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Randy A. Ziegler v. William Milliken and State of Utah : Brief of Appellant

Utah Supreme Court

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Randall Gaither; Attorney for Appellant;

Robert B. Hansen; Attorney for Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

RANDY A. ZIEGLER, :
 :
Plaintiff-Appellant, :
 :

-v- :
 :

WILLIAM MILLIKEN and :
THE STATE OF UTAH, :

Case No. ~~15553~~
15533

Defendant-Respondents. :
 :

BRIEF OF APPELLANT

Appeal from a judgment in the Third Judicial District Court in and for Salt Lake County, State of Utah, dismissing with prejudice appellant's Petition for a Writ of Habeas Corpus, the Honorable Dean E. Conder, presiding.

RANDALL GAITHER
Salt Lake Legal Defender Association
343 South Sixth East
Salt Lake City, Utah 84102
Attorney for Appellant

ROBERT B. HANSEN
Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Attorney for Respondent

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343 South Sixth East
Salt Lake City, Utah 84102
Attorney for Appellant

ROBERT B. HANSEN
Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114
Attorney for Respondent

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IN THE SUPREME COURT OF THE STATE OF UTAH

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The plaintiff-appellant, RANDY A. ZIEGLER, appeals from an order in the Third District Court, Honorable Dean E. Conder dismissing with prejudice appellant's Petition for a Writ of Habeas Corpus.

DISPOSITION IN THE LOWER COURT

Respondents brought a motion to dismiss appellant's petition with prejudice in the lower court contending that habeas corpus is an improper writ to attack conditions of confinement and therefore appellant's petition failed to state a claim upon which relief could be granted. The lower court considered three Utah cases, Chapman v. Graham, 2 U.2d 156, 270 P.2d 821 (1954), Smith v. Turner, 12 U.2d 66, 362 P.2d 581 (1961), and Rammell v. Smith, 560 P.2d 1108 (Utah 1977); and granted defendant's motion based on those cases, unspecified remedies through the Board of Corrections, and a state action

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under the Civil Rights Act of 1871, 42 USCA 1983.

RELIEF SOUGHT ON APPEAL

The appellant seeks a reversal of the order dismissing petition with prejudice and that this matter be remanded for further proceedings on the merits of his petition.

STATEMENT OF THE FACTS

Appellant, acting as his own counsel, filed two virtually identical petitions for a writ of habeas corpus (R. 1 - 12). Neither petition contained a prayer for relief, each essentially was a challenge to the rescinding of his parole date and his confinement and conditions of the confinement first in isolation and later in maximum security at the Utah State Prison for disciplinary reasons (See T. 4). Among the conditions alleged by petitioner to be unconstitutional as cruel and unusual were denial of Due Process, religious discrimination, denial of access to legal materials, physical abuse, and denial of access to the mails. On August 10, 1977, respondent moved to dismiss "the petition" on the ground it was an improper writ to attack conditions of confinement and therefore failed to state a claim upon which relief could be granted (R. 1-12).

In support of its motion, respondent filed a memorandum which argued that Rule 65B(i)(1), Utah Rules of Civil Procedure (U.R.C.P.) only allows a prisoner the remedy of habeas corpus when challenging proceedings resulting in that prisoner's confinement or commitment, and therefore the writ is unavailable to challenge conditions of confinement (R. 15 - 17). Randall Gaither entered

his appearance as appellant's counsel and on September 15, 1977, a hearing on respondent's motion was held. Counsel argued whether Rule 65B(f) or Rule 65B(i), U.R.C.P., applied to this matter (T. 2-3), and argued generally whether in Utah a writ of habeas corpus could be used to attack conditions of confinement. The Court ordered that memoranda be submitted on the points argued (T. 11). In a minute entry, and in a later order dated November 2, 1977, the Court granted respondent's motion without mentioning the dispute over the applicable rule of procedure but nevertheless basing its finding on three cases in Utah and the availability of other remedies (R. 31 - 33).

ARGUMENT

POINT I

RULE 65(f), AND NOT RULE 65(i), U.R.C.P., GOVERNS THIS PETITION FOR A WRIT OF HABEAS CORPUS

In bringing its motion to dismiss, respondent argued that Rule 65B(i) provides habeas corpus relief only to "[a] person imprisoned in the penitentiary . . . who asserts that in any proceedings which resulted in his commitment there was a substantial denial of his rights under the Constitution of the United States or of the State of Utah . . .", and therefore, since appellant was challenging the conditions of his confinement and not the "proceedings resulting in the confinement", appellant had stated no cause for relief. It is appellant's contention that Rule 65B(i), U.R.C.P., does indeed only apply to persons challenging proceedings resulting in their confinement, but that Rule 65B(f), U.R.C.P., nevertheless provides appellant with a remedy.

Rule 65B(i) applies by its terms to persons seeking to challenge constitutional flaws in proceedings resulting in their confinement and provides a procedure by which to make that challenge. However, Rule 65B(i) is by no means an exclusive remedy. Rule 65B(f) states:

Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the proper court that any person is unjustly imprisoned or otherwise restrained of his liberty. If the person seeking relief is imprisoned in the penitentiary and asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or under the Constitution of the State of Utah, or both, then the person seeking such relief shall proceed in accordance with Rule 65B(i). In all other cases, proceedings under this subdivision shall be conducted in accordance with the following provisions . . . " (Emphasis added).

The foregoing provision would seem to indicate that since the appellant challenged the conditions of his confinement he was precluded from following the procedures in Rule 65B(i) but that he could still argue his imprisonment was unjust under Rule 65B(f). A similar situation presented itself in Newton v. Cupp, 474 P.2d 532 (Or. App. 1970), and there the Court held that the writ of habeas corpus was available.

In Newton, the trial court dismissed the petition which challenged petitioner's treatment in confinement as cruel and unusual. On appeal, the State argued that Oregon's Post-Conviction Relief Act prohibited the use of the writ of habeas corpus except by imprisoned persons to challenge the judgment of conviction. The appellate court reversed the dismissal, holding that the writ of habeas corpus was available to test the constitutionality of the treatment afforded to a person inmate.

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Appellant in this matter is not foreclosed from the remedy of a writ of habeas corpus since he merely fails to fit the situation Rule 65B(i) describes, appellant still may seek relief under Rule 65B(f). Yet the issue remains as to whether or not appellant can use Rule 65B(f) to challenge the conditions of his confinement on the ground they are cruel and unusual. As will be seen, such grounds for relief have long existed in the State of Utah and elsewhere.

POINT II

A HABEAS CORPUS PROCEEDING UNDER RULE 65B(f) IS AVAILABLE TO ENFORCE A RIGHT OF APPELLANT TO TEST THE CONSTITUTIONALITY OF THE CONDITIONS OF HIS CONFINEMENT

"History refutes the notion that until recently the writ was available only in a very narrow class of lawless imprisonments . . .", ". . . its function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints", Fay v. Noia, 372 U.S. 391, 394 (1963). One of the intolerable restraints for which the writ of habeas corpus is available in the federal courts, in sister states, and in the State of Utah is restraint under conditions which amount to cruel and unusual punishment prohibited by the Eighth Amendment to the United States Constitution. For that reason, the lower court erred in failing to consider the merits of appellant's petition.

In Johnson v. Avery, 393 U.S. 483 (1969), a state prisoner was placed in disciplinary confinement for assisting other prisoners in the preparation of petitions for writs of habeas corpus in violation of a prison regulation. The District Court granted the prisoner

habeas corpus relief, ~~not releasing him from prison, but restoring~~

him from disciplinary confinement to the status of an ordinary prisoner. The Sixth Circuit Court reversed but the Supreme Court reinstated the lower court's decision, holding that the prison regulation could not be enforced until the State provided some alternative assistance to prisoners who needed it in preparing petitions.

In reaching its conclusion, the Court dealt with and rejected the contention that the interests of the State in preserving prison discipline and limiting the practice of law to attorneys justified the burden imposed on access to federal habeas corpus.

[Prison discipline and administration] are state functions. They are subject to federal authority only where paramount federal constitutional or statutory rights supervene. It is clear, however, that in instances where state regulations applicable to inmates of prison facilities conflict with such rights, the regulations may be invalidated . . . the state and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus, 'Ex Parte Hull, 312 U.S. 546, 549 (1941). 393 U.S. 483, 486 - 487.

In Wilwording v. Swenson, 404 U.S. 249 (1971), the Court reviewed a habeas corpus case involving state prisoners who challenged only their living conditions and disciplinary measures. The State and district courts all dismissed the petition. The Eighth Circuit upheld the dismissal, ruling that although state habeas remedies were exhausted, petitioners should have exhausted state suits for injunction, writ of prohibition, mandamus, declaratory judgment, or administrative remedies. The Supreme Court reversed this decision. In so holding, the Court stated,

The exhaustion requirement is merely an accommodation of our federal system designed to give the state an initial 'opportunity to pass upon and correct' alleged violations of its prisoners' federal rights. Pay

v. Noia, 372 U.S. 391, 438 (1963) . . . the mere possibility of success in additional proceedings (does not) bar federal relief. Roberts v. LaVallee, 389 U.S. 40, 42 - 43 (1967). In these circumstances (where no Missouri court ever granted a hearing to a state prisoner challenging conditions of confinement) §2254 (the habeas corpus statute) did not require petitioners to pursue the suggested alternatives as a prerequisite to taking their claims to federal court," 404 U.S. 249, 250.

The Court also found in Wilwording that the petitioner's claims could, ". . . also be read to plead causes of action under the Civil Rights Act, 42 U.S.C. 1983 . . .," 404 U.S. 249, 251. This finding is significant in that the Court appears by this finding to implicitly rule that 1983 actions may be plead in the alternative to habeas corpus actions, and thus needn't be exhausted before filing the habeas action.

Federal and state courts have followed the lead of Johnson v. Avery and Wilwording v. Swenson. Bryant v. Harris, 465 F.2d 365 (7th Cir. 1972) involved pro se petitions alleging prolonged solitary confinement and racial discrimination which operated to deny petitioners First Amendment rights of religious freedom and constituted cruel and unusual punishment in violation of the Eighth Amendment, much the same as appellant's petition herein. The District Court dismissed the petitions without a hearing but the Seventh Circuit reversed, holding, ". . . the District Court erred in dismissing the petitions without a hearing because if petitioners prove what they allege, relief is available to them, Johnson v. Avery, 393 U.S. 483 (1969)," 465 F.2d 365, 367. In Re Riddle, 57 Cal. 2d 848, 372 P.2d 304, cert. den. 371 U.S. 914 (1926) challenged conditions of confinement as cruel and unusual punishment by means of habeas corpus where petitioner had been

beaten by guards. The Court concluded,

The allegations of the petition state a good cause for relief by habeas corpus. The California Courts have used the writ not only to test jurisdiction, but also to protect fundamental basic rights of prisoners. Thus the writ has been used to examine allegations by prisoners that they were beaten [citing cases] . . . denied religious freedom . . . [citing cases] . . . or prevented effectively from communicating with counsel [citing cases] or the courts [citing cases], 57 Cal. 2d 848, 489; 372 P.2d 304.

At a later date the same court had occasion to observe, "Habeas corpus may be sought by one lawfully in custody for the purpose of vindicating rights to which he is entitled even in confinement. Re Allison, 57 Cal. Rptr. 593, 594; 425 P.2d 193 (1967). Utah has many years followed the same theory.

The petitioner in Chapman v. Graham, 2 U. 2d 156, 270 P. 821 (1954), alleged he had been subjected to cruel and unusual punishment by not being allowed out of the hospital for surgery. District Court granted the petition but the Supreme Court reversed finding no cruel and unusual punishment. While the Court clearly was reluctant to use the writ, "[u]se of the writ in a case like this could pierce and wound the administrative processes of constitutionally created executive agencies with a habeas corpus lance thrust by the judiciary. Almost universally such use has been condemned . . ." 156, 157, 270 P.2d 821, 822; the Court did not reject the use of the writ entirely. "We prefer to adhere to the principle, until that rare case approaches which to date we have not encountered, that courts, by means of the writ . . ." (Emphasis added) 2 U.2d 156, 270 P.2d 821, 823, will not interfere with administrative agencies such as the prison.

habeas corpus challenge to poor medical treatment and diet as cruel and unusual. The District Court granted the petition and again the Supreme Court reversed, quoting at length from Chapman but again not rejecting the remedy in such cases. The Court only noted, "We do not consider this case to constitute that rare case we spoke of in Chapman v. Graham that conceivably might sanction the use of the writ", and concluded, "It seems clear that the writ of habeas corpus under established principles, does not lie under the facts of this case", 12 U.2d 66, 68, 362 P.2d 581, 583.

A third Utah case challenged a poor diet in maximum security as cruel and unusual punishment grounds for a writ. The District Court granted the writ and again the Supreme Court reversed, Hughes v. Turner, 14 U.2d 128, 378 P.2d 888 (1963). The Court again stated its position, "This Court has held that the absence of cruel and unusual punishment the writ should not be used to interfere with the management and control of the internal affairs in the prison", 14 U.2d 128, 129, 378 P.2d 888, 889. Once more it would appear that the Court has not ruled out the use of habeas corpus to alleviate cruel and unusual punishment, the Court has simply not yet been presented with a case where it felt use of the writ was merited.

Johnson v. Avery and Wilwording v. Swenson, cases decided since the last Utah case involving habeas corpus and cruel and unusual punishment, both set forth the principle that state prisoners may challenge conditions of confinement through use of habeas corpus petitions. Johnson further held that habeas corpus could serve to restore a prisoner from disciplinary confinement to the general population, as appellant sought in his own petition. Wilwording

indicated that a prisoner could plead for habeas corpus relief and 42 U.S.C.A. 1983 relief in the alternative, contrary to the lower court's ruling in this action that appellant must first exhaust his Civil Rights Act remedy. In that same case, the Court ruled petitioner need only exhaust meaningful state remedies before seeking habeas corpus relief. In appellant's case, even though administrative remedies were mentioned, no hearing on the merits took place so he had no opportunity to present evidence on his exhaustion of administrative remedies.

State and federal courts have followed the lead of Johnson and Wilwording. The Utah Supreme Court has adopted the same theory despite never finding a case of cruel and unusual punishment where habeas corpus relief would be merited, the Court would apparently grant the relief if presented with "that rare case" mentioned in Chapman v. Graham. In light of the fact that the Eighth Amendment " . . . must draw its meaning from the evolving standards of decency that mark the progress of a maturing society", Trop v. Dulles, 356 U.S. 86, 101 (1958), the district courts of this state have a duty to inquire into the merits of each petition for a writ of habeas corpus where conditions of confinement are challenged as cruel and unusual punishment. To hold that no such remedy exists in this state would be equivalent to abdicating state review of state prisons, because in federal courts such issues may clearly be considered.

CONCLUSION

The District Court, Judge Dean E. Conder, erred in concluding that the writ of habeas corpus was unavailable in the State of Utah.

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as a means to challenge prison conditions alleged to be cruel and unusual punishment and therefore erred in granting respondent's motion to dismiss appellant's petition on the ground it failed to state a claim for relief. This case should be reversed and remanded for proceedings on the merits of appellant's petition.

Respectfully Submitted,

RANDALL GAITHER
Attorney for Plaintiff-Appellant