

1991

Utah v. Robert P. Hagen : Brief of Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Utah v. Robert P. Hagen*, No. 910017.00 (Utah Supreme Court, 1991).
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UTAH SUPREME COURT

BRIEF

910017

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

:

Plaintiff-Petitioner,

:

Case No.

910017

v.

:

ROBERT P. HAGEN,

:

Category No. 13

Defendant-Respondent.

:

BRIEF OF RESPONDENT

- - - - -

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FILED

MAR 20 1991

Clerk, Supreme Court, Utah

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Plaintiff-Petitioner, : Case No.
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Defendant-Respondent. :

BRIEF OF RESPONDENT
- - - - -

STATEMENT OF THE ISSUES

Respondent does not disagree with the issues presented in the petition filed by the state.

OPINION BELOW

Respondent does not disagree with the citation to the opinion of the Court of Appeals in the petition filed by the state.

STATEMENT OF JURISDICTION

Respondent does not disagree with the statement of jurisdiction in the petition filed by the state.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional, statutory or rule provisions pertinent to the questions presented for review is contained in the body of this brief.

STATEMENT OF THE CASE

Respondent does not disagree with the statement of the case presented in the state's petition.

ARGUMENT

I

THIS COURT SHOULD NOT REACH A DECISION CONTRARY TO UTE INDIAN TRIBE V. STATE OF UTAH , 773 F.2D 1087 (10th CIR. 1985) (EN BANC), CERT. DENIED, 479 U.S. 994 (1986).

In its petition, the state asserts that the Court of Appeals erroneously concluded that this court could not reach a decision contrary to Ute Indian Tribe , Supra. Its rationale was based on State v. Janis , 317 N.W.2d 133 (S.D. 1982) and Stankey v. Waddell , 256 N.W.2d 117 (S.D. 1977). The Supreme Court of South Dakota had reached a different result in those cases than the Eighth Circuit Court of Appeals on whether a reservation had been disestablished. Solem v. Bartlett , 465 U.S. 463 (1984).

Since the power to establish and disestablish a reservation is with the United States Congress, a determination of the boundary is a federal law question. Solem , supra. While the pronouncement on a federal law question by an inferior federal court is not necessarily binding on a state court, it is highly persuasive. Phillips v. Williams , 603 P.2d 1131 (Okla. 1980). There are practical advantages which cannot be ignored when federal and state courts adopt the same interpretation of federal law. Van De Hey v. United States National Bank of Oregon , 793 P.2d 1388 (C.A. Ore. 1990).

After extensive litigation in the federal court system, the U.S. Tenth Circuit Court of Appeals in Ute Indian Tribe , supra, determined the exterior boundaries of the Uintah Reservation to include Myton. The State of Utah

was a party in Ute Indian Tribe as in this case. The state should be collaterally estopped from relitigating the issue of the boundary of the Uintah Reservation. Madsen v. Borthick , 769 P.2d 245 (Utah 1988). Collateral estoppel precludes relitigation of an issue tried in a prior action. Nielson v. Doubray , 652 P.2d 1293 (Utah 1982). It is not necessary that the party who asserts collateral estoppel have been a party in the first action. Robertson v. Campbell , 674 P.2d 1226 (Utah 1983). Mutuality of parties is not required. Nielson , supra. Federal Court judgments are entitled to recognition in state courts. 46 Am Jur 2d Judgments Section 448. 47 Am Jur 2d Judgments Section 1291. Because the State of Utah was a party in Ute Indian Tribe , supra, and lost it should be estopped from relitigating the boundary issue.

In Ute Indian Tribe , the court cited Solem , supra, and stated there were two situations where courts could find that congress intended to disestablish an Indian reservation.

only in two types of situations should courts find that Congress intended to disestablish an Indian reservation. The first of these is when Congress uses explicit language of cession in an opening act and also gives indication of an unconditional commitment to compensate Indians for their opened lands. 102 S.Ct. at 1166. The other situation is "when events surrounding the passage of a surplus land act--particularly the manner in which the transaction was negotiated with the tribes involved and the tenor of legislative reports presented to Congress--unequivocally reveal a widely-held, contemporaneous understanding that the affected reservation would shrink as a result of the proposed legislation...."

The court found that neither situation existed regarding the Uintah Indian Reservation, the reservation at issue here.

Regarding diminishment of reservation lands, the court in Solem , supra, stated

When both an act and its legislative history fail to provide substantial and compelling evidence of a congression intention to diminish Indian lands, we are bound by our traditional solicitude for the Indian tribes to rule that diminishment did not take place and that the old reservation boundaries survived the opening.

The state in its petition urges this court to grant certiorai because the question of the boundary of the Uintah Indian Reservation should be settled by this court. If this court were to determine that the boundary of the Uintah Indian Reservation was different than the boundary determined by the 10th Circuit in Ute Indian Tribe , supra, then the matter would not be settled. The conflict in opinions would eventually have to be settled by the United States Supreme Court. Respondent submits that Rule 46 of the Utah Rules of Appellate Procedure does not require that the boundary of the Uintah Indian Reservation should be decided by this court.

II

THE COURT OF APPEALS WAS CORRECT IN REFUSING TO REMAND RESPONDENT'S CASE TO THE TRIAL COURT FOR RECONSIDERATION OF THE JURISDICTIONAL QUESTION.

In its petition, the state argues that the Court of Appeals should have remanded respondent's case back to the trial court for a reconsideration of the jurisidictional

issue. In support of its position, the state cites State v. Miller , 547 N.E.2d 399 (Ohio App. 1988), State v. Russo , 233 N.W.2d 485 (Wis. 1974) and State v. Love , 625 P.2d 7 (Kan. 1981). These cases are all distinguishable from the instant case. In each of the cases, a defendant was charged with a crime by a charging document which was defective. Each of the cases proceeded to trial. At varying stages thereafter, the charges were dismissed and new charges filed. Counsel for the defendants argued that double jeopardy prevented further proceedings. The court in Miller , s

upra, stated the general rule as follows:

In the absence of a sufficient formal accusation, a court acquires no jurisdiction whatever, and if it assumes jurisdiction, a trial and conviction are a nullity.

Because of the defective charging documents, all three courts ruled that the initial courts which tried the defendants did not have jurisdiction and so jeopardy did not attach.

In the present case, the Court of Appeals determined that the state had failed to offer sufficient evidentiary proof regarding the jurisdiction of the District Court. The Court of Appeals was correct in its holding that the state was not entitled to a second chance to put on evidence addressing the jurisdiction issue and that the defendant should be discharged.

The general rule is that jeopardy attaches upon the

acceptance of a guilty plea by the court. State v. Teves , 670 P.2d 834 (Haw. App.1983). The double jeopardy clause forbids a second trial for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding. Burks v. U.S. , 437 U.S. 1 (1978).

In Burks , the defendant was convicted of bank robbery despite his insanity defense. The Court of Appeals held, based on the testimony regarding the sanity of the defendant, that the trial court should have granted the defendant's motion for judgment of acquittal. The Court of Appeals then ruled that the case should be remanded to the District Court to choose the appropriate course from a balancing of the equities. The U.S. Supreme Court ruled that once the reviewing court has found the evidence legally insufficient, the only just remedy available for that court is the direction of a judgment of acquittal.

The court in State v. Sorenson , 758 P.2d 466 (UT. App. 1988) held that jurisdiction must be established by a preponderance of the evidence. U.C. Section 76-1-201 and 76-1-501(3). In that case, because the state failed to prove jurisdiction, the court reversed the conviction and ordered the discharge of the defendant. See also State v. Losolla , 500 P.2d 436 (N.M. 1972).

The Court of Appeals was correct in its determination that the state should not have a second chance to offer evidentiary proof in this matter.

This issue should not be settled by this court

under Rule 46 of the Ute Rules of Appellate Procedure.

DATED this ____ day of March, 1991.

Joel D. Berrett
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that on the ____ day of March, 1991, I mailed a true and correct copy of the foregoing BRIEF OF RESPONDENT to David B. Thompson, Attorney for Petitioner, 236 State Capitol, Salt Lake City, Utah 84114, by placing the same, postage prepaid, in the United States Post Office, Roosevelt, Utah 84066.
