

1978

Delbert v. Crawford v. Samuel W. Smith, Warden, Utah State Prison : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

DELBERT V. CRAWFORD,

Plaintiff-Appellant,

-vs-

SAMUEL W. SMITH, Warden,
Utah State Prison,

Defendant-Respondent.

BRIEF OF RESPONSE

APPEAL FROM AN ORDER OF THE
DISTRICT COURT, IN AND FOR THE
STATE OF UTAH, DEPARTMENT OF
APPELLANT'S PETITION FOR HABEAS
CORPUS, THE HONORABLE DEPARTMENT
PRESIDENT

ROBERT
Attorney

CRAWFORD
Appellant

Z
Salt Lake

Attorney

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IN THE SUPREME COURT OF THE
STATE OF UTAH

:-----
DELBERT V. CRAWFORD, :

Plaintiff-Appellant, :

-vs- :

Case No.
15507

SAMUEL W. SMITH, Warden,
Utah State Prison, :

Defendant-Respondent. :

:-----
BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

-Appellant seeks a writ of habeas corpus discharging
him from respondent's custody.

DISPOSITION IN LOWER COURT

The court below granted respondent's motion to
dismiss the petition for failure to state a claim upon
which relief could be granted.

RELIEF SOUGHT ON APPEAL

Respondent seeks an order of this Court affirming
the judgment and order of the court below.

STATEMENT OF FACTS

Appellant is an inmate at the Utah State Prison (R.2-3). His confinement is the result of a transfer from the Idaho State Prison. Id. Appellant sought a writ of habeas corpus on the grounds:

(1) That his transfer to the Utah State Prison has separated him from his appointed attorney in Idaho who is handling his appeal to the Idaho Supreme Court (R.2-3, T.7-9).

(2) That he is denied access to a law library. Id.

(3) That he has been denied medical treatment (T.9-12).

Respondent responded to the petition with a motion to dismiss for failure to state a claim upon which relief could be granted (R.7). The court granted the motion to dismiss and entered findings of fact and conclusions of law (R.32-35).

ARGUMENT

POINT I

THE COURT BELOW PROPERLY GRANTED RESPONDENT'S MOTION TO DISMISS BECAUSE APPELLANT'S PETITION FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

Appellant seeks a writ of habeas corpus on the grounds that he is separated from his Idaho attorney, denied access to a law library, and denied medical treatment. These allegations do not challenge the lawfulness of appellant's confinement, but the conditions of his confinement. Appellant has not alleged that he has been subjected to cruel and unusual punishment. Respondent submits that the writ of habeas corpus cannot be used to test conditions of lawful confinement which do not amount to cruel and unusual punishment. Chapman v. Graham, 2 Utah 2d 156, 270 P.2d 821, 923 (1954); Smith v. Turner, 12 Utah 2d 66, 362 P.2d 581 (1961). The petition fails to state a claim upon which relief can be granted, and respondent submits that the order of the court below dismissing the petition should be affirmed.

POINT II

APPELLANT'S PETITION DOES NOT ALLEGE FACTS WHICH AMOUNT TO AN UNCONSTITUTIONAL DENIAL OF ACCESS TO THE COURTS.

Appellant raises two claims in support of his contention that he has been denied access to the court:

- (1) His transfer to the Utah State Prison

separates him from his appointed counsel.

(2) He is denied access to a law library.

As to (2), respondent contends that there is no constitutional right to use a prison law library as long as adequate alternative means of access to the courts are provided. Bounds v. Smith, 97 S.Ct. 1491, 1499 (1977), states:

" . . . while adequate law libraries are one constitutionally acceptable method of assuring meaningful access to the courts, our decision here . . . does not foreclose alternative means to achieve that goal."

In the present action, appellant's right of access to the courts is protected by the appointment of Mr. Randall Gaither of the Salt Lake Legal Defender Association to represent him in this action. The additional access provided by a law library would be of minimal aid. Appellant's petition concedes as much when it states:

"Even if petitioner had access to the Utah legal library petitioner [appellant] could not meaningfully research his case and/or aid in his own defense. Because the Idaho State laws and the Utah State laws vary to the point that it is useless to cite Utah laws in an Idaho case ([sic])." (R.3).

When testifying in his own behalf at the hearing on this petition, appellant stated he required access to a law library in order to assist his counsel in Idaho in handling his appeal to the Idaho Supreme Court, and to obtain less restricted communication with his attorney in Idaho (T.8-9). Inasmuch as appellant's interests in his Idaho action are protected by an appointed counsel in Idaho, and his interest in obtaining less restricted communication with counsel is protected in this case where appellant is represented by appointed counsel, appellant has been given adequate access to the courts by means other than a law library. Appellant's claim that he has been denied access to a law library fails to state facts constituting an unconstitutional denial of appellant's right of access to the courts. The fact that a prisoner has initiated post-incarceration litigation indicates that the prisoner has not been denied access to the courts. Biagiarelli v. Sielaff, 349 F.Supp. 913 (D. Pa.), vacated on other grounds, 483 F.2d 508 (3d Cir. 1973); Jones v. Peyton, 294 F.Supp. 173 (D. Va. 1968); Annotation 23 A.L.R. Fed. 1, 33-40 (1975).

As to appellant's claim that his transfer from Idaho to Utah has separated him from his attorney, respondent

submits that this allegation does not state a denial of a constitutional right. Appellant does not claim that respondent has prevented him from communicating with his attorney, only that the transfer had made personal interviews with his attorney economically impractical (T.7-8). Appellant testified that he felt a personal interview was necessary because the mail was "in all probability" being censored. Id. In short, appellant produced no evidence that respondent has actually interfered with his communications with his attorney.

Assuming that the transfer did interfere with appellant's legal communications, respondent submits that a transfer which is otherwise legal does not become illegal because of its incidental effect on an inmate's legal communication. Wells v. McGinnis, 344 F.Supp. 594 (S.D.N.Y. 1972); Martinez v. Oswald, 425 F.Supp. 112 (W.D.N.Y. 1977). Appellant has not claimed that his transfer was unlawful or in retaliation for his attempt to gain relief from the courts. Appellant's claim that his transfer from Idaho to Utah has made personal interviews with his attorney more costly does not rise to the level of a constitutional deprivation.

CONCLUSION

Appellant's petition fails to state a claim upon which relief can be granted, and the order of the court below dismissing the petition should be affirmed.

Respectfully submitted,

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Attorneys for Respondent