

1988

City of Monticello v. Lee Christensen : Petition for Rehearing

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Lee Christensen; Pro Se.

Lyle R. Anderson; Anderson and Anderson; Attorneys for Respondent.

Recommended Citation

Legal Brief, *Monticello v. Christensen*, No. 880343 (Utah Court of Appeals, 1988).
https://digitalcommons.law.byu.edu/byu_ca1/1124

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

TABLE OF CONTENTS

PETITION FOR REHEARING..... page one
MOTION FOR CONTINUANCE..... page two
TABLE OF CASES page three
TABLE OF AUTHORITIES page three
STATEMENT OF ISSUES page four
ARGUMENT..... page five-six
CONCLUSIONpage six
CERTIFICATE OF MAILING page six
ADDENDUM

Lee Christensen
225 Hwy 30 East
Evanston, Wyoming
-mailing-
c/o Norman Christensen
965 South 15th East
Salt Lake City, Utah 84105

IN THE UTAH COURT OF APPEALS

---oo0oo---

CITY OF MONTICELLO,)	
Plaintiff/ Respondant	(
)	PETITION FOR REHEARING
V.	(
)	CASE NO. 880343-CA
LEE CHRISTENSEN,	(
Defendant/Appellant)	

Comes now the Appellant/Defendant, pursuant to Rule 35 of the Rules of the Utah Court of Appeals, to file a petition for rehearing of the Courts Dismissal of Appellant/Defendant Appeal, based on lack of jurisdiction, which was filed Febuary 23, 1989. Petition is based upon issued stated herein and annexed to this petition, and Defendant does certify to the Court that he does make this petition, fully in beleif that the Court did misapprehend the facts and issues, and dis not in anyway to be considered to be brought for the reason fo delay. Further defendant states that this petition is timely made.
Dated this 8th day of March, 1989.

Respectfully submitted,

Lee Christensen
LEE CHRISTENSEN,
PRO SE

Lee Christensen
225 hwy 30 East
Evanston, Wyoming
-mailing-

c/o Norman Christensen
965 South 15th East
Salt Lake City, Utah 84105

IN THE UTAH COURT OF APPEALS

---ooOoo---

CITY OF MONTICELLO,
Plaintiff/Respondant

v.

LEE CHRISTENSEN,
Defendant/Appellant

)
(
(
)
(
(
(

Case No. 880343-CA

MOTION FOR CONTINUANCE

Having timely filed a petition for reveiw, the defendant moves the Court to withhold ruling on said petition, to allow petitioner time to obtain at least a partial transcript of the proceedings in the circuit court, to help establish his assertion that he correctly challenged the staute he was charged with.

Respectfully submitted.
this 9th day of March 1989.

Lee Christensen
LEE CHRISTENSEN,
Pro se

TABLE OF CASES

HAINES v. KERNER, 404 U.S. 519 (1971) at 520 "The...issue before us..is petitioner's contention that the District Court erred in dismissing his 'pro se' complaint without allowing him to present evidence on his claims...."

Whatever may be the limits...allegations such as those asserted by the petitioner, however inartfully pleaded, are sufficient.... the allegations of the 'pro se' complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers,.....

(emphasis added)

TABLE OF AUTHORITIES

UCE 17-35-26(d)(2) "No appeal shall be dismissed except for a material defect in the taking thereof, or for failure to perfect the appeal or upon motion of the appellant..."

(emphasis added)

RULES OF THE UTAH COURT OF APPEALS, RULE (1 (d)), "These rules shall not be construed to extend or limit the jurisdiction of the Court of Appeals..."

Rule 2 "(a) ...An appeal may be taken from the final orders and judgements of acircuit court...within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of an notice of appeal does not affect the validity of the appeal..."

UTAH STATE CONSTITUTION Art.1 §12 "In criminal prosecutions the accused shall have the rightto appeal in all cases..."

(emphasis added)

-page four-
STATEMENT OF ISSUES

1. This case was first tried in Justice Court, defendant did by written motion, supported by oral arguement challenge the statute he was charged under (UC 41-2-28), on it's validity and constitutionality.
2. During the trial deNovo held in the Circuit Court, by written motion, supported by oral arguement again challenge the statute in it's application to this case.
3. The circuit court damaged the appellants appeal by refusing him the impecuniosity he deserved, thereby denyng him transcripts which he was unable to bear the costs of. These transcripts would show evidence to support, the fact that he has always challenged the validity fo the staute, in it's application here.
- 4, The defendant is not an attorney, and therefore the Court must give him a chance to h~~ave~~ his appea heard, no matter how "inartfully' he has plead it.
5. The Court of Appeals assumed jurisdiction when it allowed the briefs to be filed.
6. The Court has jurisdiction in this case as it it an issue of States Rights, as well as individual rights.
7. The defendant has a right to have his appeal heard, under the Utah Constitution.
8. Any Statute which limits the defendants right of appeal (UCA 77-35-26 (13)(a) is unconstitutional under the Utah Consti-tution.
9. As this is a case involving a citizen of one state vs a different state, if this court does not feel it has jurisdiction the case ought to be certified to the Supreme Court.

ARGUMENT

The motion filed in the justice court, by the defendant did state the particular statute herein complained of. This motion also challenged the validity of the statute in its instant application, wherein he states, that as a resident of Wyoming the statute did not apply to him because Wyoming had issued his license and it was still valid at that time.

In the defendant's mind this is a direct invalidity of the statute as it applies here.

Furthermore, in oral argument defendant did assert that Utah has no power to suspend his license, which certainly falls into a Constitutional realm, in that it challenges the right of one state to terminate a license issued by another state. (States rights)

The defendant has an absolute right to appeal, which means that the Court must hear his appeal, even if it feels that he has not been the most articulate in forming his challenge. Defendant is not a lawyer, and not well versed in the terminology of law, nor in the art of arguing an issue (although he has learned much from this appeal) still what the circuit court did rule on was in all actuality whether or not Utah had the power to suspend the license of a non-resident licensed in another state. Since this was the only issue of contention within this case. All other facts were undisputed (i.e. he was driving the car, he was stopped, and later ticketed, that he did show the officer a valid license from Wyoming, which was shown to be a true license, etc. Therefore Utah's rights or lack of them to suspend a non-resident's license, was the only

issue challenged. ^{-page six-}

CONCLUSION

The defendant moves the Court to reveiw it's order dismissing defendant's appeal based on lack of jurisdiction, and grant hearing of the case on the merits, The defendant has suffiently raised the grounds which give this Court Jurisdiction and Furthermore, defenant has an absolute, inalienable right to his appeal. The defendant also moves the Court allow him additional time to attempt to procure at least a partial transcript of the case in the Circuit Court.


LEE CHRISTENSEN,
Pro se

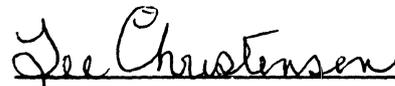
CERTIFCATE OF MAILING

I certify that a true and correct copy of the foregoing was mailed to the opposing counsel by depositing same in the U.S. mail addressed to:

Mr. Lyle Anderson
P.O. Box 275
Monticello, Utah 84535

(four copies mailed)

this 9th day of March 1989.



ADDENDUM

TABLE OF CONTENTS

H a i n e s v s . K e r n e r , 4 0 4 U . S . , 5 1 9 , (1 9 7 1)

E x h i b i t A M O T I O N T O D I S M I S S (f i l e d i n C i r c u i t
C o u r t)

Per Curiam

HAINES v. KERNER ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE SEVENTH CIRCUIT

No. 70-5025. Argued December 6, 1971—Decided January 13, 1972

Prisoner's *pro se* complaint seeking to recover damages for claimed physical injuries and deprivation of rights in imposing disciplinary confinement should not have been dismissed without affording him the opportunity to present evidence on his claims.

427 F. 2d 71, reversed and remanded.

Stanley A. Bass, by appointment of the Court, 401 U. S. 1008, argued the cause for petitioner. With him on the briefs were *Jack Greenberg*, *James M. Nabrit III*, *William B. Turner*, *Alice Daniel*, and *Max Stern*.

Warren K. Smoot, Assistant Attorney General of Illinois, argued the cause for respondents *pro hac vice*. With him on the brief were *William J. Scott*, Attorney General, *Joel M. Flaum*, First Assistant Attorney General, and *James B. Zagel*, *Morton E. Friedman*, and *Jayne A. Carr*, Assistant Attorneys General.

Briefs of *amici curiae* were filed by *Charles H. Baron* for Boston College Center for Corrections and the Law, and by *Julian Tepper* and *Marshall J. Hartman* for the National Law Office of the National Legal Aid and Defender Assn.

PER CURIAM.

Petitioner, an inmate at the Illinois State Penitentiary, Menard, Illinois, commenced this action against the Governor of Illinois and other state officers and prison officials under the Civil Rights Act of 1871, 17 Stat. 13, 42 U. S. C. § 1983, and 28 U. S. C. § 1343 (3), seeking to recover damages for claimed injuries and deprivation of rights while incarcerated under a judgment not challenged here.

Petitioner's *pro se* complaint was premised on alleged action of prison officials placing him in solitary confinement as a disciplinary measure after he had struck another inmate on the head with a shovel following a verbal altercation. The assault by petitioner on another inmate is not denied. Petitioner's *pro se* complaint included general allegations of physical injuries suffered while in disciplinary confinement and denial of due process in the steps leading to that confinement. The claimed physical suffering was aggravation of a pre-existing foot injury and a circulatory ailment caused by forcing him to sleep on the floor of his cell with only blankets.

The District Court granted respondents' motion under Rule 12 (b)(6) of the Federal Rules of Civil Procedure to dismiss the complaint for failure to state a claim upon which relief could be granted, suggesting that only under exceptional circumstances should courts inquire into the internal operations of state penitentiaries and concluding that petitioner had failed to show a deprivation of federally protected rights. The Court of Appeals affirmed, emphasizing that prison officials are vested with "wide discretion" in disciplinary matters. We granted certiorari and appointed counsel to represent petitioner. The only issue now before us is petitioner's contention that the District Court erred in dismissing his *pro se* complaint without allowing him to present evidence on his claims.

Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears

"beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U. S. 41, 45-46 (1957). See *Dioguardi v. Durning*, 139 F. 2d 774 (CA2 1944).

Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof. The judgment is reversed and the case is remanded for further proceedings consistent herewith.

Reversed and remanded.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

Lee Christensen
225 Hwy 30 East
Evanston, Wyoming
mailing
C/O Norman Christensen
965 South 15th East
Salt Lake City , Utah 84105

TO THE JUSTICE OF THE PEACE COURT OF MONTICELLO, COUNTY OF SAN JUAN, STATE OF UTAH

City of San Juan,)	
Paintiff	(
)	DEMAND FOR DISMISSAL
v.	(
)	Case No. 21786
Lee Christensen,)	
Defendant	(

Comes now the defendant to demand that the charges in the above entitled case be dismissed against him.

Defendant states to support motion, defendant is charged with DRIVING UNDER SUSPENSION, UC 41-2-28, as adopted by Ordinance in the city of Monticello. This Code does not apply to the defendant. The defendant is not a resident of the state of Utah and has not had his Utah License suspended.

Furthermore, defendant has now, did have at time of citation a Valid Wyoming License(Copy of Extract enclosed)., and is a resident of Wyoming. According to Information, and Discovery, the prosecution is basing it's case on a letter from the Dept. of Public Safty, wherein it states that defendant's "Priveledge" is suspended. This only means that defendant may not have a Utah Driver's License until the time specified is over. Defendant has not applied for a Utah Driver's License.

Therefore defendant demands dismissal of charges.

Dated this 15th day of November, 1987.

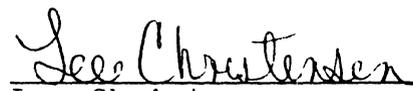
Respectfully Submitted

~~LEE CHRISTENSEN~~_____

ORAL ARGUMENT DEMANDED.

CERTIFICATE OF MAILING

I do certify that the foregoing Demand for Dismissal, were sent certified mail to the prosecuting attorney, Mr. Lyel Anderson P. O. Box 275, Monticello, Utah 84535.



Lee Christensen.

11/17/87