1959

Frank Baine v. George Beckstead : Brief of Respondent

Utah Supreme Court

Grover A. Giles; Richard C. Dibblee; Attorneys for Respondent;

Case No. 9049

IN THE SUPREME COURT of the STATE OF UTAH

FRANK BAINE,
Plaintiff and Appellant,

—vs.—

GEORGE BECKSTEAD, Sheriff,
Defendant and Respondent.

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

The parties will be referred to as they appeared in the lower court.

STATEMENT OF FACTS

Defendant agrees generally with the Statement of Facts set forth in plaintiff's brief, but submits the following additional information:

On March 4, 1958, before the Honorable Ray Van Cott, Jr., one of the Judges of the Third Judicial District for Salt Lake County, State of Utah, plaintiff appeared in person with counsel and entered a plea of guilty to the crime of issuing a check against insufficient funds. The court sentenced plaintiff to the Utah State Prison for the

indeterminate term provided by law but granted a suspension of the execution of said sentence to June 27, 1958 and placed plaintiff under the supervision and control of the Utah State Adult Parole and Probation Department. Thereafter, plaintiff was granted further suspensions of the sentence to the definite expiration dates of September 26, 1958, December 19, 1958, and March 27, 1959. On this final date the Court did not grant a further suspension of the sentence but ordered a committment to issue forthwith in accordance with the sentence originally imposed. Plaintiff was in the custody of the Salt Lake County Sheriff awaiting transfer to the Utah State Prison when a writ of habeas corpus was issued. The writ was subsequently denied and the order denying the writ is the subject of this appeal.

STATEMENT OF POINTS

POINT I

THE PLAINTIFF WAS NOT DENIED HIS FREEDOM BY VIOLATION OF DUE PROCESS.

POINT II

PROBATION MAY BE REVOKED WITHOUT NOTICE AND AN OPPORTUNITY TO BE HEARD.

ARGUMENT

POINT I

THE PLAINTIFF WAS NOT DENIED HIS FREEDOM BY VIOLATION OF DUE PROCESS.

The defendant agrees with the principles outlined in plaintiff's brief under this point.

The defendant respectfully submits that the action by the Court in not granting a further stay of the sentence was not a denial of due process, as we discuss later in this brief.

POINT II

PROBATION MAY BE REVOKED WITHOUT NOTICE AND AN OPPORTUNITY TO BE HEARD.

The Court in is discretion may grant to a person who enters a plea of guilty to a crime a suspension of the imposition of the sentence, and place the person on probation. The Utah statute which permits the court this authority is as follows:

Section 77-35-17 Utah Code Annotated 1953:

> "Upon a plea of guilty or conviction of any crime or offense, if it appears compatible with the public interest, the court having jurisdiction may suspend the imposition or the execution of sentence and may place the defendant on probation for such period of time as the court shall determine."

In accordance with the provision of the above statute the plaintiff was granted definite periods of probation and imposition of sentence was stayed accordingly. The final stay expired on March 27, 1959. On that date the Court, without a hearing, did not grant a further stay, which resulted in a committment order issuing against

plaintiff and directing that he be incarcerated in the Utah State Prison. Plaintiff now contends that the Court erred in issuing the committment order without granting plaintiff a hearing.

The plaintiff on page 4 of his brief has cited to the court certain Utah cases which he contends support his position. We submit that, with the exception of *Demmick v. Harris,* none are in point, for the reason that the defendant's period of probation in those cases did not expire but was revoked by an order of the Court. We agree with the principles announced in those cases that when probation is revoked the defendant is entitled to a scheduled hearing and sufficient evidence to justify the order of revocation. We further agree that it is the burden of the State of Utah to meet all of these requirements and that an order of revocation based upon its failure to do so is a denial of due process and should be reversed. But in a case where the probation period expires on the scheduled stay date, the Court must either order a further stay of the sentence or a committment issues as a matter of course. In either event the defendant has no right to complain and the court's order is not subject to review.

As stated before, defendant contends that the Utah case of *Demmick v. Harris,* 107 Ut. 471, 155 P 2d 170 applies to this case. In that case defendant was convicted by a jury of the crime of burglary in the second degree and of being an habitual criminal and was sentenced to

an indeterminate term of not less than 15 years imprisonment. The sentence was entered on or about November 28, 1942, but the Court granted petitioner a stay of execution to January 4, 1943, whereupon defendant was placed in custody of the State Adult Parole and Probation Department. There were certain conditions to probation involved in that case which were not important to the decision. On January 4, 1943 the probationary period expired and the Court entered an order that the commitment issue.

During the habeas corpus hearing no evidence was offered that the defendant had violated any of the terms of his probation. The writ was denied and the defendant appealed to the Supreme Court contending that he was committed to prison without any hearing on the question as to whether he violated the conditions of his probation.

The Court in affirming the denial of the writ stated the following on Page 172: * * *

> "We shall assume for the purposes of this case that it would constitute such deprivation of appellant's rights, if Judge Ellett on November 28, the date of the sentence, placed appellant on probation during good behavior; and, thereafter revoked such order without notice and hearing. Furthermore, we shall assume — and the proposition must be conceded — that the mere summary summoning of one on probation to the chambers of the sentencing judge be there cross-examined concerning his conduct either before or after the

> order granting probation, would fall short of according him the hearing the law prescribes. The primary question, therefore, is: Was appellant, on the date of sentence, granted an indefinite stay of execution and placed on probation during good behavior?
>
> "The question must be answered in the negative. The order itself, specifically makes the stay one until a definite time. Furthermore, the evidence shows that at the time of entering such order the reason, or one of the reasons given, for granting the stay was to give appellant an opportunity to tell the truth relative to the crime of which he was convicted. There can be little doubt that a temporary stay for the purpose of determining the present disposition and mental attitude of the convicted person, before granting an indefinite one is within the discretion of the trial court."

Defendant contends that the proper solution to this case is to apply the reasoning of the Demmick case. Defendant concedes that plaintiff was not granted a proper hearing if his probation was being revoked; therefore, it is necessary to pose the same question: Was plaintiff, on the date of sentence, granted an indefinite stay of execution and placed on probation during good behavior? The answer to the question must naturally be in the negative.

We respectfully submit that the same principles apply to the case at bar and this court should enter the same order.

CONCLUSION

The defendant respectfully submits that the order denying the writ of habeas corpus was not error and did not deny plaintiff his Constitutional rights. We respectfully submit the order was proper and should be affirmed by this court.

Respectfully submitted,

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