1999

Charles Watkins v. Board of Pardons : Brief of Appellant

Utah Court of Appeals

Charles Watkins; Pro Se.
James H. Beadles; Assistant Attorney General; Jan Graham; Attorney General; Attorneys for Respondents.

Utah Court of Appeals

Charles Watkins
Petitioner,

vs.

Utah Bd of Pardons,
Respondent

991092-CA
Priority #15

Utah Atty General's Office
PO Box 140857
SLC UT

Charles Walkins

CHARLES WATKINS
Z0446, OLY C, 210B
USP, PO Box 250
Draper, Utah, 84020

IN THE UTAH COURT OF APPEALS

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CHARLES WATKINS, Petitioner and Appellant,	BRIEF
v.	App. Case No. 991092-CA
UT. BD. OF PARDONS AND PAROLE, et al., Respondent and Appellee.	

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3. TABLE OF AUTHORITIES

1. STATE V. BROOKS, 786 F2d 638, 642 (5th Cir 1986); and 908 P2d 856, 859 (Utah 1985).
2. STATE V BROWN, 853 P2d 851, (UTAH 1992).
3. Campbell v Blodgett, 997 F2d 512, 516 (9th Cir 1992).
4. Chapman v California, 386 US 18, 87 Sct. 824 (1967).
5. State V Lamper, 779 P2d 1125, 1129 (Utah 1989).
6. State v Germonto, 226 Utah Adv Rep 3.
7. Kellbach v McCotter, 872 P2d, 1033, 1035 (Utah 1994).
8. Wareing v Schrenchengust, 930 P2d 37, (Mont 1996).
9. Wright v Carver, 886 P2d 58, 60 (Utah 1984).
10. US Constitutions 14th Amendment right.
11. Utah Const. Art I §5, I §7, I §11 and I §24.
12. U.R.C.A. Rule 5(b)(2)(A) and (B).
13. U.R.C.P. Rule 58A
14. Utah Code of Judicial Admin. Rule 4-504.

4. STATEMENT OF JURISDICTION

The District Court has subject matter jurisdiction of complaint. This Court has Appellate jurisdiction in accordance with Utah Code § 78-2a-3 et seq. of U.C.A. 1953 as amended.

5. STATEMENT OF ISSUES

1. Whether the habeas Court should recombine the split in two petition, adjudged by two seperate judges and issue an appealable order on the whole petition.

2. Whether the habeas Court erred by denying appellant his post judgment motions to correct order(s) so he can file a timely appeal.

3. Whether a proposed order unsigned by the judge is an appealable order under U.R.C.P. Rule 58A, or Utah Code of Judicial Admin 4-504 legal, or another rule, statute of law, or U.R.C.P. Rule 5 (b) (2) (B) or (A).

4. Whether the appellant has the right to have both issues combined or seperate appealable orders so he can file a timely appeal?

6. DETERMINATIVE CITINGS

Appellant must state he is in a mental health unit that provides no legal books and resources or cites, but he has a few cites and rules of his own only.

1. State v Brooks, "we review a courts rulings on questions of law for correctness."

2. State v Brown, "We will ... consider plain error affecting the substantial rights of a party. In making the plain error determination, we consider whether the error should have been obvious to the trial court and whether it was harmful.

3. Campbell v Blodgett, A district court, "abuse its discretion when it bases its decision on a erroneous legal conclusion or on a clearly erroneous finding of fact."

4. Chapman v California, "errors that do not affect a substantial right will be considered harmless.

5. State v Lamper, harmful error.

6. State v Germonto, see state v Brooks.

7. Kelbach v McCotter, "This Court reviews the conclusion for correctness."

8. Wareing v Schrenchengust, [Appellate] "Court reviews District Court findings to determine whether substantial evidence supports those findings, not contrary findings."

9. Wright v Carver, see Kelbach v McCotter.

10. US Constitutional, 14th Amendment, No state shall "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

11. Utah Const. Article 1§5, the privilege of the writ of habeas corpus shall not be suspended.

12. Utah Const. Art. 1§7, "No person shall be deprived of life, liberty, or property without due process of law."

13. Utah Const. Art 1§11, "All courts shall be open, and... shall have remedy by due course of law, which shall be administered without denial or unnecessary delay...."

14. Utah Const. Art 1§24, "All laws of a general nature shall have uniform operation."

15. U.R.C.P. Rule 5(b)(2)(A), "an order signed by the court and required by its terms to be served or a judgment signed by the court shall be served by the party preparing it."

16. U.R.C.P. Rule 5(b)(2)(B), "every ... paper required by this rule to be served shall be served by the party preparing it."

17. U.R.C.R Rule 58A(b), "Except as provided in Subdivision (a) hereof... all judgments shall be signed by the judge and filed with the clerk.

18. U.R.C.P Rule 58A, "A judgment is complete and shall be deemed entered for all purposes... when the same is signed and filed as herein above provided."

19. U.R.C.P. Rule 58A(d), "The time for filing a notice of appeal is not affected by the requirement of this provision". (serving judgment)."

20. CJA, Rule 4-504, "In all rulings by a court, counsel... obtaining ruling shall within fifteen days... file with the court a proposed order... in conformity with the ruling."

7. STATEMENT OF THE CASE

The prisoner filed a complaint against the Utah Board of Pardons and parole concerning his Board rehearing of Feb. 3, 1998. It was dismissed in a two part judgment of which two Assistant Attorney Generals answered one issue each. The appellant sought, via a motion to correct order(s), to have both dismissals combined into one order, or seperate orders at the same time so he can file a timely appeal.

8. RELEVANT FACTS

District Court Judge Anne Stirba split 65B petition into two seperate issues in October 13, 1999's Minute entry ruling. For the most part, Mr. James Beadles and Judge Stirba handled one issue; Ms. Chou Chou Collins and Judge

Brian handled the other issue. Judge Stirba in October 13, 1998 ruling dismissed her part, but left Judge Brian's part with merit, to be decided later while she was on vacation. To date the order of Mr. Beadles dated October 1998 was not signed by Judge Stirba. When the appellant petitioned the court to receive certified copies of proposed orders so he could file an appeal, said order of October 1998 by Mr. Beadles was not included. Twice the appellant filed motions; 1) Notice and motion for entry nunc pro tunc, of October 2, 1999; and 2) motion to correct order(s) of November 1, 1999. Since no legal books and references are available at prison, he purchased a 1998 Utah Code Unannotated to study and aid him, then investigated case and filed motions. Earlier this year for case no. 990319-CA he ran into the same problem. Wherein he had a petition dismissing issues, but one issue was with merit. The Utah Court of Appeals dismissed 319-CA, no interlockutory order was issued nor petitioned for. Likewise, this case presents the same problems, but with two different Judges. Contract Attorneys told him he could appeal the order denying the motion to correct order(s), in re similiar 319-CA case. The court denied his motion. Appellant appealed.

9. SUMMARY of ARGUMENT

The appellant explained to the habeas court his predicament in entry nunc pro tunc, then again in motion to correct order(s). The habeas court also knew he was a mentally ill pro se litigant understanding and learning the judicial processes. He feels the denial was improper since case was split in two, handled by two judges, one order signed the other unsigned. The appellant is entitled to a proposed order officially signed and served by party preparing it, so an appeal can be taken.

10. ARGUMENT

POINT I

Appellant believes the District Court should have granted one appealable order; or two certified appealable orders at the same time. Whether an appellant who has a petition split into two seperate issues, and adjudged by two seperate judges is entitled to one appealable order or an appealable order for each issue is a question of law. Appellant alleges a plain error is suspected, wherein the denial of an appealable order in any form is harmful. "we will ... consider plain error affecting the substantial rights of a party. In making the

plain error determination, we consider whether the error should have been obvious to the trial court and whether it was harmful. State v Germonto, quoting State v Brown, 853 P2d 851, (Utah 1992). Harmful error in State v Lamper, 779 P2d 1125, 1129 (Utah 1989). Difficulty had entered when Judge Stirba allowed Judge Brian to adjudge her case. The error was noticed and brought to the habeas Courts attention. However, the motion to correct order(s), if approved, would have corrected the situation by allowing the appellant to have an order combining the two split issues into one whole. An appeal on a partial issue would have required an interlocutory order which one was not issued. Whether the conclusion was correct is a question of law, wherein, "This Court reviews the conclusions for correctness, Wright v Carver, quoting Kelbach v McCotter. Therefore, appellant feels an appealable order issued by the presiding Judge Stirba would have cured the issue at hand.

POINT 2

Appellant believes the District Court and/or Respondents should have served him with an officially signed order as proscribed under rules of civil procedure.

Under U.R.C.P. Rule 58A (b) and (c) states: "...all judgments shall be signed by the judge and filed with the clerk." And, A judgment is complete and shall be deemed entered for all purposes... when the same is signed and filed as herein above provided." A question of law arises, wherein as a matter of law and controlling issues for an appeal, does a proposed order need to be signed to pursue an appeal? Under U.R.C.P. Rule 58A states: "A copy of the signed judgment shall be promptly served by the party preparing it in the manner provided in Rule 5. The time for filing a notice of Appeal is not affected by the requirement of this provision." ~~As~~ Is the final judgment and order provision of Utah R. App. P. Rule 4 violated to file an appeal, and should Respondent's had served him with a copy of order signed by Judge Stirba. Appellant argues that no signed order from Judge Stiba was received, only a signed order by Judge Brian officiating his dismissal.

POINT 3

Appellant maintains that the District Court's presiding Judge Stirba should have recombined the split issues into one appealable order, or two appealable orders certified at once so each can be appealed at the same time.

For any appellant to file his appeal, he must first file an appeal when an order is final. The appellant in this case realized that the proposed orders were submitted at two different times. When he petitioned the court to acquire a final order he was denied twice. For some reason Judge Stirba did not want the case appealed, to be identified with the collateral estoppel issue of 990889-CA. The appellant is entitled to an appeal, and denying him an order recombining the split issues prejudices his case and jeopardizes any effective appeal. This appeal is essentially his first appeal, is pro se, and mentally ill, doing his best. Judge Stirba should have realized that Judge Pat Brian's dismissal on his issue she did not dismiss on Oct. 13, 1998 was dismissed Later on. Two Attorney Generals seperately filed their respective proposed orders to the court for signature and approval. Judge Brians dismissal was signed on Nov 23, 1998, a copy was certified by the court for an appeal on August 6, 1999 and sent to appellant. But no order signed by Judge Stirba to pursue an appeal, Judge Brian's order of dismissal is not for the whole petition. Since there were two seperate Judges and Attorneys, their should have been two orders signed, or one order to recombine the two separate issues. It was

confusing to appellant to recieve one signed order and one unsigned order.

II. CONCLUSION, RELIEF SOUGHT

FOR the foregoing reasons the appellant believes since he is pro se and other circumstances he should have received an appealable order for the split petition handled by two seperate judges and Assistant Attorney Generals. Also, more specific guidelines as to what constitutes a final or appealable order under rules of civil or appellate procedures. Or, any other such relief this Court deems just and equitable upon the premises

DATED this 15 day of March, 2000.

Charles Watkins

Charles Watkins
Appellant

CERTIFICATE OF MAILING

I certify I mailed a true and correct copy of the foregoing, BRIEF, postage prepaid by first class mail, on this 15 day of March, 2000, to the following:

Utah Court of Appeals
Appellate Clerk's Office
450 South State St. 5th fl.
P.O Box 140230
S.L. City, Utah, 84114-0230

Mr. James Beadles
Assistant Attorney General
160 East, 300 South
PO Box 140857
SLCity, Utah, 84114-0857

Ms. Chou Chou Collins
Assistant Attorney General
160 East, 300 South
PO Box 140856
S.L. City, Utah, 84114-0856

Charles Watkins
Charles Watkins
Appellant