

1980

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

Utah Supreme Court

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ROBERT B. HANSEN, CRAIG L. BARLOW; Attorneys for Respondent
CLINT S. JUDKINS;
Attorney for Appellant

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IN THE SUPREME COURT OF THE
STATE OF UTAH

:
JAMES WILLARD HEARN, :
Plaintiff-Appellant, :
-vs- : Case No.
STATE OF UTAH, : 16940
Defendant-Respondent. :

:
BRIEF OF RESPONDENT

APPEAL FROM THE DENIAL OF A PETITION
FOR WRIT OF HABEAS CORPUS IN THE FIRST
JUDICIAL DISTRICT COURT, IN AND FOR
BOX ELDER COUNTY, STATE OF UTAH, THE
HONORABLE VENOEY CHRISTOFFERSEN, JUDGE

ROBERT B. HANSEN
Attorney General

CRAIG L. BARLOW
Assistant Attorney General

236 State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

CLINT S. JUDKINS

113 West Main Street
Tremonton, Utah 84337

Attorney for Appellant

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DISPOSITION IN THE LOWER COURT

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petitioner was not imprisoned in the State of Utah.

RELIEF SOUGHT ON APPEAL

Respondent seeks an order of this Court affirming the denial of the petition.

STATEMENT OF THE FACTS

In 1970 petitioner, while imprisoned at the Washington State Penitentiary, requested that a final disposition be made of charges against him in Box Elder County, Utah. In accordance with the provisions of the Interstate Agreement on Detainers (hereafter IAD) petitioner was sent to Utah where he was tried and convicted for robbery and sentenced to not less than 25 years in prison. (R. 42). Petitioner had served a few months of this sentence at the Utah State Prison when Washington notified Utah that, according to the provisions of the IAD, petitioner should have been returned to Washington. Before returning petitioner to Washington, Judge Christofferson informed him that he would be required to return to Utah, after he completed his Washington sentence.

On April 9, 1976, petitioner was transferred from Washington State Penitentiary to the United States Penitentiary in Marion, Illinois, where he presently is serving time. After the transfer, Utah placed a detainer on petitioner for his Utah sentence. Petitioner filed a petition for Writ of

Habeas Corpus in the First Judicial District of Utah, which was denied on the grounds that the court lacked jurisdiction. It is from this denial that petitioner appeals.

Petitioner asserts that this action is being brought under Title 28 Section 2254(b) United States Code Ann., which provides that a prisoner can seek federal relief under the statute if he has exhausted all his state remedies. Respondent does not treat this issue because it is inappropriate in this forum.

ARGUMENT

POINT I

PETITIONER CANNOT INSTITUTE A PROCEEDING UNDER RULES 65B (f) and (i) BECAUSE HE IS NOT PRESENTLY IMPRISONED IN UTAH.

Rule 65B(i), Utah Rules of Civil Procedure, provides:

any person imprisoned in the penitentiary or county jail under a commitment of any court, . . . who asserts that in any proceedings which resulted in his commitment there was a substantial denial of his rights under the Constitution of the United States or of the State of Utah, or both, may institute a proceeding under this rule.

Rule 65B(i) requires that a person be imprisoned in Utah before he can institute a proceeding under the rule. At present, petitioner is imprisoned in Marion Federal Prison, in Marion, Illinois, and therefore he does not have standing to challenge the legality of a sentence, which is not presently

being imposed on him. Respondent asserts that this Court does not have jurisdiction to issue a Writ of Habeas Corpus when petitioner is not presently being restrained in the State of Utah.

POINT II

REQUIRING PETITIONER TO COMPLETE THE
UNEXPIRED PORTION OF HIS SENTENCE IS
NOT A VIOLATION OF HIS CONSTITUTIONAL
RIGHTS.

Petitioner relies on a number of cases to support his allegation that his constitutional rights would be violated if he is forced to return to Utah to complete the unexpired portion of his sentence. However, the issue raised by petitioner has not ripened into a controversy worthy of adjudication because petitioner is not presently being restrained by Utah. Therefore, there is not sufficient immediacy to petitioner's claim to make it appropriate for judicial determination. Even if it were appropriate to consider the issue raised by petitioner the facts of the cases he cites and the instant case are not analogous. In fact, the instant case is so far removed from the cases petitioner cites that the principles of law adopted therein are wholly inapplicable to the instant case.

Petitioner's transfer, which was executed under the IAD, is different from the prisoner transfers in the cases he cites. Petitioner cites cases where asylum states lost

jurisdiction over prisoners by extraditing them to other states, where new sentences were imposed on them. In other cases cited by petitioner, prisoners released by mistake from prison, due to no fault of their own were forced to return and complete their sentences. In this case Utah took temporary custody of petitioner to make a final disposition of the charges pending against him. The transaction was carried out in accordance with the provisions of the IAD. In the cases petitioner cites the asylum states waived jurisdiction over the prisoners by extraditing them or releasing them from prison. Here, Washington did not waive jurisdiction over petitioner, but merely allowed Utah to have temporary custody of him until he was tried and sentenced.

Furthermore, in each case cited by petitioner, it was the asylum state that was trying to reacquire jurisdiction over the prisoners. In this case Utah was the receiving state and as such was required by the provisions of the IAD to return petitioner to Washington after a final disposition was made of the charges against him. The situation in the instant case is the reverse of the situations in the cases petitioner cites. To hold as petitioner suggests that Utah waived jurisdiction over petitioner by returning him to the sending state would defeat the purpose of the IAD. Any state, after it tried a prisoner from another jurisdiction, would be faced with a dilemma.

It could return the prisoner and lose the right to impose a sentence on him, or it could immediately impose the sentence and violate the provisions of the IAD. Therefore, it is implicit that after a prisoner completes his sentence in the sending state that the receiving state can reacquire jurisdiction over him to impose on him his sentence.

Finally, the cases that petitioner cites demonstrate situations where reincarceration of the prisoner was inconsistent with the principles of justice. However, petitioner in this case has failed to show how forcing him to serve his sentence would be violating his constitutional rights.

The case of O'Glesby v. Leeke, 210 S.E.2d 232 (So. Carolina 1974), states that a sentence can be satisfied by death, service of the required time, or relief therefrom by competent authority. Because petitioner is not presently imprisoned in Utah the issue he raises is not ripe for adjudication. Therefore, there is no competent authority to excuse petitioner from the service of his sentence at this time, nor are the cases cited by petitioner relevant to the issue he has raised.

POINT III

PETITIONER SHOULD NOT BE EXCUSED FROM COMPLETING THE UNEXPIRED PORTION OF HIS SENTENCE ON THE GROUNDS HE BEGAN SERVICE OF HIS SENTENCE BEFORE HE WAS RETURNED TO WASHINGTON.

The Interstate Agreement on Detainers is found in Section 77-65-4, Utah Code Annotated, 1953 as amended. Article V(e) of the IAD provides, "at the earliest practicable time consonant with the purpose of this agreement, the prisoner shall be returned to the sending state." Petitioner alleges that after he was convicted and sentenced in Utah he began serving his sentence at the Utah State Prison instead of being returned to Washington. However, petitioner should not be excused from serving his sentence on the grounds that Utah inadvertantly detained petitioner before returning him to Washington.

Article IX of the IAD begins, "This agreement shall be liberally construed so as to effectuate its purpose." The purpose of IAD, as stated in Article I, is to provide for the orderly and expeditious disposition of charges and detainers outstanding against prisoners because these charges obstruct programs of prisoner treatment and rehabilitation. The facts outlined by petitioner indicate that the purpose of the IAD was effectuated. A final disposition was made of the charges against petitioner before he was returned to Washington. Even though Utah failed to immediately return petitioner to Washington, this does not entitle him to be excused from serving his sentence because the purpose of the IAD was effectuated.

Saunders v. State, 397 A.2d 548 (Del. 1979), paralleled the instant case in that the defendant sought habeas corpus relief for Delaware's violation of the IAD. In Saunders, the defendant had been sent to Delaware, convicted, and sentenced to 14 years in the state penitentiary. This conviction was reversed, but in the interim between the conviction and reversal the defendant was convicted of murder. The defendant claimed that he should have been returned to the federal authorities after his conviction and not tried on new charges, which were not the basis for the original detainer. The Court rejected this claim and dismissed his petition because the defendant failed to particularize which section of the IAD had been violated and because he failed to demonstrate how Delaware's delay in returning him had violated the policies and purposes of the IAD.

Furthermore, petitioner is not entitled to relief because petitioner was not prejudiced, nor were his rights violated by Utah's inadvertent noncompliance with Article V(e). This Court outlined in Webster v. Jones, 587 P.2d 528 (Utah 1978), when a writ of habeas corpus can be used: "the rule may be used in exigent circumstances . . . or where there has been such unfairness or failure to accord due process of law that it would be wholly unconscionable not to re-examine

the conviction." Id. at 530. The New York District Court in Williams v. Dalsheim, 480 F.Supp. 1049 (1979), denied a habeas corpus petition, which claimed the IAD had been violated. The Court stated:

Since the heart of the agreement is to protect a prisoner's rehabilitative opportunities, a violation should be considered in a federal collateral proceeding in terms of prejudice it causes a prisoner.

Id. at 1054. Petitioner's claims in the instant case do not rise to the required level of seriousness which would make the granting of this petition appropriate. Nor do the facts presented by petitioner indicate that his status at the Washington State Prison was prejudiced by his temporary incarceration in Utah before he was returned to Washington.

Petitioner alleges that the detainer Utah has lodged against him at the federal prison in Marion, Illinois, had a deleterious effect on his parole hearing. However, this fact is not relevant to the question of whether Utah can force petitioner to complete his sentence. Any complaint involving the manner in which his parole hearing was conducted should be brought to the attention of the federal authorities in Illinois.

CONCLUSION

Respondent asserts that the order of the court below denying the petition for a Writ of Habeas Corpus

should be affirmed for the following reasons. First, because petitioner is not presently imprisoned in Utah the issue he raises is not ripe for judicial determination, nor can he seek post-conviction relief under Rules 65B(f) and (i), Utah Rules of Civil Procedure. Second, petitioner's allegations do not make out a deprivation of his constitutional rights. Third, petitioner was not prejudiced by Utah's temporary noncompliance with Article V(e) of the IAD.

Respectfully submitted,

ROBERT B. HANSEN
Attorney General

CRAIG L. BARLOW
Assistant Attorney General

Attorneys for Respondent