

1977

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

Utah Supreme Court

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Earl Meldrum Harding; Appellant Pro Se Randall Gaither, Esq; Attorney for Appellant

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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EARL MELDRUM HARDING, )  
Petitioner-Appellant, )  
vs. ) No. 15416  
STATE OF UTAH and )  
SALT LAKE COUNTY, )  
Defendant-Respondents. )

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BRIEF OF APPELLANT

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Appeal from the Third Judicial District Court in  
and for Salt Lake County, State of Utah, The Honorable  
Dean E. Conder, presiding.

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Earl Meldrum Harding,  
Appellant, Pro Se

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321 South Sixth East  
Salt Lake City, Utah

Attorney for Appellant

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**Clerk Supreme Court, Utah**

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STATEMENT OF THE NATURE OF THE CASE

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The appellant, an inmate at the Utah State Prison, initiated a Habeas Corpus proceeding alleging that the commitment resulting in his confinement was based upon an illegal and unconstitutional plea bargain.

DISPOSITION IN LOWER COURT

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At a hearing held on September 8, 1977, the Honorable Dean E. Conder, entered an Order dismissing with prejudice the appellant's Petition for Habeas Corpus.

RELIEF SOUGHT ON APPEAL

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The appellant seeks an Order reversing the trial court denying the Writ of Habeas Corpus and ordering that

the appellant be released from custody or awarded to withdraw his plea and set his case for a new trial.

#### STATEMENT OF FACTS

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On October 17, 1975, the appellant was sentenced in the Third Judicial District Court in and for Salt Lake County for the offense of manslaughter, a second degree felony.

The appellant had previously plead guilty to manslaughter on September 15, 1975 before Judge Peter F. Leary on the basis of a plea bargain entered into by his attorney and the County Attorney. At the time of the arraignment, the appellant's attorney informed the court that there would be a change of plea.

At the habeas corpus hearing, the appellant stated that he was misled by his appointed counsel. (T. 7) He further testified that his attorney had told him that he did not have any choice other than to plead guilty to the charge, (t. 8) and that for a period of two and one-half months, his counsel misled him almost every day for the purpose of pleading guilty. (T.8)

The appellant testified at the hearing to the fact that problems he was having at home and with his family greatly influenced his state of mind at the time of the change of plea. (T. 8) At this same time, the appellant was held in jail, without bail, a situation which influenced

his decision to change his plea. (T. 9) He testified that he was influenced by threats and promises made by the police prior to the time he had counsel appointed. (T. 10)

The appellant also gave evidence at the hearing relative to his contention that he was denied effective representation of counsel, stating that he believed his appointed attorney, instead of defending him became a prosecutor, telling him he had no other choice than to plead guilty to the charge. At the hearing, Mr. Harding testified as to certain specific reasons concerning facts which he did not learn until after his plea was entered that would have been important. (T. 11, 12)

I.

THE APPELLANT'S RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WERE VIOLATED AS THE RESULT OF THE FACT THAT HIS PLEA OF GUILTY WAS COERCED AND NOT ENTERED VOLUNTARILY AND THE FACT THAT HE WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

The right to effective representation of legal counsel is a basic constitutional right, both under the United States Constitution and the Constitution of the State of Utah.

In Alires v. Turner, 22 Utah 2d 118, 449 P. 2d 241 (1969), this Court stated that the right to be adequately represented by an attorney, "is one of those rights 'rooted

in the tradition and conscience of our people' as essential to the protection of individual liberties and therefore, included in our concept of due process of law." (Quoting Justice Cordozo in Palko v. Connecticut, 302 U. S. 319). See also, State v. Fairclough, 86 Utah 326, 44 P. 2d 692 (1935).

As early as the landmark case of Powell v. Alabama, 287 U. S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932), the United States Supreme Court has held that the right to appointed counsel includes the right of effective counsel.

The right to effective counsel is generally regarded as an evolving concept and the standard and test to be applied is that "trial counsel fails to render effective assistance when he does not exercise the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances." White v. State, 20 Cr. L. 2282, (Minnesota Supreme Court, 1976).

The appellant submits that the record in this matter does not indicate that he had effective assistance of counsel in entering his plea of guilty.

Furthermore, a plea of guilty obtained through the employment of coercion, threats, or intimidation against the accused is invalid. Boykin v. Alabama, 395 U. S. 328 (1969); Machibroda v. United States, 368 U. S. 487 (1962); and People v. Beck, 188 Cal. App. 2d 549, 10 Cal. Rptr. 396



(1961). Improper coercion may be employed by defense counsel as well as the attorney for the government. Ray v. Rose, 491 F. 2d 285 (CA. 6 1974).

It is also required that the guilty plea be intelligently made and the accused must be aware of the consequences of entering into the plea. Brady v. United States, 397 U. S. 742 (1970) and Santobello v. New York, 404 U. S. 697 (1971).

The appellant contends that the record in this case discloses that his constitutional rights were violated by the process of plea bargaining in the lower court. Taking into account the various factors present in this case, especially in light of the fact that no witnesses were presented by the State at the hearing, the decision of the lower court should be reversed and the relief sought in the habeas corpus complaint should be granted.

DATED this                    day of November, 1977.

Respectfully Submitted,

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EARL MELDRUM HARING  
Pro Se

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RANDALL GAITHER, ESQ.  
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