

1951

State of Utah v. Fred Pettit Goode : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



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.

A. W. Sandack; Attorney for Respondent;

Recommended Citation

Brief of Respondent, *State v. Goode*, No. 7727 (Utah Supreme Court, 1951).
https://digitalcommons.law.byu.edu/uofu_sc1/1586

This Brief of Respondent 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 (pre-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

STATE OF UTAH,

*Plaintiff and Appellant
Respondent,*

vs.

Case No. 7727

FRED PETTIT GOODE,

Defendant and Respondent.

BRIEF OF RESPONDENT

FILED

OCT 8 1951

A. W. SANDACK,

Attorney for Fred Pettit Goode

Clerk, Supreme Court, Utah

1122 Continental Bank Bldg.,
Salt Lake City, Utah

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	3
STATEMENT OF POINTS	8
ARGUMENT	9
Point I. The Trial Court correctly held that the provisions of Chapter 113, Laws of Utah 1951, were applicable to Fred Pettit Goode	9
Point II. The Trial Court's action may also be upheld by virtue of the provision of 98-6-18, Utah Code Anno- tated 1943, as amended	15
Point III. The State has no statutory or other authority to appeal a criminal case upon a verdict or finding of not guilty by reason of insanity; any appeal being limited solely to the insanity case must also fail since the Trial Court's order is not such a "final order" from which an appeal lies	17
CONCLUSION	19

CASES CITED

State vs. Brown, Utah, 102 Pac. 641	10
Salt Lake City vs. Salt Lake County, Utah, 209 Pac. 207.....	12
State vs. Alexander, Utah, 49 Pac. 2nd, 408	12
State vs. Thompson, Utah, 254 Pac. 147	18

STATUTES CITED

	Page
Laws of Utah 1951, Chapter 113	9, 11
105-49-2 U. C. A. 1943	10, 11, 12
105-25-15 U. C. A. 1943	10, 11, 12
103-1-40 U. C. A. 1943	10
105-40-4 (3) U. C. A. 1943	7, 18
Revised Statutes 1898, Title 76, Ch. 50, Sec. 5053.....	10
Compiled Laws of Utah 1907, Title 91, Ch. 50	10
Compiled Laws of Utah 1917, Section 9327	10
Revised Statutes of Utah 1933, Title 105, Ch. 49	10
Laws of Utah 1935, Ch. 134	11
Laws of Utah 1937, Ch. 144	11
85-7-62 U. C. A. 1943	4, 5, 14
85-7-63 U. C. A. 1943	4, 5, 17
85-7-79 U. C. A. 1943	14
98-6-18, U. C. A. 1943, as amended	15, 16, 17
Sec. 4, L. 51, H. B. 192 (Laws of Utah 1951, Ch. 113).....	9
Constitution of Utah, Article 8, Section 9	18

In the Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff and ^{Appellant}~~Respondent~~,

vs.

Case No. 7727

FRED PETTIT GOODE,

Defendant and Respondent.

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

Fred Pettit Goode, the respondent, having served his country during World War II, received a medical discharge in April 1946 from the U. S. Army for a service-connected neuro-psychosis (R-5). At the time of the proceedings upon which is appeal is based, the Veterans Administration had established a 100% disabled rating for Fred as a manic-

depressive (R-19). Psychiatrists described Fred as suffering from schizophrenia (R-33).

Fred Goode committed a serious sexual offense on his four-year-old daughter, November 10, 1948 (R-1). He was later charged with the crime of rape, and upon trial before the Third District Court, without a jury, his bizarre conduct was explained as insanity, and on February 3, 1949, he was found not guilty by reason of insanity (R-3). On the same day, the District Attorney proceeded against Fred Goode as an insane person and upon hearing Third District Judge Ellett ordered his confinement to the Utah State Hospital at Provo "until the further order of this Court" (R-8).

Fred had been hospitalized at Provo for over two years when on March 26, 1951, his mother filed a petition on his behalf seeking an order transferring Fred as an eligible war veteran to the Veterans Administration Hospital at Sheridan, Wyoming. In this Petition she alleged (R-11, 12):

"3. That on March 8, 1951, the laws of Utah with respect to hospitalization of patients in the Utah State Hospital were changed, altered and amended so as to provide as follows:

'85-7-63. If an individual ordered to be hospitalized pursuant to the previous section is eligible for care or treatment by any agency of the United States, the Court, upon receipt of a certificate from such agency showing that facilities are available and that the individual is eligible for care or treatment therein, may order him to be placed in the custody of such agency for hospitalization. When admitted to any facility or institution operated by any such agency within or without the state, he shall be subject to the rules and regula-

tions of the agency. The chief officer of any facility or institution operated by such agency and in which the individual is hospitalized, shall with respect to such individual be vested with the same powers as the superintendent of the Utah State Hospital with respect to detention, custody, transfer, conditional release or discharge of patients. Jurisdiction is retained in appropriate courts of this state at any time to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of his hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.'

"4. That the said Fred Pettit Goode was a member of the Armed Forces of the United States during World War II and received his honorable discharge April 27, 1946; by reason of such service said Fred Pettit Goode is 100% disabled and is entitled to hospitalization, care and treatment by the V. A., an agency of the United States government; that a hospital bed and other facilities are available for said Fred Pettit Goode at Fort Sheridan V. A. Hospital, Wyoming; that the record of said disability—neuro-psychiatric in nature, is on file at the Regional Office, Veterans Administration, Salt Lake City, Utah, Serial No. C-69-28-530, which said file is requested to be subpoenaed in support of this petition.

"5. That on behalf of this application, the said Fred Pettit Goode has recently been examined by a competent psychiatrist, who has stated, 'that the transfer to a V. A. Hospital may be of some benefit to him and certainly if his original illness appeared while he was in the service, there is a very definite responsibility on the part of the V. A.'

"6. That the said Fred Pettit Goode has, since his commitment to the Utah State Hospital, made tremendous improvement; that the said improvement can

be made more complete if he is permitted to transfer from the Utah State Hospital to the V. A. Hospital at Fort Sheridan, Wyoming, for the reason that the facilities available at the V. A. Hospital are not available to the said Fred Pettit Goode at the Utah State Hospital. That the best interest and welfare of Fred Pettit Goode requires such a transfer and that to continue to hold the said Fred Pettit Goode at the Utah State Hospital without providing for him the facilities and care that his condition requires would be equivalent to crystallizing his condition at its present status and probably losing the benefit of his improvement totally; that no adequate care, treatment or facilities have been available to the said Fred Pettit Goode at the Utah State Hospital for over 12 months; that the condition of the said Fred Pettit Goode requires modern psycho-therapy which, the facilities at the Utah State Hospital, because of the number of patients involved, are inadequate to give."

Authority for this procedure was the newly adopted Laws of Utah 1951, Chapter 113, wherein the State Hospital Sections of Title 85, Chapter 7, were rewritten, repealed and amended; constituting a bill of rights for the state's mentally ill.*

This law became effective May 8, 1951. The matter was presented to Third District Judge Baker on April 11, 1951, taken under advisement that day and on May 12, 1951, Judge Baker signed the order for Fred's transfer (R-52, 53, 54).

Counsel for the State concedes that the testimony and evidence produced at the hearing would be sufficient to support Judge Baker's order if the legal question raised is determined in favor of the respondent.

*The model bill was suggested by the National Institute of Mental Health, Bethesda, Md

Respondent believes it important to detail certain portions of that testimony.

Dr. Owen Heninger, Superintendent of the Utah State Hospital, a witness called for Fred, testified that Fred had received insulin shock therapy for six weeks after his entrance in February, 1949, until April 25, 1949 (R-36). That nothing in shock therapy had been administered to Fred since that time (R-36). Dr. Heninger testified there were 1,300 patients at the Hospital (R-37) at that time, with five doctors of psychiatry competent to administer to that number of patients (R-37). The testimony is uncontradicted that Fred Goode received no special treatment in two years (R-37). Dr. C. H. Branch, Head of the Psychiatry Department of the University Department of the University of Utah Medical School, testified that Fred had improved remarkably since his hospitalization (R-29), but since January 30, 1951, his condition had remained fairly static (R-30) and therefore attention which was not possible at the State Hospital might help Fred move forward. Dr. Branch (R-30) expressed the feeling that Fred would be better off at a Veterans Administration Hospital dealing in neuro-psychiatric problems (R-31) and that it would be wrong from a medical standpoint not to give Fred a chance (R-32,33). Dr. Heninger substantiated this portion of Dr. Branch's testimony (R-37, 38, 39, 40, 41, 42).

Dr. Heninger further testified that he was seeking authority to transfer Fred to a hospital having facilities that Fred's condition needed (R-37).

Counsel for the State contending that an appeal is proper pursuant to 105-40-4 (3), Utah Code Annotated, 1943, has

designated two cases for this review. Both are entitled State of Utah vs. Fred Pettit Goode, the criminal file is certified up as Case No. 13251 and the insanity file as Case No. 6002.

STATEMENT OF POINTS RELIED UPON

POINT I

THE TRIAL COURT CORRECTLY HELD THAT THE PROVISIONS OF CHAPTER 113, LAWS OF UTAH 1951, WERE APPLICABLE TO FRED PETTIT GOODE.

POINT II

THE TRIAL COURT'S ACTION MAY ALSO BE UPHOLD BY VIRTUE OF THE PROVISIONS OF 98-6-18, UTAH CODE ANNOTATED, 1943 AS AMENDED.

POINT III

THE STATE HAS NO STATUTORY OR OTHER AUTHORITY TO APPEAL A CRIMINAL CASE UPON A VERDICT OR FINDING OF NOT GUILTY BY REASON OF INSANITY; ANY APPEAL BEING LIMITED SOLELY TO THE INSANITY CASE MUST ALSO FAIL SINCE THE TRIAL COURT'S ORDER IS NOT SUCH "A FINAL ORDER" FROM WHICH AN APPEAL LIES.

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY HELD THAT THE PROVISIONS OF CHAPTER 113, LAWS OF UTAH 1951, WERE APPLICABLE TO FRED PETTIT GOODE.

The only proposition which the State raised on this appeal, is that Chapter 113, Laws of Utah 1951, has no application whatsoever to a person committed to the Utah State Hospital under the provisions of the Code of Criminal Procedure. The proposition answers itself upon a reading of Chapter 113, Laws of Utah 1951. The specific wording of Section 4, L. 51, H. B. 192, provides as follows:

“Sec.4 . Nothing contained in this Act shall be construed to alter, or change the method presently employed for the commitment and care of the *criminally insane* as provided in *Chapter 49 of Title 105*, Utah Code Annotated, 1943.”

Counsel for the State contends that Chapter 113, Laws of Utah 1951, is inapplicable to a person committed to the State Hospital under *any provision* of the Code of Criminal procedure. Specifically, the Act, by its own language, was made inapplicable only in those cases as provided in Chapter 49 of Title 105.

Fred Goode is not by any definition of law criminally insane nor was he confined pursuant to the provisions of Chapter 49, Title 105. Having been found *not guilty by reason of insanity* at a trial, Fred Goode was incapable of committing a crime, incapable of being punished as a criminal, within the

meaning of Section 103-1-40, Utah Code Annotated, 1943, which provides:

"All persons are capable of committing crimes except those belonging to the following classes:

(4) Lunatics and insane persons."

and see *State vs. Brown*, 102 Pac. 641.

Fred Goode was committed pursuant to Sections 105-25-15, 16, 17, Utah Code Annotated, 1943.

In support of respondent's contention, the legislative history and background of Chapter 49, Title 105, Utah Code Annotated, 1943, needs analysis.

Chapter 49, Title 105, Utah Code Annotated, 1943, has been a part of the Code of Criminal Procedure since 1898. Revised Statutes 1898, Title 76, Chapter 50, Section 5053 provided.

"Inquiry into sanity of accused or convicted persons. Procedure.

"Whenever a person charged with crime shall have escaped information or indictment thereof, 'or shall have been acquitted thereof on trial, upon the ground of insanity'; or whenever a person during trial or when brought up for sentence or while confined as a criminal in the State Prison or County jail shall become insane, complaint under oath must be made setting forth the facts in the case and the District Court of the County must proceed as hereinafter in this Chapter set out."

A similar provision was contained in Compiled Laws of Utah, 1907, Title 91, Chapter 50; Compiled Laws 1917, Section 9327; Revised Statutes of Utah 1933, Title 105, Chapter

49; and in 1935 the entire section was rewritten by virtue of Laws of Utah 1935, Chapter 13-4.

However, in 1937, the Legislature amended Section 105-49-2, 3, 4, 5, and 6 and in that amended form those Sections remain at the present time.

105-49-2, Utah Code Annotated, 1943, eliminates the language '*or shall have been acquitted thereof upon the ground of insanity.*'

The elimination of this language accomplished by the 1937 Legislature and continued into our present law, indicates a clear and unmistakable intent to designate 105-25-15, 16 and 17 as the procedure when an insane person has committed a criminal act and has been acquitted on the grounds of insanity and to designate Chapter 49, Title 105 as the procedure when an insane person is subject to a criminal charge. In other words, when a person has committed a criminal act and becomes insane at or during the trial, or before or after sentence, etc., then Chapter 49 is the manner of proceeding, just as 105-37-8 to 12 is the manner of inquiry into the sanity of a person under sentence of death. But the sole method of proceeding against a person who while insane committed a criminal act and has been found *not guilty by reason of insanity* is pursuant to 105-25-15, etc. Since by its terms, Chapter 113, Laws of Utah 1951, is inapplicable only to Chapter 49, Title 105, it must be applicable to the cases arising under 105-25-15.

There is an elementary rule of statutory construction that where two statutes treat the same subject matter, the one general

and the other special in its provisions, the special provisions control the general. See *Salt Lake City vs. Salt Lake County*, 209 Pac. 207. The application of this Rule should lead to the conclusion that since Chapter 113, Laws of Utah 1951, is specifically inapplicable only to Chapter 49, Title 105, it must be applicable to all other cases including those arising under 105-25-15.

In *State vs. Alexander*, 49 Pac. 2d 408, Mr. Justice Folland, speaking for this Court says:

“The policy of this state as indicated by its statutes, in harmony with the principles of the common law, is that no person while insane shall be tried, adjudged to punishment, or punished for a public offense. The common law and the reasons therefor are well stated by Mr. Blackstone in his Commentary. We quote from Cooley’s Blackstone (4th Ed.) Vol. II. p. 1231: ‘Also if a man in his sound memory commits a capital offense, and before arraignment for it, he becomes mad, he ought not to be arraigned for it; because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defense? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if, after judgment, he becomes of non-sane memory, execution shall be stayed; for peradventure, says the humanity of the English law, had the prisoner been of sound memory, he might have alleged something in stay of judgment or execution.’ To give effect to this humane policy provision was early made by the Legislature of the Territory of Utah and later by the Legislature of the State for a hearing touching the insanity of an accused or convicted person in every situation.”

The 1951 Legislature, recognizing the inadequacy of the State Hospital's physical facilities, has attempted to solve the problem of rehabilitating the mentally ill through the use of federal government facilities, in limited cases for war veterans. The State admitting its own inability, has done the next best thing. A little arithmetic will prove a point: If the five doctors at the State Hospital spent every working minute on patient care, the time, if divided equally, would amount to eleven minutes per week per patient. Yet, in the case of the respondent, Fred Goode received no special treatment in over two years, and Fred was ordered to a hospital, not confined to a prison. If Fred Goode is to be ordered back to the State Hospital and thus denied the facilities and treatment to assist his return to sanity, such action might amount to confinement for the rest of his life.

It is difficult to understand how the State of Utah, in this action, is in the position to question the effectiveness of the Statute because of the rule that such an attack upon the validity of a statute cannot be made by one whose interest and obligation as Attorney General and District Attorney, is to uphold the Legislature's enactment.

Counsel for the State contends the extra territorial powers attempted to be retained by the State Superintendent of the Hospital and by the Courts is ineffective. Similar extra territorial compacts, i. e., confinement of Utah women felons within Colorado prisons have so far not been upset. The respondent sees no vice in the way our Legislature has attempted to solve the problem of rehabilitation.

Counsel for the State next argues that Fred Goode was not

an individual *ordered to be hospitalized* pursuant to the previous Section (85-7-62). That Section sets forth the proceedings for all judicial involuntary hospitalization which was formerly spelled out under Sections 85-7-15 to 26, Utah Code Annotated, 1943. All of these later Sections have been repealed by the new law. The new procedure for *all* judicial involuntary commitments is set forth under 85-7-62, which is the *previous section* referred to in 85-7-63, as amended.

Appellant's attention should be directed to 85-7-79 of the new law which provides:

"Patients who are in the Utah State Hospital on the effective date of this Act (May 8, 1951) shall be *deemed* to have been admitted under the provisions of this Act appropriate in each instance and their care, custody and rights shall be governed by this Act from its effective date."

The clear intent of this Section must mean that any insane person confined in the Hospital on May 8, 1951, becomes entitled to all rights under the new law. If it is held that Fred Goode is confined as an insane person, not a criminally insane person, then the benefits of the Laws of Utah 1941, Chapter 113, are available to him.

There is no desire here to release upon society an insane sex offender; but to deny Fred Goode proper treatment and the vehicle to become again a good citizen, seems a Fabian answer to a case where the State of Utah has failed to meet its responsibilities to the mentally ill.*

*While it is outside the record in the case and technically improper to include here, the Court's attention might be directed to the "Report of the Utah State Hospital, Provo, Utah for Year Ending June 30, 1950, Public Welfare Commission" and a recent editorial on the report in the Salt Lake Tribune, Tuesday morning, August 28, 1951, in connection with the crisis at the State Hospital.

POINT II

THE TRIAL COURT'S ACTION MAY ALSO BE UPHOLD BY VIRTUE OF THE PROVISIONS OF 98-6-18, UTAH CODE ANNOTATED, 1943 AS AMENDED.

The Trial Court's Order may also be sustained pursuant to the provisions of 98-6-18, Utah Code Annotated, 1943 as amended, which provides:

“(1) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration or other agency of the United States government, the court, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state; and nothing in this act shall effect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any facility operated by any such agency within or without this state shall be subject to the rules and regulations of the veterans administration or other agency. The chief officer of any facility of the veterans administration or institution operated by any other agency of the United States to

which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this act are so conditioned.

“(3) Upon receipt of a certificate of the veterans administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans administration or other agency of the United States for care or treatment. Upon effecting any such transfer the committing court or proper officer thereof shall be notified thereof by the transferring agency. *No person shall be transferred to the veterans administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.*

Any person transferred as provided in this section shall be deemed to be committed to the veterans administration or other agency of the United States pursuant to the original commitment. (Sec. 18.)”

It must be apparent from this provision of our statute that the Legislature has intended to deal in a special manner where

mentally unsound veterans are concerned. The italicized portion of sub-section 3 is the precise manner in which the respondent proceeded.

This section, also known as Section 18 of the Uniform Veterans' Guardianship Act, has now been adopted by 35 States and became part of the statutes of this state by virtue of the Laws of Utah 1943 S. B. 125, approved March 18, 1943.

A reading of 85-7-63, Utah Code Annotated, 1943 as amended, shows how that Section follows very closely the provisions of sub-paragraphs 1 and 3 of the Uniform Veterans' Guardianship Act (98-6-18). The terminology of the two sections is almost identical and conclusively establishes the right of a mentally unsound veteran, who has been acquitted of a felony on the grounds of insanity, to transfer to a Veterans Administration facility for care and treatment provided only that the Court committing him shall enter an order for such transfer after appropriate motion and hearing, all of which was done in the instant case. Respondent contends that the provisions of 98-6-18 sustain Judge Baker's order, even if there is ambiguity with regard to the application of 85-7-63 to respondent's situation.

POINT III

THE STATE HAS NO STATUTORY OR OTHER AUTHORITY TO APPEAL A CRIMINAL CASE UPON A VERDICT OR FINDING OF NOT GUILTY BY REASON OF INSANITY; ANY APPEAL BEING LIMITED SOLELY

TO THE INSANITY CASE MUST ALSO FAIL SINCE THE TRIAL COURT'S ORDER IS NOT SUCH A "A FINAL ORDER" FROM WHICH AN APPEAL LIES.

Respondent contends the State of Utah may not appeal for the reason that once a defendant in a criminal proceeding has been acquitted upon a verdict or finding of not guilty by reason of insanity the Court's criminal jurisdiction expires. The State has no standing as an appellant pursuant to 105-40-4, Sub-Section (3) Utah Code Annotated, 1943, since no criminal case exists upon which to appeal.

If the State has any right to appeal, it must be limited solely to the insanity case No. 6002, and here too, the State should have no standing, since Judge Baker's Order of May 12, 1951, about which the State complains is not *a final order or judgment* from which the State might appeal to this Court, See *State vs. Thompson*, 254 Pac. 147 and *Constitution of Utah*, Article 8, Section 9.

Judge Baker's Order *does not release him from confinement* prior to a finding establishing Goode's sanity; the Order merely authorizes his transfer justified in the discretion of the Court, to the Veterans Administration where adequate treatment is available. Judge Baker's Order is interlocutory in nature and not being final, may not be appealed from. It has never been contended that Fred Goode has returned to sanity so as to be permanently released from confinement. He was merely *loaned out* for treatment to an agency of the government within the meaning of the Act.

CONCLUSION

It is submitted that our Legislature intended to provide a new, modern and humanitarian model of procedure for the care, custody, and treatment of the State's mentally ill. If the Legislature's intention is to be accomplished Fred Goode's order of transfer from the State Hospital at Provo, Utah, to the Veterans Administration Hospital at Sheridan, Wyoming, should be upheld.

It is earnestly submitted that the decision of the Lower Court be affirmed.

Respectfully submitted,

A. W. SANDACK,

Attorney for Fred Pettit Goode
1122 Continental Bank Bldg.,
Salt Lake City, Utah