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Joe S. V. Aldez v. State of Utah : Brief of Respondent

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In The Supreme Court of the State of Utah

JOE S. VALDEZ,

Petitioner-Appellant,

vs.

STATE OF UTAH,

Respondent.

BRIEF OF RESPONDENT

Appeal from the Judgment of the Second Judicial
Court of Weber County, Honorable John F. [illegible]
siding.

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In The Supreme Court of the State of Utah

JOE S. VALDEZ,

Petitioner-Appellant,

vs.

STATE OF UTAH,

Respondent,

} Case No.
10843

BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

The appellant, in December of 1966, in the Second Judicial District, Weber County, was convicted of the crime of assault with a deadly weapon and of being an habitual criminal. The assault conviction was appealed to and affirmed by the Supreme Court of Utah on September 29, 1967. *State v. Valdez*, 19 (U.2d) 426, 432 P.2d 53 (1967). On January 24, 1968, a petition for a writ of coram nobis was filed in the Third Judicial District Court of Salt Lake County. A hearing was held on the petition and the writ was denied. This is an appeal from that denial.

DISPOSITION IN THE LOWER COURT

Pursuant to the appellant's petition for a writ of coram nobis, a hearing was conducted in the District Court of Salt

Lake County. Testimony was presented as to the claimed existence of new evidence. On June 28, 1958, the petition for the writ of coram nobis was dismissed (R.16).

RELIEF SOUGHT ON APPEAL

The respondent submits that the lower court's dismissal of the appellant's petition for writ of coram nobis should be affirmed.

STATEMENT OF FACTS

The respondent is in general agreement with the statement of facts as contained in the appellant's brief, so far as those portions representing the contentions of the appellant and the victim as to what transpired are concerned, which were taken directly from the transcript of the trial with an apparent minimum of coloring. While the appellant contends that no one in the bar saw the stabbing except Valerio himself, it was claimed during the coram nobis hearing that Miss Wilkerson had seen an indian make a poking motion at Valerio and later saw him put a knife in his pocket. The indian was apparently unavailable at both the trial and the subsequent hearing. When asked why she hadn't mentioned what she had seen during the trial, Miss Wilkerson indicated that the indian was a friend of the appellant and the appellant didn't want to get the indian in trouble. After the appellant's arrest and while he was in jail awaiting trial, the appellant claims that one Kelly Valdez, a distant cousin, along with Miss Shirley Wilkerson, visited Valerio at his home. Kelly Valdez contends that while at Valerio's home, Valerio told him he "wasn't sure who stabbed him." Kelly Valdez evidently didn't see fit to apprise the appellant of

this information until after his trial, conviction and imprisonment. This evidence was therefore claimed to be unknown and undiscoverable with due diligence at the time of trial. It was only on the occasion of a happenstance visit to the appellant by his distant cousin that the information was disclosed for the first time. The appellant now asserts that this same evidence given by Kelly Valdez at the coram nobis hearing directly contradicts the testimony of Valerio which remained unchanged at the hearing. It is argued that this new evidence along with the belated disclosure of what Miss Wilkerson now claims she actually saw during the assault, requires the granting of the writ of error coram nobis.

ARGUMENT

POINT I

THE LOWER COURT DID NOT ERR IN REFUSING TO GRANT APPELLANT A NEW TRIAL ON A WRIT OF CORAM NOBIS.

In order to substantiate the argument, the respondent will first show what the courts require in the way of prerequisites necessary to the issuance of a writ of coram nobis. Next, the respondent will show how the appellant has failed to qualify in nearly every aspects of these requirements. Lastly, the attitude that appellate courts are required to assume in reviewing such appeals will be shown.

A. Prerequisites necessary to issuance of writ.

Courts of law have been atypically unanimous in establishing the following prerequisites for the issuance of a writ of coram nobis:

(1) Existence of material facts not presented at trial.

The leading case upon which this jurisdiction has relied when determining questions as to the propriety of granting writs of coram nobis is that of *People v. Shipman*, 42 Cal.Rptr. 1, 397 P.2d 993 (1965). The court in that case, while discussing the requirement for newly discovered facts, pretty much listed the entire gamut of requirements for issuance. They said:

The writ of coram nobis is granted only when three requirements are met. (1) Petitioner must "show that some fact existed which without any fault or negligence on his part was not presented to the court at the trial on the merits and which if presented would have prevented the rendition of the judgment." (Cases cited.) . . . (2) Petitioner must also show that the "newly discovered evidence [does not go] to the merits of issues tried. Issues of fact once adjudicated even though incorrectly cannot be reopened except on motion for new trial." (Cases cited.) . . . (3) Petitioner "must show that the facts on which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion for the writ." (Cases cited.) . . .

It is easy to see why this case will be further cited in subsequent portions of this argument.

In determining the degree of materiality needed in presenting facts not presented at the trial, it is interesting to note the case of *People v. Vernon*, 49 P. 326 (Cal. 1935) in which the court stated:

It appears to be the law that in and of itself, confession of guilt by one other than the applicant for writ of error coram nobis, will not furnish a sufficient reason for the issuance of the writ.

While this case may appear extreme in its requirement, courts in general are conspicuously restrictive in their determination of what constitutes "materiality". The arguments that follow will throw additional light on the requirement that newly discovered facts be material.

(a) Defendant not to be at fault in non-presentation of facts.

Not only must the newly discovered facts be material, but the fact that they were not presented at the time of trial must not result from any fault on the part of the defendant or his attorney. The *Shipman* case, *supra*, has already alluded to that requirement. This concept was earlier declared in the Utah case of *State v. Woodard*, 108 U. 390, 160 P.2d 432 (1945) where this court said:

For a party to be entitled to this writ, it must appear that the failure to present the facts to the court was not due to any negligence or fault of the party seeking the writ.

Even earlier than the *Shipman* case, California courts were insistent upon the defendant having "clean hands" in connection with newly discovered evidence. In *People v. Tuthill*, 198 P.2d 505, (Cal. 1948) the court held:

The office of the writ of coram nobis is to bring the attention of the court to, and obtain relief from, errors of fact, such as a valid defense existing in the facts of the case, but which without negligence on

the part of the defendant was not made, either through duress or fraud or excusable mistake. These facts, not appearing on the face of the record, and being such as known in season would have prevented the rendition and entry of the judgment in question.

Colorado courts require that the defendant be blameless in order to seek relief.

The facts relied upon must be such as do not appear on the face of the record, failure to disclose which was attributable to no fault of petitioner and which would, if known, have forestalled the judgment. *Hailey v. People*, 115 P.2d 993 (Colo. 1945).

Perhaps most applicable to the situation at bar is the holding of the Indiana court which suggests that relief will not lie where any misconduct in the presentation of the defendant's case has been evident.

The writ of error coram nobis should not be granted to relieve one from a predicament in which he finds himself as the result of his own dishonest and fraudulent conduct. *Vickery v. State*, 106 N.E.2d 223 (Ind. 1952).

From the foregoing it is clear that every effort must have been made to obtain all available facts and evidence in presenting the defendant's case, and any hint of dereliction of duty either on the part of the defendant or his attorney will be fatal in subsequent coram nobis proceedings.

(b) Presentation of newly discovered facts would have prevented judgment.

The greatest hurdle which the defendant must overcome in qualifying for the writ of coram nobis is that of presenting new facts, which in the minds of the reviewing court, would have conclusively precluded the contested judgment from having been rendered had such evidence been presented to the trier of facts. In the *Woodard* case, *supra*, the court applied what might be called the coram nobis "but for" test in saying:

The writ of coram nobis where available seeks to obtain a review of a judgment on the ground that certain mistakes of fact have occurred which were unknown to the court and to the parties affected and that but for such mistakes the judgment would not have been rendered.

Again, the *Shipman* case, *supra*, holds that such newly discovered evidence must of necessity "have prevented rendition of judgment."

The court in the *Tuthill* case, *supra*, similarly concluded:

. . . and where such [new facts] would have prevented rendition of the judgment questioned.

In the *Hailey* case, *supra* the Colorado court used the phrase ". . . which would if known, have forestalled the judgment . . ." It is also interesting to note the federal court's standard as to the necessary "weightiness" of the new evidence. In the case of *U.S. v. West*, 170 F. Supp. 200 (N.D. Ohio 1959), a federal district court said:

The function of coram nobis is to bring to the attention of the court some fact unknown to the court

which if known would have resulted in a different judgment.

The Sixth Circuit expressed the following in *Dunn v. U.S.*, 238 F.2d 908 (6th Cir. 1956):

On application for writ of coram nobis the entire record will be looked into by the court and the judgment rendered which the whole requires.

The court further stated in effect that failure of a defendant to make a showing that a retrial would have had a different result is grounds for denial of a motion in the nature of coram nobis to set aside his sentence.

The Eighth Circuit in *Bateman v. U.S.*, 277 F.2d 65 (8th Cir. 1960) said:

A writ of error coram nobis will not lie even if the alleged error be fundamental, unless it is probable that a different result would have occurred had the supposed error of fact been known to the trial court.

Thus, little question should remain in the minds of reasonable men as to the quality and necessary effect of newly discovered evidence required to permit the issuance of the writ. This conclusive aspect is perhaps best summed up in this holding of a West Virginia Federal Court:

The writ of error coram nobis does not lie for newly discovered evidence unless the newly discovered evidence is of such conclusive nature, that if known would have resulted in a different judgment. *U.S. v. Taylor*, 49 F.Supp 353, (N.D. West Vir 1943)

(2) Newly discovered facts not to go to issues already tried.

The second requirement called for in the *Shipman* decision, *supra*, was as follows:

(2) Showing the fact does not go to merits of issues tried.

The court clarified this concept in saying in effect that issues of fact once adjudicated, even though incorrectly, cannot be reopened except on motion for new trial, even though alleged newly discovered evidence is not discovered until after time for moving for new trial has elapsed or motion has been denied.

In the *Tuthill* case, *supra*, the unanimity of California courts was displayed in this respect:

It is a general rule that the writ will not be granted for newly discovered evidence going to the merits of the issues tried. Issues of fact once adjudicated, even though incorrectly, cannot be reopened except on motion for new trial.

It takes but little imagination to foresee the "parade of horrors" if every issue of the case, even though material, were open to relitigation. That ingredient of the law "finality", which all courts seek, would be reduced to nothing more than a legal platitude.

Again, California has been a leading state in guarding the finality of the judicial process. The California Supreme Court declared in *Ex parte Lindley*, 29 Cal. 2d 709, 177 P.2d 918 (1947):

It is stated as a general rule that the writ of error coram nobis does not lie to correct an issue of fact which has been adjudicated even though wrongly determined, nor for alleged false testimony at the trial, nor on the ground that a juror swore falsely as to his qualifications, nor for newly discovered evidence."

In a case in which the Supreme Court of the United States denied a writ of certiorari it was held:

Generally, a writ of coram nobis will not be granted for newly discovered evidence going to merits of issues tried or to correct errors of law nor is it intended to authorize any court to review and revise its opinion. *People v. Coyle*, 88 Ct.App.2d 967, 200 P.2d 546 (1948).

(3) Newly discovered facts were not known to defendant at the time of trial and were not discoverable in exercise of due diligence.

As can be seen, this requirement is closely allied with the requirement that the defendant is not at fault. In *Butt v. Graham*, 6 U.2d 133, 307 P.2d 892 (1957) Justice Wade said in effect that "where the record disclosed that no newly discovered evidence was produced at the hearing that could not have been produced at the trial in a carnal knowledge prosecution, the trial court properly refused to grant coram nobis."

Along with the court's decision in the *Shipman* case. *supra*, the court's decision in *People v. Adamson*, 210 P.2d 13 (Cal. 1949) was also indicative of the consensus of opinion:

The applicant for the writ must show that the facts upon which he relies were not known to him and could not in the exercise of due diligence have been discovered by him at any time substantially earlier than the time of his motion for the writ. Otherwise, he has stated no ground for relief.

In the case of *People v. Campbell*, 245 P.2d 311 (Cal. 1952) the court succinctly stated the doctrine as follows:

Petitioner for error coram nobis on ground of newly discovered evidence did not entitle petitioner to relief from conviction when the alleged newly discovered evidence was either known or should have been discovered by defendant at time of trial by use of reasonable diligence and when there was no allegation that petitioner had been prevented by extrinsic causes from offering same.

Little more can be said than the requirements necessary for the issuance of a writ of error coram nobis are narrowly and precisely defined. Noncompliance with or nonfulfillment of the least of these requirements is deemed fatal to an attempt at rehearing through the medium of coram nobis.

B. Appellant failed to qualify for issuance of the writ.

The respondent will now endeavor to show that the appellant has fallen substantially short of qualifying for the writ.

(1) If newly discovered facts existed, they were either immaterial or of limited import.

While it is true that the appellant's claimed new facts or evidence were not presented at the trial, it is apparent that he places undue significance on them. In the first place,

the only new "facts" presented by the appellant is the fact that there exists a "distant" cousin who is willing to testify he heard the victim casually mention that he was uncertain as to who had stabbed him. The newly discovered "facts" are neither that the victim *said* he wasn't sure nor that he in *fact* wasn't sure. In other words, the testimony of Kelly Valdez, the distant cousin, which was given at the hearing, must, of necessity, be classified as pure hearsay. As such, it can only be admitted to impeach the testimony of the victim, and in no way can be used in determining the truthfulness of the matter asserted; i.e., that the victim, Mr. Valerio, didn't know who stabbed him. It is necessary before newly discovered facts can play a role in the granting of a writ of coram nobis that those facts be "true." As the Colorado court put it in *Medberry v. People*, 108 P.2d 243 (Colo. 1940), "to justify the granting of a writ of error coram nobis, the substantive facts upon which reliance is placed must be true."

It is interesting to compare the claimed materiality of the claimed impeachment testimony in the instant case with the court ruled immateriality of a confession of guilt by other than the petitioner in the *Vernon* case, *supra*. It is difficult for the respondent to accord sufficient materiality to belated hearsay testimony of a friendly distant cousin to entitle appellant to a writ.

In ascertaining the truthfulness of statements alleged to be newly discovered material evidence, the court is free to believe or disbelieve. In the case of *People v. Bobeda*, 300 P.2d 97 (Cal. 1956) the court said:

The trial courts determination of the truth or the veracity of a witness is final, and it is not required

to accept as true the testimony of a witness even though it is not contradicted.

In the same opinion the court made a statement even more strikingly appropriate in the instant case, "It is not a remedy available to one who has been convicted on false testimony." *Supra* at P. 99

The respondent contends that the evidence claimed to warrant the granting of a writ of coram nobis was immaterial and the court had every right, as it did, to find it so.

(a) Defendant was at fault in not presenting facts at the trial which would have had equal or greater significance in providing for his defense than those alleged to have been newly discovered.

After reading the record and the appellant's brief in this case, a number of questions remain not fully answered. For instance, why did Kelly Valdez wait so long to disclose such allegedly pertinent information to the appellant? Why wasn't this information at least conveyed to Miss Wilkerson who was present during the alleged utterance? What were the real reasons for evidence of the observed "poking motion" and knife not being disclosed at the time of trial? Who was the indian and where did he go?

The above questions have one thing in common. They all tend to indicate either an overly imaginative mind or a person so unconcerned with his own defense and the outcome of his own trial that he felt little compunction to provide his attorney with pertinent available information upon which to build a case. The information, if true, concerning the indian and his knife, might have constituted some defense and might have changed the outcome of the trial. It

is claimed that the reasons this information was not disclosed was that the appellant did not want to involve his indian friend and believed such evidence was not necessary to his successful defense. The picture the appellant paints of himself is strikingly similar with the image of the appellant in the case of *Gross v. State*, 40 N.E.2d 333 (Ind. 1942) where the court was compelled to hold:

The writ will not issue to one who has negligently failed to present the facts which if known to the judge would have prevented the judgment. (Cases cited.) Much less should it be granted to a defendant who elects to perjure himself rather than use an honest defense.

In the later companion case of *Vickery v. State*, 106 N.E.2d 223 (Ind. 1952) the court finished the portrait of the appellant with these words:

The writ of coram nobis should not be granted to relieve one from a predicament in which he finds himself as a result of his own dishonest and fraudulent conduct.

It is apparent from the foregoing that the negligence which an appellant displays in defeating his petition for a writ of coram nobis need not be inexorably connected with the nondisclosure at the trial of the later discovered facts. If he seeks to perpetrate a fraud upon the court, whereby material evidence remains undisclosed, he has failed to fulfill the nonnegligence requirement.

The California Supreme Court summed up this concept in *In re De La Roi*, 28 Cal.2d 264, 169 P.2d 363 (1946) the court held in essence that:

Where a habeas corpus petitioner has trifled with the judicial process, schemed and conspired to deceive the court and to impede or defeat justice in relation to a major crime, and he and his witnesses at the time of trial or on a referee's hearing of habeas corpus petition or on a subsequent application for such petition or in some or all of such proceedings, willfully presented false immaterial testimony, the writ of coram nobis *even if otherwise proper*, would be denied. (Emphasis added.)

(b) There is no indication that the "new facts" would have had any effect on the prior judgment, let alone that such would have prevented the judgment.

In having thoroughly discussed the strict standard which is universally applied to the needed effect of newly discovered evidence, and having pointed out the questionability of the new evidence presented by the appellant as to its competence and limited application, it is indeed difficult to imagine that a jury in hearing the "new evidence" would be compelled to find other than it did. In translating the accepted standard into the case at bar, the jury would have to have found the following in order that the writ should now issue:

Because Kelly Valdez, a distant cousin and acquaintance of the accused, has testified that he heard the victim, Mr. Valerio, say "I'm not sure who stabbed me," we find it impossible to find the accused guilty of the crime as charged.

The respondent submits that once subjected to this test, which is the most significant when weighing the propriety of issuing the writ, that the appellant's "newly

discovered evidence" is found lacking. It cannot be contended that such evidence would have precluded the judgment as rendered.

(2) The issue as to who stabbed Valerio has already been tried.

As previously mentioned, issues of fact once adjudicated, even though incorrectly, cannot be reopened, except on a motion for a new trial, even though alleged newly discovered evidence is not discovered until after time for moving for a new trial has elapsed. The trial court heard the issues as to appellant's guilt in the trial court. The jury decided those issues and found the appellant guilty. Those issues of guilt were again submitted to this court in the form of a criminal appeal. This court found sufficient evidence in the record to confirm the jury's decision as to those issues of guilt. A writ of coram nobis was sought with the claim of newly discovered evidence. The evidence was heard, and yet the lower court continued to conclude, having the entire record before it, that the issue of the appellant's guilt had been conclusively decided. If ever an issue has been thoroughly heard and conclusively decided, the issue of appellant's guilt is such an issue.

(3) New facts if in existence were discoverable before trial and could have been known by defendant.

It is not inconceivable that had the appellant informed his attorney of what Miss Wilkerson later stated she saw, and if true what he personally must also have been aware of, that the attorney would have had adequate opportunity

to confront the victim with this conflicting evidence and thereby have elicited from the victim that he did not recall for certain who had stabbed him. Not only is it possible that the new facts could have been discovered prior to the trial, but a reasonable probability exists that that is exactly what would have resulted had the appellant been duly diligent in assisting counsel with his defense.

C. Ruling of lower court will not be upset on appeal in the absence of abuse of discretion, and petitioner has burden of overcoming presumption in favor of validity of conviction.

There has developed a well-founded legal tradition as to the proper roll to be assumed by courts in reviewing petitions for writs of error coram nobis. This roll, while similar to that assumed in the review of all appeals, is much more reflective of the principle that the lower court is in a substantially better position, to correctly ascertain and decide issues of fact. Courts have expressed this concept in varying degrees. In *People v. Fowler*, 346 P.2d 792 (Cal. 1959) the court said:

The granting of relief in proceedings of this kind rest largely within the lower court's discretion, and its ruling thereon will not be upset on appeal except for an abuse thereof.

It further stated:

The petitioner is deemed to be prima facie guilty. Defendant therefore has the burden of overcoming the presumption in favor of the validity of the judgment by establishing through a preponderance of strong and convincing evidence that he was de-

prived of substantial legal rights by extrinsic causes.

In *People v. McNalley*, 285 P.2d 716 (Cal. 1955) it was somewhat earlier stated in essence:

On motion by the accused to annul, vacate and set aside the judgment, the burden was upon him to produce convincing proof of facts which would constitute a legal ground for setting aside the judgment, and on a motion by the accused to annul, vacate and set aside the judgment against him in a criminal case, there was a strong presumption that judgment was valid in all respects.

With specific regard to new testimony presented by witnesses, the partial holding of the *Bobeda* case, cited earlier in this brief is reiterated.

The trial court's determination of the truth or the veracity of a witness is final, and it is not required to accept as true the testimony of a witness even though not contradicted.

Nor are state courts alone in this conception of finality, for the Sixth Circuit observed in their holding in *Dunn v. U.S.*, *supra*, that:

On application for a writ of coram nobis the entire record will be looked into by the court and the judgment rendered which the whole requires.

CONCLUSION

The respondent respectfully submits that the requirements necessary for the issuance of the writ of error coram

nobis are well recognized by the courts, and that when the appellant's case is measured by those standards, it fails in nearly all aspects to qualify for the relief sought. It is submitted that the decision of the lower court in discharging the petition be affirmed in all respects.

Respectfully submitted,

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