

1988

Stacy L. Parker v. Gerald L. Cook : Brief of Appellant

Utah Court of Appeals

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Stacey L. Parker; Attorney Pro Se.

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UTAH COURT OF APPEALS
BRIEF

UTAH
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DOCKET NO.

DLC 1593

880369-CA IN THE COURT OF APPEALS

STATE OF UTAH

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STACY L. PARKER,	:	
	:	Docketing No. <u>880369-CA</u>
Defendant and Appellant,	:	
vs.	:	
	:	Classification No. 2
GERALD L. COOK, Warden, Utah	:	
State Prison, State of Utah,	:	
Plaintiff and Respondent.	:	

---ooo0ooo---

BRIEF OF APPELLANT

Appeal from a denial of a Petition for Writ of Habeas Corpus by the Hon. Kenneth Rigtrup, a Judge of the Third Judicial District Court of the State of Utah, at Salt Lake County, Utah, on November 25, 1987.

APPEARANCES

Stacy L. Parker
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TABLE OF AUTHORITIES

STATUTES CITED

U.C.A. Section 76-3-203(3)

U.C.A. Section 17-23-3

OTHER AUTHORITIES CITED

NONE

IN THE COURT OF APPEALS

STATE OF UTAH

---oooOooo---

STACY L. PARKER, :

Defendant and Appellant, :

vs. :

GERALD L. COOK, Warden, Utah :
State Prison, State of Utah, :

Plaintiffs and Respondents. :

Docketing No. 880369 CA

---oooOooo---

JURISDICTION AND PROCEEDINGS

This Court has jurisdiction pursuant to Rule 3(a) of the Rules of the Utah Court of Appeals. This action is an appeal from a denial of a petition for a Writ of Habeas Corpus by the Honorable Kenneth Rigtrup, a Judge of the Third Judicial District Court of the State of Utah, at Salt Lake County, Utah, on November 25, 1987.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- i. Did the Judge exceed his statutory authority by allowing a sentence to exceed its legal limits?

DETERMINATIVE LAW

The determinative statutes in this matter will be U.C.A. Section 17-22-3 and Section 77-19-2.

STATEMENT OF CASE

On June 6, 1984, Petitioner was sentenced after entering a guilty plea, by the Honorable Omer J. Call, of attempted forcible sodomy, a third degree felony. Petitioner was originally sentenced to one year in the County Jail, following a 90-day evaluation commitment at the Utah State Hospital. Petitioner was transported to the Utah State Prison on June 6, 1984; the Utah State Board of Pardons subsequently set Petitioner's release date at June 9, 1989, claiming that the commitment order was received by them on June 12, 1984.

Petitioner then filed a Writ of Habeas Corpus in case number C-87-7034 before the Honorable Kenneth Rigtrup, in MAY, 1987. As part of that writ, Petitioner alleged that the trial Judge exceeded his statutory authority by allowing a sentence to exceed its legal limits, that the Judge erred by refusing to allow oral arguments, and that the Judge erred by refusing to appoint counsel to represent the Petitioner.

The Writ of Habeas Corpus was dismissed on November 25, 1987. Shortly thereafter, Petitioner filed this appeal.

SUMMARY OF ARGUMENT

Appellant contends that a proper review of the facts and circumstances surrounding his case and his conviction will show that his sentence is illegal according to statute, and that the Judge erred by refusing to allow oral arguments in this matter.

ARGUMENT

POINT I

THE JUDGE EXCEEDED HIS STATUTORY AUTHORITY BY ALLOWING A SENTENCE TO EXCEED ITS LEGAL LIMITS

Utah law provides that in a third-degree felony, a defendant may not be sentenced to more than five years. U.C.A. Section 76-3-203(3).

Defendant and Petitioner was sentenced to 0 to 5 years on June ⁴ 1984. The Utah State Board of Pardons now says that his expiration date is June 12, 1989. This time limit clearly exceeds the maximum allowed by the above statute.

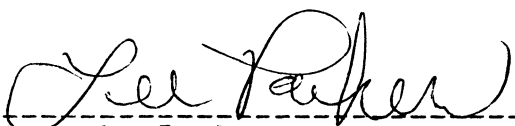
Utah statutes further provide regarding transfer to a State Prison following a felony conviction as follows:

"The sheriff of the county in which a criminal is sentenced to confinement in the State Prison, or is sentenced to death, shall cause such convict to be removed from the County Jail within five days after the sentence and conveyed to the State Prison and delivered to the Warden thereof." U.C.A. Section 17-22-3, as amended (1953).

This statute indicates that it is the intent of the legislature that an inmate, upon sentencing, be transferred to the State Prison which is to house him, as soon as possible and without delay. The Board of Pardons is trying to assert that because no commitment order was signed until June 12, 1984, that is the date upon which Petitioner's sentence begins to run, even though he was sentenced on June ⁴~~6~~, 1984, and served the next ²~~5~~ days in the County Jail pending the commitment to the Utah State Prison.

CONCLUSION

Based upon the above statutes, it is clear that Petitioner is being required to serve more than the time allowed by statute. and that his sentence should actually terminate five years from the date of ^{ORIGINAL} sentencing, on ^{FEBRUARY 1988} ~~June 6, 1989~~ OR AT LEAST ^{June 6 1989}
DATED this 5 day of December 19 88.



Stacy L. Parker
Attorney Pro Se

CERTIFICATE OF MAILING

I hereby certify that I have mailed a true and correct of
the above appeal, postage prepaid, to the Attorney General's
Office, 236 State Capitol, Salt Lake City, Utah 84114, this 5
day of December, 19 88

Lee Parker

①

IN THE COURT OF APPEALS
STATE OF UTAH

FILED

JAN 17 1989

COURT OF APPEALS

STACY L. PARKER
DEFENDANT & APPELLANT

VS.

HERALD COOK WARDEN,
UTAH STATE PRISON,
STATE OF UTAH,

PLAINTIFF & RESPONDANT

DOCKETING NO: 880369-CA

AMENDED TO BRIEF.

DOES NOT SUPERSEDE FIRST BRIEF
BUT ADDS TO IT.

IN OR ON FEBRUARY 1983. STACY L. PARKER WAS
SENTENCED TO PRESENTANCE INVESTIGATION TO
THE STATE HOSPITAL. ON THE CRIME OF
ATTEMPTED FORCIBLE SODOMY CASE # CR-2197

THEN AROUND APRIL OR MAY OF 1983 JUDGE
DIMER J. CALL AGAIN SENTENCED MR. PARKER
TO 1 YEAR IN THE COUNTY JAIL, THEN ON
OR ABOUT JUNE 4TH 1984 JUDGE CALL
SENTENCED DEFENDANT TO 0-5 YEARS
AT THE UTAH STATE PRISON TO EXPIRE
ON JUNE 6TH 1989 ALL ON CASE # CR-2197
ON A 3RD DEGREE FELONY.

(2)

Argument

ACCORDING TO V.C.A. SECTION 76-3-203 (3)
A DEFENDANT MAY NOT BE SENTENCED TO
MORE THAN 5 YEARS, ON 3RD / DEGREE FELONY.

AND ACCORDING TO 76-3-404 (2)

ANY COMMITMENT FOR PRESENTANCE INVESTIGATION
UNDER THIS SECTION SHALL NOT CONSTITUTE A
COMMITMENT TO PRISON. HOWEVER, ANY PERSON
WHO SHALL BE COMMITTED TO PRISON FOLLOWING
PROCEEDINGS UNDER THIS SECTION SHALL BE GIVEN
CREDIT AGAINST HIS SENTENCE FOR THE TIME
SPENT IN CONFINEMENT FOR A PRE-SENTANCE
INVESTIGATION REPORT.

AND ACCORDING TO 76-3-203 (3)

ANY TIME SPENT BY A PERSON OUTSIDE OF CONFINEMENT
AFTER COMMISSION OF A PAROL VIOLATION SHALL NOT
CONSTITUTE SERVICE OF THE TOTAL SENTENCE UNLESS
THE PERSON SHALL BE EXONERATED AT A HEARING TO
REVOKE PAROLE / ANY TIME SPENT IN CONFINEMENT
WAITING A HEARING OR DECISION CONCERNING REVOCATION
OF PAROLE SHALL CONSTITUTE SERVICE OF TOTAL SENTENCE

•••••

15)

CONCLUSION

IN CONCLUSION I SUBMIT THAT THE HONORABLE JUDGE OMER J. CALL ERRORED IN HIS SENTENCING OF MR. PARKER. BY NOT COUNTING THE TIME SPENT INCARCERATED FOR PRE-SENTENCE INVESTIGATION, FOR NOT COUNTING THE 1 YEAR IN THE COUNTY JAIL AND FOR NOT COUNTING THE TIME SPENT IN CONFINEMENT FOR REVOCATION OF PROBATION.

I ALSO SUBMIT THAT THE USE OF THE WORD PAROL IN SECTION 76-3-203 COULD BE SUBSTITUTED FOR THE WORD PROBATION IT SEEMS OBVIOUS THAT THE INTENT OF THIS SECTION WAS TO PREVENT PRISONERS FROM SPENDING MORE TIME ~~IN~~ IN CONFINEMENT THAN THE LAW LEGALLY PERMITS BY USING DIFFERENT TERMS FOR SAME ORAIN CONFINEMENT.

ON THESE BASIS ~~IS~~ I REQUEST THAT THE COURT OF APPEALS SETS ASIDE THE SENTENCING OF MR. PARKER IN CASE # CR-2197 AND EXPIRATE THAT SENTANCE AT THE APPROPRIATE TIME OF AROUND FEBRUARY OF 1988. ~~AND~~ AND OR ASK THE BENCH OF OMER J. CALL TO

RESENTANCE
THE LAW
SERVED.

MR PARKER IN ACORDANCE TO
COUNTING ALL TIME PREVIOUSLY

Stacy Lee Parker. JAN. 6 1989

ATTORNEY PRO SE
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DRAPER, UTAH 84020

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CERTIFICATE OF MAILING


I STACY L. PARKER CERTIFY THAT I
MAILED A TRUE AND CORRECT COPY
OF AMENDMENT TO BRIEF.

TO: UTAH ST. COURT. OF APP.

230 S. 500 E. SLC, UT. 84111

AND TO ATT GEN. OFFICE

SIGNED THIS 12 DAY OF JAN 1989


SIGNATURE