

1990

Layton City v. Clayton E. Aaron : Response to Petition for Rehearing

Utah Court of Appeals

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

LAYTON CITY,	:	
	:	<u>ANSWER TO PETITION</u>
Plaintiff/Respondent,	:	<u>FOR REHEARING</u>
	:	
vs.	:	
	:	
CLAYTON E. AARON,	:	Case No. 900272-CA
	:	
Defendant/Appellant.	:	

ANSWER TO PETITION FOR REHEARING

Answer to the Petition for Rehearing
on the decision for defendant
by the Utah Court of Appeals

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FILED

NOV 5 1990

Mary T. Noonan
Clerk of the Court
Utah Court of Appeals

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STATEMENT OF ISSUES

Does the State of Utah follow the legal or technical meaning of "conviction" whereby a individual is only convicted once final judgment is entered?

If the State of Utah does not follow the legal or technical meaning of "conviction" should a conviction be overturned where there are prejudicial proceedings and where it would be offensive to the public sense of fairness and justice?

STATEMENT OF THE CASE

A. Nature of the Case. Appellant claimed that an 11 month delay in sentencing due to a circuit court clerical error was an unconscionable delay and that sentencing after that length of time would be prejudicial to the appellant.

B. Course of Proceedings and Disposition Below. After 11 months, or 313 days, after Appellant's arraignment the Layton Circuit Court discovered their error and served notice upon Appellant to appear for sentencing on January 9, 1990.

Appellant filed a motion to dismiss on January 22, 1990 based on the unreasonable time the court had delayed now prejudiced appellant's job.

Judge K. Roger Bean denied the motion to dismiss on April 26, 1990.

On appeal this court held the delay to be unjustified and found for appellant. Respondent filed a petition for rehearing September 25, 1990.

C. Statement of Facts. On February 4, 1989 defendant, Clayton Aaron ("Aaron"), was arrested and charged with, (1) driving under the influence of alcohol; (2) driving too fast for existing conditions; (3) improper registration; and, (4) accident city code.

Aaron was arraigned February 14, 1989, where he pled no contest to charges 1 and 3 but pled not guilty on charges 2 and

4. At that time trial was scheduled on charges 2 and 4 for March 3, 1989, sentencing on charges 1 and 3 delayed until the trial.

Aaron appeared as ordered on March 3, 1989, for trial and sentencing but was told by the clerk of the court trial had been cancelled. Aaron showed the clerk his notice to appear which was countered by the computer printout of the court showing that the proceedings had been dismissed.

Aaron did not hear further from the court until notice to appear for sentencing on January 9, 1990. In the interim, Aaron received a change in work assignment at Hill Air Force Base which required him to travel to other Air Force Logistics Bases as an inspector, and also required he have a valid civilian drivers license to operate civilian and military vehicles.

Following the course and proceedings stated above Aaron was discharged from the sentence and this court reversed Defendant's conviction on charges 1 and 3. Respondent now appeals claiming this court had no power to reverse Aaron's conviction and therefore the conviction should be on Aaron's record.

SUMMARY OF THE ARGUMENT

The legal definition of "conviction" implies final judgment upon the defendant. Since the trial court is precluded from its final judgment by its own error and this court's decision, Aaron has not been legally "convicted." The trial court should not be allowed a quasi-final conviction by allowing them to record a conviction as a matter of public policy since people would be unable to reasonably rely on the statements of the court and further prejudicial harm could result.

ARGUMENT

I. THE APPELLANT WAS NOT LEGALLY CONVICTED AND THE TRAIL COURT CANNOT BE ALLOWED A QUASI-CONVICTION DUE TO PUBLIC POLICY AND LONG TERM PREJUDICE TO THE APPELLANT.

Aaron was not convicted by the legal definition and should therefore not be subject to having a "conviction" on his permanent record because it is against public policy to have unreliable courts and since Aaron still has the potential of prejudice. Since the trial court was precluded from "convicting" Aaron by their own error they should not be allowed a quasi-conviction, or the consequential results of a conviction at some far later date.

Aaron was not "convicted" in the legal definition of the term. American Jurisprudence defines conviction in the following manner:

"The word 'conviction' has two meanings: its ordinary or popular meaning, which refers to the finding of guilt by plea or verdict, and its legal or technical meaning, which refers to the final judgment entered on plea or verdict of guilty. . .[and] is not a conviction until the judgment has been entered. . .[W]here legal disabilities, disqualifications, and forfeitures are to follow, the strict legal meaning is to be applied."

21A Am Jur Criminal Law sec. 1024.

Several states have followed the American Jurisprudence distinction recognizing that even though a verdict of a plea of guilty, in Aaron's case nolo contendere, is entered the defendant is not actually convicted until there is a sentencing. In Levin v. Carpenter, 332 SW2d 862 (Mo. 1960), the Missouri Supreme Court

held, " '[T]he word "convicted" includes the final judgment, and that one who has been found guilty by the jury, but has not yet been sentenced is not a "convicted" person.'" Id. at 865 (quoting Neibling v. Terry, 352 Mo. 396, 177 SW2d 502)(emphasis added). Since sentencing has been precluded in Aaron's case by this courts decision there can be no conviction.

In Heartsill v. County Election Board of Carter County, 326 P.2d 782 (Okla 1958), the Oklahoma Supreme Court held that where there was a conviction but no judgment on a felony the strict meaning of "conviction" should be used and the defendant could not be kept from voting until the strict meaning was fulfilled. The Court said, "[T]he meaning of the term 'adjudged guilty' imports a final judgment of 'condemnation of law.'" Id. at 786.

Finally, in a Utah case, Little v. Mitchell, 604 P.2d 918 (Utah 1979), the Utah Supreme Court recognized the distinction between an order and a final judgment in a case of multiple claims. The Utah Supreme Court said, "This does not necessarily mean that there is a final judgment merely because the order so recites." Id. at 919. Thus, even where a court signs a order proclaiming final judgment there can be a final judgment in form and one "in fact." Id. at 919.

In Aaron's case the strict, legal definition of "conviction" should be used. Since Aaron has not been convicted using the legal definition of the word because he is precluded from being sentenced by this court's decision. The Utah Supreme Court has recognized a distinction between a final judgment in fact and one

in form alone. Aaron's case had neither fact or form.

Allowing the trial court to put a conviction on Aaron's record allows the form of conviction where there has been none in fact. It allows the trial court the all of the consequences of a conviction except the actual sentence when the defendant was never actually legally "convicted."

Second, public policy requires that those having business with the court be able to rely on the accuracy of the court's statements. The court cannot be allowed to err to the prejudice of another and still receive the benefits of that error. Granting Layton City's petition would allow some of the benefits of their error, a recorded conviction, where the defendant relied on the court's accuracy. There is a fundamental injustice in allowing a conviction when the court earlier claimed there was none to be had. The public should be able to rely on the accuracy of the court and when a court is inaccurate it should inure to the benefit of the defendant.

Third, if this court grants Layton City's petition Aaron will be prejudiced. Although not to the same degree as a sentence would impose, Aaron would be prejudiced by a conviction on his record. A conviction on his record may influence his employment as well as future opportunities within his current job and even affect his ability to be considered for advancement. While it is true that the effect of a conviction ought to be considered before the act is done, in this case, there was no conviction to be had in the trial court and their error should

not be allowed to haunt the defendant or his future employment.

IF THE THIS COURT FINDS THE APPELLANT WAS CONVICTED
THE ACTUAL CONVICTION SHOULD BE OVERTURNED
DUE TO THE RESPONDENT'S ERRORS.

In the alternative of point one, if this court finds that Aaron was convicted or chooses to use the layman's definition of "conviction," this court should maintain its position that the conviction is overturned. Fairness and justice requires that in this narrow field of cases where the court's delay prejudices the defendant the conviction and the sentence should be void.

In Hicklin v. State 535 P.2d 741 (Wy. 1975), the Wyoming Supreme Court said, "A Judgment in a criminal case will not be disturbed by reason of sentencing procedures unless there is a showing of an abuse of discretion, procedural conduct prejudicial to defendant, circumstances which manifest inherent unfairness and injustice, or conduct which offends the public sense of fair play." Id. at 743. In Hicklin the court found no such error.

In Aaron's case all of there errors occurred and should be the basis for overturning his conviction. The court abused it's sentencing discretion by the unconscionable length of delay in sentencing. The procedure was found prejudicial by the court on appeal. And, the circumstance definitely show and inherent unfairness and injustice which ought, if it does not, offend anyone's sense of fair play.

Aaron's conviction should, therefore, be overturned along with the discharge of his sentence.

CONCLUSION

Aaron was never convicted in the legal or technical meaning of the word. A conviction requires a sentencing or final judgment which the trial court is precluded from determining due to their own error. Allowing a conviction on Aaron's record would provide Layton City with the benefits of a conviction without a conviction in fact. Second, by public policy errors of the court should inure to the benefit of the defendant since the defendant should be able to rely on reasonable accuracy from the court. Third, albeit at a lesser degree, Aaron would still be prejudiced by a conviction on his record. Finally, in the alternative, the this court chooses to follow the layman's definition of conviction, Aaron's conviction should still be overturned due to the prejudice to the defendant and the offense to the public's sense of fairness and justice.

DATED this 5 day of November, 1990

BEAN AND SMEDLEY


STANLEY M. SMEDLEY

CERTIFICATE OF PERSONAL SERVICE

I hereby certify that on this 5th day of November, 1990, I delivered a true and correct copy of the foregoing Answer to Petition for Rehearing to Steven L. Garside, Assistant City Attorney, Layton City, 437 N. Wasatch, Layton, Utah 84041.

