

1977

Earl Meldrum Harding v. State of Utah and Salt Lake County : Brief of Respondents

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Recommended Citation

Brief of Respondent, *Harding v. Utah*, No. 15416 (Utah Supreme Court, 1977).
https://digitalcommons.law.byu.edu/uofu_sc2/852

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE
STATE OF UTAH

EARL MELDRUM HARDING,

Plaintiff-Appellant,

-vs-

STATE OF UTAH and
SALT LAKE COUNTY,

Defendants.

APPEAL FROM
COURT,
OF UTAH.

RANDALL GAITHER

321 South Sixth Street
Salt Lake City, Utah

Attorney for Appellant

TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE-----	1
DISPOSITION IN THE LOWER COURT-----	1
RELIEF SOUGHT ON APPEAL-----	1
STATEMENT OF FACTS-----	2
ARGUMENT	
THE DECISION OF THE COURT BELOW WAS BASED ON ADEQUATE EVIDENCE AND SHOULD BE AFFIRMED-----	3
CONCLUSION-----	4

CASES CITED

Bennett v. Smith, 547 P.2d 696 (Utah 1976)-----	4
Klotz v. Turner, 23 Utah 2d 303, 462 P.2d 705 (1969)-----	4
State v. Larson, 560 P.2d 335 (Utah 1977)-----	4
Strong v. Turner, 22 Utah 2d 294, 452 P.2d 323 (1969)-----	4
Sullivan v. Turner, 22 Utah 2d 85, 448 P.2d 907 (1968)-----	4

STATEMENT OF FACTS

On September 15, 1975, appellant entered a plea of guilty to a charge of manslaughter. This plea was given in exchange for the State's agreement to reduce the charge from second degree murder to manslaughter (R.33). At the time that the plea was entered, the appellant stated that his decision to plead guilty was not influenced by any promise of the possible sentence he would receive (R.33-34,36-37), that he was not induced to plead guilty (R.35), that he was satisfied with the representation he had received from his counsel (R.35-36), and that he was not under the influence of any drug which would interfere with his voluntary decision to enter a plea of guilty (R.32). The court accepted the plea of guilty (R.34). The appellant was subsequently sentenced to an indeterminate term in the Utah State Prison of not less than one nor more than fifteen years (R.43).

Appellant then filed a petition for a writ of habeas corpus wherein he alleged that his plea of guilty was not voluntarily entered, and that he had not received effective assistance of counsel (R.2-4). Respondents moved to dismiss the petition based upon the record of the plea taking (R.21).

A hearing was held on the motion to dismiss, and appellant was permitted to testify in his own behalf. The appellant testified that his decision to plead guilty was not influenced by any promise of leniency in sentencing (T.12), and that he had lied to the court on the date that his plea was taken (T.13). The court refused to believe the appellant's testimony that his plea was coerced (T.16), and granted the motion to dismiss (R.59).

ARGUMENT

THE DECISION OF THE COURT BELOW WAS BASED ON ADEQUATE EVIDENCE AND SHOULD BE AFFIRMED.

The appellant has repeated the arguments made to the court below that his plea of guilty was coerced and that his counsel was ineffective. The appellant has failed to show wherein the court below erred in refusing to believe his self-serving testimony.

The record of the plea taking conclusively demonstrates that the plea was voluntary (R.32-37). The court below was not obliged to believe the testimony presented at the hearing on the motion to dismiss, even though the respondents offered no witnesses. Sullivan

v. Turner, 22 Utah 2d 85, 448 P.2d 907 (1968); State v. Larson, 560 P.2d 335 (Utah 1977); Strong v. Turner, 22 Utah 2d 294, 452 P.2d 323 (1969). The transcript of a plea taking is sufficient evidence to support a finding that the plea was voluntary. Klotz v. Turner, 23 Utah 2d 303, 462 P.2d 705 (1969); Bennett v. Smith, 547 P.2d 696 (Utah 1976); Sullivan v. Turner, supra. The court below resolved the factual question of the voluntariness of the plea against the appellant, and this resolution is based on sufficient evidence. The court's finding affords the appellant no basis for appeal.

CONCLUSION

The lower court's finding that appellant's plea of guilty was voluntary is supported by sufficient evidence and the judgment dismissing appellant's petition should be affirmed.

Respectfully submitted,

ROBERT B. HANSEN
Attorney General

WILLIAM W. BARRETT
Assistant Attorney General

Attorneys for Respondents