

1981

Edward Dale Hardy v. Lawrence Morris : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

EDWARD DALE HARDY, :
Plaintiff-Appellant, :
v. : Case No. 17062
LAWRENCE MORRIS, Warden, :
Utah State Prison, :
Defendant-Respondent. :
:

BRIEF OF APPELLANT

Appeal from a Judgment Denying Petition for Writ of Habeas Corpus by the Third Judicial District Court, Salt Lake County, State of Utah, on the 11th day of April, 1980, the Honorable G. Hal Taylor, Judge, presiding.

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IN THE SUPREME COURT OF THE STATE OF UTAH

EDWARD DALE HARDY, :

Plaintiff-Appellant, :

v. :

Case No. 17062

LAWRENCE MORRIS, Warden, :
Utah State Prison, :

Defendant-Respondent. :
:

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The plaintiff-appellant, EDWARD DALE HARDY, appeals from an order in the Third Judicial District Court, Salt Lake County, State of Utah, entered by the Honorable G. Hal Taylor, Judge, granting respondent's Motion for Summary Judgment and denying with prejudice appellant's Petition for Writ of Habeas Corpus.

DISPOSITION IN THE LOWER COURT

The above-entitled matter having come on regularly for hearing in the above-entitled court on Thursday, the 3rd day of April, 1980, before the Honorable G. Hal Taylor, Judge, on appellant's application for Writ of Habeas Corpus, and the appellant being sworn and testifying to the allegations of his petition, the court having heard his testimony and having received transcripts of appellant's plea and subsequent sentencing, and having reviewed

all exhibits submitted by the respective parties, and having considered respondent's Motion for Summary Judgment and having considered arguments of counsel and being fully advised in the premises the court ordered that respondent's Motion for Summary Judgment be granted and the issuance of a Writ of Habeas Corpus be denied with prejudice.

RELIEF SOUGHT ON APPEAL

The appellant seeks an order granting his Petition for Writ of Habeas Corpus, and in the alternative he seeks a reversal of the trial court's Order Granting Respondent's Motion for Summary Judgment which denied with prejudice appellant's Petition for Writ of Habeas Corpus.

STATEMENT OF THE FACTS

That on or about February 21, 1979, at approximately 9:45 p.m., appellant, Edward Dale Hardy, with others, was present at the Crossroads Cafe in Davis County, State of Utah. Mr. Hardy's presence there was for the purpose of selling a given quantity of marijuana to one Kirk Cordary and others with whom he made arrangements prior to, by telephone.

There was conflict and disputes within the Davis County drug community arising from rip-offs and power struggles for control of the drug market in that County. Mr. Hardy was involved

in the foregoing and had been warned that certain individuals in the drug community were after him for his prior actions.

On the night in question, Mr. Hardy had partaken a substantial quantity of traditional street drugs prior to and during the period arrangements were being made to sell the marijuana. Mr. Hardy and companion, one Kevin Gartrell, after arrangements were made, departed for the crossroads and enroute procured a shotgun for Mr. Hardy's protection.

Upon arrival at the crossroads the parties made contract. An agreement was reached after a dispute over the price was resolved. Mr. Hardy and the deceased Kirk Cordary departed together from the conference vehicle and were enroute to the Cordary vehicle to procure the funds needed to consummate the deal, when a shotgun, carried by Mr. Hardy, discharged, fatally wounding Kirk Cordary.

The drug deal was never consummated. Mr. Hardy fled from the scene with his companion. Mr. Hardy was subsequently arrested and charged for First Degree Murder in State of Utah v. Hardy, Second District Court, Davis County, State of Utah, Case No. 3107-A.

At the time of his arrest in the within matter he had one other criminal matter pending in Davis County. His life, other than the aforesaid, was relatively free from involvement with the courts, law enforcement, or the criminal system generally.

Following his incarceration, retention of counsel, and preliminary hearing, Mr. Hardy escaped from the Davis County Jail with another inmate and was reported by local news people to have gone on a crime spree. He was subsequently apprehended and charged with several serious offenses allegedly arising from and during the escape flight from Davis County.

He was arrested and incarcerated in the Salt Lake County Jail where he remained for six (6) weeks before being visited by his retained counsel in the within matter. After numerous delays, Mr. Hardy was returned to Davis County Jail.

Mr. Hardy did travel to a local psychologist in Davis County for a trial conference prior to the entry of plea, however, the results of said evaluation were not made known to him by the evaluator or counsel.

Mr. Hardy had few and brief conferences with counsel in preparation of trial in the within matter. Mr. Hardy was visited two (2) days prior to scheduled trial in the within matter and was informed that counsel was not prepared to go to trial on the scheduled date. Counsel further disclosed the plea negotiation agreement memorialized by the expiation agreement executed by Mr. Hardy. The degree of explanation of the meaning and import of the agreement did not expand on the detail set forth in the writing itself. Mr. Hardy was urged by counsel to accept the plea bargain as a means to avoid exposure to the imposition of the

Counsel for appellant at no time explained the function, role, and constitutional right to trial by jury, nor did Mr. Hardy know or understand the function a jury could have in determining the imposition of death penalty in his capital case.

Mr. Hardy was not given a meaningful explanation by counsel nor did he understand his right to confront witnesses against him and right against self-incrimination. On urging of counsel and fear of the death penalty if he didn't agree to the negotiation, he signed the expiation agreement and the record thereof is set before the court.

After entry of sentence, he gave notice to the court of his dissatisfaction with counsel and the advice he had received from him. There was a subsequent hearing, September 20, 1979, regarding the guilty plea. The plea was not withdrawn, however, Mr. Hardy's complaint regarding counsel's assistance was made a part of the record. From the record page 32 of the transcript, September 20, 1979, inferentially, it was a foregone conclusion that the court would not impose the death penalty.

Mr. Hardy was sentenced to life imprisonment and did not appeal the foregoing proceedings. The on record statement by counsel present was that he believed there was no merit for appeal.

Mr. Hardy subsequently commenced this proceeding by filing the within Petition for Writ of Habeas Corpus in the Third Judicial District, Salt Lake County, State of Utah, Case No. C80-700.

The trial court granted respondent's Motion for Summary Judgment denying appellant's Petition for Writ of Habeas Corpus. Appellant appealed to the above-entitled court for relief sought in his petition or reversal of the trial court order.

ARGUMENT

POINT I

THE COURT INAPPROPRIATELY GRANTED RESPONDENT'S MOTION FOR SUMMARY JUDGMENT BECAUSE GENUINE ISSUES OF MATERIAL FACT WERE SHOWN AND RESPONDENT WAS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW.

Summary Judgment, Rule 56 of the Utah Rules of Civil Procedure, Subsection (c), provides in pertinent part as follows:

. . . The judgment sought shall be rendered forthwith if the pleadings, depositions, and answers to interrogatories and admissions on file together with affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law . . .

This court has interpreted the meaning of the foregoing subsection in Bullock v. Deseret Dodge Truck Center Inc., 11 U.2d 1, 354 P2d 559, (1960), and set down the well established standard by which other courts grant Motion for Summary Judgment, to-wit:

A Summary Judgment must be supported by evidence, admission and inferences which, when viewed in the light most favorable to the loser, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law; such showing must preclude

all reasonable possibility that the loser could, if given a trial, produce evidence which would reasonably sustain a judgment in his favor. (Emphasis added.)

The gist of the Motion for Summary Judgment is that the court must find from the pleadings, evidence, admissions and inferences viewed most favorably to the non-moving party there is no genuine issue of material fact precluding the non-moving party from relief whatsoever, and that the prevailing party is entitled to a judgment as a matter of law. See Tanner v. Utah Poultry and Farmers Co-op, 11 U.2d 353, 359 P.2d 18 (1961), and Frederick May & Co. v. Dunn, 13 U.2d 40, 368 P.2d 266, (1962).

The appellant filed a Verified Complaint alleging in part he had been denied full disclosure by his trial counsel of certain facts and possible defenses in the within matter. That based on the information provided to appellant as is provided in the court record, appellant had not entered a knowing and voluntary plea of guilty to said capital offense. The reasonable inference flowing from appellant's Complaint regarding counsel is averments of ineffectiveness of counsel. At the very least, the court transcript of September 20, 1979, page 32, page 12 of respondent's exhibit, appellant stated in pertinent part as follows:

. . . I'd like it known and have the court aware that I still believe that I was misrepresented and I was given bad advice.

A review of the record reveals that there was no meaningful discussion in the expiation agreement, or by the court in its proceedings of the appellant's constitutional right to trial and right to trial by jury.

The right to jury trial in such a case is significant, as it relates to the burden of proof on the State to prove beyond a reasonable doubt each and every element of the offense for which appellant is charged. The court in its inquiry and the recitals in the expiation agreement failed to specifically delineate the elements of the charge to which appellant was pleading guilty, define the burden of proof the State would have as to each and every element thereof and the requirement that each and every juror so find that the State had met that burden.

Furthermore, there was a failure to disclose the significant role of the jury function in capital cases where the death penalty is imposed, to-wit: A separate and distinct hearing requiring a unanimous finding on the issue of whether the imposition of the death penalty is appropriate under the circumstances of the instant case.

There was a failure to disclose the automatic right of appeal to this court from judgments imposing the death penalty.

All of the foregoing are facts that were not made known to the appellant that are significant considerations that should have been made known in the interest of justice to one considering a plea bargain under the threat of the imposition of the death penalty.

It is submitted that based on the foregoing the trial court inappropriately granted respondent's Motion for Summary Judgment. The appellant pled he was not informed and the record from the below court is devoid of meaningful disclosure of specific constitutional rights. There are genuine issues of material fact and as a matter of law, respondent is not entitled to judgment.

POINT II

RESPONDENT IS NOT ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW BECAUSE APPELLANT DID NOT MAKE A KNOWING AND VOLUNTARY WAIVER OF HIS CONSTITUTIONAL RIGHTS WHICH IS NECESSARY TO ENABLE THE TRIAL COURT TO ACCEPT HIS GUILTY PLEA.

One cannot waive Constitutional Rights if one lacks actual knowledge of the substantive meaning of those Constitutional Rights. The U.S. Supreme Court in Boykin v. Alabama, 395 U.S. 238, 23 LEd.2d 274, 1969, held that before a court may accept a guilty plea, there must be a knowing and voluntary waiver of specific Federal Constitutional Rights. The court

stated the scope of the waiver as:

Several Constitutional Rights are involved in the waiver that takes place when a plea of guilty is entered in a State criminal trial. First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth, Malloy v. Hogan, 378 U.S.1, 12 LEd.2d 653, 84 SCt. 1489. Second, is the right to trial by jury, Duncan v. Louisiana, 391 U.S. 145, 20 LEd.2d 491, 888 SCt. 144. Third is the right to confront ones accusers, Pointer v. Texas, 380 U.S. 400, 13 LEd.2d 923, 85 SCt. 1065. We cannot presume a waiver of these important Federal Rights from a silent record.

The issue of the effective waiver of Federal Constitutional Rights in a State proceeding is governed by Federal standards, Douglas v. Alabama, 380 U.S. 14-13 LEd.2d 934, 1965.

The court in Boykin, *ibid.*, held that:

A plea of guilty is more than admission of conduct, it is a conviction. Ignorance, uncomprehension, coercion, terror, inducements, subtle and blatant threats might be a perfect cover-up of unconstitutionality.

A

APPELLANT DID NOT KNOWINGLY
AND VOLUNTARILY WAIVE HIS
RIGHT TO TRIAL BY JURY.

In the case at bar appellant was not given a meaningful explanation of his right to trial by jury. Both the expiation agreement and the court record is devoid of any inquiry of appellant's understanding of the purpose, function or role

of a jury trial. Likewise, the appellant had had little contact with the court system to give him independent knowledge from which he could reasonably rely to make an intelligent choice of action. The trial court at page 29 of Transcript of the Proceedings on August 15, 1979, made brief reference to the right to trial by jury issue in a profunctory fashion, failing to make any mention of appellant's right to trial by jury, to-wit:

The court: Do you understand that this plea of guilty would take the place of a trial, and in fact there would be no trial, and you would be waiving your right to appeal?

The court failed to mention the constitutional right to trial by jury, and it made no inquiry as to whether appellant knew or understood that if he was tried by a jury the verdict of guilty must be based on a unanimous finding that the State had proven beyond a reasonable doubt that appellant was guilty of each and every element of the offense for which the appellant stood charged.

Similarly, trial counsel in the expiation agreement at page 40, under the section entitled "YOU ARE NOW SPECIFICALLY ADVISED OF THE LAW:

If you plead guilty there will not be a trial of any kind, so that by pleading guilty you waive the right to trial by jury."

The record is devoid and appellant was not informed of the significant function the jury fulfills in capital cases.

Section 76-3-206, Utah Code Annotated, 1953, as amended, provides:

Capital felony—Death or life imprisonment.—

(1) A person who has been convicted of a capital felony shall be sentenced in accordance with section 76-3-207, and sentence shall be death or life imprisonment as the court of jury, in accordance with this section shall determine.

(2) The judgment of conviction and sentence of death shall be subject to automatic review by the Utah State Supreme Court within 60 days after certification by the sentencing court of the entire record unless time is extended an additional period not to exceed 30 days by the Utah State Supreme Court for good cause shown. Such review by the Utah State Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Utah State Supreme Court.

Section 76-3-207 provides in pertinent part as follows:

Capital felony—Hearing on sentence.—(1) When a defendant has been found guilty of a capital felony, there shall be further proceedings before the court or jury on the issue of penalty. The proceedings shall be conducted before the court or jury which found the defendant guilty . . . In these proceedings, evidence may be presented as to any matter the court deems relevant to sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition, and any other facts in aggravation or mitigation of the penalty. . . . The state's attorney and the defendant shall be permitted to present argument for or against sentence of death. . . . Miti-

gating circumstances shall include the following:

(a) The defendant has no significant history of prior criminal activity;

. . . (d) At the time of the murder, the capacity of the defendant to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirement of law was substantially impaired as a result of mental disease, intoxication, or influence of drugs;

(2). . . In all proceedings before a jury, under this section, it shall be instructed as to the punishment to be imposed upon a unanimous verdict for death and that to be imposed if a unanimous verdict for death is not found. . . . If the jury is unable to reach a unanimous verdict imposing the sentence of death, the court shall discharge the jury and impose the sentence of life imprisonment.

In addition, the waiver of a jury trial in a capital case constitutes a double waiver of Constitutional Rights, to-wit: Right to trial by jury and right to an automatic appeal in the event the death sentence is imposed. This factor was not disclosed to the appellant.

The role of the jury in capital cases is a material consideration that must be weighed by one charged with a capital offense before he can intelligently waive his right to trial by jury. Subtle coercion was recognized by Justice Douglas, in Boykin, *ibid.*, as a possible cover-up for unconstitutionality. The language from the expiation agreement pertaining to the

reason for the change of plea smacks of such coercion, to-wit:

. . . and that you are pleading guilty to this to avoid the exposure to the death penalty.

The dissent in the United States Supreme Court case of United States v. Jackson, 390 U.S. 570, 20 LEd.2d 138, 1968, recognized that:

Pleas of guilty and waivers of jury should be carefully examined before they are accepted in order to make sure that they have been neither coerced nor encouraged by the death penalty power in the jury.

In the instant capital case, the role of the jury in effecting the death penalty is not shown to have been explained to appellant, and yet trial counsel recommended appellant change his plea to guilty to insure avoidance of the imposition of the death penalty. The common understanding and import from the language of the expiation agreement is that appellant exposes himself to the death penalty by invoking his Constitutional Right to Trial By Jury. The true import of the jury impact in the capital case has been set forth by statute above.

It is submitted that the appellant was coerced into changing his plea because he believed a jury trial would mean his execution.

It is further submitted that from the record, no meaningful disclosure of appellant's Constitutional Rights to jury

trial was given and therefore no knowing and voluntary waiver of said Constitutional Rights to Trial By Jury was effected.

B

APPELLANT DID NOT KNOWINGLY
WAIVE HIS RIGHT AGAINST SELF-
INCRIMINATION.

The court record of August 15, 1979, fails to make any reference or inquiry into appellant's understanding of his right not to be a witness against himself. Furthermore, the ex-piation agreement, at page 40, sets forth the following conclusory assertion:

You have the right . . . against self incrimination . . . "If you plead guilty, you waive these rights".

Appellant's knowledge of the nature of the offense for which he stood charged, his presumption of innocence; and the burden of proof on the State, was not shown in the record. The record does not show appellant knew the nature of the offense for which he was pleading guilty. More specifically, what the State had a burden of proving beyond a reasonable doubt in the event the Constitutional Right to Trial By Jury was invoked.

Appellant was charged with First Degree Murder, a violation of Section 76-5-202, Utah Code Annotated, 1953, as amended, which provides in pertinent part as follows:

Murder in the first degree--(1) Criminal homicide constitutes murder in the first degree

if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

. . . (d) the homicide was committed while the actor was engaged in the commission of, . . . aggravated robbery . . .

(2) Murder in the first degree in a capital offense.

The court made only cursory inquiry into the elements of knowingly and intentionally committed the act that resulted in the homicide, and the court failed to make inquiry or state as a proposition that the homicide was committed while the actor was engaged in the commission of an aggravated robbery. The nature of the offense charge would require the State to prove the respective elements of the aggravated robbery beyond a reasonable doubt in order for the appellant to be convicted of the offense of First Degree Murder as charged.

The expiation agreement did not assist the court in disclosing the nature of the offense for which appellant was charged. The last paragraph of said agreement, page 40, set forth the following:

By your signing, you are acknowledging to me that you did in fact shoot and kill Kirk Cordary . . .

The foregoing purported admission could relate to any homicide from Justifiable Homicide to the offense of First Degree Murder and fall substantially short of making certain on the record,

that appellant knew the nature of the offense to which he was pleading guilty.

It is encumbant on the State to prove each of the foregoing elements of the charged offense beyond a reasonable doubt. Section 76-1-501, Utah Code Annotated, 1953, as amended, provides in pertinent part as follows:

Presumption of innocence—"Element of the offense" defined.—(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In absence of such proof, the defendant shall be acquitted.

(2) As used in this part the words "element of the offense" mean:

(a) The conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense;

(b) The culpable mental state required . . .

The corollary to the foregoing rule of law is Section 77-31-4, Utah Code Annotated, 1953, as amended, which provides as follows:

Defendant presumed innocent—Reasonable doubt.—A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

It is submitted that the court record is devoid of any specific or meaningful inquiry into appellant's Constitutional

Right against compulsory self-incrimination and pursuant to the requirements and learning from Boykin, *ibid.*, the guilty plea entered by appellant entered herein was therefore not knowingly and voluntarily made.

C

APPELLANT DID NOT KNOWINGLY
AND VOLUNTARILY WAIVE HIS
SIXTH AMENDMENT RIGHT TO CON-
FRONT HIS ACCUSORS.

The Court Transcript of proceedings on August 15, 1979, is devoid of any mention of appellant's Sixth Amendment rights to confront the witnesses against him. The court did not make specific inquiry as to that right, its waiver, or appellant's understanding of the Constitutional Right.

The expiation agreement at page 40, makes reference to said Constitutional Right as follows:

You have the right to be confronted by the witnesses against you . . . if you plead guilty, you waive these rights.

It is doubtful, and there is no showing that appellant had substantive understanding of what was afforded the accused by the Constitutional Right and just how he would exercise said right. As to either of the foregoing inquiries, the court record is devoid of any meaningful showing that appellant did in fact waive his Constitutional Right to confront witnesses against him.

D

THE ADEQUACY OF THE COURT RECORD TO DETERMINE THE APPROPRIATENESS OF A STATE COURT'S ACCEPTANCE OF A GUILTY PLEA IS CONTROLLED BY FEDERAL STANDARDS.

The waiver of Federal Constitutional Rights are governed by Federal standards; see Douglas v. Alabama, *ibid*; no waiver can be presumed from a silent record, see Boykin, *ibid.*; reasonable adherence to Federal mandates must be clear from the record to sustain attack for inadequacy, see Garner v. Louisiana, 368 U.S. 157, 173, 7 LEd.2d 207 (1961).

The court record in the instant case, considered in its entirety, fails to comply with the Federal standard as set forth in Boykin, *ibid.*, i.e., it is devoid of sufficient inquiry by the court or counsel to ascertain whether appellant when entering his guilty plea knowingly and voluntarily waived his rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

POINT III

APPELLANT'S APPROPRIATE REMEDY IS A WRIT OF HABEAS CORPUS.

The extraordinary remedy of Writ of Habeas Corpus, Rule 65B(f), et sec, Utah Rules of Civil Procedure, provides in pertinent part as follows:

(i) any person imprisoned in the penitentiary or county jail under commitment of any court, whether such imprisonment be under an original commitment or under a commitment for violation of probation or parole, who asserts that any proceedings which resulted in his commitment that was a substantial denial of his rights under the Constitution of the United States or the State of Utah or both may institute proceedings on this rule. (Emphasis added.)

The foregoing language is absent of any condition precedent of a requirement the issues raised pursuant to said rule requires that a direct appeal be exhausted before one seek remedies thereunder.

Notwithstanding the foregoing, a Writ of Habeas Corpus is properly invoked when the court has no jurisdiction over the person or the offense, or the requirements of law have been so disregarded that the party is substantially and effectively denied due process of law, or where some such fact is shown that it would be unconscionable not to re-examine the conviction. Bryant v. Turner, 19 U.2d 284, 431 P.2d 121, 1967, Helmuth v. Morris, 598 P.2d 333 (1979), Gentry v. Smith, 600 P.2d 1008 (1979). The Utah Supreme Court affirmed this position in the cases of Martinez v. Smith, 602 P.2d 700 (1979), Chess v. Smith, 1617 P.2d 341, 343 (1980).

Appellant in the instant case, has been substantially and effectively denied due process of law as a result of the trial court proceedings. The appellant was denied effective as-

sistance of counsel at the time of sentencing. At the foregoing hearing he raised objections as to the effectiveness of counsel, the sufficiency of the advice given to him, and questioned the legitimacy of the proceedings. Notwithstanding the foregoing, the court declined to provide substitute counsel to assist appellant in the proceeding, and received and made no comment on counsel's pre-sentence comment concerning appellant's right to appeal and the lack of merits thereof.

The resulting effect was to cause appellant not to file a timely appeal and the comments and failure of the court to act at the time the objections were raised actually caused prejudice and the resulting Constitutional violations.

Based on the foregoing, the appellant complied with the Utah Contemporaneous Objection Rule (See Rule 4, Utah Rules of Evidence and Rule 46, Utah Rules of Civil Procedure), thereby complying with the widely accepted Wainright v. Sykes doctrine, Wainright v. Sykes, 433 U.S. 72 (1977).

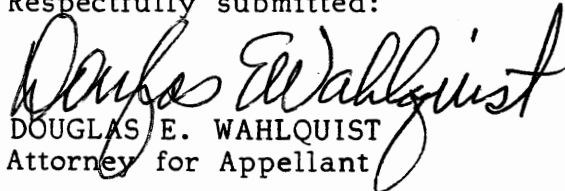
It is submitted that upon review the court should find that the proceedings rose to the level of fundamental unfairness and did substantially prejudice and deny appellant his Constitutional Rights, and therefore, appellant should be allowed to remedy said issues by way of Writ of Habeas Corpus.

CONCLUSION

Based on the foregoing, appellant submits that there

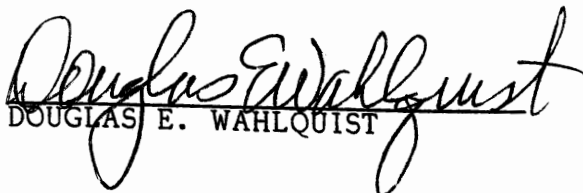
are genuine issues of fact, that respondent is not entitled to a judgment as a matter of law, that appellant did not knowingly and voluntarily waive his Constitutional Rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution, and that as a result of the trial proceedings, defendant was substantially denied due process of law and as a result thereof, appellant should be granted his Writ of Habeas Corpus or this matter should be remanded to the trial court for an evidentiary hearing.

Respectfully submitted:


DOUGLAS E. WAHLQUIST
Attorney for Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Appellant to Earl F. Dorius, 236 State Capitol Building, Salt Lake City, Utah 84114, postage prepaid, this the 15th day of June, 1981.


DOUGLAS E. WAHLQUIST