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Howard Dale Young v. State of Utah : Reply Brief

Utah Court of Appeals

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890392

IN THE UTAH COURT OF APPEALS

HOWARD DALE YOUNG,
Petitioner/Appellant,
V.
STATE OF UTAH,
Defendant/Respondent.

Case No. 890392-CA

Reply Brief

REPLY BRIEF OF APPELLANT

REPLY TO RESPONDENT'S BRIEF AS PROVIDED UNDER
RULE 24, (10) (C) OF THE RULES OF THE UTAH SUPREME
COURT.

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STATEMENT OF ISSUES

- I RIGHT OF PAROLE/EQUAL TREATMENT AND PROTECTION.
- II FAILURE OF ATTACK ON LOWER COURT FINDINGS OR CONCLUSIONS.
- III FALSE INFORMATION.
- IV APPELLANT'S RIGHT TO COMPLAIN.
- V ENTITLEMENT TO EARLY PAROLE.
- VI TRIAL COURT WAS NOT IN QUESTION.
- VII BOUNDS OF THE BOARD OF PARDONS.
- VIII REBUTTAL OF 5th, 6th, 8th AND 14th AMENDMENTS.
- IX REVERSAL OF LOWER COURT ORDER.
- X REQUEST FOR REMEDY.

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ARGUMENT
RIGHT TO PAROLE/EQUAL PROTECTION

POINT I.

As specifically invoked in Appellant's initial brief, ALL (SIX) Supreme Court Rulings stated that: States that elect to use Parole Boards and their policies MUST be in accord and dictates of the U.S. Constitution, they also state that all decisions by such Boards MUST be in compliance with the Due Process Clause of constitutional law.

In EVITS V. LUCEY, particularly, it states that
"the Right to Appeal would be unique
among state actions if it could be
withdrawn without consideration of
Applicable due process norms"

Utah Code 77-27-5 (annotated 1953) must therefore be unconstitutional as it denies Respondent the simple explanation of errors used in adjudicating him and possibly causing him to be restrained of his liberty four years in excess of the appropriate guidelines the Board of Pardons had agreed to use: And More: When the Board of Pardons goes over or under those federally recommended guidelines, there must be provocation and the reason for either must be given in writing.

In providing certainty and fairness as well as equal protection, impact of his entire sentence based on the Utah State Board of Pardons actions would violate the standards set by UNITED STATES V. JOHNSON, 805 F. 2d 1284, 1288-89 (7th Cir 1986) which states that:

resentencing not required when defendant
contested information in pre-sentence report
one year after sentencing.

And the Judge stated he did not consider disputed information in sentencing.

FAILURE TO ATTACK LOWER COURT FINDINGS OR CONCLUSIONS

POINT II

In Appellant's Brief, page 2, under nature of case, Appellant specifically admitted that his sentence was proper and therefore not appealed. The Court as well as the Attorney representing the State of Utah and his own lawyer Mr. Van Sciver, all agreed that the recommended time his guidelines and the prosecuting Attorney recommended were better than spending the same time in a county jail where no Substance Abuse treatment was available.

Appellant was told he would spend 12 to 18 months in the Utah State Prison and that because of therapy available, better housing etc-the time would be more conclusive to rehabilitation.

As a result, and believing the advise of his own counsel, Appellant plead guilty and expected to re-habilitate himself.

By giving 5 times the recommended guidelines the Board of Pardons violated their discresonary power, their duty to the sentencing court as well as the prosecuting Attorney, who all felt because of the lack of criminal history, the Board of Pardons had no pravocation to enhance the normal restraint of Appellant.

Again: the United States Supreme Court has said:

A punishment that does not comport
with the basic concept of human dignity
is at the core of the 8th Amendment."

Again: UNITED STATES V. MESSER, 785 F. 2d 832, 834, (9th Cir 1986)
states:

Appellate review proper when sentence
possibly based on false or inaccurate
information."

The State of Utan in using a parole board system must view those decisions that are outrageous as part of the total sentence of whomever they are adjudging.

FALSE INFORMATION

POINT III

In Respondents argument on page 6 the states Attorney uses a citation of the Honorable Judge Anderson of the United States District Court in which Judge Anderson specifcally says:

Some states laws provide Mandatory parole release standards that MUST be carried out with the Due process guaranties. U.S. Const. Amend. XIV.

In these instances STATE PRISONERS MAY HAVE CLAIM FOR RELIEF IF THEY ARE PREJUDICED BY FALSE INFORMATION IN THEIR RECORDS.

Since errors were found and admitted, simple justice would demand that relief be given Appellant. If error were allowed in any case against any individual knowingly, a more severe injustice could not be conceived. Truth is the heart of all justice, to disallow it would be an act of irresponsibility of the highest order.

RIGHT TO COMPLAIN

POINT IV

Respondant in his reply to Appellant's brief claims that he has NOT the right to complain about the absence of Due process.

The UNITED STATES CONSTITUTION, specifically provides in the Due process clause that any Body or Board that is appointed and not approved by Legislature vote MUST be reviewable.

This violation could not be more clear nor could the protection have been more appropriately written into law.

Any abuse of discresonary power is reviewable and in rendering justice this court seeing the abuse and effect is bound to the principle of same.

ENTITLEMENT TO EARLY PAROLE

POINT V

Respondant on page 7 of his response states that an inmate is not entitled to parole or an early release after any certain time frame, and that the lower court properly refused to grant the writ. He claims the court could not "second guess" the Parole Board.

Appellant having shown error in his petition and its result, was, denied justice by the lower court. The error or argument was not allowed or brought to light. No questions were asked regarding it, nor did the Attorney General's office respond. The issue was disregarded as was other claims. No argument was allowed or discussed.

Entitlement to parole is a basic concept of an indeterminate sentence, otherwise no such sentence would exist. "Guidelines are not empty promises" 18 U.S.C. § 3553 (b) (Supp. III 1985).

The States argument is both illusive and flagrant, the entire system of having a parole board at all would be ludicrous and absurd if a Parole were not the result of their deliberations.

The trial court findings are not in question, only the results of the indeterminate sentence are.

TRIAL COURT

POINT VI

The trial court or those proceeding are not in question.

Appellant has no burden to establish error as indicated on page 8 of Respondants Brief. Appellant has not attempted to demonstrate those "Requisite Allegation", they are not now or was ever in question.

The argument by the States counsel is irrelevant and misleading. The marshalling of merit of challenge is also inappropriate, to marshal evidence in support of finding is also a guise and has no meaning in this case.

The statement by the States Attorney demanding a conclusion of law and asserting an underpinning is pointing to illusive objects which don't exist.

Since the States Attorney also admits in his brief that there exist no statutory authority to review Appellant's sentence by the Board of Pardons, he in essence, also admits that there does exist cumulative punishments by the State of Utah and it's Parole Board System.

The Board takes the intent of the sentencing court and without provocation exceeds the bounds of reason. A five year sentence of restraint is, for an unintentional accident, is Cruel and Unusual Punishment and violates the 5th and 14th Amendment to the U.S. Constitution.

By placing jeopardy on Appellant, the Board of Pardons as well as the Attorney General's offices denial of same, robs Appellant of due process and a Writ of Habeas Corpus is proper as an action of last resort.

BOUNDS OF THE BOARD OF PARDONS

POINT VII

The States position that the Board of Pardons is within Constitutional powers was never in question.

Their authority too is not in question.

The statement by the state that the Appellant advances no specifics is a demonstration of the ludicrous attitude displayed by both the Board of Pardons and the Attorney General's office.

No explanation or excuse is available to the state, the Board of Pardons as the state admits, has no bounds, no limits, no liability; all that they do is legally unquestionable. That's what this action is about, how long will the Court of Appeals allow this abuse of power to continue?

DISMISSAL OF CLAIMS OF VIOLATION OF 5th, 6th, 8th & 14th AMENDMENTS

POINT VIII

The violations of Due Process cannot be in question, Appellants petition was clear.

The disparity between crime and total sentence can only be read both cruel and unusual punishment.

Appellants Attorney failed to receive legal consideration for a plea of guilty. He also failed to advise his client of the consequences.

His failure to properly act as a "sword of defense" is clear, the outcome of his plea has been disastrous.

Contrary to the State's claim that there were no basis upon which to reverse the lower courts decision; Again; the lower court (sentencing court), decision has never been in question. Appellant's admission to all proceedings (excluding his legal representation) were not in question.

All Constitutional violations were made crystal clear in Appellants original petition for a Writ of Habeas.

REVERSAL OF LOWER COURT

POINT IX

When Appellant Young was taken to the Third District Court, the first appearance, the States lawyer failed to appear. On the date of his second scheduled appearance and after a Motion for Default had been filed for Appellant, one for the State's answer, one for the States failure to appear, the Judge asked Appellant Young if he knew what default was.

Appellant Young read from his dictionary the perfect answer. The Judge then shuffled the papers which were the petitions of Appellants. He looked at the States Attorney and claimed he saw no cause for a Writ to issue.

Its no secret that most District Court Judges rarely read petitions, and rely on their law clerks to inform them of what is in a petition.

No comment was made regarding any specifics in the complaint, nor were any questions asked. The petition was not properly heard and Appellant was prepared to make his presentation at that time.

If this court considers the issues presented to the lower Court in which his petition for a Writ of Habeas Corpus was filed, it will be the first consideration received by Appellant.

REMEDIES

POINT X

Contrary to Respondant's Brief, this court or an order to the lower court may issue a Writ of Habeas Corpus, and further if this court or the lower court recognizes the illegality of his adjudication or the unlawful restraint of 5 years. All remedies of a Habeas Writ may apply.

Since all allegations in Appellants petition are of a Constitutional violation nature, the court of appeals may vacate the decision of the Board of Pardons because it became an over-riding decision of his original sentencing court and the County Attorney who prosecuted the case for the State of Utah.

As the State contends: (on page 10), the Parole Board decisions are not subject to judicial review.

Appellant contends that all constitutional issues are subject to review by any court State or Federal and, Any Determination Requires A Balancing Of The Prisoners Interest In Remaining Free From Erroneous Decisions. See HEWIT V. HELMS, 459, U.S. 460, 437 (1982).

Also: in MERLO V. BOLDEN, 801 F. 2d 252, 257 (6th Cir 1986) its states that:

"Error is not harmless when evidence prevented reviewing court from finding evidence of intent overwhelming"

CONCLUSION

The error in Appellant's adjudication was not harmless, it was plain error.

Judge Anderson (on page 6 of Respondents Brief) clearly states that false information violates Due Process.

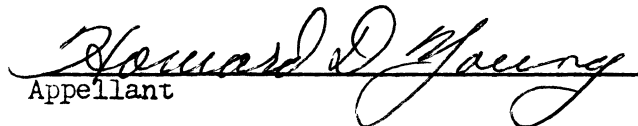
The States argument that "even if an inmate can show a complete absence of criminal history, this does not entitle him to parole or early release;" has no bearing. No such claim was made, although Appellant has no criminal record, his son's marijuana possession and a D.U.I. conviction was used to assess points against Appellant for consideration of granting a parole date. This can only be read as a violation of Due Process causing a Cruel and Unusual length of total sentence.

Inmates at the Utah State Prison have no law library or law books, and are legally stranded, without sheppard's citations or normal defense capabilities, and current remedies for remedies by State Courts are not available to Appellant Young.

He at best, can only ask that this Court Of Appeals review his situation and grant relief as justice would require.

The State has failed to address many issues presented, Appellant prays simple justice will prevail.

Dated this 20 day of November 1989


Appellant

CERTIFICATE OF MAILING

I hereby certify that a true and exact copy of this document was mailed to the following Defendants on this 20 day of November , 1989.

I. Attorney General, State of Utah
236 Utah State Capitol Bldg.
Salt Lake City, Utah 84114

By

Appellant

