

1988

John O. Wulffenstein v. Larry Morris : Brief of Appellant

Utah Court of Appeals

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David L. Wilkinson; attorney general; counsel for respondent.

John O. Wulffenstein; pro se.

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BRIEF

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JOHN O. WULFFENSTEIN,

PETITIONER/APPELLANT,

-Vs-

Case No. 870328-CA

LARRY MORRIS,

RESPONDENT/

146

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BRIEF OF APPELLANT

Appeal from the dismissal of petition for Writ of Habeas Corpus
by the Honorable Homer F. Wilkinson, Judge, Presiding in the Third
Judicial District Court, in and for Salt Lake County, State of Utah

JOHN O. WULFFENSTEIN
Without assistance of counsel
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Draper, Utah 84020

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FILED

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Clerk, Supreme Court, Utah

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Court of Appeals

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COURT OF APPEALS
STATE OF UTAH

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JOHN O. WULFFENSTEIN,

PETITIONER/APPELLANT,

-Vs-

LARRY MORRIS,

RESPONDENT/APPEALEE.
-----ooOoo-----

Case 870328-CA

BRIEF OF APPELLANT

JURISDICTIONAL STATEMENT

The appellant, John O. Wulffenstein, appeals from an order issued by the Honorable Homer F. Wilkinson of the Third Judicial District Court, wherein, the court dismissed a Petition for Writ of Habeas Corpus.

NATURE OF THE PROCEEDINGS

On December 1st, 1981. the Appellant, John O. Wulffenstein, prepared and filed a Petition for Writ of Habeas Corpus, without the assistance of counsel or aid from any person learned in the law, challenging the Utah State Prisons refusal to obey a Judicial sanctioned order. The appellant further alleged that the Prisons refusal violated his Constitutional Rights secured by the 1st, 6th and 14th Amendments of the United States Constitution, in-that, the Prisons refusal placed the appellant (then defendant) at a real disadvantage during his criminal trial.

ISSUES PRESENTED IN APPEAL

I. Whether the Utah State Prisons violation of Judge Wahlquists court order for law books, violated the appellants right to a Fair Trial, right to Counsel and due process of law. In violation of Article I, Section 12. and Article I, Section 7. of the Utah State Constitution and the 6th and 14th Amendments of the United States Constitution.

II. Whether a 5 year and 5 month delay in hearing a petition for Writ of Habeas Corpus constitutes a suspension of a Writ of Habeas Corpus in violation of Article I, Section 5. of the Utah State Constitution and Article I, Section 9. of the United States Constitution.

III. Whether the court below erred in hearing respondent untimely filed motion to dismiss in violation of the Utah Rules of Civil Procedures 65B (1)(6).

IV. Whether the court belows failure to hear and/or adjudicate petition for Writ of Habeas Corpus in a timely manner violated Article I, Section 11. of the Utah State Constitution and the 1st Amendment of the United States Constitution.

V. Whether the court belows failure to follow the procedure prescribed in 65B (1)(5) violated appellants right to Due Process of Law in violation of Article I, Section 7. of the Utah State Constitution and the 14th Amendment of the United States Constitution.

CONSTITUTIONAL PROVISIONS, STATUTES INVOLVED

Utah State Constitution Article I, Section 5.

The privilege of the Writ of Habeas Corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety requires it.

UNITED STATES CONSTITUTION Article I, Section 9.

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

Utah State Constitution Article I, Section 7.

No person shall be deprived of life, liberty or property, without due process of law.

UNITED STATES CONSTITUTION XIV Amendment, Section 1.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of the law.

Utah State Constitution Article I, Section 11.

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law which shall be administered without denial or unnecessary delay;...

UNITED STATES CONSTITUTION I Amendment

..., and to petition the government for a redress of grievances.

Utah State Constitution Article I, Section 12

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel,...

UNITED STATES CONSTITUTION VI Amendment

In all criminal prosecutions, the accused shall enjoy the right,...to have the assistance of counsel for his defence.

Utah Rules of Civil Procedure 65B (1)(6)

Within ten days after service of a copy of the complaint upon him, the attorney general, or the county attorney, as the case may be, shall answer

Utah Rules of Civil Procedure 65B (1)(5)

If the complainant is not represented by counsel when the complaint is filed, he shall advise the court upon filing his complaint whether he intends to employ his own counsel, and if he does not do so, or if he requests the court to appoint counsel, the presiding judge shall forthwith appoint counsel to represent complainant and shall give notice to the complainant and the attorney general or county attorney of such appointment.

STATEMENT OF THE CASE

On April 27th, 1981. the Appellant (then Defendant in criminal case 14280) John C. Wulffenstein requested a court order directing the Utah State Prison to allow him access to law books so that the Defendant/Appellant could prepare a defence for 4 criminal charges pending against him. The Honorable Judge John F. Wahlquist of the Second Judicial District Court, experienced by many years of presiding over criminal trials, determined that, in the interest of the fair administration of justice, the then defendant unrepresented by counsel required access to law books. After making fore-stated determination, his Honorable Judge John F. Wahlquist produced, in writing, a legally binding order directed to the Utah State Prison staff informing them "Law books to be made available" to the unrepresented defendant.

Upon returning to the Utah State Prison pending trial, the Appellant made requests for law books continuously from April 27, 1981 through December 1, 1981 to no avail. In-fact, Appellant was placed in Maximum Security, on June 7, 1981, for refusing to cut his hair in violation of yet another court order directing the appellant to appear at trial as he did when arrested and not to cut his hair.

For Eighty (80) days prior to Trial, the Appellant was denied total access to the Utah Code and/or any other Procedural Law, in direct violation of a legally binding, Judicially sanctioned order. Not only did the respondent refuse to obey the Courts Order, he placed the appellant in Maximum Security to inable respondent to quiet the appellants continuous requests for law books. Further, the respondent demonstrated his total disregard for Judicial authority by failing to Appeal the courts order.

On July 16th and 17th, 1981. the Appellant was tried for Aggravated Robbery, a First Degree Felony, in violation of Utah Code Ann. 76-6-302, as amended 1953. and was subsequently convicted of case 14280 Second District Court.

Upon being convicted, the Appellant made his desire to appeal the conviction on the Court record of July 17th, 1981. The Court appointed Trial Counsel, (Appellant was unrepresented at all stages of the proceedings except Trial) after being put on notice of the appellants intention to appeal, failed to assist in filing or in any other aspect of the appeal process. This action by Trial Counsel, caused the Appellant to file his appeal without the aid of counsel or access to law books as order by the court.

On December 1, 1981, after continuous request for law books for over seven (7) months, the appellant filed a Petition for Writ of Habeas Corpus with the Third Judicial District Court Civil No. C-81-9251. Judge Homer F. Wilkinson, dismissed the petition on the 10th day of July, 1987. Hence this appeal.

ARGUMENT POINT I

The question is who may disregard a court order. A loaded question. If the President of the United States can not disregard a Court Order. Then the Utah State Prison can not

The respondent, then Warden Larry Morris, was order by the Honorable John F. Wahlquist to make law books available to the then Defendant. A very simple and direct order. The order would not have placed the respondent at any great hardship or cost.

The appellant, then defendant in case 14280 in Weber County, was unrepresented counsel required access to the Utah Code in order to know the procedures of the court. Further, without the ordered law books, the appellant could not and did not know how to proceed in defending against the criminal charges or the petition for writ of Habeas Corpus.

The respondent, by refusing to obey the courts order, caused the appellant to proceed to trial without the benefit of knowledge of the law. The State may not hinder or prevent a defendant from presenting his defense. If the state does so, the conviction can not stand.

The only question remaining to be answer is if the Warden of the Utah State Prison is the state? Very simplily, the answer is YES. The Attorney General represents the State of Utah.

The respondent, Larry Morris, further hindered the appellants access to law books by placing him in Maximum Security where no law books are available. By placing the appellant in Maximum Security, the respondent made it impossible to obtain any law books at all, and further denied appellant access to what books are available for use by inmates.

Finally, a Court order must be followed by anyone who is instructed by the court to do something. One can not refuse to obey the order, EVEN PENDING APPEAL. In this case no appeal was taken. Instead, the respondent believed himself to be above the law.

ARGUMENT POINT II

In arguing this point the Appellant is reliant on the wording and the intent of the Constitutional Provisions of:

Article I, Section 5.
Utah State Constitution;

The privilege of the Writ of Habeas Corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety requires it.

According to Webster's New Collegiate Dictionary, the word SHALL means:

used in law, regulations, or directives to express what is mandatory.

Webster's New Collegiate Dictionary, the word suspend (ed) means:

to hold in an undetermined or undecided state awaiting fuller information; to keep fixed or lost; to keep waiting in suspense or indecision; to cause to stop temporarily.

Upon reviewing the definitions of the key words contained in the forestated Constitutional Provision, it becomes clear that the intent of said provision is that the Writ of Habeas Corpus will not be held in a state indecision or undetermined or lost or temporarily undecided.

Appellant respectfully proclaims that 5 years and 5 months of delay in hearing his Petition for Writ of Habeas Corpus can not be justified and therefore violated Article I, Section 5 Utah Constitution and Article I, Section 9. United States Constitution.

ARGUMENT POINT III

The question of default in the present case has two focal points: One, the time between December 1, 1981 and May 6, 1987; two, the time between May 6, 1987 and May 28, 1987. (The first point of default will be argued with point V. of this Brief)

It is the appellants contention that from May 6, 1987 to May 28, 1987 is 22 days and that Rule 65B (1)(6), Utah Rules of Civil Procedure, demands that the Attorney General "Shall answer the complaint or otherwise plead thereto" and that he shall do so "Within ten days after service of a copy of the complaint upon him"

The Attorney General, in his motion to dismiss, (Memorandum in support of his motion) states "The Office of the Attorney General was unaware of this action until it was brought to its attention by the Court on May 6, 1987". The foregoing admission, coupled with the Date of filing his Motion to Dismiss, proves that respondent defaulted in answering the Petition once a copy had been served upon him.

Once again, the Appellant, finds the word Shall present in Rule 65B (1)(6), which removes any discretion from Judge Wilkinson to hear respondents Motion to Dismiss. In-fact, Judge Wilkinson, acting without Judicial Authority and contrary to established Procedural Law, determined that the Appellant had no Due Process right under Rule 65B (1)(6).

The Appellant has been unable to find any law which states that a convicted person does not have the same process which is due as any other citizen of the State of Utah.

Therefore, Judge Wilkinsons failure to follow Rule 65B (1)(6) violated appellants "Due Process of Law" rights under Article I,

Section 7, Utah State Constitution and the 14th Amendment of the United States Constitution.

ARGUMENT POINT IV

The Appellant filed a Petition with the Third Judicial District Court on December 1, 1981, by placing a copy thereof in the United States Post Office Box at the Utah State Prison. The Court received the Petition in the month of December 1981.

Article I, Section 11. Utah State Constitution

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law which shall be administered without denial or unnecessary delay;...

IS 5 YEARS AND 5 MONTHS, for hearing a Petition for Writ of Habeas Corpus, A VIOLATION OF THE ABOVE CONSTITUTIONAL PROVISION? Keeping in mind the MANDATORY (shall) structure of the provision, one can only conclude that from December 1, 1981 to May 1987 constitutes a denial of access to the court in violation of both the Utah State Constitution and the 1st Amendment of the United States Constitution.

ARGUMENT POINT V

If the complainant is not represented by counsel when the complaint is filed, he shall advise the court upon filing his complaint whether he intends to employ his own counsel,

and if he does not so, or if he requests the court to appoint counsel,

the presiding judge shall forthwith appoint counsel to represent complainant and shall give notice to the complainant and the attorney general or

The Appellant, unaided by counsel, uneducated in law and unassisted by anyone learned in law, filed a document with the heading "Petition for Writ of Habeas Corpus". The heading was clearly typed and placed in the right hand corner. It is impossible for anyone seeing the document to not understand what it was.

Rule 65B (1)(5) was formulated to insure that all people have a fair opportunity to be heard with the assistance of counsel. In-fact, if the complainant fails to state that he intends to employ his own counsel, the "Presiding judge SHALL forthwith appoint counsel" and he (presiding judge) "SHALL give notice to the complainant and the attorney general".

The importance of the above Rule and/or procedure in the instant case is; (1) Upon filing the petition, the appellant, mailed a copy to the county attorney instead of the attorney general. (2) had the presiding judge follow Rule 65B (1)(5) and appointed counsel and GAVE NOTICE to the complainant and the attorney general the petition for writ of habeas corpus would have been heard in December 1981 instead of May 1987. Further, the appellant would have become aware of his mistake in mailing the copy to the county attorney.

The appellant uneducated in law informed the Third District Court of what he believes (ed) to be an intentional violation of his rights. The presiding judge was required, by mandatory statutory provisions, to insure the expedient adjudication of the appellant's petition. The presiding judges failure to follow Rule 65B (1)(5) caused the petition to remain suspended for 5 years and 5 months in violation of every statutory and constitutional provision of the State of Utah and the United States.

CONCLUSION

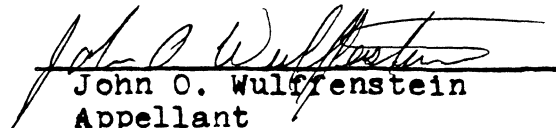
Because the law is ^{brittle}~~brittle~~ and therefore inflexible. One can not bend the law to suit his own purposes, for to bend the law is to break the law.

In the instant case, the law has been destroyed beyond all recognition by; The presiding Judge of the Third District Court in 1981; The Respondent, Larry Morris, for failing to obey a legally binding court order; The Attorney General of the State of Utah; and last but not least, Judge Homer F. Wilkinson of the Third District Court on July 10th, 1987.

The law has been mutilated by the very people who are sworn to uphold it.

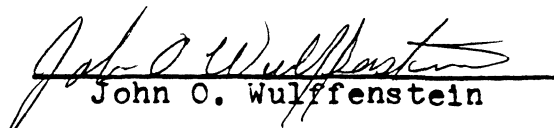
THEREFORE, the appellant demands that the mandatory provisions be reinstated and that his Petition for Writ of Habeas Corpus be unsuspended and that he be released from his unconstitutional detention forthwith.

Submitted this 22 day of October, 1987


John O. Wulffenstein
Appellant
P.O. Box 250
Draper, Utah 84020

CERTIFICATE OF MAILING

I, John O. Wulffenstein, do hereby certify that I mailed two (2) true and correct copies of the foregoing Brief to; David L. Wilkinson, Utah Attorney General, 236 State Capitol, Salt Lake City, Utah. 84114. On this 22 day of October, 1987.


John O. Wulffenstein