

1972

Steven D. Nordgren v. John W. Turner, Warden, Utah State Prison : Brief of Appellant

Utah Supreme Court

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In The Supreme Court of the State of Utah

STEVEN D. NORDGREN,
Plaintiff-Appellant,

-vs-

JOHN W. TURNER, WARDEN,
UTAH STATE PRISON,
Defendant-Respondent.

BRIEF OF APPELLANT

An appeal from the decision of the District Court, the Honorable Joseph [redacted] siding, granting respondent's motion for appellant's writ of habeas corpus.

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In The Supreme Court of the State of Utah

STEVEN D. NORDGREN,
Plaintiff-Appellant,

-vs-

JOHN W. TURNER, WARDEN,
UTAH STATE PRISON,
Defendant-Respondent.

} Case No.
12815

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Steven R. Nordgren, appeals from a decision of the Third Judicial District Court, the Honorable Joseph G. Jeppson, presiding, granting respondent's motion to dismiss appellant's writ of habeas corpus.

DISPOSITION IN THE LOWER COURT

On the 6th day of January, 1972 respondent's motion to dismiss appellant's writ of habeas corpus was granted without any evidentiary hearing having been held.

RELIEF SOUGHT ON APPEAL

Appellant, Steven R. Nordgren, seeks a reversal of the order of the court below and an order remanding the case for an evidentiary hearing.

STATEMENT OF FACTS

The appellant, Steven R. Nordgren, filed a petition for a writ of habeas corpus with the clerk of the court for the Third Judicial District in and for Salt Lake County, State of Utah, wherein appellant alleged that:

- a. The prosecutor's remarks, insinuations and line of questioning appellant's father as well as his summary to the jury was calculated and did effectively deny appellant a fair trial, due process and equal protection of the law as guaranteed under Article I, Section 7 of the Constitution of the State of Utah and the Fourteenth Amendment to the United States Constitution.
- b. That the court failed to instruct the jury as to a lesser included offense.

On the 20th day of December, 1971, the respondent filed with the clerk of the same court a motion to dismiss appellant's writ of habeas corpus and that motion was set for hearing before the Honorable Joseph G. Jeppson on the 6th day of January, 1972. The court

on that day heard argument by counsel and granted the motion to dismiss without holding an evidentiary hearing as to the issues raised in appellant's writ of habeas corpus. (H. 1-8)

ARGUMENT

APPELLANT CONTENDS THAT THE COURT ERRORED IN RULING THAT AS A MATTER OF LAW THE PETITION DOES NOT SET FORTH ALLEGATIONS FOR WHICH RELIEF COULD BE GRANTED IN A HABEAS CORPUS PROCEEDING.

This court has recognized in many cases, *Brown v. Turner*, 21 Utah2d 96, 440 P.2d 968 (1968); *Bryant v. Turner*, 19 Utah2d 284, 431 P.2d 121 (1967); *Johnson v. Turner*, 24 Utah 2d 439, 473 P.2d 901 (1970); *Klotz v. Turner*, 23 Utah2d 303, 462 P.2d 705 (1969); *Rees v. Turner*, 24 Utah 2d 349, 471 P.2d 168 (1970); *Sinclair v. Turner*, 20 Utah2d 126, 434 P.2d 305 (1967); *Sullivan v. Turner*, 22 Utah 2d 85, 448 P.2d 907 (1968); *Syddall v. Turner*, 20 Utah2d 263, 437 P.2d 194 (1968); that a habeas corpus may be used to review a conviction in certain instances. The *Bryant* case, *supra*, is representative of the language of those cases where the court said at 19 Utah2d at page 286:

The writ is, as our rules describe it, an extraordinary writ, to be used to protect one who is restrained of his liberty where there exists no

jurisdiction or authority or where the requirements of the law have been so ignored or distorted that the party is substantially and effectively denied which is included in the term due process of law, or where some other such circumstances exist that it could be wholly unconscienable not to re-examine the conviction.

Appellant contends that the court below erred in dismissing his writ of habeas corpus without holding an evidentiary hearing as to the allegations contained in the petition. Appellant submits that conduct of the prosecution, in his cross-examination of a witness or his closing statement to the jury, may be violative of the requirement of the law so as to effectively and substantially deny an individual of due process of law. This denial of due process could consist of prejudicial remarks concerning a witness or the defendant himself and may take several forms. It is for the court to determine after hearing the testimony regarding the alleged misconduct to make a determination as to whether such conduct was so violative of due process requirements as to reach constitutional proportions. Appellant would like to point out that the cases cited above were all cases in which the court made that determination after a consideration of the evidence in support of petition. This case should also receive the same consideration.

CONCLUSION

Appellant maintains that the case should be reversed

and remanded with instructions that an evidentiary hearing should be held to determine if the evidence comes within the standard pronounced by this court.

Respectfully submitted,

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