

1956

Joseph Craven Washington and John Joseph Sullivan v. Roy Renouf: Brief of Appellant

Utah Supreme Court

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In the
Supreme Court of the State of Utah

JOSEPH CRAVEN WASHINGTON
and JOHN JOSEPH SULLIVAN,

Appellants,

vs.

ROY RENOUF,

Respondent.

Case No.

8495

and

Case No.

8496

FILED

MAY 4 - 1956

BRIEF OF RESPONDENT Clerk Supreme Court, Utah

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In the Supreme Court of the State of Utah

JOSEPH CRAVEN WASHINGTON
and JOHN JOSEPH SULLIVAN,
Appellants,
vs.
ROY RENOUF,
Respondent.

Case No.
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and
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BRIEF OF RESPONDENT

STATEMENT OF FACTS

The appellants were arrested on September 28, 1955, in Mesquite, Nevada, for a burglary committed at St. George, Washington County, Utah. Subsequently, and in an ordinary and lawful manner, appellants were extradited and brought to the State of Utah. A preliminary hearing was then held before Justice of the Peace Maiben Ashby of St. George Precinct, at which appellants were bound over to the District Court. Justice Ashby committed the

men to the custody of the defendant sheriff on November 21, 1955.

This is an appeal from a dismissal by Judge Will L. Hoyt on December 9, 1955, in Fifth Judicial District Court in and for Washington County, Utah, of appellants' separate petitions for writs of habeas corpus, and from a dismissal on December 23, 1955, of subsequent petitions by the same judge in the same court. This appeal has been brought by both parties jointly and one brief has been prepared in their behalf.

The original habeas corpus proceedings came on for hearing on December 9, 1955, and were heard separately by Judge Hoyt. Petitioners were present without counsel and the defendant sheriff was present and represented by District Attorney Patrick H. Fenton and County Attorney V. Pershing Nelson.

Counsel for the defendant sheriff offered in evidence an executive warrant or order for extradition from the Governor of Nevada; an order for extradition from the Governor of Utah; the original complaint on which preliminary hearing was held; and a warrant of arrest issued by Maiben Ashby, Justice of the Peace at St. George, Utah. On motion of counsel for defendant, the court allowed certain amendments to be made in papers filed in the felony case of *State v. Sullivan and Washington*.

Appellant Sullivan attempted to question Sheriff Renouf (Sullivan Record, p. 9) concerning events transpiring in Nevada at the time of the arrest. The court, on the objection of the District Attorney, refused to receive said

evidence for reasons shown in the portion of the record set out in this brief.

Nowhere in either record did the appellants produce any evidence that they were being detained by any person or officer of the State unauthorized to hold them. All of the arguments of the appellants in both cases went to the substance of the alleged crime for which they were being held and had no bearing on their habeas corpus petitions.

The court found that neither petitioner was being illegally detained, and ordered the writs of habeas corpus on which they were brought before the court discharged.

Thereafter, appellants presented further habeas corpus petitions, prepared by a Las Vegas attorney, but signed in their own names, to the same court on December 23, 1955. Judge Hoyt found the petitions to be substantially repetitions of the original hand-written petitions; that neither made any allegation that the legality of the imprisonment or restraint referred to had not already been adjudged in a prior proceeding; and that there appeared no allegation in the petitions as to whether or not other petitions for the same relief had been filed and had been thereafter denied by any court. These petitions thereupon were denied.

A portion of the record in the Sullivan hearing is of importance and reveals the nature and tenor of both proceedings, especially insofar as the appellants sought to enter into the substance of the criminal charge against them while failing completely to argue any illegal or unauthorized procedure that might have been involved in their being placed or held in official custody. Therefore, the Sullivan

record is set out in part, beginning at the top of page 9 and running to page 12.

“ROY R. RENOUF, the defendant, called as a witness by the plaintiff, having been first duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Sullivan:

“Q. State your name, please.

“A. Roy R. Renouf.

“Q. Your occupation.

“A. Sheriff of Washington County, Utah.

“Q. Sheriff, would you recall to the best of your recollection the events that took place on the morning of the 28th of September prior to your arrival at Mesquite, Nevada and of the events that took place upon your arrival, any conversation that occurred in Nevada, at Mesquite, Nevada?

“MR. FENTON: I object to the question and any answer, from the standpoint of a writ of habeas corpus. It might be proper in a jury trial. I doubt the propriety of going into this matter as to whether the plaintiff is properly charged in the criminal matter.

“THE COURT: The court feels that the circumstances referred to in your petition, as to the actions taken in the State of Nevada are not relevant upon the question before us now.

“MR. SULLIVAN: Well, I want to bring that out.

“THE COURT: In a habeas corpus proceeding, the officer detaining a person is required to produce evidence of his authority to detain the prisoner. If it is defective, you have the right to have it adjudicated. If the process is regular that should be shown.

The circumstances occurring in the State of Nevada appear to the court to be immaterial. Of course, in a hearing in the habeas corpus proceeding we are not treating you as guilty or innocent.

“MR SULLIVAN: I understand that. I am not versed in the legal profession. I am trying to bring out in the writ of habeas corpus I am being held illegally. That is the reason I would like to question Mr. Renouf in regards to that. If I can't question him in regards to what happened in Nevada on this particular morning, then I would like to question him as regards what took place at the preliminary hearing.

“THE COURT: The court doesn't believe that it is involved in the issue before us on the habeas corpus proceeding. If you claim there is anything indicating denial of due process you may indicate. We are not going into your guilt or innocence nor the regularity of the proceeding.

“MR. SULLIVAN: Your Honor, I am glad you gave me permission to talk. I am not versed in legal matters. I claim at no time the complainant in this case under oath identified me as the man who had burglarized the room. I claim that at no time has any of this property ever been found upon my person. I was in the State of Nevada the morning of September 28th, and have taken oath at the preliminary hearing to that effect.

“THE COURT: Those were matters for you to bring out at the preliminary hearing.

“MR. SULLIVAN: I did bring them out at the preliminary hearing.

“THE COURT: If you did, then those were matters for the Justice of the Peace which you met at the preliminary hearing. He appears to have

judged there was sufficient cause to bind you over for trial.

"MR. SULLIVAN: I have that right, that is what I am trying to show, there was no sufficient cause at any time at the preliminary hearing to bind me over. I would like to have them show legal cause to bind me over.

"THE COURT: That is not a proper thing to be treated in a habeas corpus matter.

"MR. SULLIVAN: What is to be treated?

"THE COURT: The regularity of the process. You will be given a trial in the District Court. At the proceeding now the court is not treating you as guilty or innocent.

"MR. SULLIVAN: I am not versed at law. I am at this hearing, I claim I am being held illegally. I am trying to show here, and prove, and also in the preliminary hearing, Mr. Ashby admitted he has no training, he has no legal background, he has bound me over without the slightest evidence of legal training.

"THE COURT: You mean he has admitted he has no legal training?

"MR. SULLIVAN: He admitted he has not had any legal background.

"THE COURT: That is true, most justices of the peace are not trained lawyers. That is not a disqualification.

"MR. SULLIVAN: On a writ of habeas corpus, how can I proceed. I have a right to prove my innocence.

"THE COURT: You don't have to prove your innocence.

"MR. SULLIVAN: I would like to prove why I am being held.

"THE COURT: You have been advised—

"MR. SULLIVAN: I beg your pardon?

"THE COURT: You are entitled to a trial in the District Court. This isn't a trial in the District Court on the question of guilt or innocence. A habeas corpus proceeding is not a proceeding for that. It is not going to hear you on the evidence presented before the magistrate. He has certified that he found sufficient evidence to believe a crime had been committed and sufficient evidence to believe that you committed it. He certified that, and bound you over for trial. That is not a final adjudication, but he felt that sufficient evidence had been presented to bind you over for trial. Now, you are entitled to a trial. You can bring that up at the trial, but you can't bring it up in a habeas corpus proceeding."

STATEMENT OF POINTS

POINT I

APPELLANTS WERE PROPERLY IN THE CUSTODY OF THE SHERIFF OF WASHINGTON COUNTY AT THE TIME THEY PETITIONED FOR HABEAS CORPUS RELIEF.

POINT II

APPELLANTS FAILED IN ANY WAY TO SET FORTH ANY EVIDENCE OR ARGUMENTS TENDING TO SHOW THAT THE PROCEED-

INGS BY WHICH THEY WERE COMMITTED TO THE CUSTODY OF THE SHERIFF WERE IMPROPER.

POINT III

IT IS IMMATERIAL AND BEYOND THE SCOPE OF INQUIRY OF THE TRIAL COURT HOW APPELLANTS WERE BROUGHT INTO THIS STATE FOR PROSECUTION.

ARGUMENT

POINT I

APPELLANTS WERE PROPERLY IN THE CUSTODY OF THE SHERIFF OF WASHINGTON COUNTY AT THE TIME THEY PETITIONED FOR HABEAS CORPUS RELIEF.

The court found, as can be seen from minute entries and on the record, that the appellants were extradited into the State of Utah from Nevada on the strength of a warrant from the Governor of Nevada, Charles H. Russell, and that said instrument was in proper form bearing the seal of the state and attested to by the Secretary of State. Also placed in evidence was the order of extradition signed by the Governor of the State of Utah.

Justice of the Peace Maiben Ashby of the St. George Precinct testified that he had committed appellants to the custody of the defendant sheriff on the 21st day of November, 1955. The original complaint upon which he bound

them over was introduced in evidence. Also placed in evidence was a warrant of arrest, issued September 30, 1955, bearing the signature of Mr. Ashby. All of the above proceedings and instruments were proper and orderly and the judge concluded that the appellants had been legally committed to the custody of the defendant sheriff.

POINT II

APPELLANTS FAILED IN ANY WAY TO SET FORTH ANY EVIDENCE OR ARGUMENTS TENDING TO SHOW THAT THE PROCEEDINGS BY WHICH THEY WERE COMMITTED TO THE CUSTODY OF THE SHERIFF WERE IMPROPER.

The appellants' brief, in its highly unusual form and consummate informality, fails to set forth in any clear or understandable way the points appellants may be relying on in their effort to overturn the lower court's ruling on their petitions for writs of habeas corpus.

Clearly, the appellants cannot successfully argue alleged facts which were not made a part of the trial record. This they attempt to do all through their brief. As previously stated, and as is clearly shown in excerpts from the record (Sullivan Record, p. 9-12), they, Sullivan primarily, repeatedly attempted to procure by examination of witnesses evidence which would have gone only to the substance of the case involving the alleged burglary, but which was pointless in regard to their habeas corpus petitions.

The points, as drawn with some difficulty from their brief, amount to at least nine in number, none of them tied in, in any proper way, to the habeas corpus hearings, and, in fact, none of them made a part of the trial record from which this appeal is taken. In effect, the allegations were substantially as follows:

1. That an alleged fugitive must be granted a hearing if he requests it before being extradited under the laws of both Utah and Nevada.

2. That the appellants were entitled to institute habeas corpus proceedings to test the legality of the removal procedure.

3. That appellants had the right to be at liberty on bail pending outcome of such legal procedures.

4. That it is illegal to arrest a person without a warrant.

5. That unreasonable searches and seizures were effected in appellant's case.

6. That a person at liberty on bond cannot be re-imprisoned without a court order.

7. That the laws of the United States forbid that a man shall be forcibly kidnapped and removed from one state to another without legal process being shown him approving such procedure, and that no such authority was shown to appellants before their removal.

8. That no person shall be deprived of life, liberty or property without due process of law, according to Article

I, Section 7, Utah Constitution, and Section One of the Fourteenth Amendment to the Constitution of the United States.

9. That their second petition set up a prima facie violation of their rights which should have been heard and that pro forma denial of their petition was illegal.

Except for point nine, which was properly answered in Judge Hoyt's ruling set out above in the Statement of Facts, respondent sees no necessity for going in detail into the merits of any of these allegations, some of which undoubtedly constitute valid statements of constitutional or procedural law, yet none of which were applied at the hearing to the appellants' situation, or, in fact, deserve application in this proceeding and appeal.

POINT III

IT IS IMMATERIAL AND BEYOND THE
SCOPE OF INQUIRY OF THE TRIAL COURT
HOW APPELLANTS WERE BROUGHT INTO
THIS STATE FOR PROSECUTION.

It is accepted law and was pointed out to be such by the judge in the Sullivan transcript, at page 9, that it is immaterial how the appellants were brought into this State insofar as habeas corpus might lie to deliver them from the custody of persons and instrumentalities of the State subsequently coming to hold them in a legal and legitimate manner.

Judge Hoyt specifically referred to the famous Supreme Court case, *Pettibone v. Nichols*, 203 U. S. 221. This case upheld a decision of the Supreme Court of Idaho and stands for the following propositions:

(1) that after a person comes within the jurisdiction of the demanding state, he cannot raise in its courts the question of whether he was or had been, as a matter of fact, a fugitive from the justice of that state;

(2) that the courts of a demanding state have no jurisdiction to inquire into the acts or motives of the executive of the state delivering the prisoner;

(3) that one who commits a crime against the laws of the state, whether committed by him in person on its soil or absent in a foreign jurisdiction and acting through some other agency or medium, has no vested right of asylum in a sister state;

(4) that the fact that a wrong is committed against him in the manner or method pursued in subjecting his person to the jurisdiction of a complaining state, and even the fact that such a wrong is redressable either in the civil or criminal courts, can constitute no legal or just reason why he should not answer the charges against him when brought before the proper tribunal. See also 13 Cyc. Law Pro. 99; *State v. Rose*, 21 Iowa 467, and *Dow's Case*, 18 Pa. St. Reps. 37, etc.

CONCLUSION

Because appellants were properly in the custody of the defendant sheriff, because appellants gave no evidence that the proceedings of commitment were improper, and because it is immaterial how the appellants came into the custody of the sheriff, respondent asks that the rulings of the court below be affirmed.

Respectfully submitted,

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