

1980

## Sydney Dean Olson v. Lawrence Morris, Warden, Utah State Prison : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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SYDNEY DEAN OLSON, :

Plaintiff-Appellant :

v. :

LAWRENCE MORRIS, Warden, :  
Utah State Prison, :

Case No. 16654

Defendant-Respondent :

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BRIEF OF APPELLANT

Appeal from the order of the Third District Court  
denying the Appellant's Petition for Writ of Habeas Corpus, the  
Honorable David K. Winder, Judge presiding.

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Clk. Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

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SYDNEY DEAN OLSON,

Plaintiff-Appellant

LAWRENCE MORRIS, Warden  
Utah State Prison,

Case No. 1665-

Defendant-Respondent

---

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The Plaintiff-Appellant, SYDNEY DEAN OLSON, appeals from an order in the Third District Court, entered by the Honorable David R. Winder denying with prejudice Appellant's petition for a writ of habeas corpus.

DISPOSITION IN THE LOWER COURT

In a memorandum decision dated July 13th, 1979, the trial Judge granted the motion to dismiss the complaint filed by the Respondent on the ground that the Petitioner's remedy for the hold and detainer filed against the Petitioner on March 9, 1979 is to pursue the matter under the provisions of the inter-state agreement on detainers, and in addition, the court found that there is nothing relating to the detainer which constituted an unlawful restraint on the Petitioner at the time of Habeas corpus proceedings before the Court.

## RELIEF SOUGHT ON APPEAL

The Appellant seeks a reversal of the order entered by the Judge denying with prejudice the Appellant's petition for a writ of habeas corpus, and an order remanding the case back to the Court for additional hearing, or an order declaring that the detainer filed by the state of Wyoming is unconstitutional and should not be honored.

## STATEMENT OF THE FACTS

On December 9, 1979, while the Petitioner was in the Salt Lake County Jail, the officials of Lincoln County, Wyoming caused the Petitioner to be held pursuant to a Fugitive complaint and detainer. On March 7, 1978, for the expiration of a period of over ninety days, a Fugitive complaint alleging that Petitioner was a fugitive from justice as a result of the aforementioned charges out of Lincoln County, Wyoming, was filed against the Petitioner. Notwithstanding the fact that the Petitioner was in state custody the entire period of time, the Petitioner was never extradited or otherwise removed to the state of Wyoming as a result of the detainer and Fugitive complaint filed by the state of Wyoming. On March 9, 1979, the officials of the state of Wyoming caused to be filed at the Utah State Prison, another detainer which was based upon the same charges underlying the December 9, 1979 detainer, and the March 7, 1978 fugitive complaint. The Petitioner filed the present writ of habeas corpus action in Third District Court in an attempt to discharge the Petitioner from the Wyoming detainer. After hearing on the

12, 1979, the trial judge on July 13, 1979, issued a memorandum decision denying the writ of habeas corpus and on July 25, 1979, entered an order granting the respondent's motion to dismiss with prejudice.

## ARGUMENT

### POINT I

THE APPELLANT WAS DENIED HIS RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION ON THE GROUNDS AND FOR THE REASON THAT THE SECOND DETAINER FILED BY THE STATE OF WYOMING IS AN UNCONSTITUTIONAL AND ILLEGAL RESTRAINT UPON THE PETITIONER IN VIOLATION OF UTAH CODE ANNOTATED 77-56-17(1953) AND UTAH CODE ANNOTATED 77-63-1, (1953).

On December 7, 1977, a hold was placed against the Petitioner while in the Salt Lake County Jail. That hold acted as a detainer and the Petitioner was unable to make bail on the other charges for which he was incarcerated for a period of 88 days. Finally, on March 7, 1978, the County Attorney of Salt Lake County, State of Utah, filed a Fugitive complaint in civil action No. 69259.

The Petitioner was held on the Fugitive complaint and detainer for a period of 90 days. At the end of the 90 day period, no Governor's warrant was filed and during that period of time the Petitioner was committed to the Utah State Prison.

Utah Code Annotated 77-56-17 (1953), states as follows:

If the accused is not arrested under warrant of the Governor but expiration of the time specified in the warrant or

that a judge or magistrate may  
thereafter return a writ of habeas corpus  
at any time, but not exceed 30  
days, or a judge or magistrate may  
again take time for appearance  
and question, as provided in Section  
16-1-10, but within a period not to  
exceed 30 days after the date of such  
return.

The Petitioner respectfully submits that not following  
this procedure the state of Wyoming waived any right they  
may have had to compel his attendance in the state of Wyoming  
for the purposes of trial. When the officials of the state of  
Wyoming elected not to proceed on the detainee, the state of  
Wyoming forfeited any right they may have had to extradite  
Petitioner. The Utah Code on extradition sets up a specific  
procedure which should be followed, and to disregard that  
procedure is a denial of due process.

Furthermore, the Petitioner respectfully submits that  
Utah Code Annotated, 17-63-1, requires that the 180 day  
provisions for disposition of the charges apply in the present  
case. The provisions of 17-63-1 should be found to be inapplicable  
in the Petitioner's case to prevent the abuse that has been  
demonstrated by the actions of the officials of the state of  
Wyoming. The Petitioner's case illustrates the potential  
abuse by officials of another state if this Court does not  
place upon them any requirement to proceed on detainees held  
against a person incarcerated in Utah prisons. By ruling  
that the Petitioner was denied due process of law, this Court  
has the ability to remedy this abuse, and for the Petitioner  
his rights under the Constitution of the State of Utah.

## CONCLUSION

In light of the foregoing, the order of the District Court dismissing the Petitioner's writ of habeas corpus should be reversed and the Court should enter an order vacating the detainer by the state of Wyoming.

Respectfully submitted,

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Pro Se