

1988

State of Utah v. Joseph Mitchell Parsons : Petition for Rehearing

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

880102

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,)
)
 Plaintiff-Respondent,)
) Case No. 880102
 vs.)
)
 JOSEPH MITCHELL PARSONS,) Classification Priority No. 1
)
 Defendant-Appellant.)

PETITION FOR REHEARING

Petition for rehearing from the opinion and order affirming the judgment of the trial court filed October 13, 1989.

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FILED
DEC 1 1989

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,)	
)	
Plaintiff-Respondent,)	
)	Case No. 880102
vs.)	
)	
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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,)
)
 Plaintiff-Respondent,)
) Case No. 880102
 vs.)
)
 JOSEPH MITCHELL PARSONS,)
)
 Defendant-Appellant.)

PETITION FOR REHEARING

POINTS OF FACT FOR REVIEW ON REHEARING

1. The Court was unable to review the trial record in this case in light of the decision in State v. Ireland, 773 P.2d 1375 (Utah, 1989) which was decided after this case was briefed and argued.

2. Subsequent information coming to the attention of the defense counsel would indicate that the Iron County Attorney, Scott M. Burns, was not qualified to act as County Attorney and, in fact, could not act as County Attorney in the prosecution of the Defendant because of the failure of Scott M. Burns to file the bond required by 17-16-11, Utah Code Annotated, 1953, as amended.

3. Because of the failure of Scott M. Burns to file a bond, the information in this matter was not appropriately approved by the County Attorney as required by 77-2-1, Utah Code annotated, 1953, as amended.

STATEMENT OF THE NATURE OF THE CASE

This a Petition for Rehearing, filed pursuant to Rule 35 of the Rules of the Supreme Court, asking the Court to reconsider its ruling filed October 13, 1989, affirming the conviction of the Defendant in the death penalty ordered by the Fifth District Court of Iron County. This Petition for Rehearing is filed pursuant to stipulation entered into between James L. Shumate, counsel for the above-named Defendant, and Dan Larsen, Deputy Utah Attorney General, representing the State of Utah in this case.

ARGUMENT

I

At the time that this matter was Briefed and argued before the Court, the Utah Supreme Court had not decided the case of State v. Ireland, 773 P.2d 1375 (Utah, 1989).

This Court in the Ireland matter specifically required that trial courts in the State of Utah use a differing instruction on reasonable doubt. The Ireland case draws reference to a reasonable doubt instruction similarly questioned in another capital homicide case, State v. Tillman, 750 P.2d 546 (Utah, 1987), but in this matter, the circumstances are substantially different because the reasonable doubt instruction in this case was given to the jury only in the sentencing phase, the defendant having plead guilty to this offense charged and having argued that he should be sentenced to life imprisonment rather than the death penalty.

II

It has recently come to the attention of counsel for the Defendant, the undersigned Petitioner, that the person purportedly acting as the Iron County Attorney, one Scott M. Burns, has never filed the requisite bond required to be filed by County Attorneys under the provisions of 17-16-11, Utah Code Annotated, 1953, as amended. Under the provisions of 52-2-1, Utah code Annotated, 1953, as amended, the person duly elected as Iron County Attorney in the last general election for that office, Mr. Burn, is required to qualify for office within sixty (60) days after the beginning of the term of office which was on January 1, 1987. Because Mr. Burns has failed to file his bond as required by the statute cited above, he has not qualified for office and the office of Iron County Attorney should be declared vacant.

It only follows logically that because of the failure of Mr. Burns to file the bond required of his office, that there can be no County Attorney to prosecute the matter or to authorize the offense for presentment or to sign the Information as a prosecuting attorney. The Petitioner is mindful of this Court's ruling in the case of State, ex rel. Canon v. Leary, 646 P.2d 727 (Utah, 1982), wherein the Court found that the District Court did have jurisdiction when a Deputy County Attorney had executed the authorization portion of the information in behalf of the elected County Attorney. In this case, however, there is no County

Attorney, and the matter can only be dismissed for lack of jurisdiction under the ruling in State v. Beddo, 63 P. 96 (Utah, 1900).

CONCLUSION

For the reasons set forth above, this Court is respectfully requested to review the matter before it and its ruling and requested to reverse the conviction and death penalty entered against the Defendant and to dismiss the information against him for lack of jurisdiction.

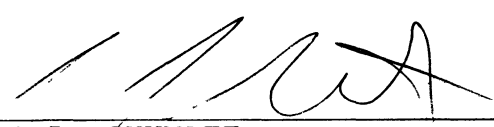
DATED this 4th day of December, 1989.



JAMES L. SHUMATE

CERTIFICATE OF DELIVERY

I hereby certify that I delivered in person a true and correct copy of the above and foregoing PETITION FOR REHEARING to Mr. Dan Larsen, Assistant Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114, this 4th day of December, 1989.



JAMES L. SHUMATE