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Richard L. A. Phillips v. Rex Vance : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

RICHARD L. A. PHILLIPS,

Plaintiff-Appellant,

-v-

REX VANCE, Sheriff of Salt Lake
County, State of Utah,

Defendant-Respondent.

An appeal from the judgment
of Habeas Corpus in the Third District Court,
Salt Lake County, Utah, the Honorable
presiding.

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IN THE SUPREME COURT OF THE STATE OF UTAH

RICHARD L. A. PHILLIPS,	:	
	:	
Plaintiff-Appellant,	:	
	:	
-v-	:	
	:	
REX VANCE, Sheriff of Salt Lake	:	Case No. 15944
County, State of Utah,	:	
	:	
Defendant-Respondent.	:	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, RICHARD L. A. PHILLIPS, appeals from the dismissal of his Petition for a Writ of Habeas Corpus in the Third Judicial District Court, Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

After denial of the appellant's Motion for Continuance and following proffer of evidence by the appellant's counsel, the Writ of Habeas Corpus was dismissed and the appellant was remanded to the custody of the respondent.

RELIEF SOUGHT ON APPEAL

Appellant seeks to have the District Court's dismissal of his petition reversed and to have the Petition for a Writ of Habeas Corpus reinstated with an order granting appellant the requested pre-trial discovery.

STATEMENT OF THE FACTS

On May 26, 1978, the appellant filed a Petition for a Writ of Habeas Corpus (R. 2). On June 18, 1978, the appellant filed a Motion for Production of Documents pertaining to appellant's claim in the lower court (R. 4). On June 22, 1978, the appellant filed a Motion for a Temporary Restraining Order to prevent the appellant from being taken out of the state while the proceedings were ongoing (R. 7).

On June 29, 1978, Judge Peter F. Leary of the Third Judicial District Court heard the Motion for a Temporary Restraining Order (R. 8). At that time the appellant was given the documents requested in the Motion for Production of Documents and the respondent filed an Answer to the Petition for a Writ of Habeas Corpus. In addition, the Court granted a temporary restraining order for the period of one week and set the matter over for hearing to July 6, 1978 (R. 8).

On July 3, 1978, the appellant filed a series of interrogatories (R. 11). On July 5, 1978, the appellant filed a Motion for a Continuance on the matter to be heard on July 6 (R. 15).

On July 6, 1978, the matter came on for hearing on the appellant's Motion for a Continuance (R. 28). That motion was denied (R. 34). The matter then proceeded immediately to a hearing. Appellant did not call any witnesses. The appellant proffered that the evidence that would have been available to him had the interrogatories been answered by the respondent (R. 32). At this point

the Court denied the Petition for a Writ of Habeas Corpus (R. 35).

ARGUMENT

THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY REFUSING TO ALLOW THE APPELLANT TO CONDUCT LIMITED DISCOVERY UNDER THE DIRECTION OF APPOINTED COUNSEL WHICH WAS RELEVANT TO HIS CLAIM ON HIS PETITION FOR WRIT OF HABEAS CORPUS.

The appellant in this case has contested the legality of his possible extradition as provided in Utah Code Ann. §77-56-10 (1953 as amended) by filing a Petition for a Writ of Habeas Corpus alleging that his arrest and restraint were illegal (R. 2). Petitioner contended that he was not within the demanding state (California) at the time that the offense which he had been accused of committing was perpetrated (R. 29). Pursuant to Rule 33 of the Utah Rules of Civil Procedure the appellant filed interrogatories on the respondent on July 3, 1978 (R. 11). On July 5, 1978, the appellant filed a motion for a continuance because the interrogatories had not yet been answered (R. 12). The motion was denied on July 6, 1978 (R. 12). The Court found that the State had made its prima facie case and then gave its reasoning for denying the motion for a continuance:

And it would seem to the Court that the items that you're suggesting to the Court are matters that you desire to discover are also matters that would be well within the -- within your client's knowledge. At least I don't suppose that if you think he was under surveillance or something that he could itemize that, but he certainly must have some idea where he was at the time of the alleged offense.

Now, if there are witnesses that he could tell you about or so on, I think that he's had adequate time to do that. The Court does not think that this is the appropriate proceeding for any fishing expedition upon his part in connection with any prosecution, nor do I think that it's the responsibility of the State of Utah to endeavor to obtain any information for you in connection with these matters.

The State of Utah has done its job in connection with the matter in presenting or making a prima facie case, and that apparently has been done through the filing of the various documents.

And I am assuming that, having perused those, you certainly have not indicated any objection to the documents as such. And unless you have something else, why, I'll make a ruling in connection with the matter. (R. 31-32).

In other words, the Court felt that the discovery was improper and that was the Court's basis for denying the appellant's motion.

The question of the applicability of civil discovery to habeas corpus proceedings has never been dealt with directly by this Court. However, Rule 81(a) of the URCP provides:

Special Statutory Proceedings. These Rules shall apply to all special statutory proceedings, except in so far as such Rules are by their nature clearly inapplicable. Where a statute provides for procedure by reference to any part of the former Code of Civil Procedure, such procedure shall be in accordance with these Rules.

Habeas Corpus procedures are covered by Rule 64B of the URCP. The procedures for the petition and answer are covered by that rule, but the rule does not describe any other procedures that are to be applied. The other procedures to be applied in habeas corpus hearings must be governed by the URCP. Such pro-

cedures must include discovery by the parties.

In Aldridge v. Beckstead, 16 Utah 2d 136, 396 P.2d 870 (1964), this Court noted in dictum that such procedures may be applicable in habeas corpus. The Court stated:

Dictum-wide, nonetheless, we observe that petitioner urges that habeas corpus proceedings are civil, not criminal; that the Rules of Civil Procedure are applicable; that so being, his motions to entertain the discovery process of interrogatories, deposition and examination of documents were violated by their denial.

Everything petitioner requested by motion was available to him as a matter of public record. 396 P.2d at 870.

Since this was a special statutory proceeding and the special rules applicable to such proceedings do not conflict with the application of Rule 33 of the URCP as was sought in this case, the appellant was entitled to the discovery under Rule 81(a) of the URCP. Furthermore, the answers to the interrogatories sought here do not conflict with the exception to Rule 81(a) which provides "except in so far as such Rules are by their nature inapplicable". The applicability has been determined by the United States Supreme Court which has held general civil discovery to be inappropriate in federal habeas corpus proceedings. However, the Court did find,

that in appropriate circumstances, a district court, confronted by a petition of habeas corpus which establishes a prima facie case for relief, may use or authorize the use of suitable discovery procedures, including interrogatories, reasonably fashioned to elicit facts necessary to help the court to 'dispose of the matter as law and justice require'. Harris v. Nelson, 394 U.S. 286

at 290, 22 L.Ed.2d 281, 89 S.Ct. 1082,
reh. den. 394 U.S. 1025, 23 L.Ed. 2d 50,
89 S.Ct. 1623 (1969).

In that case, the United States Supreme Court found that general civil discovery was not appropriate on habeas corpus for three basic reasons. The first was because of the history of both the Federal Rules of Civil Procedure and federal habeas corpus made such discovery inapplicable. The second reason was that some forms of discovery would be inappropriate in habeas corpus proceedings. The final reason was that there was a great deal of potential for abuse of discovery by prisoners who would be acting without the guidance and restraint of members of the bar.

However, the Court in Harris v. Nelson, supra, did not find, as noted above, that civil discovery was completely inappropriate in habeas corpus proceedings.

The Court held that the district courts are to have discretion in allowing such discovery and stated:

We do not assume that courts in the exercise of their discretion will pursue or authorize pursuit of all allegations presented to them. We are aware that confinement sometimes induces fantasy which has its basis in the paranoia of prison rather than in fact. But where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore, entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry. Obviously, in exercising this power, the court may utilize familiar procedures, as appropriate, whether these are found in the civil or criminal rules or else where in the "usages and principles of law." (footnote omitted) 394 U.S. at 300.

The Court found that the federal district courts had the power to allow such limited discovery under the All Writs Act, 28 United States Code §1651.

Even though Utah does not have a statute similar to the All Writs Act, such limited discovery may still be appropriate. The Colorado Supreme Court was faced with the same problem in the case of Hithe v. Nelson, 471 P.2d 596 (1970). In that case, as in the case at hand, the habeas corpus petitioner was challenging his being held for extradition. The Court held that the habeas corpus petitioner does not have an "unrestricted and unmodified" right to civil discovery, but discovery would be available if it was "clearly shown that the matters sought to be discovered will be relevant to the very narrow issue of a habeas corpus hearing", 471 P.2d at 598.

In the case at hand the appellant was seeking discovery of only those matters relevant to his claim. He sought to discover the time and place of the occurrence of the crime he was accused of committing and whether the government had him under surveillance at that time, and if he was under surveillance he sought to discover the government's information as to this whereabouts. Consequently, the fears expressed in Harris v. Nelson, supra, were not present here because the petitioner was seeking very limited discovery and because the discovery was conducted under the guidance and restraint of counsel, thus minimizing the potential for abuse.

This information was necessary for the appellant's case

for several reasons. The first is that the government's information may allow the appellant to prove his case without having to waive his privilege against self incrimination. The second is that such evidence may be regarded by the court as more credible than the appellant's assertions which the court may feel are self-serving in nature. Finally, since the appellant is presently incarcerated in the Salt Lake County Jail and the crime was alleged to have occurred in California such discovery may have been a great aid to the appellant and to the court by helping him locate evidence at a minimal expense. For these reasons, the trial court committed error in not allowing the appellant to conduct the limited discovery which he sought. This error was prejudicial because without the information sought, the appellant was completely unable to meet his burden of proof and with such information the burden may have been met. The trial court's ruling must be reversed and the case remanded to the district court to allow the appropriate discovery and a hearing on the appellant's claim.

CONCLUSION

The court order denying appellant's motion for continuance to allow him to conduct limited discovery was an abuse of discretion. The discovery was of a very limited nature and it is obvious that the information was readily available. This is because it had to be in the possession of either the Utah or California authorities. Consequently, the delay in obtaining the

information would have been minimal. When such delay is balanced against the loss the appellant incurred by having his petition denied, it becomes obvious that the Court abused its discretion in denying the motion for continuance and as a result denying the discovery which would follow from that continuance.

Respectfully submitted,

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Attorney for Appellant