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State of Utah v. Frederick William Albert : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,)	
)	
Plaintiff-Respondent,)	
)	
-v-)	No. 15551
)	
FREDRICK WILLIAM ALBERT,)	
)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

Appeal from the Judgment of the
Fourth Judicial District Court
Duchesne County, State of Utah
Honorable Allen B. Sorensen, Judge

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TABLE OF CONTENTS

	Page
NATURE OF THE CASE	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF FACTS	1
ARGUMENT	
POINT I THE TRIAL COURT ERRED IN FAILING TO MAKE AN INQUIRY TO THE DEFENDANT PERSONALLY AS TO THE VOLUNTARINESS OF HIS GUILTY PLEA AND TO DETERMINE THAT THE DEFENDANT UNDERSTOOD THE CONSEQUENCES OF HIS PLEA	4
POINT II THE UTAH SUPREME COURT AS A MATTER OF LAW SHOULD ADOPT THE REQUIREMENTS FOR THE ACCEPTANCE OF GUILTY PLEAS AS SET OUT IN FEDERAL RULES OF CRIMINAL PROCEDURE RULE 11	7
POINT III THE DEFENDANT WAS DENIED HIS RIGHT TO BE REPRESENTED BY ADEQUATE COUNSEL	8
CONCLUSION	11

CASES CITED

	Page
<u>Alires v. Turner</u> , 22 Utah 2d 118, 449 P.2d 241 (1969)	9
<u>Boykin v. Alabama</u> , 395 U.S. 238 (1968)	5,7
<u>Douglas v. Alabama</u> , 380 U.S. 415	7
<u>Duncan v. Louisiana</u> , 391 U.S. 145	5
<u>Malloy v. Hogan</u> , 378 U.S. 1	5
<u>Pointer v. Texas</u> , 380 U.S. 400	5
<u>Windom v. Cook</u> , 423 F.2d 721 (1970)	10

STATUTES CITED

Utah Code Ann. § 76-6-412(a)(c)	2
Utah Code Ann. § 76-6-604	2

OTHER AUTHORITIES

Fed. R. Crim. P. 11	7
U.S. Const. amends. VI, XIV	10
Utah Const. art. I, § 12	10

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,)	
Plaintiff-Respondent,)	
-v-)	No. 15551
FREDRICK WILLIAM ALBERT,)	
Defendant-Appellant.)	

BRIEF OF APPELLANT

NATURE OF THE CASE

This is an appeal from a judgment of guilty after defendant pleaded guilty to one count of theft, a Class A misdemeanor in the Fourth Judicial District Court of the State of Utah in and for Duchesne County, the Honorable Allen B. Sorensen, Judge.

RELIEF SOUGHT ON APPEAL

The appellant seeks to have this case dismissed or, in the alternative, to order the district court to allow defendant to withdraw his guilty plea and set the matter for trial.

STATEMENT OF FACTS

The appellant, Fredrick William Albert, was charged

with the crime of theft, a Class A misdemeanor, as defined in Section 76-6-412(1)(c), Utah Code Annotated (1953). The information alleges that on or about the 5th day of August, 1977, the defendant did commit the crime of theft as defined in Section 76-6-604, Utah Code Annotated (1953) in Roosevelt, Duchesne County, State of Utah.

On the 26th day of October, 1977, the defendant came before the Honorable Allen B. Sorensen, Judge, for the purposes of arraignment. At the time of the arraignment the defendant was without representation of counsel. Apparently the defendant could not meet his selected counsel's retainer fee, so selected counsel refused to accompany the defendant to the arraignment. (Transcript of proceedings hereinafter referred to as Tr.) (Tr. 1, 2.)

The defendant attempted to enter a guilty plea without representation of counsel, but the Court refused to entertain the plea without defendant being represented by counsel.

The prosecuting attorney then asked the Court, "If they confer with counsel today, may this come back on at the end of the calendar?" (Tr. 2.)

At that time an attorney who happened to be in the courtroom came forward and agreed to represent the defendant. After a short conference, the matter came before the Court again. Whereupon the Court accepted the defendant's guilty plea. The guilty plea was accepted without personally

addressing the defendant to determine if the plea was voluntary or if the defendant understood the consequences of his guilty plea. The relevant portions of the transcript read as follows:

THE COURT: Let the record show. Mr. Albert you may enter a plea to this charge now or you have a right to additional time to think it over. What is your request as to the entry of plea?

MR. ALBERT: I will make my plea today, Your Honor.

THE COURT: To the charge contained in the information what is your plea?

MR. ALBERT: Guilty, Your Honor.

THE COURT: Were these the same transactions?

MR. DRANEY: Yes, Your Honor.

MR. MANGAN: Yes.

THE COURT: You were with Mr. Mach I take it?

MR. ALBERT: Yes, sir.

THE COURT: Did you hear the questions I asked him about his wishes to enter a plea of guilty?

MR. ALBERT: Yes, sir, I did.

THE COURT: Would any of your answers to those questions be any different?

MR. ALBERT: No, sir.

THE COURT: The court finds the defendant is voluntarily offering to enter a plea of guilty and directs the clerk to enter that plea.

The defendant came before the Court on the 22nd day of November, 1977, for the pronouncement of judgment and sentence. The Court announced that the judgment would be a six-month confinement in the Duchesne County Jail.

The defendant filed his notice of appeal on the 23rd day of November, 1977.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN FAILING TO MAKE AN INQUIRY TO THE DEFENDANT PERSONALLY AS TO THE VOLUNTARINESS OF HIS GUILTY PLEA AND TO DETERMINE THAT THE DEFENDANT UNDERSTOOD THE CONSEQUENCES OF HIS PLEA.

The defendant came before the trial court for the purpose of entering a guilty plea. The trial judge did not personally inquire of the defendant if he understood the consequences of his plea or if the plea was voluntary. He merely asked if the defendant heard the questions he had asked to a Mr. Mach who had been arraigned just prior to the defendant on the same charge who had also pleaded guilty, and if the defendant would change any of his answers.

This does not conform with the requirements for the determination of the voluntariness or the requirement to

inquire as to the defendant's understanding of the consequences of his guilty plea, as required by the United States Supreme Court in Boykin v. Alabama, 395 U.S. 238. In that case the Supreme Court held that as constitutional requirement, the court must inquire into the constitutional rights involved. The Court stated:

Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth. Malloy v. Hogan, 378 U.S. 1. Second, is the the right to trial by jury. Duncan v. Louisiana, 391 U.S. 145. Third, is the right to confront one's accusers. Pointer v. Texas, 380 U.S. 400. We cannot presume a waiver of these three important federal rights from a silent record.

What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence. When the judge discharges that function, he leaves a record adequate for any review that may be later sought

In the present case the transcript and record of the

above defendant's proceeding is silent as to any inquiry by the trial court to the defendant as to the defendant's understanding of the consequences of his guilty plea or as to its voluntariness.

The purpose of the Boykin requirement that the trial judge personally address the defendant concerning his waiver of his constitutional rights is to insure that the defendant understands the consequences of his plea and to guarantee that it is voluntary.

The constitutional rights waived by a guilty plea are far too important to allow a trial judge to expect a defendant to listen to the interrogation of a different defendant in a different action whose outcome does not affect the outcome of his own case. The record of the defendant's own proceeding must reflect that the defendant voluntarily and understandingly waived his constitutional rights.

The above-entitled court should not be forced to look into the transcript of an entirely separate proceeding whose transcript was not ordered by either party to the action and only available through the action of the trial judge and should not be included as part of the record on appeal.

The record of the above defendant's proceeding is silent as to the defendant's understanding of the effects of his guilty plea or as to its voluntariness. As the Court said in Boykin, "We cannot presume a waiver of these three important

federal rights from a silent record." (Id. at 243.)

Therefore the defendant prays that his judgment as in Boykin be reversed or, in the alternative, to order the district court to allow defendant to withdraw his guilty plea and set the matter for trial.

POINT II

THE UTAH SUPREME COURT AS A MATTER OF LAW SHOULD ADOPT THE REQUIREMENTS FOR THE ACCEPTANCE OF GUILTY PLEAS AS SET OUT IN FEDERAL RULES OF CRIMINAL PROCEDURE RULE 11.

The United States Supreme Court in Boykin, supra, held that when a defendant pleads guilty to a criminal charge he waives several federal constitutional rights and that therefore "The question of an effective waiver of a federal constitutional right in a proceeding is of course governed by federal standards. Douglas v. Alabama, 380 U.S. 415, 422." (Id. at 243.)

The appropriate federal standards for the acceptance of guilty pleas and the procedures to safeguard defendant's constitutional rights waived by a guilty plea are set out in Federal Rules of Criminal Procedure Rule 11.

In interpreting the effect of the majority opinion in Boykin, a dissent written by Mr. Justice Harlan points out:

The court thus in effect fastens

upon the States, as a matter of federal constitutional law, the rigid prophylactic requirements of Rule 11 of the Federal Rules of Criminal Procedure. (Id. at 245.)

Therefore, in order to adequately protect the defendant's federal constitutional rights waived by a guilty plea, the above-entitled court should adopt as a matter of law the standards for determining voluntariness of a guilty plea and that defendant understands the consequence of his guilty plea as set out in Federal Rules of Criminal Procedure Rule 11.

POINT III

THE DEFENDANT WAS DENIED HIS RIGHT TO BE REPRESENTED BY ADEQUATE COUNSEL.

The defendant appeared before the Honorable Allen B. Sorensen, Judge, for arraignment without counsel. The counsel defendant had selected to represent him refused to attend the arraignment because the defendant could not pay his retainer fee. The trial judge announced he would not accept the defendant's plea if he was not represented by counsel and announced he would continue the matter. The prosecuting attorney thereupon asked the Court, "If they confer with counsel today, may this come back on at the end of the calendar?" (Tr.2.) It was then arranged that an attorney who happened to be in the courtroom would represent the defendant. (Tr.3.) After a brief

conference, the defendant came back before the Court and a plea of guilty was entered and accepted as more fully discussed in Point I.

The case of Alires v. Turner, 449 P.2d 241, 22 Utah 2d 118 (1969) facts are remarkably similar to the present case. In that case when the defendants came before the district court for the purposes of arraignment. The judge appointed an attorney who happened to be in the courtroom at the time to represent the defendants. After a brief conference with the attorney in the judge's chambers, the defendants entered pleas of guilty. (See p. 242.)

The Utah Supreme Court held that this was inadequate counsel and remanded the case for new trial. In announcing its position, the Court stated:

The right of an accused to have counsel as assured by Sec. 12, Art. I, Utah Constitution, and by the VI and XIV Amendments to the U. S. Constitution is one of those rights "rooted in the traditions and conscience of our people" as essential to the protection of individual liberties and therefore included in our concept of due process of law. The requirement is not satisfied by a sham or pretense of an appearance in the record by an attorney who manifests no real concern about the interests of the accused.

The Court then held:

The failure of such representation for the petitioner herein is a departure from due process of law. (Id. at 243.)

The Fifth Circuit in Windom v. Cook, 423 F.2d 721 (1970) held that where a court-appointed counsel's only conference with defendant came just prior to the arraignment proceeding at which the guilty plea was entered, lasted for a period of between fifteen and thirty minutes and did not discuss the elements of the crimes charged (id., at 721) with the defendants, that such representation constituted inadequate counsel.

Therefore in the present case where defendant's counsel was unaware of the facts of the case or any defenses available to the defendant, who had no real concern about the interests of the defendant and only conferred with the defendant for a few short moments before representing the defendant and aiding him in his plea of guilty, does not satisfy the requirements that defendant be assured counsel as guaranteed by Section 12, Article I of the Utah Constitution and the Sixth and Fourteenth Amendments to the United States Constitution. The representation of the defendant in this case constituted a sham or at best a pretense of an appearance of representation of counsel in the record and therefore violates the defendant's right to due process of law and right to counsel, necessitating that the above court dismiss the

action against the defendant or, in the alternative, to order the district court to allow defendant to withdraw his guilty plea and to set the matter for trial.

CONCLUSION

The trial court improperly accepted defendant's plea of guilty by failing to inquire of the defendant personally whether or not he understood the consequences of his guilty plea or if his plea was voluntary. The record of this defendant's proceeding is silent as to any inquiry made by the trial judge to this defendant and is therefore error, for the Court cannot assume voluntary waiver of the constitutional rights involved by a guilty plea from a silent record.

(Boykin.)

In order to adequately protect that the constitutional rights waived in a plea of guilty are knowing and voluntary, the above court should adopt the requirements of Federal Rules of Criminal Procedure Rule 11 as a matter of law, as required by Boykin.

Further, the defendant was denied constitutional right to counsel by the trial court allowing an attorney who happened to be in the courtroom, who had no knowledge or interest in defendant's case, and who only met with the defendant for a few moments before the defendant entered his guilty plea to advise and represent the defendant in entering

his guilty plea.

As a result of the above infringements of the defendant's constitutional rights as guaranteed by the Utah Constitution and the United States Constitution, the above court should dismiss the case against the defendant or, in the alternative, to order the district court to allow the defendant to withdraw his guilty plea and set the matter for trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing brief of appellant was served on the Office of the Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, this 7th day of April, 1978.

