

1960

James R. McPhie v. John W. Turner : Brief of Respondent

Utah Supreme Court

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In the Supreme Court of the State of Utah

JAMES R. McPHIE,

Plaintiff and Appellant,

-VS-

JOHN W. TURNER, Warden of
Utah State Prison,

Defendant and Respondent.

FILED

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Clerk Supreme Court, Utah
Case No. 9163

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

STATEMENT OF FACTS

Respondent does not dispute appellant's statement of
facts.

STATEMENT OF POINTS

POINT I.

APPELLANT'S STAY OF EXECUTION OF SENTENCE EXPIRED AND, SINCE HE HAD NOT BEEN PLACED ON PROBATION INDEFINITELY DURING GOOD BEHAVIOR, THE COURT THEREUPON PROPERLY ORDERED HIM TO SERVE THE PRISON SENTENCE.

ARGUMENT

POINT I.

APPELLANT'S STAY OF EXECUTION OF SENTENCE EXPIRED AND, SINCE HE HAD NOT BEEN PLACED ON PROBATION INDEFINITELY DURING GOOD BEHAVIOR, THE COURT THEREUPON PROPERLY ORDERED HIM TO SERVE THE PRISON SENTENCE.

The court, in the interest of justice and in the proper exercise of its discretion, granted appellant McPhie a stay of execution of sentence and placed him under the supervision of the Adult Probation and Parole Department. McPhie was not placed "on probation" at all even though ordered under the Department's supervision during the pendency of his stay. The stay date was extended from time to time until January 9, 1959. It expired and McPhie was ordered to serve the proper sentence for the crime committed.

Counsel for McPhie makes a great point of his having

been placed on probation. He was not placed on probation. The court's order said nothing about probation at all. All it did was place him under the supervision of the Department.

Assuming, however, for the sake of argument, that he was placed on some sort of probation, he certainly cannot, by any stretch of the imagination, be construed to have been placed on probation indefinitely during good behavior.

The rule in the State of Utah in regard to a person situated as appellant McPhie was, is given in the case of *Demmick v. Harris*, 107 Utah 471, 155 P.2d 170. It is this: when one convicted of a crime and sentenced has been given a stay of execution to a date certain, and the date has expired, he is not entitled to a hearing before being committed to Prison.

The court clearly distinguished the *Demmick* case from that of *State v. Zolantakis*, 70 Utah 296, 259 P. 1044, and certain other cases. The pertinent words of Justice McDonough follow:

"The *Zolantakis* case was decided on appeal from the order revoking the suspension of sentence. Therein we stated [70 Utah 296, 259 P. 1046]:

'In the absence of statutory authority, in this jurisdiction, district courts do not have inherent power to suspend sentences except for some definite period and for some specific temporary purpose * * *. Under the statute * * * trial courts are

not given authority to suspend sentences as a matter of favor or grace, but only when "it appears compatible with the public interest."

We also said:

"The purpose of the law permitting suspension of sentence is clearly reformatory. If those who are to be reformed cannot implicitly rely upon promises or orders contained in the suspension of sentences, then we may well expect the law to fail in its purpose. Reformation can certainly best be accomplished by fair, consistent, and straightforward treatment of the person sought to be reformed. It would therefore seem, both upon authority and principle, that when a sentence is suspended during good behavior, without reservations, the person whose sentence is thus suspended has a vested right to rely thereon so long as such condition is complied with. * * * Such right may not be alternately granted and denied without just cause."

But here we are met by respondent's contention that the use of the writ of habeas corpus is restricted to the correction of jurisdictional errors and errors so gross as in effect to deprive one of constitutional substantive or procedural rights. *Thompson v. Harris*, 107 Utah 99, 152 P.2d 91, opinion on petition for rehearing. 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 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 to 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. * * *

The court further stated at page 477 as follows:

“Whether one convicted of crime, and subject to punishment therefor, should be placed on probation is a matter in such court’s discretion. It would be but salutary procedure in the exercise of such discretion for a trial judge who is doubtful whether the granting of probation during good behavior is compatible with the public interest, to make such investigation as his judgment dictates as to the attitudes of the person convicted. Nor do we see anything irregular in the court’s action in this case in requiring compliance with conditions usually imposed on those placed on probation during good behavior, as a condition to the keeping in force of the stay order until the date of its expiration. The appellant, it appears from the record, could not have been misled thereby. Indeed the record below reveals that what in truth shocked appellant’s sense of justice was that he was unable to tell a story which the sentencing judge would believe. However, the burden of persuasion was upon him; and the one to be persuaded was the judge in whose power it lay to grant an additional stay of execution; not the court sitting below in this proceeding, nor this court on appeal.”

In the Demmick case, Chief Justice Larson concurred specially, and in doing so made the following statement which we believe properly covers the case at hand:

“The record is definite that sentence was imposed upon Demmick on November 28, 1942, and a stay of execution was granted until January 4, 1943. Such stay of execution operated only to delay commitment until the day certain fixed in the stay. At the expiration of that time, commitment issues as of course, unless the court by order grants a further stay. * * *”

The fact that appellant's stay date was continued from time to time to new dates certain is not sufficient to remove it from the confines of the Demmick decision.

Appellant's appeal, therefore, has no foundation and must be dismissed.

CONCLUSION

The appeal of appellant James R. McPhie does not set forth grounds entitling him to a reversal of the finding of the court below and should therefore be dismissed.

Respectfully submitted,

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