

1968

## Willie Folkes v. John W. Turner, Warden Utah State Prison, et al. : Brief of Appellant

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1. Plaintiff and defendant,

Case No.  
1170

Defendant and respondent.

2. Plaintiff and defendant,

3. Plaintiff and defendant,

4. Plaintiff and defendant,

5. Plaintiff and defendant,

6. Plaintiff and defendant  
7. Plaintiff and defendant  
8. Plaintiff and defendant  
9. Plaintiff and defendant  
10. Plaintiff and defendant

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11. Plaintiff and defendant  
12. Plaintiff and defendant  
13. Plaintiff and defendant  
14. Plaintiff and defendant  
15. Plaintiff and defendant

Clara Supreme Court, Utah

## TABLE OF CONTENTS

	Page
Statement of the nature of the case .....	1
Disposition in Lower Court .....	1
Relief Sought on Appeal .....	2
Statement of Facts .....	2-3
Argument Point 1 .....	3-4-5
Conclusion .....	5

### CONSTITUTION

#### FIFTH AMENDMENT AND FOURTEENTH AMENDMENT

### UNITED STATES CONSTITUTION

### STATUTES CITED

Utah Code Annotated 1953 Section 76-62-7

### CASES CITED

Overseign Camp, W.O.W., VS. Casados, D.C.N.M., 21 F. pp. 969, 994. ....	3
More v. Reid, 246 F. 2d. 654 (1957. U.S.C.A., D.C.) ..	4
More v. Reid, 289 F. 2d. 462 (1961. U.S.C.A., D.C.) ..	4
Barry v. Plunkett, 146 Ga. 547, 91 S.E. 561, 567, R.A. 1917D, 926, Ann. Cas. 1917E 685. ....	4

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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MI FOLKS,

Plaintiff and Appellant,

Case No.  
11270

W. TURNER, WARDEN,  
STATE PRISON, et al;

Defendant and Respondent.

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BRIEF OF APPELLANT

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STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a denial of a petition for a writ of habeas corpus, in the Third Judicial District Court of the State of Utah, County of Salt Lake. Case No. 178133. Said denial of petition for writ of habeas corpus was rendered by the Honorable Judge Joseph G. Jeppson, on April 25,

DISPOSITION IN LOWER COURT

The Third Judicial District Court for the County of Salt Lake, State of Utah, after a hearing on appellants petition for writ of habeas corpus, before the Honorable Joseph G. Jeppson, Third Judicial District Court, denied the writ of habeas corpus sought by your appellant.

## RELIEF SOUGHT ON APPEAL

Appellants seeks reversal of the lower Courts Judgment discharge by habeas corpus.

## STATEMENT OF FACTS

Appellant was on parole from the Utah State Prison, he was arrested for an alleged violation of his parole and sent to the Utah State Prison, where on or about the 8th date February 1968, he was taken before the Utah State Board of - and was advised that he was accused of Assault and Battery on his wife. Tr. 11.

"Tr. 11. And you will note, that Judge Latimer said that. "We have no conviction of any alleged Assault and Battery.

It is submitted that the actual basis for the violation appellants parole stems from a previous date when on April 3, 1967, Appellant was on parole and an order issuing a warrant was issued charging him with parole violation Tr. 7. Appellants parole at this time was violated in a hearing before the Board of Pardons and Paroles on July 24th 1967. Tr. 9. On July 25th 1967, the Honorable Judge B. Sorenson granted your appellant a writ of habeas corpus, from the Fourth Judicial District Court of the State of Utah, - County of Utah. Tr. 10. 9. Appellant was subsequently released from Utah State Prison and reinstated on parole Tr. 10.

Appellant was violated in his parole in a hearing before Utah State Board of Pardons and Paroles without the benefit of process of Law. Appellant was not advised of the right to have benefit of Counsel during revocation proceedings against him. He was represented by Counsel at his hearing before the Board of Pardons. In view of the fact that the only possible cause of violation said Board of Pardons could have used was a conviction of Appellant in matter he was previously violated for the Crime of Escape from the Utah State Hospital. In that in said case there was a question on whether one can be an accessory and accomplice, other issues as to jeopardy. And that there was confusion as to whether there is misunderstanding in the difference between an accessory and normal misdemeanor.

At the time and on the actual date that appellant appeared before the board of pardons on revocation proceedings subsequently had his parole revoked, the board of pardons without lawful or valid authority to order and direct the revocation of appellants parole.,

## ARGUMENT

### POINT 1

THE ACTION OF THE BOARD OF PARDONS WAS ARBITRARY IN THAT APPELLANT WAS TWICE PUNISHED AND THE REVOCATION OF APPELLANTS PAROLE WAS ACTUALLY IMPOSED UPON A WHIM OF THE BOARD OF PARDONS THE COURT THEREFORE ERRED PREJUDICIALLY IN DENYING THE WRIT OF HABEAS CORPUS; APPELLANT WAS DENIED DUE PROCESS OF LAW:

The board of pardons under provisions of Utah Code dated 1953 Section 76-62-7. RULES AND REGULATIONS PROVIDES:

"The board of pardons is empowered and authorized to adopt rules and regulations not inconsistent with law, for its government its meetings and its hearings, the conduct of proceedings before it providing for the parole and pardon of prisoners, and the commutation and termination of sentences: Said board is further empowered and authorized to promulgate reasonable rules and regulations, not inconsistent with law., which shall establish the general conditions under which parole shall be granted and revoked."

"Equal Protection of Law" means that equal protection and security shall be given to all under like circumstances in his life, his liberty, and in the pursuit of happiness, and in the exemption from any greater burdens and charges than are equally imposed upon all others under like circumstances;" Sovereign Camp, W.O.W., VS. Casados, D.C.M.M. 21 F. Supp. 989, 994.

"The constitutional provision of due process of law demands that the application of laws and rules in administrative bodies shall not be unreasonable, - arbitrary or capricious."

"The Illinois Supreme Court, viewing the due process clause as applicable to every proceeding which may deprive a person of his liberty. " WHETHER THE PROCESS BE JUDICIAL OR ADMINISTRATIVE IN ITS NATURE OR EXECUTIVE AS A FAVORABLE ACT OF GRACE AND FAVOR BY THE BOARD OF PRISONERS OF THE JAIL."

equal protection and due process of law are required in the revocation proceedings, Moore v. Reid, 246 F. 2d. 654, 17. U.S.C.A., D.C.) Glenn v. Reed, 299 F. 2d. 462, (1961. U.S.C.

"The Fifth Amendment to the United States Constitution provides that no person shall be deprived of life, - liberty, or property, without due process of law....." The Fourteenth Amendment extends the same proscription to the States in these words; "Nor shall any State - deprive any person of life, liberty, or property:" These words. "DUE PROCESS OF LAW". Are ancient in the history of jurisprudence."

"Parole may not be revoked at the whim of the parole board: It must have specific grounds upon which to base the revocation. The charge must be sustained by adequate evidence."

"A Constitutional Right. Is a right guaranteed to the Citizens by the Constitution and so guaranteed as to prevent legislative interference therewith." Belaney v. Plunkett, 146 Ga. 547, 91 S.W. 561, 567, L.R.A. 1917D, 926, Ann. Cas. 1917E 685.

It is submitted that the late justice Louis J. Brandies in his one of his historic decisions stated.

"Decency security and liberty demand that government officials shall be subjected to the same rules of - conduct that are commands to the citizens, failure to abide by such rules of conduct merely to obtain the incarceration of a private criminal; Would surely - bring terrible retribution."

"Mr. Justice Douglas States"  
"When the humblest citizen comes into this court  
with the constitution of his country in his hand  
we dare not disregard the appeal."

CONCLUSION

Appellant submits that he is illegally and unconstitution-  
ally confined, detained, and restrained, in his liberty at Utah  
Prison. And for the foregoing reasons must of necessity be  
granted absolute discharge.

Appellants cause is worthy of ALACRITY consideration.  
Further your Affiant Sayeth Not.

RESPECTFULLY SUBMITTED

Willie I. Folker

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