

1988

Jerry Joe Medina v. Gerald L. Cook, Warden, et al. : Response to Petition for Certiorari

Utah Supreme Court

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UTAH SUPREME COURT,

BRIEF

880355

IN THE SUPREME COURT OF THE STATE OF UTAH

JERRY JOE MEDINA,	:	
	:	
Plaintiff-Respondent,	:	Case No. 880355
v.	:	
GERALD L. COOK, Warden et. al.,	:	Category No. 3
Defendant-Appellant.	:	

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS

- - - - -

PETITION FOR WRIT OF CERTIORARI TO COMPEL
TRIAL COURT TO GRANT PETITIONER'S WRIT OF
HABEAS CORPUS.

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 880355
 Clerk, Supreme Court, U. of U.

IN THE SUPREME COURT OF THE STATE OF UTAH

JERRY JOE MEDINA, :
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IN THE SUPREME COURT OF THE STATE OF UTAH

JERRY JOE MEDINA, :
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v. :
GERALD L. COOK, Warden et al., : Category No. 3
Respondent. :

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
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JURISDICTION AND NATURE OF PROCEEDINGS

Jurisdiction over the granting or denying of a Petition for Writ of Certiorari for the review of cases adjudicated by the Court of Appeals is given in Utah Code Ann. § 78-2-2(5) (1987). This case is a Petition for Writ of Certiorari wherein petitioner asks this Court to review his case which, at the time the petition was filed, was still pending in the Third District Court. On October 3, 1988, after the petition was filed, the Honorable Frank G. Noel issued a Memorandum Decision denying petitioner's Writ of Habeas Corpus.

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. Whether this Court should deny petitioner's request for Writ of Certiorari because it is not a review of a judgment from the Court of Appeals and because there was no decision of any court that petitioner was seeking to review when the petition was filed.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

In this response respondent is relying on the following provisions:

Utah Code Ann. § 78-2-2(5) (1987) and Rule 42, Rules of the Utah Supreme Court (1988). The text of these provisions are attached in the Addenda.

STATEMENT OF THE CASE AND OF THE FACTS

Petitioner filed for a Writ of Habeas Corpus on November 3, 1987. The matter was assigned to the Honorable Frank G. Noel, of the Third District Court who held a hearing on the matter on March 25, 1988. Since that time, petitioner has filed several affidavits with the court, the latest in August 1988.

Petitioner filed this petition for Writ of Certiorari on September 27, 1988 and the District Court entered its Memorandum Decision on October 3, 1988.

SUMMARY OF ARGUMENT

A Writ of Certiorari is allowed only to review decisions of the Utah Court of Appeals by the Utah Supreme Court. Since the review petitioner seeks is not from a decision of the Court of Appeals, the vehicle of writ of certiorari is not appropriate.

Petitioner's alternative Writ for Mandamus has become moot because the District Court below has issued a decision.

ARGUMENT

POINT I

A WRIT OF CERTIORARI IS NOT PROPER IN THIS CASE.

Rule 42 of the Rules of the Utah S. Ct. defines the proper use of a Petition for Writ of Certiorari. That writ is appropriate only when this Court is reviewing decisions of the Court of Appeals. Petitioner is asking this Court to review his case which was pending in the District Court when he filed his petition. At the time of filing, there was no decision to review from any court, least of all from the Court of Appeals.

POINT II

THE ALTERNATIVE REQUEST FOR A WRIT OF MANDATE IS MOOT.

Petitioner requested, as an alternative to the Writ of Certiorari, a Writ of Mandate requiring the District Court to rule on his petition for Writ of Habeas Corpus. Since the court issued its decision on October 3, 1988, petitioner's request for a Writ of Mandamus has become moot.

CONCLUSION

Based on the foregoing, respondent requests that this Court deny petitioner's request for Writ of Certiorari and Writ of Mandamus.

RESPECTFULLY submitted this 19th day of October, 1988.

DAVID L. WILKINSON
Attorney General


CHARLENE BARLOW
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and accurate copies of the foregoing Response to Petition for Writ of Certiorari were mailed, postage prepaid, to Jerry Joe Medina, P.O. Box 250, Draper, Utah 84020, this 19th day of October, 1988.

Melvin T. ...