

1980

James Willard Hearn Vs. State of Utah : Brief of Appellant

Utah Supreme Court

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JAMES WILLARD HEARN ; Pro se

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FILED

APR 18 1980

Clerk, Supreme Court, Utah

IN THE SUPREME COURT
STATE OF UTAH

CASE NO. 16940

JAMES WILLARD HEARN
VS.
STATE OF UTAH

BRIEF OF APPELLANT

ON APPEAL OF PETITION FOR WRIT OF HABEAS CORPUS IN
THE DISTRICT COURT OF BOX ELDER COUNTY; AND TO
EXHAUST STATES REMEDY AS PER 28 U.S.C. SEC. 2241 .

JAMES WILLARD HEARN PRO SE

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(ii)

IN THE SUPREME COURT
STATE OF UTAH

JAMES WILLARD HEARN
APPELLANT

VS.

STATE OF UTAH
APPELLEE

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NO. 16940

ON APPEAL
FROM THE DISTRICT COURT AT BOX ELDER COUNTY AND AS PER TO EXHAUST
STATE REMEDY PURSUANT TO U.S.C. 28 SECTION 2241

BRIEF FOR APPELLANT
STATEMENT OF THE ISSUES

1. WHETHER JURISDICTION LIES WITHIN THE STATE AUTHORITY TO DIMISS
ILLEGAL DETAINERS THAT IMPEND FUTURE INCARCERATION AND THAT
PRESENTLY CAUSE IRREPARABLE DAMAGE IN CONSIDERATION OF PAROLE
ON PRESENT FEDERAL SENTENCE THAT APPELLANT IS NOW SERVING.
2. DUE PROCESS AND EQUAL PROTECTION TO RELIEVE APPELLANT FROM
SERVING UTAH SENTENCE IN INSTALLMENTS.

(1)

STATEMENT OF THE CASE

APPELLANT WAS SERVING A SENTENCE IN THE WASHINGTON (WALLA WALLA) PRISON; AT THAT TIME HE FILED A SPEEDY TRIAL MOTION TO THE STATE OF UTAH TO CAUSE FINAL DISPOSTION OF CHARGES PENDING AT BOX ELDER COUNTY. APPELLANT FILED THIS SPEEDY TRIAL MOTION ON THE 7-18-70 AND SHORTLY THEREAFTER ~~HE~~ HE WAS TRANSFERED FROM WALLA+WALLA TO BRIGHAM CITY UTAH COUNTY JAIL. ON OCT. 29 1970 AT BOX ELDER COURTHOUSE #5466 BRIGHAM CITY UTAH. PETITIONER WAS AT THAT TIME SENTENCED TO 25 YEARS FOR ARMED ROBBERY; BY JUDGE VE NOY CHRISTOFFERSON. PETITIONER WAS THEN SENT TO DRAPER UTAH STATE PRISON TO COMMENCE SERVING HIS IMPOSED 25 YEAR SENTENCE AND GIVEN STATE PRISON NUMBER 12823.

STATEMENT OF THE FACTS

UPON SERVING SEVERAL MONTHS TOWARDS THE IMPOSED 25 YEAR SENTENCE IN DRAPER PRISON, APPELLANT WAS INFORMED BY A JAILHOUSE LAWYER THAT HIS SPEEDY TRIAL AGREEMENT WAS BEING ABUSED AND THAT HE WAS SUPPOSED TO HAVE BEEN SENT DIRECTLY BACK TO WASHINGTON AFTER BEING SENTENCED. APPELLANT THEN SENT A LETTER TO WASHINGTON IN THIS CONCERN, WHEREUPON WASHINGTON INFORMED UTAH OF THE MISTAKE AND REQUESTED THE RETURN OF APPELLANT BACK TO WASHINGTON TO CONTINUE HIS SENTENCE THERE. IN DECEMBER OF 1970 APPELLANT WAS BRISKED BACK IN FRONT OF JUDGE VE NOY CHRISTOFFERSON AND INFORMED THAT THE INTER STATES AGREEMENT WOULD BE HONORED "BUT" THAT WHEN WASHINGTON WAS FINISHED WITH HIM UTAH WOULD REQUIRE HIM BACK TO FINISH SERVING THE REMAINDER OF HIS IMPOSED 25 YEAR SENTENCE.

APPELLANT WAS THEN SENT BACK TO WALLA WALLA FROM WHICH HE ESCAPED AND PICKED UP FEDERAL CHARGES AND SUBSEQUENT FEDERAL SENTENCES. AFTER A CIVIL ACTION INVOLVEING CONSTITUTIONAL VIOLATIONS REGARDING SOLIDARY CONFINEMENT AGAINST THE WARDEN AT WALLA WALLA THE WARDEN RELINQUISHED CUSTODY OF APPELLANT TO SERVE HIS FEDERAL SENTENCE. THEREAFTER THE STATE OF UTAH FILED DETAINERS AT HIS PRESENT PLACE OF CONFINEMENT; MARION FEDERAL PRISON.

SUMMARY OF THE ARGUMENT

APPELLANT ASSERTS THAT THE MATTER OF JURISDICTION IS NOT COMPLICATED --
WITHIN THE PROVISIONS OF U.S.C. TITLE 28 SECTION 2241 THERE EXISTS A
SINGLE ELEMENT FROM WHICH ONE RECEIVES THE RIGHT TO USE THAT STATUTE :
THAT IS; "THAT STATE REMEDY MUST BE EXHAUSTED; UNLESS IT IS PRIMA FACIE
THAT THERE CAN BE NO RULEING ON THE ISSUES BROUGHT - DUE TO LACK OF
JURISDICTION ECT." IN THE CASE AT BAR; THE STATE HAS FULL POWER TO
CORRECT AN ISSUE OF CONSTITUTIONAL EQUAL PROTECTION UNDER THE LAW. IF IT
CHOOSES TO IGNORE THIS AUTHORITY BY CLAIMING LACK OF JURISDICTION- THEN
IT SIMPLY PERMITS THE REQUIREMENT OF TITLE 28 U.S.C. SECTION 2241.

IN THIS INSTANT CASE IT IS QUITE EVIDENT THAT THE INTENT IS TO CAUSE
APPELLANT TO SERVE AN IMPOSED SENTENCE OF 25 YEARS IN INSTALLMENTS!!!

ARGUMENT AND AUTHORITY

1. WHETHER JURISDICTION LIES WITHIN THE STATE AUTHORITY
TO DIMISS ILLEGAL DETAINERS THAT IMPEND FUTURE
INCARCERATION AND THAT PRESENTLY CAUSE IRREPARABLE
DAMAGE IN CONSIDERATION OF PAROLE ON PRESENT SENTENCE.

IT SEEMS THAT A MISCONCEPTION HAS BEEN CONCEIVED BY THE APPELLEE IN
THAT THEY SEEM TO BE UNDER THE IMPRESSION THAT APPELLANT SEEKS
POST CONVICTION RELIEF AS PER COLLATERAL ATTACK; BY CITING UTAH RULE-
65 B (1) AND 65 B (f) 1 AND ALSO FROM THEIR REPLY BRIEF TO THE ORIGINAL
COMPLAINT. IT IS EVIDENT THEY FEEL THIS IS A MATTER OF POST CONVICTION
LITIGATION. ----- QUITE THE CONTRARY!!!; THIS IS AN ISSUE CLAIMING THE
DENIAL OF "EQUAL PROTECTION UNDER THE LAW; AND DUE PROCESS"

UNITED STATES CONSTITUTIONAL VIOLATIONS

NOT FOR THE PURPOSE OF ATTACKING IMPOSED SENTENCE PER SE; BUT TO CAUSE

RELIEF FROM VIOLATION OF THE UNITED STATES CONSTITUTIONAL NATURE!
IN THIS CASE POWER IS VESTED IN ALL STATES TO COMPLY AND COMPEL THAT
EQUAL PROTECTION IS AFFORDED, NOT TO DISMISS AN ISSUE UNDER THE FACADE
OF LACK OF JURISDICTION!.

2. DUE PROCESS AND EQUAL PROTECTION TO
RELIEVE APPELLANT FROM SERVING UTAH
SENTENCE IN INSTALLMENTS.

JUDGE VE NOY CHRISTOFFERSON SENTENCED APPELLANT TO COMMENCE HIS 25
YEAR SENTENCE: WHEREUPON HE WAS IMMEDIATELY PLACED IN THE UTAH STATE
DRAPER PRISON AND ISSUED PRISON NUMBER 12823.

UNDER THE FEDERAL TERMINOLOGY THAT POSTULATES WHEN A SENTENCE IS
COMMENCED WE SHOW: TITLE 18 U.S.C. SECTION 3568:

QUOTE:

"THE SENTENCE OF IMPRISONMENT OF ANY PERSON CONVICTED OF
AN OFFENCE SHALL COMMENCE TO RUN FROM THE DATE ON WHICH
SUCH PERSON IS RECIEVED AT THE PENITENTARY, REFORMATORY
OR JAIL - FOR SERVICE OF SUCH SENTENCE." UNQUOTE.

BECAUSE THE MISTAKE OF IMPOSING THE COMMENCEMENT OF SENTENCE(
(IN VIOLATION OF THE INTER STATE AGGREMENT STATUTES) HAD BEEN CORRECTED
BE RETURNING APPELLANT BACK TO WASHINGTON -- DID NOT -- INABLE THE
CONTINUED VIOLATION OF DUE PROCESS BY REQUIREING THE RETURN OF THE
APPELLANT BACK TO THE DRAPER PRISON TO RECONTINUE HIS IMPOSED AND
COMMENCED SENTENCE OF 25 YEARS IN THE INSTALLMENT PLAN. SEE:
WHITE VS. PEARLMAN, 10 CIR. 1930, 42 F2d 788: A PRISONER CANNOT

BE REQUIRED TO SERVE HIS SENTENCE IN INSTALLMENTS.

ALSO SEE: BARRETT VS. BARTLY, 383 IL. 437 50 N.E. 2d 517,147 A.L.R.
935 (1943) ::::: ALSO: JONES VS. RAYBORN, 346 S.W. 2d 743 ::::: ALSO
EX PARTE GUY, 41 OKL. cr.1 269 P.782 AND IN RE JONES, 154 KAN. 589 121
p.201-219 ::::: ALSO SEE: BUCHALTER VS. PEOPLE OF STATE OF NEW YORK,
319 U.S. 427-63 SUPREME COURT 1129 87 L. ED 1492 (1943)

AND; SHIELDS VS. BETO, 370 F2d 1003 (1967)

AND

U.S.C.A. CONST. AMEND. 1216 (c).

IT IS AN ESTABLISHED POSTULATE THAT THE INSTALLMENT PLAN IS CRUEL
AND UNUSUAL PUNISHMENT, AND CONTRARY TO THE RATIOCINATION OF THE INTENT
OF THE CONSTITUTION.

THEREFORE APPELLANT PRAYS THIS HONORABLE COURT WILL
DIGEST THE RELEVANCE OF HOLDING FAST TO THE BONDS OF JUSTICE THAT MAKES
THIS NATION THE GREATEST ON EARTH.

RESPECTFULLY SUBMITTED

James Willard Hearn

JAMES WILLARD HEARN PRO SE
SIGNED PURSUANT TO 18 U.S.C. SEC. 1001

CERTIFICATE OF SERVICE

I, JAMES WILLARD HEARN, HEREBY CERTIFY THAT I HAVE SERVED COPIES OF THE
FOREGOING BRIEF OF APPELLANT, BY PLACING SAME IN THE UNITED STATES MAIL
ON THIS DAY 16TH OF APRIL 1980. A.D.

James Willard Hearn

JAMES WILLARD HEARN PRO SE

DATE

April 14, 1980

NOTARY

C. H. Craig
A CASE WORKER U.S.P. MARION IL.

Authorized by the Act of July 7, 1956
to Administer Oaths (18 U. S. C. 4004)

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