1989

Howard Dale Young v. State of Utah : Brief of Appellant

Utah Court of Appeals

Howard Dale Young; Pro-se.
Kent M. Barry; Assistant Attorney General; Attorneys for Respondent.

IN THE SUPREME COURT FOR THE STATE OF UTAH (COURT OF APPEALS)

HOWARD DALE YOUNG, Plaintiff / Appellant, -vs- STATE OF UTAH, Defendant / Respondent.	Appeals No. 890392-CA Civil No. 89090I99I JUDGE JOHN A. ROKICH

BRIEF OF APPELLANT

Appeal of the final decision of the Third Judicial Court dismissing a petition for a Writ Of Habeas Corpus.

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CASES CITED

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JURISDICTION

This Court has jurisdiction under Utah Code 78-2-2 (h). Appellant moves that this Court consider his petition and grant appropriate relief.

STATEMENT OF THE ISSUES

I. Due Process of law
2. Abuse of discretionary powers
3. Ineffective counsel
4. Cruel and unusual punshment
5. Equal Protection under the law
6. Separation of Powers
7. Cumulative Punishments

NATURE OF CASE

The Appellant, HOWARD DALE YOUNG, is an inmate at the UTAH STATE PRISON. He plead guilty to the offense of Automobile Homicide on Nov I5, I988 in the Second Judicial Court in Davis County, JUDGE DOUGLAS L. CORNABY presided. Case No. 6III. He was sentenced to a 0-5 year sentence. The sentence was proper and was not appealled.

Appellant having been advised by counsel and informed of the recommendation to the Court by the probation deptment, was led to believe by both, that a I2-I8 month incarceration at the UTAH STATE PRISON would be the outcome and consequence of his plea.

Appellant met with the UTAH STATE BOARD OF PARDONS on the 3 day of Feb. I989 and was required to serve the entire 60 month sentence. No parole date was given, he was required by said Board to serve his maximum amount of time, he could be required to serve. Error in Appellants record may have caused the Boards decision, (or) an abuse of discressionary power caused such a drastic discision.

Since decisions by the BOARD OF PARDONS are not grievable and all decisions are final and not subject to review, a petition for a Writ of Habeas Corpus was filed in the THIRD JUDICIAL COURT of which had jurisdiction of Appellant.

STATEMENT OF FACTS

Appellant Young is a 60 year old man with no criminal history. After the accident which he caused occured, Mr. Young had feelings of guilt and felt that incarceration and rehabilitation was just.

His Attorney, Mr. ROBERT VAN SEIVER esq. of Salt Lake City Utah, was retained to advise and represent him at his court proceedings.

In past years, the offense of Automobile Homicide had been treated by the UTAH STATE BOARD OF PARDONS as a serious offense, but had followed the guidlelines which they had initiated in November of I987, unless previous crimes and criminal history indicated more severe punishment.

When appellant appeared before the BOARD OF PARDONS, they required him to serve his entire sentence.

Appellant discovered that his Son's past criminal history had erroneously been included in his (Appellant's) record.

Verification of same is attached to his petition.

Since the BOARD OF PARDONS decisions are final and not subject to review, and not grievable through prison channels, this action, (one of last resort)is presented for review. The petition was denied by the THIRD DISTRICT COURT.

ARGUMENT

POINT I

DUE PROCESS OF LAW

In EVITTS V. LUCEY, 469 us 387, 83 L Ed 2d 82I, I05 S CT 830 para (3c) it states:

> The right to appeal would be unique among state actions if it could be withdrawn without consideration of applicable due (469 us 40I) process norms.

And Similarly:

> A state has great discretion in setting policies governing parole decisions, but it Must nonetheless make those decisions in accord with the Due Process Clause.

See Morrissey v. Brewer, 408 us 47I, 48I - 484, 33 L ED 2d 484, 92 S CT 2593 (I97⁷).

See also GRAHM v. RICHARDSON , 403 us 365 374, 29 L ED 2d 534, 9I S CT I848 (I97I); BELL v. BURSON, 402 us 535, 539, 29 L ED 2d 90, 9I S CT I586 (I97I); SHERBERT v. VERNER, 374 us 398, 404, I0 L ED 2d 965, 83 S CT I790 (I963); JOINT ANTI-FACIST REFUGEE COMMITTEE v. McGRATH,34I us I23, I65-I66, 29 L ED 2d 532, 9I S CT I848 (I95) and the Honorable FRANK FURTER concering. In short:

> When a State opts to act in a field where it's actions has significant discretionary elements it must nonetheless act in accord with the dictates of the Constitition--- and, in particilar, in accord with the Due Process Clause.

Since the decisions of the BOARD OF PARDONS are final and not subject to review; See Utah Code 77-27-5 Due process has been denied. All decision made by an appointed board must be reviewable.

POINT 2

ABUSE OF DISCRESSONARY POWER

Because of the duration of time required to serve by the Appellant, equal to a much greater offense, the UTAH STATE BOARD OF PARDONS has abused their powers granted by the Legislature of the State. The State of Utah applied for and received Federal Grants (2), to enable the Commission Of Criminal and Juvenile Justice to proqulmate and follow guidelines recommended by the U.S. Sentencing Committee, as a result of the U.S. Sentencing Reform Act of 1984. The new guidelines, as developed by the caseworker of Appellant Young was 12 months.

To require a 60 year old man with no criminal history to serve (5) times the guidilines is an abuse of both power and authority, it can be read no other way.

POINT 3

INEFFECTIVE COUNSEL

Appellant's Attorney, by failing to substatiate the Criminal record presented to both the Probation Dept and the Court, and later to the UTAH STATE BOARD OF PARDONS, showed a lack of interest in his client. To allow his client to plead guilty without a trial, without receiving consideration (a lesser charge) was also inappropriate.

Citing WAINWRIGHT v. TORNA, 455 us 586, 587-588, 71 L ED 2d 475, 102 S CT 1300 (1982) (per curium):

> The Court acknowledges that "(of) course, the right to effective counsel is dependant on the right to counsel itself"

POINT 4

CRUEL AND UNUSUAL PUNISHMENT

To require a person 60 yrs. old to serve a (5) year sentence for an unintentional crime can only be read as both cruel and unusual. It is equivalent to a federal 2d degree murder charge and possibly is a life sentence. The perimeters also reflect injustice toward other constitutional protections. (i.e.), equal protection, due process and cumulative punishment: the intent of the court was over ridden by an over zealous BOARD OF PARDONS who singled out Appellant Young to send a message to the Community.

Although Appellate Courts do not disturb a sentence within statutory limits they may intercede when it raises a constitutional question. See SOLEM J. HELM, 463 u.s. 277, 303 (I983) it states: Gross disproportionality between crime and sentence constitutes cruel and unusual punishment in violation of the eighth amendment. Aso: UNITED STATES v. MESSER, 785 F. 2d 832, 834 (9th Cir. I986) states: "appellate review proper when sentence possibly based on false or inaccurate information in pre-sentence report since due process rights violated if district court relied on inaccurate information." Furthermore, the United States Supreme Court has said that a punishment that does not comport with the basic concept of human dignity is at the core of the amendment.

POINT 5

EQUAL PROTECTION

The law permits both the prosecutor and the defendant to appeal sentences imposed from incorrect application of the guidelines. The Supreme Court of the United States has held that when a statute provides specific guidelines for placing prisoners in detention, a prisoner has a protected liberty interest, and that once an interest is classified as protected, a court must determine what due process protections are required. The same would hold true for an equal protection issue.

The guidelines devoloped by the United States Sentencing Committee to help Judges decide the lenth of sentences imposed are; for less serious offenses (a third degree felony) are less than (3) years. Yet the UTAH STATE BOARD OF PARDONS has required Appellant to serve (5)

In BOARD OF PARDON v. ALLEN, I07 S CT 2415 (1987) the Supreme Court held that when "criterias are met" the BOARD OF PARDONS "shall" release prisoners. In Appellant Young's case the UTAH STATE BOARD OF PARDONS did not.

All equal protection statutes would clearly indicate justice has been withheld by the State of Utah. In UNITED STATES v. YOUNG 470 u.s. I (1985) the court held that identified plain error that seriously affect fairness, integrity, public reputation or judicial proceedings or which would result in a miscarriage of justice should be recognised.

Equal protection as related to conditions of confinement are not in question, however; to require Appeallant to serve more time than inmates guity of much greater offenses is a violation of his rights. Numerous inmates in the State of Utah , guilty of Manslaughter both first and second degree have spent far less time incarcerated than Appellant. The equal protection violation could not be more clear.

Attached to Appellants original complaint a (5) newspaper clippings of similar crimes where the defendants all charged with class A Misdemeours and served less than I year incarcerated.

POINT 6

SEPARATION OF POWER

The State of Utah, through its BOARD OF PARDONS, violates the Separation of Powers requirements established by the U.S. Constitution. All decision made by any appointed group must be reviewable. The BOARD OF PARDONS is an appointed Board, yet their decisions are not subject to review. This violates the constitution protection provided in Article I.

POINT 7

CUMULATIVE PUNISHMENTS

Although the sentencing Judge's expectation of the future coarse of parole proceedings is not a fundamental defect subject to attack, in POOR THUNDER v. UNITED STATES, 810 F. 2d 817, 822 (8th Cir 1987) stated that:

> "Violation of need for factual accuracy in presentencing investigation report is a fundamental defect."

The pre-sentence report of Appellant was incorrect, it may have caused probation to be withheld.

In determing or deciding it and when a parole date should be given, the judgement was taken from the Court. The Parole Board also was given improper information and a form of Jeopardy was created in that cumulative punishment was judicated toward Appellant. Here; extreme punishment was given by the Judge. It was again administered by the UTAH STATE BOARD OF PARDONS.

See CRIST v. BRIETZ, 437 u.s. 28, 33 (1978), which states:

> "Society's interest in protecting the intigrity of final judgements has also been articulated a policy justification for the double jeopardy clause."

CONCLUSION
(Relief Sought)

The lower Court did not allow Appellant Young to state his case. Due process was denied by that Court as it was by the UTAH STATE BOARD OF PARDONS.

The fact that the UTAH BOARD OF PARDONS have violated his rights by not following their own guidlines is obvious. In order for Appellant to receive a fair and just outcome of his plea as explained to him at the time of his plea; and to insure that this abuse of discressonary power does not happen to others, and to insure equal treatment under the law, Appellant Young's guilty plea should be reversed. The Sentence should be vacated.

RESPECTFULLY submitted this 17 day of October, 1989.

Richard D. Young

CERTIFICATE OF MAILING

I hereby certify that a true and exact copy of this document was mailed to the following Defendants on this 17 day of October, 1989.

I. Attorney General, State of Utah
236 Utah State Capitol Bldg.
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By Howard D. Young