

1982

Pierre Dale Selby et al v. Lawrence Morris : Petitioner's Reply Memorandum

Utah Supreme Court

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Recommended Citation

Reply Brief, *Selby v. Morris*, No. 18230 (Utah Supreme Court, 1982).

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IN THE SUPREME COURT OF THE STATE OF UTAH

WILLIAM ANDREWS :
Petitioner, : Case No. 18230
v. :
LAWRENCE MORRIS, Warden :
of the Utah State Prison, :
Respondent. :

PETITIONER'S REPLY MEMORANDUM

Petitioner filed this Petition on January 22, 1982. Since that time, by its refusal to answer and its repeated motions to continue and extend time, Respondent has delayed its consideration.

On September 15, 1982, the undersigned counsel finally received a response: a Motion to Dismiss, and a 98 page supporting Brief, a smokescreen of irrelevancies, distortions, and untruths designed to confuse the straightforward issues here.

Petitioner cannot possibly respond in detail to that Brief in the time before the hearing. Most of its arguments should need no response. But Petitioner does feel compelled to answer one, new issue Respondent has injected: the application to this case of the newly-enacted SB 60, which permits resentencing in capital cases where sentence is reversed.

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To apply that statute to these cases would violate both the clear law of this State barring retroactive application absent an express declaration by the legislature, and the constitutional prohibitions of ex post facto laws and bills of attainder.

The argument that this statute law would not be ex post facto applied to this case, because it is "procedural", blinks reality. The change in this statute makes a group of people--capital defendants whose sentences have been reversed--eligible for a more severe punishment than they were under the previous law. It is long since settled that application of a statute which eliminates a legal bar to a severe punishment, to a case which arose before its passage, violates the ex post facto clause of the United States Constitution. Dobbert v. Florida, 432 U.S. 282 (1977) did not change, but reaffirmed, that:

"any statute which punishes as a crime an act previously committed, . . . which makes more burdensome the punishment for a crime, after its commission, or which deprives one charged with a crime of any defense available according to the law at the time when the act was committed, is prohibited as ex post facto."

432 U.S. 292, quoting Beazell v. Ohio, 269 U.S. 167, 169-170 (1975). See also Kring v. Missouri, 107 U.S. 221 (1883).

Moreover, to permit this statute to be applied to these cases would violate the bill of attainder prohibition in the federal constitution. This law was written and passed at the behest of the Respondent's counsel, for the specific purpose of making a death sentence available on remand in these cases. If need be,

Petitioner can show that at an evidentiary hearing: this purpose was communicated to the legislators who passed this law, and was their principal reason for adopting it. Respondent then delayed these proceedings, in order to argue for application of that law to the Petitioners in this case.

If the Court holds it necessary, Petitioner would ask for a such a hearing on those facts. But no proof should be necessary to reject, on settled state law grounds, this last-ditch effort to single out these two men, to retain the power to execute them. Despite Respondent's continuing efforts to deny it to them, they are entitled to the equal protection of the laws of this State. Petitioner is confident that, on this Petition, he will receive that protection from this Court.

DATED: September 18, 1982.

Respectfully submitted,

Timothy K. Ford

THE ATTORNEY GENERAL



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September 17, 1982

Mr. Geoffrey Butler
Supreme Court Clerk

Dear Mr. Butler,

Please note the following correction in Respondent's Brief, Pierre and Andrews v. Morris, Case Nos. 18234 & 18230, filed September 14, 1982. The last sentence of page 71 should read:

In conclusion, the failure to sentence petitioners under the Wood standard was not "something substantial and prejudicial in the sense that there is a reasonable likelihood that in its absence there would have been a different result."

I apologize for the omission of certain language therein.

Very truly yours,

A handwritten signature in cursive script that reads "Earl F. Dorius".

EARL F. DORIUS
Assistant Attorney General

EFD/sp

cc: Timothy K. Ford
Parker Nielson
D. Gilbert Athay

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Clerk, Supreme Court, Utah