2017

Osman Mohammed Noor, Peti Tione1/ Appellant, v. State of Utah, Respondent/Appellee.

Utah Court of Appeals

GARY McCAMEY, PRO SE
#104766 BIRCH 1
POST OFFICE BOX 550
GUNNISON, UT 84634

IN THE UTAH COURT OF APPEALS

GARY JOE McCAMEY
APPELLANT, PRO SE,

V.

STATE OF UTAH
APPELLEE

BRIEF OF APPELLANT

CASE: 20160785

THIS IS AN APPEAL OF A THIRD DISTRICT COURT DENIAL OF A WRIT OF HABEAS CORPUS PETITION, DURING WHICH THE JUDGE RULED OPPOSITE OF LONG-HELD CLEARLY ESTABLISHED LAW, THAT:

A- A REPORT FROM ADULT PROBATION AND PAROLE AGENTS ALLEGING CRIMINAL CONDUCT, OR THE POSSIBILITY OF CRIMINAL CONDUCT, DOES NOT MEET THE STANDARD OF A REPORT UNDER UTAH CRIMINAL CODE THAT WOULD TRIGGER AN INVESTIGATION INTO SUSPECTED SEXUAL

MISCONDUCT BY A PAROLEE (ON PAROLE DURING PROCESS OF A SEXUAL CONVICTION) OR REQUIRE DETERMINING IF THE STATUTE OF LIMITATIONS HAD RUN ON THE SUSPECTED OFFENSE; WHEN THE SUSPECTED VICTIM DURING THAT INVESTIGATION AFFIRMED NO CONDUCT BY THE SUSPECT MET THE REQUIREMENT FOR A SEXUAL ASSAULT, AND IN FACT DENIED ANY INAPPROPRIATE BEHAVIOR BY THE SUSPECT IN BOTH THE PRE-REINCARCERATION INTERVIEW AND THE POST-REINCARCERATION INTERVIEW CONDUCTED BY MURRAY CITY POLICE. (WHO DECLARED IN 2007 THAT THE STATUTE HAD RUN) EVEN IF NO NEW REPORT WAS MADE, SINCE A NEW REPORT WAS ALSO MADE IN 2007: IT TURNED ON THE SAME DETAILS OF THE AP&P REPORTS FACTS MADE IN 2001, AND THEN AGAIN IN 2012. (NOTE THERE WERE NEW ALLEGATIONS MADE IN THE LAST REPORT, BUT SINCE THE SUSPECT WAS IN PRISON AS A RESULT OF REINCARCERATION

DUE TO THE PAROLE VIOLATION, IT IS IMPOSSIBLE ANY FURTHER SEXUAL MISCONDUCT ALLEGATION WOULD HAVE ANY VIABLE RELIABILITY OR VERRACITY; ESPECIALLY SINCE IT WAS ALSO MADE TO MURRAY CITY POLICE WHO ALREADY KNEW WHERE THE SUSPECT WAS ON THOSE LATER DATES).

BESIDE THE FACT THAT EVERY LAW ENFORCEMENT OFFICER (INCLUDING API'P) HAS AN INHERENT DUTY TO ENFORCE THE LAW (HENCE THE TITLE) UTAH CODE 62A-4a-403-3 "REPORTING STATUTE" CLEARLY REQUIRES OFFICIAL ENTITIES TASKED WITH INVOLVEMENT IN PROTECTING CHILDREN, AND OTHER PRIVATE ENTITIES REQUIRED TO DO LIKEWISE, OR FACE FELONY CHARGES, THE RESULT OF THE 2001 INVES-TIGATION REPORT WAS TWO-FOLD: FIRST THAT A REASON-ABLE SUSPICION WAS PRESENT DUE TO THE PRIOR SEX OFFENSE (WHICH ACTIVATED HIGHER STANDARDS OF CONCERN AND PURSUIT BY LAW ENFORCEMENT); SECOND, THE RESULT WAS REASONABLY DETERMINED TO EXHONORATE

THE SUSPECT, IN THE WORDS OF THE ALLEGED, OR POTENTIAL, VICTIM, AFTER A FULL, LENGTHY INVESTIGATION. IT BECOMES CLEAR THAT THE SUSPECT, THIS PETITIONER/APPELLANT, HAD A VESTED RIGHT IN RELYING ON THE RESULT OF BOTH THE INVESTIGATION IN 2001 BY MURRAY CITY THAT HAD EXHONORATED HIM AFTER HE HAD BEEN REMOVED FROM ANY ~~AM~~ SPHERE OF INFLUENCE OVER THE CHILD UPON RE-INCARCERATION.

THE UTAH SUPREME COURT CLEARLY AGREED IN A DECISION ISSUED IN 2001 (STATE V. LUSK, 2001 UTAH 102) THAT A VESTED RIGHT EXISTS UNDER THESE CIRCUMSTANCES: IT WAS THEREFORE IMPROPER BY LONG HELD LAW FOR THE JUDGE TO HOLD OTHERWISE.

LASTLY, AP&P REPORTS HAVE BEEN VIABLE ENOUGH TO CAUSE WARRANTS TO ISSUE AND CRIMINAL CHARGES TO BE FILED, FOR DECADES, WHEN THE RESULTING INVESTIGATION FOUND SUFFICIENT FACTUAL SUPPORT FOR THE SUSPECTED

VIOLATION OF LAW. EVERY JUDGE KNOWS THIS IS AN ACCEPTED PRACTICE, AND IS A RELIABLE PROCESS USED TO INITIATE CRIMINAL CHARGES.

RECENTLY, IN BENNETT V. STATE, 2016 UTAH 54, THE PREMISE THAT APiP REPORTS (VIOLATING PAROLE AS REPORTED BY APiP RESULTING IN REINCARCERATION OF BENNETT) ARE USED, AND CAUSE LEGAL STANDING TO BE CHALLENGED WHEN A CONSTITUTIONAL RIGHT IS IMPLICATED: THERE A FIFTH AMENDMENT RIGHT, HERE BOTH A SIXTH AMENDMENT RIGHT AND A FIFTH AMENDMENT RIGHT TO DUE PROCESS, AND A RIGHT PROTECTING AGAINST EX-POST-FACTO PUNISHMENT OR CHARGING (ART. 1, SEC. 18 UTAH CONST.). (LUSK, SUPRA)

CONCLUSION

AS ARGUED AND CITED ABOVE, THE JUDGE CLEARLY CONTRADICTED PREVISIONS UTAH SUPREME COURT DECISIONS AND ATTEMPTED TO DIMINISH AN APiP REPORT INTO A

"NON-REPORT" THAT WAS STILL FULLY INVESTIGATED (PROVING IT A VALID REPORT) TO VIOLATE THE STANDARDS CITED (OR DENY THE RESULT MANDATED). IT ALSO IS APPARENT THAT THE SAME PERSON MAKING A DELAYED-DECADE REPORT HAD ALREADY EXHONORATED THE APPELLANT. HER MOTIVE WAS PROBABLY THE FACT THAT A 2008 CONSENSUAL COMMON-LAW RELATIONSHIP BETWEEN THE "SUSPECTED VICTIM" AND THE SUSPECT OF THE 2001 REPORT HAD BEEN ENDED BY APPELLANT. HOWEVER, REGARDLESS THE MOTIVE, THE FACTS CITED AND ARGUED REQUIRE ISSUANCE OF A HABEAS CORPUS WRIT, AND THE RELEASE OF THIS APPELLANT, AND EXPUNGEMENT OF THE CONVICTION AND INCARCERATION.

RESPECTFULLY,

GARY JOE McCAMEY, PRO SE

DATED: DECEMBER 18, 2016

Certificate of Mailing

I certify I mailed a copy of this Brief to the Attorney General at:

160 East 300 South 6th Floor
Salt Lake City, UT 84114

This 19th day of December, 2016