

1981

# Walter J. Thomas v. Lawrence Morris, Warden, Utah State Prison : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. David Wilkinson and Earl F. Dorius; Attorneys for Respondent Douglas E. Wahlquist; Attorney for Appellant

---

## Recommended Citation

Brief of Appellant, *Thomas v. Morris*, No. 17340 (Utah Supreme Court, 1981).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/2487](https://digitalcommons.law.byu.edu/uofu_sc2/2487)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT OF THE  
STATE OF UTAH

-----  
WALTER J. THOMAS, :

Plaintiff-Appellant, :

vs. :

CASE NO. 17340

LAWRENCE MORRIS, Warden, :  
Utah State Prison, :

Defendant-Respondent. :

-----  
BRIEF OF APPELLANT  
-----

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE JAMES S. SAWAYA, JUDGE, PRESIDING.

-----  
DOUGLAS E. WAHLQUIST  
100 Commercial Club Building  
32 Exchange Place  
Salt Lake City, Utah 84111  
Attorney for Appellant

DAVID WILKINSON  
Attorney General

EARL F. DORIS  
Assistant Attorney General

236 State Capitol  
Salt Lake City, Utah 84114

Attorneys for Respondent

FILED

APR - 6 1981

-----  
Clark, Supreme Court, Utah



TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE NATURE OF THE CASE-----	1
DISPOSITION IN THE LOWER COURT-----	1
RELIEF SOUGHT ON APPEAL-----	1
STATEMENT OF THE FACTS-----	2
ARGUMENT	
POINT I:        A WRIT OF HABEAS CORPUS IS AN EXTRA- ORDINARY REMEDY UNDER THE UTAH RULES OF CIVIL PROCEDURE-----	4
POINT II:       THE SENTENCE IN THE INSTANT CASE IS CONTRARY TO LAW AND ITS IMPOSITION CONSTITUTES A DENIAL OF EQUAL PRO- TECTION AND DUE PROCESS OF LAW-----	6
POINT III:      UNDUE DELAY IN PRONOUNCEMENT OF APPELLANT'S SENTENCE MAY CONSTITUTE THE DENIAL OF HIS SIXTH AMENDMENT RIGHT TO SPEEDY TRIAL-----	10
POINT IV:       APPELLANT IS ENTITLED TO CREDIT FOR ANY AND ALL TIME AFTER JANUARY 29, 1974, SPENT ON COMMITMENT TO THE UTAH STATE HOSPITAL-----	10
POINT V:       APPELLANT WAS DENIED DUE PROCESS HEARING BECAUSE TRIAL JUDGE HAD POTEN- TIAL CONFLICT OF INTEREST MAKING IT IMPOSSIBLE TO RECEIVE A FAIR AND IMPARTIAL HEARING-----	11
CONCLUSION-----	12

CASES CITED

Chess v. Smith, 617 P.2d 341, 343 (Utah, 1980)-----	5
Brown v. Turner, 21 Ut.2d 96, 440 P.2d 968, 969 (1968)-	5
People v. Ruddell, 46 Il.2d 248 (1970)-----	6
People v. Fay, 10 N.Y.2d 374, 179 N.E.2d 483 (1961)----	6
State v. Helm, 563 P.2d 794 (1977)-----	7
Wahlquist, 585 P.2d 437 (1978)-----	9
Pollard v. United States, 352 U.S. 354, 77 S.Ct. 481, 1 L.Ed.2d 393 (1957)-----	10
United States v. Tortorello, 391 F.2d 587 (2nd Cir. 1968)-----	10
Walsh v. United States, 348 F.2d 885 (6th Cir. 1965)---	10
United States v. Grbina, 390 F.2d 783 (2nd Cir. 1962)--	10
Lott v. United States, 309 F.2d 115 (5th Cir. 1962)----	10

STATUTES CITED

Utah Code Ann. §76-5-404(1)(b)(1953), as amended-----  
Utah Code Ann. §77-49-1, et seq, (1953), as amended---  
Utah Rules of Civil Procedure, Rule 65B(f) et seq-----  
Utah Code Ann. §77-49-4 (1952), as amended-----  
Utah Code Ann. §77-35-1 (1952), as amended-----  
Utah Code Ann. §77-49-5 (1953), as amended-----  
Utah Code Ann. §77-49-7 (1953), as amended-----

IN THE SUPREME COURT OF THE  
STATE OF UTAH

-----  
WALTER J. THOMAS, :  
 :  
Plaintiff-Appellant, :  
 :  
vs. : CASE NO. 17340  
 :  
LAWRENCE MORRIS, Warden, :  
Utah State Prison, :  
 :  
Defendant-Respondent. :  
 :  
-----

BRIEF OF APPELLANT

-----  
STATEMENT OF THE NATURE OF THE CASE

The appellant, Walter J. Thomas, is appealing the trial court's Order Dismissing his Petition for Writ of Habeas Corpus.

DISPOSITION IN THE LOWER COURT

The Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable James S. Sawaya presiding, ordered that appellant's Motion to Dismiss be granted on the grounds stated in the respondent's Memoranda and that petitioner's Petition for Writ of Habeas Corpus be dismissed with prejudice.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the Order Granting Dismissal of his Petition for Writ of Habeas Corpus and requests

that this Court grant the relief sought in said Petition  
Writ of Habeas Corpus.

#### STATEMENT OF THE FACTS

Appellant, Walter J. Thomas, on October 1, 1973, entered a plea of guilty to the crime of forcible sexual abuse, in violation of the Utah Code Annotated §76-5-404, 1953, as amended, a felony of the third degree. At the the Third District Court in and for Salt Lake County, State of Utah, accepted said plea, it ordered a mental examination of the appellant for the purposes of a sanity hearing. The Court found on November 8, 1973, based on expert testimony that appellant suffered from an abnormal mental condition. The Honorable D. Frank Wilkins, one of the Judges of the aforesaid Court, ordered that appellant be confined for 180 or until such time as further action as provided by statute take place at the Utah State Hospital, Provo, Utah, pursuant to §77-49-1, et seq, Utah Code Annotated, 1953, as amended. The Court further ordered that appellant be returned to said Court in one year, on November 8, 1974, for review.

Subsequently, on or about January 29, 1974, approximately three months after said sentencing, Glen Johnson and Van O. Austin, both resident psychiatrists at the Utah State Hospital, in a letter to the Honorable D. Frank Wilkins, recommended that the appellant be returned to the Court for commitment to the Utah State Prison. The sentencing Court failed

to follow the recommendations of the aforementioned psychiatrists. There is additional evidence that further efforts were made by the State Hospital, appellant and appellant's named counsel to have appellant brought before the sentencing Court for further disposition, however, such efforts were frustrated by Court-caused delay, bureaucratic red tape, and misinformation. Even though the Court ordered a one-year evaluation of the case, the sentencing Court did again review the case until April 10, 1975. Said review was pursuant to the Motion for Rehearing filed by Brian White, Legal Defenders Association, Salt Lake City.

The Court, notwithstanding the recommendation from the Utah State Hospital staff, dated January 29, 1974, rejected defense counsel's plea for probation and recommitted appellant to the Utah State Hospital without imposing sentence.

The case was not reviewed again until July, 1977, and again the Court delayed sentencing even though appellant objected to delay and even though his mental status and condition remained unchanged from that reported by Drs. Van O. Austin and Glen Johnson on January 29, 1974.

On July 29, 1977, nearly four years following the entry of his guilty plea and more than three and one-half years following the Utah State Hospital's recommendation for commitment to the Utah State Prison, the Honorable James S. Sawaya, sentenced appellant to serve an indeterminate sentence

of zero to five years at the Utah State Prison. In con-  
tion therewith, the Court ordered appellant to be placed  
probation and to return to the Utah State Hospital as an  
patient participant in the Sexual Offenders Program.

In December, 1977, Adult Probation and Parole re-  
revocation of appellant's probation for the same reason  
by the resident psychiatrist in January, 1974, as the re-  
why appellant should be committed to the Utah State Prison  
to-wit:

". . .extremely resistant to our treatment  
program yielding little therapeutic bene-  
fits as a result of his present attitude."

The Court, on January 25, 1978, four years after  
report of Dr. Van Austin and four and one-fourth years after  
entry of appellant's guilty plea, ordered appellant be  
mitted to the Utah State Prison forthwith pursuant to the  
sentence imposed July 29, 1977. Appellant was transported  
to the Utah State Prison where he currently resides, and  
has a release date of January 25, 1983.

## ARGUMENT

### POINT I

A WRIT OF HABEAS CORPUS IS AN EXTRAORDINARY  
REMEDY UNDER THE UTAH RULES OF CIVIL PRO-  
CEDURE.

Rule 65 B (f), et seq, of the Utah Rules of Civil  
Procedure provides in pertinent part as follows:

(i) . . . Any person imprisoned in the penitentiary or County Attorney under a commitment of any Court, whether such imprisonment be under an original commitment or under 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 under this rule. (Emphasis added.)

The Utah Supreme Court has limited the function and scope of a Petition for Writ of Habeas Corpus. A Writ of Habeas Corpus is designed to provide speedy release from illegal incarceration and may not be used to review a conviction in lieu of an appeal. The Supreme Court of Utah has often addressed the issue of Habeas Corpus as a substitute for appeal, and the Court holds that a Writ of Habeas Corpus will lie upon a showing of fundamental denial of a person's constitutional rights. Chess v. Smith, 617 Pac.2d 341, 343 (Utah, 1980), Brown v. Turner, 21 Ut.2d 96, 440 Pac.2d 968, 969 (1968). The latter held:

It (Habeas Corpus) is an extraordinary remedy which is properly invocable only when the Court has no jurisdiction over the person or the offense, or where 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.

It is submitted that in the instant case, appellant is not attempting to use the extraordinary relief of Habeas

Corpus to set aside his conviction, but rather, appellant challenging the constitutionality of the sentence imposed that has restrained his freedom beyond the jurisdiction of the Court.

In People v. Ruddell, 46 Ill.2d 248 (1970), the Illinois Supreme Court held that a Petition for Writ of Habeas Corpus, although limited, is the proper remedy to challenge an order imposing sentence of confinement where there was an unreasonable delay of more than three years from the code violation, arrest and confinement.

Likewise, People v. Fay, 10 N.Y.2d 374, 179 N.E.2d 811 (1961) a New York case involving a six year delay in imposition of sentence following a guilty plea in a robbery, the Court held as follows:

The Court lost jurisdiction where sentence for robbery was delayed six years after entry of guilty plea . . . and sentence was therefore void and defendant was entitled to a Writ of Habeas Corpus.

## POINT II

THE SENTENCE IN THE INSTANT CASE IS CONTRARY TO LAW AND ITS IMPOSITION CONSTITUTES A DENIAL OF EQUAL PROTECTION AND DUE PROCESS OF LAW.

Chapter 49, Mental Examination Before Sentencing, Utah Code Annotated, §77-49-4, 1952, as amended, provides in pertinent part as follows:

The effect of finding of insanity - if report discloses that any such person is not suffering from any form of abnormal mental illness which resulted in the commission of any such sex offenses enumerated herein, then the Judge shall impose sentence in the manner provided by law. (Emphasis added.)

Chapter 35, The Judgment, Utah Code Annotated, §77-35-1, 1952, as amended, provides in pertinent part as follows:

Time for pronouncing - after a plea or a verdict of guilty . . . if the judgment is not arrested or retrial granted, the Court must appoint a time for pronouncing judgment which must be at least two days and not more than 10 days after the verdict.

Case law, amplifying the meaning of the foregoing section has held that the provision is within the discretion of the Court and not a hard and fast mandatory rule. Notwithstanding, such an interpretation, State v. Helm, 563 Pac.2d 794 (1977), has limited deviation to:

Reasonable extension of time for sentencing made at defendant's request or with his consent or where extension is calculated to be for defendant's possible benefit in determining whether he should be placed on probation . . .

The appellant in the instant case was committed to the Utah State Hospital pursuant to §77-49-5, Utah Code Annotated, 1953, as amended, and respondent argues such a disposition did not constitute an imposition of judgment.

In arguendo, and with intention to preserve the right to argue that issue, appellant invites Court attention to §77-49-4, Utah Code Annotated, 1953, as amended and as previously cited in its entirety, to consider how that section

which requires the Court to act to impose appropriate sentence as provided by law interfaces with §77-35-1, Utah Code 1953, as amended, that requires timely pronouncement of sentence.

The Court in the instant case was advised by a letter signed by two competent physicians, addressed and mailed to the sentencing Judge, the Honorable D. Frank Wilkins, informing the Court that the appellant was not suffering any form of abnormal or subnormal mental illness or other psychiatric condition. The letter went even further, it requested appellant's commitment to the Utah State Prison for his failure to cooperate in programmed therapy.

"In the manner provided by law" phrase requires that the Trial Court have a duty to impose sentence timely. The law has taught us that means a reasonable time from the time when there is no legal reason why judgment should not be imposed. It is submitted that four years and three months, the time period in the case at bar, constitutes an abuse of the power of the Court that has substantially prejudiced the appellant, and has adversely affected his rights that will result in his State Institutionalization for a period of 10 years and three months or for a period greater than two full indeterminate terms for the triggering offenses.

The facts further evidence that the Court imposed delays that resulted in appellant being denied due process in equal protection of the law. The code section that provides for life confinement to the Utah State Hospital is a harsh one indeed. Without ample due process review procedures, individuals could become lost in the internal workings of the system. Likewise, and by analogy, this Court has ruled on the need for compliance with due process requirements for civil commitments, stressing the necessity to insure due process review of individuals committed to the Utah State Hospital. In re Wahlquist, 585 P.2d 437 (1978), in the case at bar, due process was denied to appellant when the Court failed to assume and perform its duty following the input provided by the review mechanism of the statute. Due process of law was further denied when the Court failed to review the case within a year as initially ordered, and ironically, said Court order was imposed as a stop-gap to insure due process of law. Equal protection of the law was denied to the appellant by the sentencing Court's failure to impose sentence once there was no legal reason for not doing so which failure effectively resulted in appellant's confinement or State Institutionalization for a period far greater than the sentence imposed on other offenders for similar offenses.

### POINT III

UNDUE DELAY IN PRONOUNCEMENT OF APPELLANT'S SENTENCE MAY CONSTITUTE THE DENIAL OF HIS SIXTH AMENDMENT RIGHT TO SPEEDY TRIAL.

In Pollard v. United States, 352 U.S. 354, 77 S.Ct. 1 L.Ed.2d 393 (1957), the Supreme Court assumed, without deciding, that an unreasonable delay from the time of conviction to the time of sentencing might be part of the trial for the purpose of the Sixth Amendment. Subsequent to the Pollard case, several other decisions have assumed that a right to speedy trial includes the right to be sentenced without an unreasonable delay. United States v. Tortorello, 391 F.2d 587 (2nd Cir. 1968), Walsh v. United States, 348 F.2d 885 (6th Cir. 1965), United States v. Grbina, 390 F.2d 783 (2nd Cir. 1962), Lott v. United States, 309 F.2d 115 (5th Cir. 1962).

The gist of the right to speedy trial is to avoid prejudice to the accused, caused by undue delay.

In the instant case, the four year delay in sentencing did prejudice the appellant by doubling the time he will serve as compared to other offenders sentenced for similar offenses and further acts to stifle his re-entry as a productive member of society.

### POINT IV

APPELLANT IS ENTITLED TO CREDIT FOR ANY AND ALL TIME AFTER JANUARY 29, 1974, SPENT ON COMMITMENT TO THE UTAH STATE HOSPITAL.

Section 77-49-7, Utah Code Annotated, 1953, as amended

provides in pertinent part as follows:

No statute relating to remission of sentence is by way of computation time for good behavior or for work performed, shall apply to the person committed to Utah State Hospital as herein provided.

Appellant in the instant case, does not seek remission or credit by statute, but rather seeks credit for time delays caused by the Court's failing to fulfill its duty and obligation to impose sentence once it was notified there was no legal reason why sentence should not be imposed.

In State v. Helm, 563 P.2d 794, 1977, the Court held:

That purpose was that there should be no undue or unreasonable delay in the pronouncement of sentence, particularly that there should be no imposition of hardship on the defendant or prejudicial effect upon his rights . . . the statute are not mandatory and jurisdictional, but are directory . . . and where sentence is imposed within reasonable time so that there is no abuse of the Court's powers nor adverse affects upon the defendant, he should not be entitled to go free, but should be entitled to have the correct sentence imposed upon him, with due consideration given for any time he may have served because of the delay.

The facts in the instant case would justify and warrant an immediate release. Appellant has served or has been institutionalized by the State for a period in excess of the statutory penalty for which he was convicted. Therefore, based on the foregoing, appellant should be released.

#### POINT V

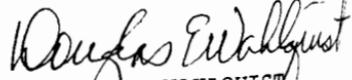
APPELLANT WAS DENIED DUE PROCESS HEARING  
BECAUSE TRIAL JUDGE HAD POTENTIAL CONFLICT  
OF INTEREST MAKING IT IMPOSSIBLE TO RECEIVE  
A FAIR AND IMPARTIAL HEARING.

The events and developments in this case have been protracted over several years. The initial plea and commitment were received and ordered on November 9, 1973, by the Honorable D. Frank Wilkins. The ultimate criminal sentence was imposed by the Honorable James S. Sawaya. This may give rise to a direct conflict of interest that could result in the appellant being denied a fair and impartial hearing on the merits of his claim. The conflict of interest arises from the fact that the Honorable James S. Sawaya, the Judge imposing sentence on appellant on hearing of writ is forced to review matters he was directly involved in and forced to rule on validity of issues that formed the very basis of the challenged order. In the interest of fundamental fairness this Court should remand the case for full evidentiary hearing before a disinterested fact finder.

#### CONCLUSION

Based on the foregoing, the Order Granting Respondent's Motion to Dismiss Appellant's Petition for Writ of Habeas Corpus should be reversed and the relief prayed for granted to appellant.

RESPECTFULLY SUBMITTED,

  
DOUGLAS E. WAHLQUIST  
Attorney for Appellant

CERTIFICATE OF DELIVERY

I hereby certify I hand delivered and true and correct copy of Appellant's Brief to Earl F. Dorius, Assistant Attorney General, 236 State Capitol Building, Salt Lake City, Utah 84114, this the 6th day of April, 1981.

  
\_\_\_\_\_  
DOUGLAS E. WAHLQUIST