

1954

Leroy Chapman v. Marcell Graham : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF LEROY
CHAPMAN, PETITION FOR A
WRIT OF HABEAS CORPUS

Plaintiff and Respondent,

— vs. —

MARCELL GRAHAM, Warden,
State Prison,

Defendant and Appellant.

FILED

MAR 22 1954

Supreme Court, Utah

Case
No. 8147

Brief of Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

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Defendant and Appellant.

Case
No. 8147

Brief of Appellant

STATEMENT OF FACTS

LeRoy Chapman was received at the Utah State Prison on August 23rd, 1950, (R. 56) under sentence and commitment for a term of not less than one nor more than twenty years for the crime of burglary in the second degree. (R. 55) At the time of his incarceration and for years prior thereto, 1943-1945 (R. 19), Chapman had suffered from a residual poliomyelitis of the right arm and hand; he was unable to flex the wrist

and oppose the thumb. (Ex. 2) On July 14th, 1952, Chapman was granted a parole from the prison, one of the reasons for parole being his desire to have an operation on the disabled hand and arm. (R. 17) Chapman was permitted to leave the State of Utah for this specific purpose. (R. 27) In January of 1953, he entered the Mayo Clinic at Rochester, Minnesota, where he underwent surgery for this condition on February 13th following. (R. 27) Approximately ten or eleven days thereafter, he was permitted to leave the clinic (R. 28), being required to return daily (R. 35) during a satisfactory convalescence until the cast was changed on February 28th, 1953. (Ex. 2) That cast was to remain on the hand and arm for approximately three months and thereafter further surgery was to be performed. (Ex. 2) However, before that time arrived, Chapman's parole was revoked and he was, on April 24th, 1953, returned to the Utah State Prison. (R. 56) Chapman was charged with having violated his parole in three particulars: (1) In having associated with one Max Jones, a former fellow inmate of the Utah State Prison; (R. 34) (2) in having committed a misdemeanor, slugging telephones, for which he served a thirty-five days' sentence; (R. 35) and (3) for having in his possession certain tools alleged to be burglar tools. (R. 36) Chapman admitted violations one and two but denied that the circular saw with carborundum blades was a burglar tool such as may be used for breaking into safes, and also denied other tools found in his possession were burglar tools.

Petition for Writ of Habeas Corpus was filed to secure Chapman's release in order that he be afforded further surgical ministrations. It was alleged that cruel and inhuman punishment was being inflicted upon the petitioner in violation of Amendment VIII of the Constitution of the United States of America, and Article I, Section 9, of the Constitution of the State of Utah; that, the petitioner was treated with unnecessary rigor in violation of the law, in that (a) he was taken into custody and forcibly removed from the care of his surgeon; (b) that he was refused and restrained from receiving medical attention; (c) that he was completely deprived of competent medical care while incarcerated in the Utah State Prison; (d) that the respondent, Warden Marcell Graham, the Board of Pardons and the Board of Corrections at all times refused to permit him to consult with or be placed under the care of *any competent surgeon*.

On January 4th, 1954, the District Court of the Third Judicial District, State of Utah, the Honorable Joseph G. Jeppson, Judge, found:

THE COURT: In this matter the Court finds a very novel situation in that the Warden claims that his hands are tied and he cannot give the medical treatment as required, and the state contends that for that reason the action against the Warden—I suppose by inference from your argument—might not be proper, and it might be proper to bring the action against the Board of Corrections.

The Court is of the opinion that the action against the Warden is proper, even though he

may not be able, without the consent of the Board of Corrections, to give the treatment necessary.

If the defendant is deprived of his rights, the Warden certainly has him in custody, and the actions for his dealings would properly be brought against the Warden, even though the Warden has no personal illwill, or even though he does not have the ability to grant the defendant his rights.

The Court finds in this case that during the period since the petitioner was sentenced, that he has acquired a need for medical care, and the evidence is uncontroverted and clear that there is need for medical treatment, or he will suffer a loss in the use of his arm and hand.

The Court is of the opinion that a continued incarceration must be accompanied by a reasonable medical treatment, and that in this case, the petitioner is deprived of that treatment; that being deprived of it is a violation of his right; that it constitutes cruel and inhuman treatment and is illegal and unconstitutional.

The Court further finds from the evidence that it constitutes a punishment on the part of the State for the violation of his parole by denying him medical treatment in view of the fact that the need arose during the period of his parole.

The Court finds that it is improper. The Writ of Habeas Corpus is granted, and it is ordered that the petitioner be released and discharged forthwith. (R. 76, 77)

Thereafter, on the 29th day of January, 1954, the court entered its formal Findings of Fact, Conclusions

of Law and Order. (R. 81, 82) The Attorney General for and on behalf of the respondent and of the State of Utah takes this appeal.

STATEMENT OF POINTS

POINT I

THE COURT BELOW ERRED IN HOLDING THAT THE WRIT OF HABEAS CORPUS WAS A PROPER REMEDY FOR REVIEW OF PETITIONER'S COMPLAINTS ABOUT INCIDENTS OF PRISON MANAGEMENT SINCE COURTS HAVE NO FUNCTION TO SUPERINTEND THE TREATMENT OF PRISONERS IN THE STATE PENITENTIARY.

POINT II

THE COURT BELOW ERRED IN FINDING THAT THE PETITIONER WAS DEPRIVED OF REASONABLE MEDICAL TREATMENT IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

POINT III

THE COURT BELOW ERRED IN FINDING THAT PETITIONER WAS SUBJECTED TO CRUEL AND INHUMAN TREATMENT, AND, THAT THE ALLEGED REFUSAL OF MEDICAL ATTENTION WAS AN ADDITIONAL PUNISHMENT FOR PETITIONER'S HAVING VIOLATED HIS PAROLE.

ARGUMENT

POINT I

THE COURT BELOW ERRED IN HOLDING THAT THE WRIT OF HABEAS CORPUS WAS A PROPER REMEDY FOR REVIEW OF PETITIONER'S COM-

PLAINTS ABOUT INCIDENTS OF PRISON MANAGEMENT SINCE COURTS HAVE NO FUNCTION TO SUPERINTEND THE TREATMENT OF PRISONERS IN THE STATE PENITENTIARY.

The Board of Pardons and the Board of Corrections were created by, and look for their authority to, the Constitution of the State of Utah.

Section 12 of Article VII, Constitution of Utah, created the Board of Pardons and declared that, "until otherwise provided by law" the Governor, Justices of the Supreme Court and the Attorney General should have the right to commute punishments and grant pardons. Section 13 of Article VII, Constitution of Utah established, "until otherwise provided by law," the Board of Prison Commissioners. The Governor, Secretary of State and Attorney General were named to constitute this board and were charged with supervision of all matters in connection with the State Prison. By legislative enactment, the present Board of Pardons has succeeded the constitutionally established board, Sec. 77-62-2, U.C.A. 1953; and, the present Board of Corrections has succeeded the constitutionally established Board of Prison Commissioners, Sec. 64-9-2, U.C.A. 1953. These boards have now the constitutional powers and duties of their predecessors.

Title 64, Chapter 9, U.C.A. 1953, declares the law of this State pertaining to the establishment, maintenance and regulation of the Utah State Prison. The powers of the Board of Corrections and of the Board

of Pardons are therein enumerated and defined, Sec. 64-9-2, U.C.A. 1953. The Legislature enacted these laws to direct those charged with constitutional duty for the operation of the Prison and the management thereof. Our Legislature has at no time conferred upon the courts of this State any responsibility for the operation of the prison and, in the absence of a constitutional amendment, could not, by so doing, deprive either the Board of Corrections or the Board of Pardons of their authority in that respect. We find no Utah decision wherein it has been held that the writ of habeas corpus may be availed of to secure the release of a prisoner on the ground that confinement in the State Prison was impairing his health. Our court has held:

In habeas corpus proceedings, nothing is inquired into except the legality of the restraint.

Jones v. Moore, 61 Utah 383, 213 P. 191, 193.

If the issue here is a matter of first impression in this jurisdiction, such is not the case elsewhere and the question has been no stranger in other courts and has often been adjudicated. The Criminal Court of Appeals of Oklahoma said:

Without stating our conclusions upon the question of fact as to the actual physical condition of the petitioner, we deem it only necessary to state that in a habeas corpus proceeding, where no question is raised as to the validity of a judgment upon which a commitment is based, but the only question involved is one of fact as to the health of the accused, that such question involves a matter of clemency to be addressed to the

Governor. Since the petitioner may again seek clemency at the hands of the Governor, it is not proper that we express an opinion as to this man's physical condition, as such question is a question for the sole determination of the chief executive in whom the power to extend clemency is vested. * * *

* * * Art. 6, Sec. 10, Oklahoma Constitution, Okl. St. Ann. Const., provides: "The Governor shall have the power to grant, after conviction, reprieves, commutations, paroles, and pardons for all offenses, except cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to such regulations as may be prescribed by law. * * *"

We have held in *Ex Parte Ridley*, 3 Okla., Cr. 350, 106 P. 549, 26 L.R.A., N.S., 110, in one of the early opinions of this court by Judge Doyle, that under this constitutional provision, the Governor has exclusive power to parole a convict, with such restrictions and limitations as he may deem proper; and any law which restricted this power would be unconstitutional and void. This case further held that under our Constitution, it is the duty and prerogative of the legislative department to define crime and fix the maximum and minimum penalty, and to fix by law the kind and manner of punishment, and provide such disciplinary regulation for prisoners, not in conflict with the fundamental law, as the legislature deems best. It is the duty of the judiciary department to try offenders against those laws, and upon conviction to sentence them under the statute. That after a conviction has become final, it is not within the functions of the courts or legislature to interfere with the pardoning power of the chief executive.

Coburn v. Schroeder, (1941), 112 P. 2d 191.

It was held in *Platek v. Aderhold, Warden*, C.C.A. 5th Circuit, 73 F. 2d 173, that:

* * * the court has no power to interfere with the conduct of the prison or its discipline, but only on habeas corpus to deliver from the prison those who are illegally detained there. * * *

The holding in *Platek v. Aderhold*, supra, was followed and affirmed in *Sarshik v. Sanford*, 142 F. 2d 676. In California, where the petitioner alleged ill health, the court held that the questions raised were medical, scientific and administrative rather than judicial. The petition for the writ of habeas corpus was denied, *Kauble v. Haynes*, (1946), 64 Fed. Supp. 153. In *Edmondson v. Warden*, (1949), 69 A. 2d 919, the court held that habeas corpus was not a remedy for review of complaints about incidents of prison management and that the Board of Corrections there had full power and control over the House of Corrections. The United States District Court for West Virginia in the case of *United States ex rel Bowe, et al. v. Skeen*, (1952), 107 Fed. Supp. 879, said:

* * * The petition should be dismissed * * * the writ of habeas corpus cannot be used to correct alleged mistreatment by prison authorities of prisoners subject to valid judgment and commitment. * * *

We contend, for this Point I, that it must be presumed that the Board of Corrections is properly exercising its authority in the operation of the prison and that the judiciary of this State should be hesitant to

substitute their judgment for that of the Board where the result becomes an infringement upon the executive branch of government. There is a remedy in the courts which may be availed of to control and restrain government agencies when such restraint or control is necessary or desirable; we do not think that remedy, in such as the instant case, to be the writ of habeas corpus.

POINT II

THE COURT BELOW ERRED IN FINDING THAT THE PETITIONER WAS DEPRIVED OF REASONABLE MEDICAL TREATMENT IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS.

The evidence does not sustain the finding of the court below.

Norman L. Beck, M.D., orthopedic surgeon, and a witness for petitioner testified that he first saw the petitioner on June 3, 1953, (R. 12), in fact, the petitioner had been examined by Dr. Beck in March of 1952. (R. 13, 22) Subsequent to June 3, 1953, the petitioner was attended by Dr. Beck on June 24th, July 6th and September 21st, 1953. (R. 15) The doctor recommended further surgery on petitioner's hand "without too great delay"; (R. 18) he had made his report to the Board of Corrections. (R. 19) The Board of Corrections had been informed by this witness in June of 1953 that a delay in the performance of surgery of six or eight months would not be too long, (R. 20) and the doctor could not answer yes or no at the hearing as to what

the exact time would be that would constitute too great a delay. (R. 20) X-rays taken on July 6th, 1953, showed that the bone in petitioner's hand was completely fused and that under such circumstances, there should be no discomfort. (R. 23) The doctor concluded by testifying that he was willing to perform the necessary surgery with petitioner's consent and cooperation and that it would not be necessary that the petitioner be released from the penitentiary during convalescence therefrom. (R. 24, 25)

LeRoy Chapman, the petitioner, on his own behalf testified that his requests for medical attention subsequent to his return to the prison had been constantly denied, (R. 31) but, he then said that he was told to abide by the decision of the prison physician and he was "constantly referred to Dr. Jones." (R. 31) The petitioner admitted of his appointments with Dr. Beck (R. 31) and admitted further that it was not his intention nor desire to have the necessary surgery performed in Utah, (R. 32) also that he had never consented to have the surgery performed in Utah. (R. 37)

J. O. Jones, M.D., prison physician, testified that he attended the petitioner at the prison dispensary on several occasions and that he did not think that at any time the need for surgery in this case had been imperative. (R. 42) The doctor testified that he gave his permission for the petitioner to consult Dr. Beck. (R. 47)

Andrew Unamuno, medical officer at the Utah State Prison, testified that to his knowledge the petitioner had

never been refused attention at the infirmary; (R. 48) that he received what treatment he requested. (R. 52)

Marcell Graham, warden, testified that he had never interfered with the petitioner's receiving medical attention; (R. 58, 61) that the petitioner had refused to have the surgery performed by Dr. Beck; (R. 59) that the Board of Corrections would permit petitioner the operation if he, the petitioner, would pay for it. (R. 66, 71) Warden Graham had interceded on petitioner's behalf before the Board of Pardons and the Board of Corrections. (R. 74)

For Point II we contend that the petitioner was not denied reasonable medical attention and further that the State of Utah was under no obligation to provide the petitioner with the facilities of the Mayo Clinic at Rochester, Minnesota; nor, for that matter, to expend state funds for an operation locally, under the circumstances in this case, even had petitioner consented thereto. We cannot subscribe to any such proposition that an offer of payment for the operation by some third person should or could be a reason for, a consideration for, or an excuse for, the granting of the writ of habeas corpus.

POINT III

THE COURT BELOW ERRED IN FINDING THAT PETITIONER WAS SUBJECTED TO CRUEL AND INHUMAN TREATMENT, AND, THAT THE ALLEGED REFUSAL OF MEDICAL ATTENTION WAS AN ADDITIONAL PUNISHMENT FOR PETITIONER'S HAVING VIOLATED HIS PAROLE.

Amendment VIII of the Constitution of the United States declares:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article I, Section 9, of the Constitution of the State of Utah reads:

Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor.

The petitioner complains that he was subjected to cruel and *inhuman* punishment and treated with unnecessary rigor. (R. 1) The court found that being deprived of reasonable medical treatment constituted cruel and *inhuman* treatment and treatment with unnecessary rigor. (R. 82)

It has been held that the term "cruel and *unusual* punishment" applies to something inhuman and barbarous, torture and the like. *In Re Ward*, 295 Mich. 742, 746, 295 N.W. 483. *People v. Sarnoff*, 302 Mich. 266, 4 N.W. 2d 544. In the case of *Smith v. Command*, (Mich.) 204 N.W. 140, 40 A.L.R. 525, 527, Weist, J., dissenting, had this to say:

In examining the subject of cruel and unusual punishments, I have been surprised at the dearth of adjudications. This fact, however, speaks well for American legislation. It must be assumed

that the framers of the Bill of Rights had knowledge of former cruel and unusual punishments, whether adjudged under some law or imposed by despotic and arbitrary power. They knew of quartering, of slitting the nose and cropping the ears, of nailing the tongue to a post, of crucifixion, of flogging at the cart's tail, of disemboweling, cutting off hands, and of branding, of castration, of burning, of *peine forte et dure*, of the rack and thumbscrews, etc., and they emphatically said, "Never again."

Examples of cruel and unusual punishments were referred to in the case of *Wilkerson v. Utah*, 99 U.S. 130, 135 as:

* * * Where the prisoner was drawn or dragged to the place of execution, in treason; or where he was emboweled alive, beheaded, and quartered, in high treason. * * * public dissection in murder, and burning alive in treason committed by a female. * * *

Mr. Justice McKenna discusses the subject at length in *Weems v. U. S.*, 217 U.S. 349, 368 et seq., and gives an interesting historical dissertation thereon.

In searching the case law for a determination of what constitutes cruel and unusual punishment we have found numerous decisions. It becomes apparent upon reading these cases that there is no hard and fast definitive rule and that the circumstances of each individual case must determine whether punishment is cruel or unusual within the meaning of the constitutional provi-

sions. (*Without comment thereon we cite in a footnote some of the decisions we feel to be pertinent to the case at bar.) The extreme cruel and unusual punishments to which we have hereinabove referred to are, we appreciate, archaic and such punishments were resorted to when the fundamental idea back of the criminal law was one of vengeance. The old Mosaic doctrine of "an eye for an eye and a tooth for a tooth" no longer prevails and such cases read, to us of the present generation, like scenes from the Inferno of Dante. However, though it be admitted that all punishments are in some sense cruel, since punishment imports pain or suffering, the Constitution does not mean that crime for this reason is to go unpunished.

It has been held that punishment will not be declared excessive because confinement might undermine the health of an accused, *State v. Van Klaveren*, (Iowa 1929), 226 N.W. 81, wherein that court said:

* * * the only thing properly coming before us for our consideration is the punishment which was inflicted by the court, which the defendant alleges is excessive. The motion of the defendant is supported by the affidavits of himself and wife and a physician. Their affidavits are to the effect that the defendant is not in the prime of health and that a long period of confinement in the county jail might undermine his health and lead

**U. S. v. Ragen*, 54 Fed. Supp. 973; *In Re Pinaire*, 46 Fed. Supp. 113; *In Re Calhoun*, 94 N.E. 2d 388; *Delnegro v. State*, 81 A. 2d 241; *Geurin v. City of Little Rock*, 155 S.W. 2d 719; *Harper v. Wall*, 85 Fed. Supp. 783; *Ex Parte Pickens*, 101 Fed. Supp. 285; *Siegel, et al., v. Ragen, et al.*, 88 Fed. Supp. 996.

to serious consequences. It is sufficient to say that a period of confinement by way of imprisonment might weaken the condition of a healthy man, and that many men now in good health will pass into eternity before the expiration of the period of imprisonment given to the defendant, but that is not sufficient reason why the guilty should not be punished. * * *

To the record in the case at bar: The petitioner, Chapman, was being restrained of his liberty by the defendant at the Utah State Prison under a lawful commitment and order of the District Court of the Second Judicial District of the State of Utah. He had been paroled from that institution on July 14th, 1952, upon his application therefor so that he might obtain surgical care for his disabled arm and hand. (R. 26) In January of 1953, petitioner entered Mayo Clinic at Rochester, Minnesota, for that purpose; (R. 27) whereat he was receiving the finest attention he had ever had. (R. 35) However, he was unable to avoid the toils of the law, (R. 35, 36) or to live up to the terms of his parole. (R. 34, 35, 36) Consequently, he found himself, on April 24th, 1953, back in prison and the second phase of his surgical need not yet accomplished. The refusal of the Board of Pardons to again parole petitioner *or to have the second operation performed at the Mayo Clinic in Rochester, Minnesota, at state expense is the cruel and unusual punishment and treatment with unnecessary rigor of which petitioner complains.* There is nothing in the record to indicate that petitioner received treatment while incarcerated in the Utah State Penitentiary

different than that afforded any other inmate of the prison. There is nothing in the record which indicates that petitioner suffered physical discomfort, to the contrary, his witness, Doctor N. R. Beck, testified to the effect that where the fusion of the bone was complete, there should be no discomfort. (R. 23) The petitioner was not assigned work at the prison which was not within his physical capabilities. (R. 42) He was never refused attention at the prison infirmary. (R. 48) The warden had never interfered with the petitioner receiving medical attention. (R. 58, 61, 62) The petitioner refused to have the operation performed in Utah, (R. 32, 37, 59) although Dr. N. R. Beck of this city was qualified (Ex. 2) and willing to proceed. (R. 24) If petitioner would have consented to having the surgery performed here, the matter could then have been presented to the Board of Corrections for their determination. (R. 74)

For this Point III, we hold that the record does not sustain a finding that petitioner was subjected to cruel and inhuman (unusual) treatment and treatment with unnecessary rigor. On the contrary, the record shows conclusively that petitioner was afforded every consideration by the penal authorities, all of them. There is no evidence of abuse or mistreatment. There is evidence of compassion (his parole), of consideration (work assignments), of care (medical attention), and of solicitude (the warden's efforts on his behalf with both the authorities and with petitioner's family). Society has *not* neglected its obligation to the petitioner; but society

has been imposed upon, and taken advantage of, through his release.

CONCLUSION

Courts should, of course, exercise their power to prevent any inhuman or cruel treatment, when properly called upon so to do, of those unfortunate enough to be confined in jails. But the courts should not hamper officials charged with the duty of maintaining prisons and having custody of those convicted of crimes by interfering with the regulation or management thereof in the absence of unreasonable or capricious conduct or the neglect of duty. We are unaware of any legitimate complaint heretofore directed to the management of Utah's modern and excellent State Prison.

The Findings of Fact, Conclusions of Law and Order of the lower court should be set aside and held for naught; and, the cause should be remanded with directions to the court below to return the petitioner to the custody of the warden.

Respectfully submitted,

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