

1980

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

SYDNEY DEAN OLSON,

Plaintiff-Appellant.

-vs-

LAWRENCE MORRIS, Warden,
Utah State Prison,

Respondent.

BRIEF OF RESPONDENT

APPEAL FROM THE ORDER OF THE COURT
DENYING THE APPELLANT'S PETITION
OF HABEAS CORPUS, THE HONORABLE
JUDGE PRESIDING

SYDNEY DEAN OLSON

Pro Se

P.O. Box 250
Draper, Utah 84020

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IN THE SUPREME COURT OF THE
STATE OF UTAH

SYDNEY DEAN OLSON, :
Plaintiff-Appellant, :
-vs- : Case No. 16654
LAWRENCE MORRIS, Warden, Utah :
State Prison, :
Defendant-Respondent.

BRIEF OF RESPONDENT

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 K. Winder, denying with prejudice appellant's petition for a writ of habeas corpus.

DISPOSITION IN THE LOWER COURT

In a memorandum decision dated July 13, 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 interstate 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 respondent seeks affirmance of the order entered by the Judge denying with prejudice the appellant's petition for a writ of habeas corpus.

STATEMENT OF THE FACTS

Appellant was tried and convicted of the crime of theft, a violation of Utah Code Ann. § 76-6-404. On April 14, 1978, appellant was sentenced by the Honorable Ernest F. Baldwin, Jr., to the Utah State Prison for a term of from 1-15 years. In accordance with this judgment, appellant is presently in the custody of the Warden at the Utah State

On March 9, 1979, the state of Wyoming lodged a detainer against appellant pursuant to a criminal warrant issued against him for the crime of Grand Larceny, a felony violation of § 6-132, Wyoming Statutes (1957), as amended. This detainer was filed against appellant as provided by the Interstate Agreement on Detainers, Utah Code Ann. § 77-65-4 (1953). Rather than request a final disposition of the charges against him, the remedy provided by Utah Code Ann. § 77-65-4, appellant chose to request a writ of habeas corpus charging that the detainer filed by the state of

Wyoming is an unconstitutional and illegal restraint. On July 13, 1979, Judge David K. Winder dismissed appellant's petition for writ of habeas corpus for failure to state a claim upon which relief could be granted. Judge Winder found that appellant's confinement is the result of a conviction for theft, and therefore, the Wyoming detainer is not the cause of his restraint.

ARGUMENT

POINT I.

APPELLANT IS PROPERLY RESTRAINED
AS A RESULT OF HIS UTAH CONVICTION,
AND NOT AS A RESULT OF A WYOMING
DETAINER.

Custody of appellant at the Utah State Prison is a result of his conviction for theft and subsequent sentence of confinement properly imposed by the Honorable Ernest F. Baldwin, Jr. The lower court properly so found. Appellant's remedy with regard to the Wyoming detainer is provided by the Interstate Agreement on Detainers, Utah Code Ann. § 77-65-4. Article III states:

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information of complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after

he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the terms of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

Appellant has chosen not to request of Wyoming a final disposition of the complaint against him. Instead, he has challenged the constitutionality of his detention by the State of Utah. This challenge reveals that appellant has confused this confinement which is due to a criminal conviction with the Wyoming detainer. This claim is without merit and, therefore, does not warrant the issuance of a writ of habeas corpus.

CONCLUSION

In view of the foregoing, it is urged that the decision of the lower court dismissing appellant's petition for writ of habeas corpus be affirmed.

Respectfully submitted,

ROBERT B. HANSEN
Attorney General

ROBERT R. WALLACE
Assistant Attorney General

Attorney for Respondent