

1981

## State of Utah v. James Willard Hearn : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,

Plaintiff-Respondent,

-v-

JAMES WILLARD HEAST,

Defendant.

---

Appeal from the

Habeas Corpus by

the First Judicial

JAMES WILLARD HEAST  
Appellant Pro Se  
Box 1000  
Marion, Illinois

IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH, :  
Plaintiff-Respondent, :  
-v- : Case No. 17620  
JAMES WILLARD HEARN, :  
Defendant-Appellant. :

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BRIEF OF RESPONDENT

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Appeal from the denial of a Petition for Writ of  
Habeas Corpus by the Honorable VeNoy Christofferson, Judge, in  
the First Judicial District Court in and for Box Elder County.

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DAVID L. WILKINSON  
Attorney General  
ROBERT N. PARRISH  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, UT 84114  
Attorneys for Respondent

JAMES WILLARD HEARN  
Appellant Pro Se  
Box 1000  
Marion, Illinois 62959

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IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH, :  
Plaintiff-Respondent, :  
-v- : Case No. 17620  
JAMES WILLARD HEARN, :  
Defendant-Appellant. :

---

BRIEF OF RESPONDENT

- - - - -

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the denial of a petition for a writ of habeas corpus which challenged the validity of a Utah detainer pending against appellant. Appellant is presently confined in the federal prison in Marion, Illinois.

DISPOSITION IN THE LOWER COURT

Appellant filed a petition for writ of habeas corpus on February 15, 1980 in the First Judicial District Court of Utah, the Honorable Venoy Christofferson, presiding. The petition was denied on the grounds that the court had no jurisdiction because appellant, at the time, was not imprisoned in Utah. This Court, in State v. Hearn, Utah,

621 P.2d 707 (1980), held that the lower court did have jurisdiction over the matter and remanded the petition for further proceedings. On February 23, 1981 a hearing was held in the First Judicial District Court, the Honorable VeNoy Christofferson, presiding (H.R. 41).<sup>1</sup> Appellant was represented at the hearing by Clint S. Judkins. On February 24, 1981 the petition was again denied (H.R. 42). It is from this denial that appellant brings this appeal.

#### RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the Order denying the Petition for Writ of Habeas Corpus.

#### STATEMENT OF THE FACTS

On July 20, 1970, while serving a sentence in the Washington State Prison in Walla Walla, appellant was served with a warrant for his arrest pursuant to a robbery charge pending against him in Utah. Pursuant to the terms of the Interstate Agreement on Detainers (hereafter IAD), appellant was taken to Utah where he was tried and convicted in the First Judicial District Court of Utah on the robbery charge (T.R. 35). Thereafter, appellant was sentenced to a term in the Utah State Prison (T.R. 44). After appellant began his Utah sentence, Washington officials requested that he be

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<sup>1</sup>For convenience, citations to the trial record are given herein as (T.R. \_\_\_\_ ) and citations to the Habeas Corpus records are given as (H.R. \_\_\_\_ ) throughout this brief.

returned to serve his sentence there. Utah complied with Washington's request and placed a detainer on appellant for his return to Utah after the completion of his Washington sentence.

In April of 1976, appellant was transferred from the Washington State Prison to the United States Penitentiary in Marion, Illinois. After his transfer, Utah placed a detainer on appellant in Illinois. In his petition, appellant challenges the validity of this detainer on the grounds that the above proceedings were improperly conducted.

#### ARGUMENT

##### POINT I

UNDER THE INTERSTATE AGREEMENT ON  
DETAINERS, APPELLANT SHOULD NOT BE  
GRANTED HABEAS CORPUS RELIEF FOR UTAH'S  
FAILURE TO IMMEDIATELY RETURN HIM TO  
WASHINGTON FOLLOWING HIS CONVICTION.

Appellant, who is presently serving time in the federal prison at Marion, Illinois, claims that his application for parole at that prison has been adversely affected by a Utah detainer pending against him. The detainer pending against appellant relates to a 1970 Utah conviction for robbery, for which Utah seeks jurisdiction over appellant to force appellant to serve the remainder of his sentence. It appears that appellant is claiming the detainer against him is invalid because Utah violated the terms of the Interstate Agreement on Detainers when appellant was transferred to Utah

in 1970 to try him on the robbery charge. Appellant points out that after his conviction in Utah he began serving his sentence at the Utah State Prison before he was returned to Washington. Appellant was sentenced on October 27, 1970 and was transferred to Washington on December 21, 1970 (T.R. 44, 47).

Article II(e) of the IAD provides, "At the earliest practicable time consonant with the purpose of this agreement, the prisoner shall be returned to the sending state." Appellant appears to contend that he should be granted habeas corpus relief from his Utah conviction because Utah delayed in returning him to Washington. This position is not supported by the language of the IAD nor by caselaw.

The IAD is found in Utah Code Ann., § 77-29-5 (Supp. 1980). (The IAD was previously found in Utah Code Ann., § 77-65-4 (1953), as amended.) Article IX of the IAD begins, "This agreement shall be liberally construed so as to effectuate its purpose." The purpose of the IAD, as stated in Article I, is to provide for the orderly and expeditious disposition of detainers, based on untried indictments, informations, or complaints, because these outstanding charges obstruct programs of prisoner treatment and rehabilitation.

In Saunders v. State, 397 A.2d 548 (Del. 1979), the defendant sought habeas corpus relief for an alleged violation



of the IAD. In Saunders, the defendant had been sent to Delaware, convicted, and sentenced to 14 years in the state penitentiary. This conviction was reversed, but in the interim between the conviction and reversal the defendant was convicted of murder. The defendant claimed that he should have been returned to the federal authorities after his conviction and not tried on new charges, which were not the basis for the original detainer. The Court rejected this claim and dismissed his petition because the defendant failed to particularize which section of the IAD had been violated and because he failed to demonstrate how Delaware's delay in returning him had violated the policies and purposes of the IAD. Therefore, unless a state's failure to comply with the provisions of the IAD violates the policies or purposes of the IAD, habeas corpus relief is not appropriate.

Further support for this conclusion is found in the framework of the IAD. In accordance with its purpose, to provide for the expeditious disposition of untried charges against a prisoner, the IAD provides that the charges against a prisoner will be dismissed if the state where the charges are pending fails to bring the defendant to trial prior to returning him to the asylum state, or if the state fails to accept temporary custody of the prisoner. Article IV(e) and Article V(C). There are no penalties in the IAD for a

violation of Article V(e). Clearly, the efficacy of the IAD is not destroyed by the receiving state's failure to immediately return a prisoner to the asylum state following his conviction.

The case of Williams v. Dalsheim, 480 F.Supp. 1049 (D.C.N.Y. 1979) further supports the position that habeas corpus relief is not appropriate for a mere violation of the IAD. In Williams, the court denied a habeas corpus petition in which it was claimed that the IAD had been violated, stating:

Since the heart of the agreement is to protect a prisoner's rehabilitative opportunities, a violation should be considered in a federal collateral proceeding in terms of prejudice it causes a prisoner.

Id. at 1054.

The facts in the instant case establish that the purposes of the IAD were effectuated and that appellant was not prejudiced. While serving a sentence in the Washington State Prison, appellant was transferred to Utah, pursuant to the terms of the IAD, where he was convicted of robbery, sentenced to the Utah State Prison and then returned to Washington. Thus, the proper status of the detainer against appellant was determined before he was returned to Washington.

Appellant makes a few general representations that he was prejudiced by having his term at the Utah State Prison commenced before he was returned to Washington. However, there is no showing that appellant's rehabilitative opportunities were affected by Utah's failure to immediately return him to Washington. Since if and when appellant is returned to Utah to finish serving his sentence he will be given credit for the time served between October 27, 1970 and December 21, 1970, there could be no harm. In summary, habeas corpus relief should not be granted appellant because the purposes and policies of the IAD were not violated nor was he prejudiced during the proceedings in Utah.

#### POINT II

APPELLANT'S RIGHTS WOULD NOT BE VIOLATED  
IF HE IS RETURNED TO UTAH TO SERVE HIS  
SENTENCE.

Appellant also contends that if he is required to return to Utah to serve his sentence, the principles of law, set forth in White v. Pearlman, 42 F.2d 788 (10th Cir. 1980) and Shields v. Beto, 370 F.2d 1003 (5th Cir. 1967) would be violated. These cases are distinguishable from the instant case and the principles adopted therein are wholly inapplicable here.

In White v. Pearlman, a prisoner, who was released by mistake from prison due to no fault of his own, re-established himself in society and was then forced to return to prison to complete his sentence. The court in White held that the prisoner's sentence had run while he was at liberty. The court reasoned it would be impossible for a prisoner to ever re-establish himself if he were not allowed to serve his sentence continuously.

In Shields v. Beto, the defendant had been extradited from Texas, where he was serving a sentence, to a Louisiana penitentiary. Twenty-eight years following the extradition, Texas tried to reacquire jurisdiction over him. The court held that Texas had waived jurisdiction over the defendant by extraditing him to Louisiana, especially where Texas had failed to take any affirmative action to secure the defendant's return.

In the instant case, appellant was transferred to Utah pursuant to the terms of the IAD to be tried for robbery. Under the IAD, Utah, as the receiving state, was obligated to return appellant to Washington once the status of the charges against him were determined. To hold as petitioner suggests that Utah waived jurisdiction over appellant by returning him to Washington would be contrary to the terms of the IAD. If such were the case any state, after trying a prisoner from

another jurisdiction, would be faced with a dilemma. It could return the prisoner and lose the right to impose a sentence on him or it could immediately impose a sentence and violate the terms of the IAD. Therefore, it is implicit in the IAD that when the sentence in the asylum state has been completed, the receiving state can reacquire jurisdiction over a prisoner to impose on him his sentence.

Furthermore, in the instant case, unlike Shields, Utah took immediate steps to reacquire jurisdiction over appellant. A detainer was filed in Washington after appellant was returned, and a detainer was filed against appellant at the federal prison in Illinois when he was transferred there.

The instant case is also distinguishable from White in that the prisoner in White would have been severely prejudiced if prison officials had been able to keep him in a state of limbo, never allowing him to complete his sentence. Here appellant has failed to show how Utah's delay in returning him to Washington prejudiced him.

Habeas corpus relief is limited to extraordinary circumstances. This Court, in Brown v. Taylor, 21 Utah 2d 96, 440 P.2d 968 (1968), outlined the limited scope of a writ of habeas corpus.

. . . It [habeas corpus] is not a substitute for and cannot properly be treated as a regular appellate review [citation omitted]. It is an extraordinary remedy which is properly invocable only when the court had 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 [Citing Bryant v. Turner, 19 Utah 2d 2841 431 P.2d 121 (1967)].

Id. at 969. Appellant's claims in the instant case do not raise to the required level of seriousness to make the granting of appellant's petition appropriate.

#### CONCLUSION

In 1970 appellant was transferred from Washington to Utah, under the Interstate Agreement on Detainers, where he was tried and convicted of robbery. Appellant was returned to Washington and later transferred to the federal prison in Marion, Illinois. Pursuant to his Utah conviction, a detainer was placed on appellant in Illinois. Appellant does not challenge the validity of his conviction; he seeks habeas corpus relief on the grounds that Utah violated the IAD by failing to immediately return him to Washington after his conviction. However, Utah's delay in returning appellant to Washington did not violate the purposes or policies of the

IAD nor did it prejudice appellant. Under these circumstances habeas corpus relief is not appropriate, and the petition was properly denied.

DATED this 8th day of December, 1981.

Respectfully submitted,

DAVID L. WILKINSON  
Attorney General

*Robert N. Parrish*

ROBERT N. PARRISH  
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and exact copies of the foregoing brief, postage prepaid, to James Willard Hearn, Attorney Pro Se, Box 1000, Marion, Illinois, 62959, this 8th day of December, 1981.

*Robert N. Parrish*