

1981

Lonnie Morishita v. Lawrence Morris, Warden,
Utah State Prison, and Thomas R. Harrison,
Chairman, Utah State Board of Pardons : Brief of
Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

LONNIE MORISHITA,	:	
Plaintiff-Appellant,	:	
v.	:	
LAWRENCE MORRIS, Warden,	:	Case No. 16846
Utah State Prison, and	:	
THOMAS R. HARRISON, Chairman,	:	
Utah State Board of Pardons,	:	
Defendant-Respondent.	:	

BRIEF OF APPELLANT

Appeal from a Judgment Denying Petition for Writ of Habeas Corpus by the Third Judicial District Court on the 19th day of December, 1979, the Honorable David K. Winder, Judge presiding.

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Utah State Prison, and	:	
THOMAS R. HARRISON, Chairman,	:	
Utah State Board of Pardons,	:	
Defendant-Respondent.	:	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The Plaintiff-Appellant, Lonny Morishita, appeals from an order in the Third Judicial 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 December 6, 1979, the trial judge granted the motion to dismiss the complaint filed by the Respondent on the grounds that Petitioner's probation was properly revoked even though a jury acquitted him of the same crime relied upon in the probation revocation hearings, and that the record provides a sufficient "written" basis as to the evidence and reasons relied upon for the

revocation of probation and to meet due process requirements.

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, that the revocation of probation was without cause and that a Writ of Habeas Corpus should issue or an order remanding the case back to the court for additional hearing.

STATEMENT OF THE FACTS

On the 16th day of January, 1978, the Appellant was convicted by a plea of not guilty in the court of the Honorable Jay E. Banks, of the crime of Aggravated Robbery. On the 15th day of September, 1978, Appellant was sentenced to a term of 5 to life in the Utah State Prison for said crime. The court stayed the execution of the foregoing sentence on September 15th, 1978, and Appellant was placed under the supervision of the Adult Probation and Parole Department. On or about May 7, 1979, Appellant was stopped, questioned, and subsequently arrested at or near the parking area of the Elks Club on west 2100 South in Salt Lake County, State of Utah. Appellant was at said location to attend a function being held at the Elks Club Building. Appellant had gone to said location with friends, one of whom had driven. Appellant was on the dark side of the Elks Club

Building attempting to relieve himself when he was approached

by patrol officers who knew him. The officers made routine inquiries, name, address, what Appellant was doing and how he had gotten there. Appellant was cooperative and he explained his presence and it was obvious Appellant was dressed for the function taking place at the Elks Club that evening. The officers arrested, searched, and booked the Appellant into the Salt Lake County Jail for urinating in a public place. At the time of arraignment on the foregoing charge, Appellant was advised and for the first time became aware of the following additional charges arising out of the arrest: a violation of Title 76, Chapter 10, Section 503, Utah Code Annotated, 1953, and individual having been convicted of a crime of violence being in possession of a dangerous weapon, as alleged in Appellant's case, a firearm; and a violation of Title 76, Chapter 10, Section 504, Utah Code Annotated 1953, as amended, allegedly Appellant did conceal upon his person a dangerous weapon. On or about May 17, 1979 and Order to Show Cause was issued alleging that Appellant violated the terms of his probation. The basis for the issuance of the Order to Show Cause was the then pending charges set forth above. On June 1, 1979, a hearing was held before the Honorable Jay E. Banks and the Court entered a judgment and commitment sentencing the Appellant to the term of 5 to life at the Utah State Prison, for the crime of Aggravated Robbery. The trial court did not enter any Findings of Fact or Conclusions of Law required by law. There had been no disposition of the

foregoing charges that gave rise to said Order to Show Cause hearing. However, the Appellant had entered a plea of not guilty and the matter was set down for a jury trial. On August 1, 1979, Appellant was tried for the offense of possession of a firearm by a restricted person in violation of Title 76, Chapter 10, Section 503, Utah Code Annotated, 1953 as amended, and found not guilty of the charge. The Appellant filed the present Writ of Habeas Corpus action in the Third Judicial District Court because the trial court at the Order to Show Cause hearing failed to enter Findings of Fact and Conclusions of Law, and making it impossible for Appellant to prepare and present an intelligible appeal from the Order to Show Cause hearing. After hearing on the Writ of Habeas Corpus of December 6, 1979, the trial Judge on December 6, 1979, issued a memorandum decision denying the Writ of Habeas Corpus, and on December 19, 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 OF THE UNITED STATES CONSTITUTION ON THE GROUNDS AND FOR THE REASON THAT THE TRIAL COURT FAILED TO ENTER FINDINGS OF FACT AND CONCLUSIONS OF LAW IN VIOLATION OF UTAH RULES OF CIVIL PROCEDURE 52 (a).

In the United States Supreme Court case of Gagnon v.

Scarpelli, 411 U.S. 778, 36 L.Ed. 656 (1972) the United

States Supreme Court held that the Fourteenth Amendment to the United States Constitution requires at a minimum that a hearing to revoke probation must include a written statement by the fact finder as to the reasons for revoking probation. The Court stated that the minimum requirement of such a hearing serve as a substantial protection against illconsidered revocation. The Utah Rule of Civil Procedure, Rule 52 (a), provides that:

"In all actions tried upon the facts without a jury the court shall find the facts specifically and state separately its conclusions of law thereon."

The language of this section is mandatory and does not provide for any waiver of this requirement. Farrell v. Turner, 482 P.2d 117 (Utah, 1971).

In the case of Farrell v. Turner, the Supreme Court in a Writ of Habeas Corpus appeal noted that in 1965 the former provisions of Rule 52(a) permitting a waiver of the findings of fact was deleted. Notwithstanding the rule change, the court held that a party who waives the making and entering of findings of fact cannot take advantage of the failure of appeal and the reviewing court will assume that the trial judge found them to be such as to sustain the ruling if there is competent evidence to support it. Judge Ellett went on to say:

However, in view of the intermeddling of the federal courts in state criminal matters, it would seem to be unwise for a trial court

to follow a stipulation of waiver and fail to make findings of fact in habeas corpus matters. Emphasis added.

In the recent case of Rucker v. Dalton, 598 P.2d 1336 (Utah, 1979), the Utah Supreme Court vacated the trial court's judgment and remanded the case for additional findings of fact in accordance with the evidence. The Court stated:

The importance of complete, accurate and consistent findings of fact in a case tried by a judge is essential to the resolution of dispute under the proper rule of law. To that end the findings should be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusions on each factual issue was reached. The rule as stated in Prows v. Hawley, 72 Utah 444, 271 P.2d 31, 33 (1928) is:

'that until the court has found on all the material issues raised by the pleadings, the findings are insufficient to support a judgment; and that findings should be sufficiently distinct and certain as not to require an investigation or review to determine what issues are decided.'

Unless findings of fact meet such standards, application of the proper rule of law is difficult, if not impossible, and the reviewing function of this Court is seriously undermined. The controlling issue in this case appears to be who was responsible for the manner in which the work was done. The findings do not determine that issue as to the nonplumbing aspects of the job and are seemingly inconsistent on their face.

Contrary to the contention of the Respondent, the requirement for findings of fact is based upon the necessity of providing a reviewing court with a sufficiently detailed record to determine the process by which the court reached the decision to revoke probation. This is especially true in criminal cases such as the Petitioner's where the probationer is acquitted of the pending criminal charges by a jury.

The Petitioner submits that it is not necessary to return the matter for the entry of any additional findings of fact because the matter has now been conclusively determined by the jury and, therefore, the Petitioner should be released.

Without adequate findings of fact, this Court as a reviewing tribunal, is unable to determine whether there is a sufficient factual predicate for the probation revocation, and therefore, the Court should accept the jury finding of not guilty.

CONCLUSION

In light of the foregoing, the order of the Third Judicial District Court dismissing the Appellant's Writ of Habeas Corpus should be reversed and the Court should enter an order declaring that the revocation of probation

was without cause and that the Writ of Habeas Corpus
be granted; or an order remanding the case back to the
Third Judicial District Court for an evidentiary hearing.

Respectfully submitted,

A handwritten signature in cursive script, reading "Douglas E. Wahlquist".

DOUGLAS E. WAHLQUIST
Attorney for Appellant