

1979

State of Utah v. Ralph Leroy Menzies : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-v-

RALPH LEROY MENZIES,

Defendant-Appellant.

Case No. 16323

BRIEF OF APPELLANT

An appeal from the judgment and conviction of the crime of Escape in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Peter F. Leary, Judge presiding.

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FILED

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Plaintiff-Respondent,	:	
	:	
-v-	:	
	:	
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	:	
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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

Plaintiff-Respondent,

-v-

RALPH LEROY MENZIES,

Defendant-Appellant.

Case No. 16323

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, RALPH LEROY MENZIES, appeals from the conviction of the crime of Escape in the Third Judicial District Court, Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

The appellant, RALPH LEROY MENZIES, was found guilty by a jury before the Honorable Peter F. Leary, Judge presiding, of the crime of Escape on January 22, 1979, and was thereafter sentenced to be committed to the Utah State Prison for the indeterminate term as provided by law.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of his conviction and a new trial. Counsel on appeal requests permission to withdraw from the

appeal and submits this brief in compliance with Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 93 (1967).

STATEMENT OF THE FACTS

According to Carl H. Loerbs, a counselor at the Utah State Prison, on the evening of the 6th of July, 1978, he was assigned to count the prisoners confined to a particular area of minimum security. On the evening of July 6, 1978, at the hour of 11:00 p.m. Mr. Loerbs made a count and in "K" Dorm could not locate Ralph Menzies nor Johnny Sloan, another inmate assigned to "K" Dorm. Mr. Loerbs then made a physical search of the entire "K" Dorm area and was not able to locate either individual. Mr. Loerbs identified the appellant as being the same Ralph Leroy Menzies who had previously been in "K" Dorm of minimum security and further said that the appellant did not have permission to his knowledge to leave the institution on that occasion.

Mr. Loerbs also testified that his knowledge of the nature of the commitment of the appellant was based on the assumption that there was a valid commitment order and that he had no direct evidence that the appellant was a bona fide inmate.

Ron Hinckley, who was a correctional counselor at the Utah State Prison, testified that he searched for the escapees on the evening of July 6, 1978, and early morning hours of the July 7, 1978, and that he found a door that apparently had been forced open. He

a, testified that he did not see them again for some time.

The State called George Byron Stark who introduced a copy of a judgment that purported to be an authenticated copy of a commitment of Ralph Leroy Menzies to prison. Mr. Gregory L. Bown, a Deputy County Attorney, was called to say that on September 10, 1976, he was present and witnessed the appellant being committed to prison pursuant to the case out of which the commitment theretofore entered into evidence had been filed. Charles L. Illsley was called as a witness and testified that on the evening of July 22, 1978, in the course of a routine patrol, he arrested the appellant at about 12:45 a.m. He further testified that the appellant gave the name of Lee Stevens and the address of 55 White Cherry Way, and that he denied having any identification on him. The witness further stated that at a subsequent point he saw an identification card protruding from appellant's wallet, removed the wallet from the truck and discovered that it contained Utah State Prison identification to Ralph Leroy Menzies. Pursuant to that investigation, the officer subsequently arrested the appellant for the charge of Escape. The State then rested, but later was allowed to reopen to call Joy Greenwood to the stand. Joy Greenwood testified that she was a keeper of the prison records, that she had with her the prison inmate record of Ralph Leroy Menzies, that the record revealed that he was there pursuant to a valid sentence, and that that sentence had not been terminated, voided or he had not been paroled at the time of his alleged escape.

Mrs. Greenwood further stated on cross-examination that the mere fact that a file was in her possession was not evidence that the person to whom that file referred was, in fact, in the Utah State Prison. She further testified that in order to show that the appellant's sentence had not been terminated, voided, or that he had not been put on parole, she relied on the absence of a particular entry in the file, rather than any individual entry in the file itself. In addition Mrs. Greenwood testified that numerous people had access to the file and that it was possible that they could have altered or destroyed portions of that file without her knowledge.

ARGUMENT

POINT I

APPELLANT IS ENTITLED TO A NEW TRIAL BECAUSE THE VERDICT WAS NOT SUPPORTED BY THE EVIDENCE.

This Court has on several occasions stated the rules concerning the granting of a new trial on the basis that the verdict was not supported by the evidence. In State v. Cooper, 114 Ut. 531, 201 P.2d 764, 770 (1949), this Court stated:

The question of granting or denying a motion for a new trial is a matter largely within the discretion of the trial court. This court cannot substitute its discretion for that of the trial court. We do not ordinarily interfere with the

rulings of the trial court in either granting or denying a new trial, and unless abuse of, or failure to exercise, discretion on the part of the trial judge is quite clearly shown, the ruling of the trial court will be sustained.

While in appellant's case there was no motion for a new trial, the above language would seem to indicate under what circumstances this Court will grant a new trial even in the absence of a motion for a new trial. The Court also stated:

The state's evidence is so inherently improbable as to be unworthy of belief so that upon objective analysis it appears that reasonable minds could not believe beyond a reasonable doubt that the defendant was guilty, the jury's verdict cannot stand. Conversely, if the state's evidence was such that reasonable minds could believe beyond a reasonable doubt the defendant was guilty, the verdict must be sustained. State v. Mills, 122 Ut. 306, 249 P.2d 211 (1952).

It is apparent from these various statements of the law that this Court does have the power to order a new trial in appropriate cases. This Court has said that:

We are not unmindful of the settled rule that it is the province of the jury to weigh the testimony and determine the facts. Nevertheless, we cannot escape the responsibility of judgment upon whether under the evidence, a jury could, and reason, conclude the defendant's guilt was proved beyond a reasonable doubt. State v. Williams, 111 Ut. 379, 180 P.2d 551, 555 (1947.)

Clearly each case must turn upon its own facts and circumstances to whether or not a new trial is warranted because the

verdict was not supported by the evidence. Appellant contends that in the case before the Court the verdict was not supported by the evidence and therefore he should be granted a new trial.

POINT II

APPELLANT IS ENTITLED TO REVERSAL OF THE CONVICTION
IN THE ABOVE ENTITLED CASE AND DISMISSAL OF THAT
CHARGE BECAUSE HE WAS DENIED HIS RIGHT TO A SPEEDY
TRIAL.

The Sixth Amendment to the United States Constitution provides "in all criminal prosecutions the accused shall enjoy the right to a speedy . . . trial". This provision is embodied in the Due Process Clause of the Fourteenth Amendment and hence is applicable to state prosecutions as well as federal prosecutions. Klopfer v. North Carolina, 386 U.S. 213, 18 L.Ed. 2d 1, 87 S.Ct. 988 (1967).

Case law reflects certain general principles:

- 1) The right to a speedy trial is necessarily relative;
- 2) That it is constitutionally permissible for there to be some delay in prosecuting a criminal case, but not inordinate, purposeful or oppressive delay; and
3. Whether the delay involved in completing a particular criminal prosecution violates the accused's right to a speedy trial depends upon the circumstances.

The Supreme Court rejected a claim of denial of right to speedy trial in Beavers v. Haubert, 198 U.S. 77, 49 L.Ed. 950, 25

S.Ct. 573 (1905). After the accused had been indicted for federal crimes in a New York Federal District Court, and after a continuance had been granted, the prosecuting attorney announced an intention not to proceed further with the New York prosecution, but instead to have the accused removed to the District of Columbia for prosecution under the indictments against him there. Holding that the accused had not been denied his constitutional right to a speedy trial, the Court emphasized that where a person is charged with more than one crime, he cannot be tried for all at the same time; that the accused's rights must be considered with regard to the practical administration of justice; that the right to a speedy trial cannot be claimed for one offense and prevent arrest for other offenses; and that removal proceedings from one Federal District Court to another are merely process for arrest and means of bringing a defendant to trial.

The Supreme Court, here and in later cases, emphasizes that "The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice". 198 U.S. 77 at 87. "[T]he essential ingredient is orderly expedition and not mere speed". Smith v. United States, 360 U.S. 1, 10, 3 L.Ed. 2d 1041, 79 S.Ct. 991 (1959).

In Pollard v. United States, 352 U.S. 354, 1 L.Ed.2d 393, 77 S.Ct. 481 (1957), the Court said in order for a violation of the

constitutional right to speedy trial to exist the delay must be purposeful or oppressive. In that case, the delay in completing prosecution against the defendant by imposing a sentence was accidental and was promptly remedied when discovered. Because of the accidental nature of the delay, the Court rejected appellant's claim that his rights were violated.

There was no constitutionally impermissible denial of a speedy trial in Hoag v. New Jersey, 356 U.S. 464, 2 L.Ed.2d 913, 78 S.Ct. 829 (1958), where the defendant was tried in a New Jersey court in October 1954, four years after the occurrence of the alleged crime. The Court found the following circumstances in that case justified the delay: 1) the defendant was imprisoned in New York from November 1950 until January 1952; 2) he was tried in New Jersey in May 1952 on indictments charging him with robberies of three individuals, was acquitted, and was returned to New York and was in prison there in July, 1952, when a New Jersey grand jury returned an indictment charging him with robbery of a fourth individual; 3) New Jersey reacquired him by extradition in May, 1954, and 4) the Court in which he was tried in October, 1954, was not in session for criminal trials during the summer months.

Though Smith v. United States, 360 U.S. 1, 3 L.Ed. 2d 1041, 79 S.Ct. 991 (1959) did not involve an accused's claim of denial of right to speedy trial, the Court enunciated a general principle in regard to the Sixth Amendment right:

While justice should be administered with dispatch, the essential ingredient is orderly expedition and not mere speed. It is well to note that in this very case the inordinate speed that was generated through the filing of the information caused many of the difficulties which led the court below to conclude that petitioners had been deprived of due process of law.
3 L.Ed. 2d at 1048.

Thus the Court warns against the dangers of a trial that is so "speedy" as to render a denial of due process.

The defendants in United States v. Ewell, 383 U.S. 166, 15 L.Ed.2d 627, 86 S.Ct. 773 (1966), had their convictions for violation of a federal narcotics statute vacated on the ground of a defect in their indictments. The Government then had them rearrested and reindicted, and each of the new indictments, besides remedying the defects in the earlier ones, included two new counts which had not been charged in the previous indictments. All counts of the new indictments were based upon the same transaction as the previous prosecution. Nineteen months had passed between the time of the accused's original arrest and the hearing on their last indictments. The District Court granted the defendant's motion to dismiss the indictments on the ground that they had been denied their Sixth Amendment right to speedy trial. The Government appealed, and the Supreme Court reversed. The purpose of the Sixth Amendment guaranty, the Court said, is to work as a safeguard to prevent undue and oppressive incarceration prior to trial, to

minimize anxiety and concern accompanying public accusation, and to limit the possibility that long delay will impair the ability of an accused to defend himself. However, because of the many procedural safeguards provided a defendant, the ordinary procedures for criminal prosecution are designed to move at a deliberate pace.

The Court again emphasized the concern of a trial that was too "speedy":

A requirement of unreasonable speed would have a deleterious effect upon both the rights of the accused and upon the ability of society to protect itself. 15 L.Ed. at 631.

In United States v. Ewell, supra, the Court held that the accused must have actually been prejudiced as a result of the prosecution's delay. The defendant's claim was found to be insubstantial, speculative and premature where he had not shown any specific evidence which had actually disappeared or been lost and no witnesses were known to have disappeared. The Court could find no oppressive or culpable government conduct, and therefore, rejected defendant's Sixth Amendment claim. However, in a later case, the Court held that an affirmative showing of prejudice is not necessary. See Moore v. Arizona, infra.

The Supreme Court, in Klopper v. North Carolina, supra, applying the Sixth Amendment to the states through the Due Process Clause of the Fourteenth Amendment, held that the state had violated the accused's Sixth Amendment right by entering against him a

no longer prosecute with leave to reinstate prosecution at a future date. Such a procedure would indefinitely prolong the oppressive effects of the pendency of the indictment, which would subject the defendant to public scorn, and would prolong the anxiety and concern accompanying public accusation.

Harrison v. United States, 392 U.S. 219, 20 L.Ed. 2d 1047, 88 S.Ct. 2008 (1968), involved an appeal on the issue of illegally seized evidence. The Court summarily dismissed defendant's claim that he was denied a right to a speedy trial where virtually all of the delays of which he complained occurred in the course of appellate proceedings and resulted either from his own actions or for the need to assure careful review of an unusually complex case.

The Sixth Amendment right to a speedy trial made obligatory on the states by the Fourteenth Amendment may not be dispensed with merely because the accused under a state charge is serving a prison sentence imposed by another jurisdiction, but the state in such case, upon accused's demand, has a constitutional duty to make a diligent, good-faith effort to bring him before the trial court. Smith v. Hooey, 393 U.S. 374, 21 L.Ed.2d 607, 89 S.Ct. 575 (1969). The Court rejected the notion that a man already in prison under a lawful sentence is not in a position to suffer from "undue and oppressive incarceration prior to trial". The delay may ultimately result in:

First, the possibility that the defendant already in prison might receive a sentence at least partially concurrent with the one he is serving may be forever lost if trial of the pending charge is postponed. Secondly, under procedures now widely practiced, the duration of his present imprisonment may be increased, and the conditions under which he must serve his sentence greatly worsened, by the pending of another criminal charge outstanding against him.
21 L.Ed.2d Ct. 611.

The "anxiety and concern accompanying public accusation" would have an equally depressive effect upon a prisoner as upon a person who is at large. Also, the Court notes, the strain and anxiety could interfere with the prisoner's ability to take maximum advantage of his institutional opportunities for rehabilitation. There is, again, the concern with the inability of the prisoner to adequately prepare his defense.

A seven-year delay in bringing the accused to trial resulted in a denial of the right to speedy trial. Dickey v. State of Florida, 398 U.S. 30, 26 L.Ed.2d 26, 90 S.Ct. 1564 (1970). In that case, the Supreme Court held that no valid reason existed for the prosecution's deferring the trial in the face of the accused's diligent and repeated effort to secure his constitutional right to a speedy trial. The Court found that there was abundant evidence in the record that the delay had caused actual prejudice to the accused as a result of the death of two potential witnesses, the unavailability of another potential witness, and the loss of police

records and, because of the delay and its consequent prejudice, the accused was entitled to have any further proceedings arising out of the robbery charges dismissed.

The right to a speedy trial attaches once the putative defendant in some way becomes an accused; the Sixth Amendment does not apply to the period prior to arrest. Marion v. United States, 404 U.S. 307, 30 L.Ed. 2d 468, 92 S.Ct. 455 (1971).

The accused in Barker v. Wingo, 407 U.S. 514, 33 L.Ed.2d 101, 92 S.Ct. 2182 (1972), was not denied the right to a speedy trial even though he was indicted in September, 1958, and after a series of sixteen continuances, was not tried until October, 1963. The Court in Barker, set out the criteria by which the speedy trial right is to be judged. The Court held: 1) the right to a speedy trial is a more vague and generically different concept than other constitutional rights guaranteed to accused persons and cannot be quantified into a specified number of days or months, and it is impossible to pinpoint a precise time in the judicial process when the right must be asserted or considered waived, 2) while a defendant's assertion of, or failure to assert, his right to a speedy trial is one of the factors to be considered in an inquiry into the deprivation of such a right, the primary burden remains on the courts and the prosecutors to assure that cases are speedily brought to trial, 3) a claim that a defendant has been denied his right to a speedy trial is subject to a balancing test, in which the conduct of both

the prosecution and the defendant are weighed, and courts should consider such factors as (a) length of the delay, (b) reason for the delay, (c) the defendant's assertion or nonassertion of his right, and (d) prejudice to the defendant resulting from the delay, in determining whether a defendant's right to a speedy trial has been denied. While the petitioner's case, involving as it did such an extraordinary delay, was a close one, the facts that prejudice to him was minimal and that the petitioner himself did not want a speedy trial outweighed the deficiencies attributable to the state's failure to try the petitioner sooner, therefore the petitioner was not denied his right to a speedy trial.

The only possible remedy for denying the defendant the right to a speedy trial is dismissal of the charges especially in view of the policies underlying that Sixth Amendment right. Strunk v. United States, 412 U.S. 434, 37 L.Ed.2d 56, 93 S.Ct. 2260 (1973). The accused's right to a speedy trial is fundamental and the duty to provide a prompt trial rests with the Government. Unintentional delays caused by crowded courts or understaffed prosecutors are given less weight than intentional or oppressive delays, however, they still must be considered since the ultimate responsibility for such circumstances lies with the Government rather than the defendant. The fact that the accused, even one who is released pending trial is not interested in being tried quickly does not, alone, alter the prosecutor's obligation to provide

a prompt trial as the public's interest as well as the accused's constitutional right command prompt imposition of criminal charges. The defendant in Strunk was denied a speedy trial and charges against him were dismissed.

In earlier cases, the Supreme Court lists prejudice to the defendant as necessary in order to show denial of the right to speedy trial. However, in Moore v. Arizona, 414 U.S. 25, 38 L.Ed.2d 183, 94 S.Ct. 88 (1973), it was held that the four factors to be considered in determining whether the right to speedy trial has been denied, as enunciated in Barker, are neither necessary or a sufficient condition to base a finding of a denial of the right to speedy trial. Thus, an affirmative demonstration of prejudice to the accused is not necessary to prove a denial of his constitutional right (cf. United States v. Ewell, supra). The Court also noted that prejudice is not confined to the possible prejudice to his defense in the proceedings, but the Court must also consider, inter alia, the possible impact which pending charges might have on his prospects for parole and meaningful rehabilitation. The defendant's case in Moore was remanded for reassessment under proper Sixth Amendment constitutional standards.

The right to a speedy trial is also guaranteed by the Utah Constitution, Article I, Section 12. In State v. Rasmussen, 418 P.2d 134 (Utah, 1966), it was held that Utah Code Ann. §77-18-8(6) (1953) which provides that the defendant in all criminal cases shall be entitled to a speedy public trial within 30 days after arraignment,

is a statutory implementation of the constitutional guarantee to a speedy trial. Though the defendant in the Rasmussen case was not brought to trial until 45 days after arraignment, the Court held the delay was not a denial of defendant's right to a speedy trial where the circumstances causing the delay were beyond the control of the prosecution or the court, and where there was no intent to prejudice the defendant.

It was argued in State v. Lozano, 462 P.2d 710 (Utah, 1969) that Utah Code Ann. §77-18-8(6) (1953) is mandatory. The Court rejected the argument and said that the provision is not mandatory but directory, and "each case must be examined in light of its own particular facts". However, where defendant was arrested on January 1, made two demands for the speedy trial, objected to prosecutor's request for continuance on July 12, and was not brought to trial until August 5, the Court held that incarceration prior to trial, without cause or excuse, was undue and oppressive and constituted denial of defendant's right to speedy trial under the United States and Utah Constitutions.

The defendant in State v. Mathis, 319 P.2d 134 (Utah, 1957) claimed that a 13-day delay in being brought to trial constituted a denial of his Sixth Amendment right. The Court noted that anyone accused of a crime, especially one incarcerated awaiting trial, is entitled to have his case tried with all possible dispatch, if he so desires, citing the Utah Constitution Article I, Section 12. The

defendant also based his claim upon Utah Code Ann. §77-51-1 (1953) which deals with dismissal for failure to prosecute, which is a legislative implementation of the constitutional guarantee of a speedy trial. The Court found no transgression from that statute. In addition, there was no reversible error where the prosecutor did not file an affidavit for continuance pursuant to §77-29-1 regarding postponement of trial, but instead orally made the motion 59) for continuance and gave statements in support thereof. "In the absence of any indication of lack of good faith or of diligence on the part of the state which resulted in a substantial infringement upon the defendant's rights or in some manner prevented or im- 60) paired his ability to defend", the Court said, the granting of a continuance is well within the trial court's discretion.

In the case of State v. Renzo, 443 P.2d 392 (Utah, 1968), the Court held that the constitutional speedy trial guarantee is not applicable until after prosecution is instituted, and prosecution 61) is instituted when an indictment is returned or an information filed. The Court also restated the rule enunciated in State v. 62) Bohn, 248 P.119 (Utah, 1926), that "a defendant cannot claim that his constitutional right to a speedy trial was violated unless 63) he asks the court to grant him a trial". 443 P.2d at 395. See also Pietch v. United States, 110 F.2d 817 (10th Cir. 1940) where 64) the Court said that in the absence of an affirmative request or demand for trial, it is presumed that the accused acquiesced in the

delay and therefore cannot complain. Note that the United States Supreme Court in Barker lists the absence of an affirmative request as only a factor to consider.

However, a statutory right to a speedy trial cannot be forfeited by the defendant's silence. In State v. Wilson, 453 P.2d 158 (Utah, 1969), the accused did not forfeit his right to have charges against him dismissed pursuant to Utah Code Ann. §77-65-2 (1953) by remaining silent and failing to request an earlier setting when the trial court set date for trial beyond the 90-day period required under §77-65-1. The Court held that the burden of complying with the statute rests on the prosecutor.

The pretrial delays in the above entitled case occurred when this case was delayed in order to try an armed robbery case against the same appellant (R. 75). Continuances in the armed robbery case and the necessity for a re-trial of that case following a hung jury in the initial trial were required. At that time, counsel for appellant waived the 90-day disposition theretofore filed in order to allow re-trial of the robbery case first (R. 76). Arraignment on the escape charge occurred September 1, 1978, and the appellant was not tried until January 15 of the following year. Appellant contends that the delay of a four and a half months was in violation of the appellant's constitutional rights to a speedy trial.

Pursuant to the cases cited above, counsel for the appellant requests the Court to decide whether or not the proceedings

in this case warrant a dismissal for the failure of the State to grant the appellant a speedy trial. Appellant contends that the delays prior to trial preclude the State from going forward at the time of trial.

POINT III

APPELLANT CONTENDS THAT PROSECUTION CONVICTION AND SENTENCING OF THE APPELLANT FOR THE CRIME OF ESCAPE CONSTITUTES DOUBLE JEOPARDY AND/OR DOUBLE PUNISHMENT FOR SAID CRIME.

The appellant contends that the punishment levied against the appellant by the Board of Pardons in the form of re-setting of the appellant's release date incarceration in maximum security and other penalties levied against the appellant, constitute punishment for the crime and that it is inappropriate for him to be convicted and punished by the Court in an additional proceeding (R. 76).

The Fifth Amendment provides that no person shall be "twice put in jeopardy" for the "same offense". That provision is made applicable to the states through the Due Process Clause of the Fourteenth Amendment. Benton v. Maryland, 395 U.S. 785 (1969).

The Utah Constitution, Article I, Section 12 also prohibits double jeopardy. The statutory enactment of that constitutional right is Utah Code Ann. §77-1-10 (1953).

Neither the Utah Supreme Court or the United States Supreme

Court have addressed the precise issue of whether a criminal prosecution for crime of escape is prohibited by the double jeopardy clause of the Constitution because the escapee was, on his recapture, subjected to discipline by prison authorities for the prison discipline violation involved. There is, however, an abundance of case law in other jurisdictions.

The unanimous consensus on that issue is that a defendant who is criminally prosecuted for escape from prison is not twice put in jeopardy even though he is subject to discipline by the prison board for his attempted escape. The reasoning is that the proceeding before the prison board is administrative and not judicial. People v. Conson, 237 P. 799 (Cal. 1925). "Jeopardy" in its constitutional and common-law sense, has a strict application to criminal prosecutions only. Disciplinary actions by order of the warden for escape is not a criminal prosecution. Ex Parte Kirk, 252 P.2d 1032 (Okla., 1953). For plea of double jeopardy to be invoked, it is incumbent upon appellant to show that he has previously been placed on trial before a court of competent jurisdiction upon an indictment or information for the same offense. State v. Williams, 356 P.2d 99 (Wash., 1960). Statute providing that an escape shall not be eligible for parole or the accumulation of good time for certain period subsequent to his recapture and return to prison does not impose additional punishment amounting to double jeopardy. Silva v. People of Colorado, 407 P.2d 38 (Colo., 1965). Where administrative penalty

imposed does not result in confinement beyond maximum term set in imposed sentence, no double jeopardy or double punishment attaches as a result of prosecution under felonious escape statute.

Schwickrath v. People of Colorado, 411 P.2d 961 (Colo., 1966).
State v. Williams, 493 P.2d 258 (Kan., 1972); Collins v. State, 524 P.2d 715 (Kan., 1974); Shuman v. Sheriff of Carson City, 523 P.2d 841 (Nev., 1974); State v. Millican, 501 P.2d 1076 (N.M., 1977); State v. Budau, 518 P.2d 1225 (N.M., 1974); Boyle v. State, 569 P.2d 1026 (Okla., 1977); Nelson v. State, 567 P.2d 522 (Okla., 1977); State v. Kennedy, 453 P.2d 658 (Ore., 1969); Taylor v. Oregon, 530 P.2d 526 (Ore., 1975); State v. Bowling, 459 P.2d 454 (Ore., 1969); Martz v. State, 566 P.2d 222 (Wyo., 1977); Hamby v. State, 559 P.2d 1388 (Wyo., 1977).

Other cases in support of the above rule are State v. Vinson, 443 P.2d 700 (Ariz., 1968); Turner v. Gore, 175 S.W. 2d 317 (Tenn., 1943); State v. Mead, 32 A.2d 273 (Conn., 1943); State v. Coney, 246 So.2d 793 (La., 1971); Patterson v. United States, 183 F.2d 327 (4th Cir., 1950); Mullican v. United States, 252 F.2d 398 (5th Cir., 1958); United States v. Lepiscopo, 429 F.2d 258 (5th Cir., 1970); United States v. Apker, 419 F.2d 388 (9th Cir., 1969); Ryan v. State of Louisiana, 314 F.Supp. 1047 (U.S.D.C., E.D., La., 1970).

CONCLUSION

Counsel for the appellant respectfully submits the above entitled analysis of the points of law raised by the appellant and requests permission to withdraw, believing the appeal is without meritorious grounds. The counsel for the appellant further submits that the foregoing brief discusses all the law applicable to the only points that could arguably be presented on appeal.

DATED this ____ day of July, 1979.

RESPECTFULLY SUBMITTED,

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