2001

State of Utah v. Gypsy Allen Codianna : Brief of Appellant

Utah Supreme Court

UTAH SUPREME COURT

BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent

-vs-

GYPSY ALLEN CODIANNA,

Defendant-Appellant

Case No 14248

AMENDED AND SUPPLEMENTAL BRIEF OF APPELLANT

Appeal from the Seventh Judicial District Court in and for Carbon County, State of Utah, The Honorable Edward Sheya presiding.

BRYCE K. BRYNER
155 South Main Street
Helper, Utah 84526

Attorney for Appellant

VERNON B. ROMNEY
Attorney General
236 State Capitol
Salt LakeCity, Utah 84114

Attorney for Respondent

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In the interest of brevity and to avoid duplication, the Statement of the Nature of the Case, Disposition in Lower Court, Relief Sought on Appeal, and Statement of Facts are omitted herein inasmuch as they are contained in the original Brief of Appellant on file herein. The point contained in this brief is supplemental to those set forth in Appellant's original brief.

ARGUMENT

POINT I

THE SAME OPPORTUNITY FOR ARBITRARINESS AND CAPRICE CONDEMNED BY THE FURMAN DECISION IS RETAINED BY SECTION 76-3-207 UTAH CODE ANNOTATED 1953 AS AMENDED, AND IS THEREFORE UNCONSTITUTIONAL.

An analysis of the Utah capital felony sentencing statute reveals that no provision has been made to insure that the aggravating and mitigating circumstances set forth in the statute were properly considered by the sentencing authority. The statute does not compel the making of any written findings as to any of the factors set forth. It appears that the trial court or jury could disregard any or all of the mitigating factors and the defendant would be at a loss as to the factors which influenced the judgment imposed. The trial court or jury is insulated from having to justify its decision on the sentence imposed. This inherent defect permits the same opportunity for the arbitrariness and caprice condemned by the Furman decision, and meaningful appellate review of the sentence imposed is thereby precluded. The reviewing court has nothing to refer to in determining whether the aggravating and mitigating circumstances were properly considered, or considered at all, or whether the sentence imposed was the result of passion or prejudice.

In July of 1976 the United States Supreme Court rendered five landmark decisions dealing with the death penalty, three of which have direct application to the instant case. The Court appears to have concerned itself with the measures taken by each state to insure the integrity of the sentence imposed. The Court was not safisfied merely with whether the statute in each state permited consideration

of aggravating and mitigating circumstances, but constantly made reference to additional procedural safeguards such as provision for automatic appellate review of each death sentence, requiring the making of written findings to support a sentence of death mandatory, or whether the evidence supported such findings, and whether the sentence imposed was disproportionate compared to those sentences imposed in similar cases.

In Gregg v. Georgia, U.S.49 L.Ed.2d 859 ,96 S.Ct, the United States Supreme Court upheld the constitutionality of the Georgia death penalty statute and made reference to several of the safeguards referred to above. Specifically, the jury in Georgia is required to find a statutory aggravating circumstance before recommending a sentence of death. The Georgia statute also provides for automatic appeal of all death sentences to the State Supreme Court. On review,the Court is required by statute to "review each sentence of death and determine whether it was imposed under the influence of passion or prejudice, whether the evidence supports the jury's findings of statutory aggravating circumstance, and whether the sentence is disproportionate compared to those sentences imposed in similar cases."

In Proffitt v. Florida U.S. 49 L.Ed.2d 913,96 S.Ct. United States Supreme Court upheld the consitutionality of thatstate's death penalty by stating that the sentencing

Judge is required to impose the death penalty on all first degree murderers as to whom the statutory aggravating factors outweigh the mitigating factors. The statute requires that if the trial court imposes a sentence of death,

> "it shall set forth in writing its findings upon which the sentence of death is based as to the facts: (a) that sufficient statutory aggravating circumstances exist...(b) that there are insufficient statutory mitigating circumstances." Fla. Stat. Ann.Sec.921.141(3)

It should also be noted that the Florida statute provides for automatic review by the Supreme Court of Florida in all cases where the death sentence has been imposed. Fla.Stat. Ann. Sec. 921.141(4). As a result of the above provisions, meaningful appellate review of each sentence of death is made possible since the judge must justify the imposition of the death sentence with written findings.

In Jurek v. Texas, U.S.49I..Ed.2d 576, 96 S.Ct., the United States Supreme Court upheld the Texas statute which required that after a verdict finding a person guilty of one of five specified murder categories the jury must answer the following three questions:

> "(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result;
> "(2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and

> "(3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable response to the provocation, if any by the deceased." Texas Code Crim.Proc.,Art.37.071(b)

The death sentence is imposed if the jury finds that the State has proved beyond a reasonable doubt that the answer to each of the three questions is yes; a sentence of life imprisonment results if it finds that the answer to any question is in the negative. Thus, the sentence of death in Texas is dependent upon the jury making a specific finding of yes or no as to each of the three questions involved. The Texas statute also provides for an expedited review by the Texas Court of Criminal Appeals.

By comparing the capital sentencing statutes of Georgia, Florida and Texas with the Utah statute in question, Sec. 76-3-207, it is apparent that the framers were remiss in failing to incorporate into the statute language of a mandatory nature requiring that the sentencing authority give proper consideration to the mitigating factors and that it justify its determination of death by written findings.

The transcript in the instant case reveals that the trial court in reaching it's decision to impose the death penalty on appellant addressed itself to only one of the mitigating factors set forth in Section 76-3-207, to wit:

> (d) at the time of the murder, the capacity of the defendant to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to

the requirement of law was substantially impaired as a result of mental disease, intoxication, or influence of drugs. (See T.647)

The Court apparently did not take into consideration or even discuss the other mitigating circumstances contained in that section and which the court had a duty to consider. The Court made no reference to the young age of appellant, stated to be between 20 and 22 years of age at the time of the crime; made no reference to the minimal participation by appellant in the crime; and made no reference to the deprived background of appellant. These were all proper areas of inquiry which should have been addressed by the Court and which should have entered into the decision as to life imprisonment or death. The failure of the Court to set forth in writing any findings, or to set forth in its justification of the death penalty, (T. 645-650) has the effect of withholding from the reviewing court information necessary to determine whether the sentence imposed was the result of passion or prejudice.

CONCLUSION

The appellant respectfully submits that Section 76-3-207 Utah Code Annotated is unconstitutional since it does not embody adequate procedural safeguards to insure that arbitrariness and caprice do not enter into the sentence imposed. The statute does not meet the test of the Furman decision and does not contain the procedural safeguards alluded to in Gregg, Proffitt, and Jurek.

The judgment rendered at trial should be reversed and the matter remanded to the trial court for a new trial, or in the alternative, an Order should be issued setting aside the sentence of death and remanding the cause to the trial court for the imposition of the sentence of life imprisonment.

Respectfully submitted,

Bryce K. Bryner
155 South Main Street
Helper, Utah 84526

I hereby certify that on this 9th day of September, 1976 I personally served upon the Attorney General of the State of Utah three copies of the above and foregoing Amended and Supplemental Brief of Appellant by personally delivering said three copies to the office of the Attorney General.

Bryce K. Bryner