

1978

Edward Keith Ludahl v. Delmar Larson : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

 Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Brad Rich; Attorney for Appellant;

Robert Hansen; Attorney for Respondent;

Recommended Citation

Brief of Appellant, *Ludahl v. Larson*, No. 15713 (Utah Supreme Court, 1978).

https://digitalcommons.law.byu.edu/uofu_sc2/1189

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

RICHARD KEITH LUDAHL, :
 :
 Plaintiff-Appellant, :
 :

-v- :
 :

DELMAR LARSON, Sheriff of Salt : Case No. 15713
Lake County, State of Utah, :
 Defendant-Respondent. :

BRIEF OF APPELLANT

Appeal from a judgment in the Third Judicial District Court in and for Salt Lake County, State of Utah, denying appellant's Petition for a Writ of Habeas Corpus, the Honorable Peter F. Leary, presiding.

BRAD RICH
Salt Lake Legal Defender Assoc.
333 South Second East
Salt Lake City, Utah 84111
Attorney for Appellant

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

FILED

JUL 25 1978

IN THE SUPREME COURT OF THE STATE OF UTAH

RICHARD KEITH LUDAHL, :
 :
 Plaintiff-Appellant, :
 :

-v- :
 :

DELMAR LARSON, Sheriff of Salt : Case No. 15713
Lake County, State of Utah, :

Defendant-Respondent. :

BRIEF OF APPELLANT

Appeal from a judgment in the Third Judicial District
Court in and for Salt Lake County, State of Utah, denying appellant's
Petition for a Writ of Habeas Corpus, the Honorable Peter F. Leary,
presiding.

BRAD RICH
Salt Lake Legal Defender Assoc.
333 South Second East
Salt Lake City, Utah 84111
Attorney for Appellant

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

TABLE OF CONTENTS

	PAGE
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT.	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF THE FACTS.	2
ARGUMENT	
<u>POINT I: THE TRIAL COURT ERRED IN DENYING APPELLANT'S WRIT OF HABEAS CORPUS IN THAT THE DOCUMENTS PRESENTED WERE NOT SUFFICIENT UNDER UTAH CODE ANN. §77-56-3.</u>	3
<u>POINT II: THE APPELLANT CONTENDS THAT HE WAS DEPRIVED OF HIS RIGHT TO APPEAL BY VIRTUE OF THE COURT'S ORDER THAT HE BE IMMEDIATELY EXTRADITED TO THE STATE OF OREGON AND BY THE SUBSEQUENT TAKING OF APPELLANT PRIOR TO THE APPEAL PERIOD LAPSING</u>	6
CONCLUSION.	8

CASES CITED

<u>Birmingham v. Larson</u> , 490 P.2d 893 (1971)	4,5
<u>Little v. Beckstead</u> , 358 P.2d 93 (1961)	3,4
<u>Mora v. Larson</u> , 540 P.2d 520 (1975)	3
<u>Washington v. Renouf</u> , 299 P.2d 620 (1956)	7

OTHER AUTHORITIES CITED

Utah Code Ann. §21-7-3 (1953)	6
Utah Code Ann. Chapter 56, Title 77	2,3,7
Utah Code Ann. §77-56-3 (1953).	3,5
Utah Code Ann. §77-56-10 (1953)	3
Utah Rules of Civil Procedure, Rule 73(c)	6

IN THE SUPREME COURT OF THE STATE OF UTAH

RICHARD KEITH LUDAHL, :
 :
 Plaintiff-Appellant, :
 :
 -v- :
 :
 DELMAR LARSON, Sheriff of Salt : Case No. 15713
 Lake County, State of Utah, :
 :
 Defendant-Respondent. :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appellant, RICHARD KEITH LUDAHL, appeals from dismissal of his Writ of Habeas Corpus rendered in the Third Judicial District Court, Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

The matter came on for hearing in front of the Honorable Peter F. Leary on the Writ of Habeas Corpus and was dismissed and the plaintiff-appellant remanded to the custody of the Sheriff for extradition to the State of Oregon.

RELIEF SOUGHT ON APPEAL

The appellant seeks dismissal of the Governor's Warrant and extradition proceedings against him, or in the alternative, reinstatement of the Writ of Habeas Corpus and a new hearing on the sufficiency of the Governor's Warrant and extradition proceedings.

against him.

STATEMENT OF THE FACTS

On January 27, 1977, the appellant was arrested on a fugitive warrant from the State of Oregon. Fugitive charges were filed against him in City Court and the first hearing on that matter set for February 25, 1977. On February 25, 1977, the matter was continued for an additional 30 days to the 28th day of March, 1977.

On the 28th day of March, 1977, it was alleged that a Governor's Warrant had arrived and the fugitive charges against appellant were dismissed and the appellant was arraigned in District Court on the Governor's Warrant. At that time the appellant requested time for a petition for a Governor's Hearing and/or a Writ of Habeas Corpus. The Court granted time for that and set bond in the matter and the appellant was released.

On May 18, 1977, a Governor's Hearing was had and subsequently the Governor, having taken the matter under advisement, denied the appellant's petition for refusal of extradition by the Governor.

The Governor's Hearing having failed, the appellant filed a Petition for a Writ of Habeas Corpus on November 18, 1977. That petition came on for hearing before the Honorable Peter F. Leary on February 2, 1978.

On that occasion appellant contended that the documents supporting the Governor's Warrant were inadequate in that they failed to include an affidavit as required by Chapter 56 and Title 77 of

Utah Code Ann. The Court heard argument on the matter and denied the Petition for Writ of Habeas Corpus and ordered that the appellant be taken back into custody and extradited by to the State of Oregon.

The appellant was surrendered at that point and was, within the next few days, returned to the State of Oregon.

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN DENYING APPELLANT'S WRIT OF HABEAS CORPUS IN THAT THE DOCUMENTS PRESENTED WERE NOT SUFFICIENT UNDER UTAH CODE ANN. §77-56-3.

The provisions for proceeding in an extradition matter are set forth in Chapter 56 of Title 77 of Utah Code Ann. The only remedy provided for the test of a Governor's Warrant under that chapter is set forth in §77-56-10. That section provides that:

If the prisoner or his counsel shall state that he or they desire to test the legality of his arrest the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a Writ of Habeas Corpus.

In the case of Little v. Beckstead, 358 P.2d 93 (1961) at 94, this court said that the plaintiff should be allowed to test the validity of the extradition proceedings and challenge whether the statutory requirements had been met. In Mora v. Larson, 540 P.2d 520 (1975) at 521, this court held that:

. . . in extradition proceedings the governor's rendition warrant makes a prima facie case and shifts the burden to the petitioner to show that he is not the person named therein.

It has been generally held that a Writ of Habeas Corpus may attack the extradition proceeding on three substantive grounds. First, that he is not the same person that the demanding state wants. Second, that he was not in the state at the time that the state alleges that he was in that state. Third, that the crime for which the state is attempting to extradite is not a crime in that demanding state. In addition to the substantive grounds the petitioner may attack by way of Writ of Habeas Corpus, the procedural inadequacies of the extradition proceeding. This court has said in Little v. Beckstead, supra, at page 94:

The proper process for testing the legal sufficiency and validity of plaintiff's arrest and detention is the habeas corpus proceeding. It is statutory in Utah that persons arrested upon a Governor's Warrant for extradition shall be given the opportunity to apply for a Writ of Habeas Corpus to test the legality of the arrest. Plaintiff should have been allowed to test the validity of the extradition proceeding and challenge whether the statutory requirements had been met.

In that same case, the court, however, established that it was in fact a valid concern for the trial court to examine and test the sufficiency of the documents that had been submitted by the demanding state.

In the case at bar, the appellant sought to do just that. In the case of Birmingham v. Larson, 490 P.2d 893 (1971), Justice Ellett's writing for a unanimous court says at page 494:

Our statute sets out the requirements for the issuance of the governor's rendition warrant. Those requirements in substance are:

(1) A written request from the executive of the demanding state alleging (a) that the accused was present in the demanding state at the time of the commission of the alleged offense, and that (b) thereafter he fled the state.

(2) A copy of an affidavit made before a magistrate of the demanding state with a copy of any warrant which was issued thereon, together with

(3) A statement by the executive authority of the demanding state that the person claimed has (a) escaped from confinement, or (b) broken the terms of his bail, probation or parole.

It is the contention of the appellant that nothing in the documents submitted to the trial court constituted an appropriate affidavit made before the magistrate of the demanding state as required by subsection (2) quoted from Birmingham v. Larson, supra. There is amongst those documents filed with the court a statement of the crime which lists the charge but is not signed and not sworn to. It is apparently the basis for the Governor's Rendition Warrant. The appellant contended before the trial court that that was insufficient in that it was in no way an affidavit as required by the statute by §77-56-3 and as set for in Birmingham v. Larson, supra, and that therefore the documentations submitted by the State of Oregon was insufficient to allow the extradition of the appellant.

Based upon this failure of the documentation required, the appellant feels that a dismissal of the extradition proceeding against him is appropriate.

POINT II

THE APPELLANT CONTENDS THAT HE WAS DEPRIVED OF HIS RIGHT TO APPEAL BY VIRTUE OF THE COURT'S ORDER THAT HE BE IMMEDIATELY EXTRADITED TO THE STATE OF OREGON AND BY THE SUBSEQUENT TAKING OF THE APPELLANT PRIOR TO THE APPEAL PERIOD LAPSING.

The appellant in this case was appointed counsel because he was found by the court to be indigent. In connection with the filing of a Writ of Habeas Corpus the appellant filed an Affidavit of Impecuniosity verifying his continued indigency. At the time of the taking of his appeal he was incarcerated, first at the Salt Lake County Jail and then in Oregon, he was unemployed and had no source of income.

Rule 73 of the Utah Rules of Civil Procedure (c) provides that a bond on appeal is required in all cases but if the appellant is indigent, he may file an affidavit as set out in Utah Code Ann. §21-7-3 (1953). Such an affidavit will waive the bond on appeal. The Affidavit of Impecuniosity meets the requirements set out in Utah Code Ann. §21-7-3 (1953) and no bond on appeal is required.

However, Rule 73 (d) sets forth the conditions for obtaining a stay of judgment pending an appeal. That rule provides that if the appellant desires a stay of judgment during the pendency of the appeal, he must file a supersedeas in an amount set by the court. That section does not provide for the indigent appellant. From those two sections it is clear that while the Utah Rules of Civil Procedure make allowances for the indigent appellant in that they waive the cost of the bond on appeal. They do not provide any

mechanism whereby the indigent defendant can obtain a stay judgment during the pendency of that appeal.

The the conclusion of the trial court hearing after the court had denied the Petition for Writ of Habeas Corpus (T. 78) and after the court had ordered him returned to Oregon (T. 78) the counsel for the appellant asked for a stay of even a few minutes in order to discuss with the appellant the possibility of an appeal and was denied a stay of execution on the sentence for even that long. Faced with that difficulty there was no way for the appellant, being indigent, to prevent the State of Oregon from coming to take him immediately. Oregon got him within ten days and the appeal was filed at the direction of the appellant from his incarceration in the State of Oregon.

It is the appellant's contention that he was denied his constitutional rights in that he was taken from this state without benefit of appeal, and secondly, that he was prevented from staying the judgment of the court because he was in fact not able to post a supersedeas bond and therefore, by virtue of his poverty, deprived of rights that he would otherwise had been able to purchase. In the case of Washington v. Renouf, 299 P.2d 620 (1956), this court held that the state's power to try a person accused of a crime is not impaired by the fact that he was brought within the territorial jurisdiction by illegal means. The implication of this in an extradition proceeding is that if a person is deprived of his rights and removed illegally and in violation of the provisions of Title 77,

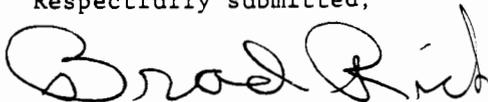
Chapter 56 to the demanding state then he, as a practical matter, has no remedy.

In the case before the court, this is precisely what has happened. The appellant has no way to prevent his being removed from the state before he has had an opportunity to fully litigate his matters in court. Perhaps this is an explanation for the paucity of extradition cases of first impression that had been before this court.

CONCLUSION

Towards that end the appellant asks simply that he be granted a dismissal of the extradition and that the case be dismissed, or in the alternative, remanded to the District Court. While this has no direct effect and is not binding on the State of Oregon, appellant submits that legal proceedings there will be able to take into consideration the court's holding in this case, and take appropriate action.

Respectfully submitted,



BRAD RICH
Attorney for Appellant