

2001

Rodney C. Rose v. Samuel Smith : Brief of Appellant

Utah Supreme Court

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DEC 9 1975

IN THE SUPREME COURT OF THE
STATE OF UTAH

**BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School**

RODNEY C. ROSE
Appellant

-vs-

SAMUEL SMITH, Warden
Utah State Prison
Respondent

Case No. 14013

BRIEF OF APPELLANT

Appeal from an order granting Respondent's motion to dismiss,
the Honorable James S. Sawaya, presiding.

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE
STATE OF UTAH

RODNEY C. ROSE :
Appellant :

-vs- :

Case No. 14013

SAMUEL SMITH, Warden :
Utah State Prison :
Respondent :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Rodney C. Rose, appeals from an order granting the defendant's motion to dismiss in the Third District Court.

DISPOSITION IN THE LOWER COURT

The appellant filed a petition for a writ of habeas corpus July 29, 1974. The respondent filed a motion to dismiss October 18, 1974, alleging that the issues raised by the appellant had been adjudicated on previous habeas corpus actions and habeas corpus should not be conducted on a piecemeal basis. Argument was heard January 26, 1975, and February 18, 1975 and an order was signed granting respondent's motion to dismiss.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the order granting respondent's motion to dismiss and an order directing the Third Judicial District to hear his petition for writ of habeas corpus.

STATEMENT OF FACTS

The appellant was convicted and sentenced to the Utah State Prison by the Second Judicial District Court of Weber County for the unlawful sale of a stimulant drug (Methamphetamine). The alleged sale occurred on April 19, 1971. The appellant filed a writ of habeas corpus challenging the authority of the District Court to sentence him to the Utah State Prison. After a hearing on the respondent's motion to dismiss, an order was signed dismissing the appellant's habeas corpus.

ARGUMENT

POINT I

THE APPELLANT WAS CONVICTED OF A CRIME THAT WAS NOT PUNISHABLE BY A TERM AT THE UTAH STATE PRISON, BUT ONLY PUNISHABLE BY CONFINEMENT IN THE COUNTY JAIL.

The appellant contends that the District Court of Weber County had no authority to sentence him to the Utah State Prison. It is clear from the following language in the majority opinion in State v. Conover, 28 Utah 2d, 335, 502; Pac. 2d 552, 972, (1972), that the maximum sentence the court could impose is one year in the County Jail:

Prior to January 1, 1972, it was unlawful for persons (other than those prescribed in the statute) to sell any depressant or stimulant drug to any other person. Laws of Utah 1967, Chapter 140, §6(b). The penalty for violation of the statute was imprisonment for not more than one year or a fine of not more than \$1,000 or both such imprisonment and fine etc. Laws of Utah 1967, Chapter 140, §4(a).

A sentence to the Utah State Prison is clearly void of jurisdiction which cannot be waived by failure to appeal prior proceeding.

Respectfully submitted,

LYNN R. BROWN
Attorney for Appellant

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