

1990

Laurence A. Morgan v. State of Utah : Brief of Appellant

Utah Court of Appeals

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Laurence A. Morgan; Attorney Pro se.

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Recommended Citation

Brief of Appellant, *Morgan v. Utah*, No. 900408 (Utah Court of Appeals, 1990).

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 90 0408 CA IN THE UTAH COURT OF APPEALS

LAURENCE A. MORGAN,

Petitioner,

vs.

STATE OF UTAH,

Respondent,

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:
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:
:
:
:

Case No. 900408-CA

BRIEF OF APPELLANT

Appeal from a final ruling entered April 17, 1990, denying
Petition for Expungement by the Honorable Boyd L. Park of the
Fourth Judicial District Court.

LAURENCE A. MORGAN
Attorney Pro Se
P.O Box 788
Monticello, Utah 84535

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IN THE UTAH COURT OF APPEALS

LAURENCE A. MORGAN,	:	
	:	
Petitioner,	:	
	:	Case No. 900408-CA
vs.	:	
	:	
STATE OF UTAH,	:	
	:	
Respondent.	:	

ISSUES PRESENTED ON APPEAL

1. Was the Petitioner denied his statutory right to expungement of specific arrest records and the retrieval of all reports made thereof?

2. Did the Employees of the Department of Corrections deny the Petitioner his constitutional right to due process by using erroneous conclusions of guilt made from the arrest records sought to be expunged?

NATURE OF THE CASE

This is an appeal of a final ruling made by the Fourth District Court denying a petition seeking expungement of specific arrest records and the retrieval of all reports and decisions made in part or on the whole from these records.

DISPOSITION AT TRIAL COURT

On April 17, 1990, the Fourth Judicial District Court Judge, Boyd L. Park, denied Appellant's petition seeking expungement, retrieval, and sealing of specific arrest records.

RELIEF SOUGHT ON APPEAL

The Appellant seeks expungement of the instant records and the retrieval of all reports made from said records. The Appellant also seeks injunctive relief in regards to the use and any results

derived from the use of said records.

STATEMENT OF FACTS

The Appellant, Laurence Arthur Morgan, is an inmate at the Utah State Prison who was returned to prison in September 1988 for "Absconding from Supervision", a technical rule violation of parole. His parole was officially revoked on October 5, 1988, at which time he received a six (6) month rehearing, the appropriate guideline dictate for his rule infraction. Mr. Morgan returned to the Board of Pardons on February 10, 1988, and at this time many things were considered as should be the case; but in the course of these considerations, his arrests were also brought out. When he denied guilt of these "mere allegations", he was told he wasn't taking responsibility for his actions and that maybe he would after he was finished with a 10 year rehearing. (Refer to transcripts of this hearing in the possession of the Board of Pardons.)

These arrests are part of Mr. Morgan's file, and anybody who reads the file to consider Mr. Morgan's classification, custody, housing, work, or Board of Pardons status is influenced by these records, which is contrary to several constitutional provisions and statutory dictates. Meeting the necessary requirements for expungement, these specific records and reports should be retrieved, destroyed, and sealed.

SUMMARY OF ARGUMENT

1. The Appellant was denied his statutory right to the expungement of specific arrest records and the retrieval of any reports made thereof.

2. The Appellant was denied his constitutional right to due process when these arrests were categorized with the convictions of his record. The Appellant was denied his constitutional right to not incriminate himself when the Board of Pardons asked him if he was guilty of these arrests. The Appellant was denied his constitutional right to due process when the Board of Pardons concluded him to be guilty of said arrests without a judicial conviction. The Appellant was denied his constitutional right to due process and statutory right when he was punished for these mere

allegations.

ARGUMENT

POINT I

THE APPELLANT WAS DENIED STATUTORY RIGHTS SET FORTH IN THE UTAH CODE WHEN THE COURT APPLIED THE WRONG SUBSECTION (SPECIFICALLY 77-18-2[1][B]), AND AN ERRONEOUS INTERPRETATION OF THE APPROPRIATE SUBSECTION, (SPECIFICALLY 77-18-2[2][A]).

The Appellant has read all of the expungement statutes, 77-18-2, and sub-section (1) clearly applies to convictions and subsection (2) clearly applies to arrests. The Plaintiff seeks only to expunge arrests; therefore, the application of subsection 1 Mr. Morgan's petition is not appropriate.

Under subsection (2) (a) the statute states, "when a person has been arrested with or without warrant, that individual, after one month if there have been no intervening arrests". The arrests referred to by the Fourth Judicial Court which occurred on August 4, 1983 and August 30, 1983 are the specific arrest sought to be expunged. They are the same charges stemming from one incident but from difference jurisdictions and the repeat of the same charges when the Petitioner was released and subsequently re-arrested. The Appellant was convicted of one (1) possession of a firearm by a restricted person and everything else was dismissed. All of the dismissed charges associated with the August 4, 1983, arrest are sought to be expunged.

The August 26, 1988, arrest was well beyond the 30-day time indicated in 77-18-2(2)(a) and also was never filed. All of the arrest records sought to be expunged clearly qualify under 77-18-2(2)(a).

POINT II

THE APPELLANT WAS AND CONTINUES TO HAVE HIS FIFTH AND FOURTEENTH CONSTITUTIONAL AMENDMENT RIGHTS DENIED WHEN THE USE OF PRESUMED GUILT OCCURS DURING THE DECISION MAKING PROCESSES USED TO DECIDE THE HOUSING, CLASSIFICATION, AND BOARD OF PARDONS STATUS.

The Appellant asserts that insufficiently of evidence to prosecute and the nonexistence of a conviction constitutes innocence as indicated in 76-1-501(1), U.C.A. (1973).

(1) A Defendant in a criminal proceeding is presumed to be innocent until each element of the offense charges against him is proved beyond a reasonable doubt....

So when no elements of any offense are proven, innocence is a presumed fact as indicated in 76-1-503, U.C.A. (1973):

An evidentiary presumption established by this code or other penal statute has the following consequences;

(2).....the law regards the facts giving rise to the presumption as evidence of the presumed fact.

Judgments contrary to an established presumed fact of innocence that punish and deprive an individual of rights and freedoms must be prohibited or must be reversed and retrieved along with the specific records sought to be expunged.

In support, the Utah State Legislature subscribes to the same intent in 77-1-4, U.C.A., (1980), which states, "No person shall be punished for a public offenses until convicted in a court having jurisdiction." Therefore, the findings of fact spoken of in 77-27-11, U.C.A., (1986), "...the examiner shall make findings of fact..." are not discretionary findings but absolute facts prescribed by law and mere allegations that constitute grounds from an arrest cannot be used to declare guilt without conviction.

Seventy-four years ago the Supreme Court of the United States held, "It is not within the province of State Legislatures to declare a person guilty or presumptuously guilty of a crime", McFarland v. American Sugar and Refining Co., 241 U.S 79 (1916). Clearly the Utah Legislature has been very specific and decisive in this regard with the above states as well as 76-1-104, U.C.A, (1953), "Purpose and Principles: (2)....and safeguard conduct that is without fault from condemnation as criminal. (4) Prevent arbitrary or oppressive treatment of persons accused..."

With the foregoing intent and principles in place as law, every agency created by those same laws must be first and foremost to conform to those standards.

Under the statutes specific to pardons and paroles the

requirements are set forth in 77-27-5, U.C.A. (1986):

Board of Pardons Authority (1) The Board of Pardons shall determine by majority decision when and under what conditions subject to the provisions of this chapter and other laws of the state, ...or as otherwise limited by law, may be released upon parole,...or their sentences commuted or terminated....

Also, 77-27-2, U.C.A. (1986):

Board of Pardon Creation and Function (2)(e)...a majority vote of the three full-time members of the board is required for adoption of rules or policies of general applicability as provided by law...

So in Utah, as everywhere else in America, everybody and everything functions "by law". "By law" is defined in 78-27-19, U.C.A. (1953):

Wherever in this code the term "by law" is used with reference to any act or thing done or to be done, such term shall refer to all statutes in effect as well as the rules of civil procedure or other court rules, and any decision of the Supreme Court interpreting the same.

When the Board of Pardons has a hearing, they are considering an internal adjustment of a sentence; and if they terminate a sentence prior to the expiration date, they have literally re-sentenced that person. The United States Supreme Court has held, "A sentence may not be based on improper or inaccurate information...", [Dorsyzski v. U.S., 418 U.S. 424, 431 N.7, 94 S.Ct. 3042, 41 L. Ed.2d 855 (1974)] and that inaccurate information in the file remains unverified or un-rebutted increased the risk of erroneous decision and could flaw the decision making process [Greenholtz v. Inmates of Neb. Penal and Correctional Complex, 442 U.S. 13, 99 S.Ct. 2100 (1979)]. Also, "nor may the judge rely on mistaken information or baseless assumptions." [Roberts v. U.S., 445 U.S. 552, 556, 100 S.Ct. 1358, 63 L.Ed.2d 622 (1980)].

We find a clear guild to the perimeters legally allowed, not only in what is considered to real a decision, but the process used to obtain that information and reaching the ultimate decision therefore requiring the retrieval and expungement of all records pertinent to this appeal.

In support of the above case law and statutory dictates, the Utah State Constitution and the United States Constitution makes

the intentions of the framers of our way of life even more profound. "No person Shall be deprived of life, liberty or property, without due process of law" [Article I, Section 7, U.S.C., (1896)], "Nor shall any State deprive any person of life, liberty, or property, without due process or law..." (Amend. V, Section 1, U.S. Constitution), "Nor shall be compelled in any criminal case to be a witness against himself..." (Amend. V, U.S. Constitution)

CONCLUSION

For all of the foregoing reasons, the record and all of the reports made in part or on the whole from these records retrieved forthwith.

RESPECTFULLY submitted this 11th day of September, 1990.

Laurence A. Morgan
LAURENCE A. MORGAN

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing BRIEF OF APPELLANT to the Utah State Attorney General, 236 State Capitol, Salt Lake City, Utah 84114, this 11th day of September, 1990, first class postage fully prepaid.

Laurence A. Morgan
LAURENCE A. MORGAN