

1960

State of Utah in the interest of Carl Everett Lindh : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Walter L. Budge; Neil D. Schaerrer; Attorney for Respondent;

Recommended Citation

Brief of Respondent, *State v. Lindh*, No. 9318 (Utah Supreme Court, 1960).
https://digitalcommons.law.byu.edu/uofu_sc1/3771

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, in the interest of:
CARL EVERETT LINDH,
an alleged delinquent child,

Appellant.

Case
No. 9318

FILED

Clerk

BRIEF OF RESPONDENT

WALTER L. BUDGE

Attorney General — State of Utah

By NEIL D. SCHAEFFER

Assistant Attorney General

Attorney for Respondent

TABLE OF CONTENTS

	Page
STATEMENT OF FACTS.....	1
STATEMENT OF POINTS.....	2
ARGUMENT	3

POINT I.

THE JUVENILE COURT HAD CONTINUOUS JURISDICTION OVER THE APPELLANT BY STRICTLY COMPLYING WITH THE STATUTORY REQUIREMENTS OF NOTICE AND HEARING, AND CONSEQUENTLY HAD POWER TO REVOKE THE SUSPENSION OF APPELLANT'S COMMITMENT TO THE INDUSTRIAL SCHOOL. THEREFORE, THE COMMITMENT IS VALID.....	3
--	---

POINT II.

THE ORDER OF THE JUVENILE COURT IN THE DECREE DATED JUNE 28, 1960, IS DEFINITE AND CERTAIN AND, THEREFORE, ENFORCEABLE	8
--	---

CONCLUSION	10
------------------	----

Authorities Cited

Am. Jur., Juvenile Courts, Sec. 16, Vol. 31, p. 302.....	4
43 C. J. S., Infants, Sec. 101, 102.....	9

Cases Cited

Ex Parte Baeza, 185 P. 2d 242.....	7
Ex Parte S. H., 1 U. 2d 186, 264 P. 2d 850 (1953).....	7
In Re Jones, 252 P. 2d 284, 41 Wash. 2d 764.....	7
In Re Olsen, 111 Utah 365, 180 P. 2d 210.....	4, 6
Mill v. Brown, 31 Utah 473, 88 Pac. 609 (1907).....	3, 4
People v. Picanas, 260 N.Y. 72, 182 N.E. 675, 85 A.L.R. 1097.....	3
Re State in the Interest Graham, 110 Utah 159, 170 P. 2d 172 (1946)	4
Stocker v. Gowans, 45 Utah 556, 147 Pac. 911 (1915).....	7

Statutes Cited

Utah Code Annotated, 1953:

55-10-13	5
55-10-14	5
55-10-15	5
55-10-26	3
55-10-30	4, 9

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, in the interest of: CARL EVERETT LINDH, an alleged delinquent child, <i>Appellant.</i>	}	Case No. 9318
--	---	------------------

BRIEF OF RESPONDENT

STATEMENT OF FACTS

The Juvenile Court for the Fifth District first obtained jurisdiction of the appellant in December of 1958, and in the following 18 months he was brought before the court six times. Each time he appeared before the court he was charged with being a delinquent child for reasons which included being truant from school, unlawfully taking and using an automobile, incorrigible and insubordinate to school faculty, running away from home, using tobacco, leaving the State without permission of the court, destroying property, violation of a probation order, vio-

lation of a curfew order, use of abusive language, preventing an officer from properly discharging his duty, etc.

At the fifth hearing on June 16, 1960, the court found appellant to be a delinquent child, ordered him committed to the State Industrial School but suspended the commitment upon condition that the boy live up to the terms of his probation.

On June 22, 1960, Summons and Notice to Parents was served upon appellant's parents alleging that the appellant had violated his probation and naming specific violations. After a hearing was held the juvenile court revoked the suspension and committed the appellant to the Industrial School.

STATEMENT OF POINTS

POINT I

THE JUVENILE COURT HAD CONTINUOUS JURISDICTION OVER THE APPELLANT BY STRICTLY COMPLYING WITH THE STATUTORY REQUIREMENTS OF NOTICE AND HEARING, AND CONSEQUENTLY HAD POWER TO REVOKE THE SUSPENSION OF APPELLANT'S COMMITMENT TO THE INDUSTRIAL SCHOOL. THEREFORE, THE COMMITMENT IS VALID.

POINT II

THE ORDER OF THE JUVENILE COURT IN THE DECREE DATED JUNE 28, 1960, IS DEFINITE AND CERTAIN AND, THEREFORE, ENFORCEABLE.

ARGUMENT

POINT I

THE JUVENILE COURT HAD CONTINUOUS JURISDICTION OVER THE APPELLANT BY STRICTLY COMPLYING WITH THE STATUTORY REQUIREMENTS OF NOTICE AND HEARING, AND CONSEQUENTLY HAD POWER TO REVOKE THE SUSPENSION OF APPELLANT'S COMMITMENT TO THE INDUSTRIAL SCHOOL. THEREFORE, THE COMMITMENT IS VALID.

The Utah Supreme Court in the early case of *Mill v. Brown*, 31 Utah 473, 88 Pac. 609 (1907), speaking of juvenile courts, stated that "while, in the very nature of things, these courts cannot conform to the rigorous rules of criminal and law courts, their proceedings should still be conducted as a legal investigation."

It is universally held that proceedings before a juvenile court are not criminal in nature and, therefore, the strict rules of criminal procedure are inapplicable to the proceedings, *People v. Picanas*, 260 N. Y. 72, 182 N.E. 675, 85 A.L.R. 1097. Section 55-10-26 U.C.A. 1953, states that in all cases relating to the delinquency, neglect, dependency or other cases of children and their disposition the court shall be regarded as exercising equity jurisdiction. The court may conduct the hearing in an informal manner and may adopt any form of procedure in such cases which it deems best suited to ascertain the facts relating to such cases and to make a disposition in the best interests of such children and of the public.

It has been held in Utah as well as in the majority of jurisdictions that Juvenile Court Acts are not violative of constitutional rights, because strict “due process” is not complied with or because the act does not provide for trial by jury, arraignment and plea, warrant and notice, specific manner of trial and examination, or that a child is required to be a witness against himself. *Mill v. Brown* (supra); Am. Jur. Juvenile Courts, Section 16, Vol. 31, p. 302.

All of the cases cited by the appellant with the exception of *In re. Olsen* are inapplicable because they are cases involving alleged criminals and procedure before criminal courts. The main purpose of juvenile proceedings is to determine what is best for the juvenile. It is well established today that when the juvenile court obtains jurisdiction of a child it becomes as a guardian to the child (*parens patriae*) to educate and to save it from a criminal career, not to inflict punishment. Its actions are in no sense criminal. The juvenile court has greater latitude in the judgment it may render, and the child may be disposed of in any way, except to commit it to jail or prison (which the Industrial School is not) that may, in the best interest of the child to the end that its wayward tendencies shall be corrected, and the child be saved to useful citizenship, Section 55-10-30 U.C.A. 1953.

Being a creature of statute the juvenile court obtains and retains jurisdiction by compliance with statute. See *Re State in the Interest Graham*, 110 Utah 159, 170 P. 2d 172 (1946).

Section 55-10-13 requires that when information is received stating that a child is delinquent the probation officer must first make an inquiry to determine whether the public interests or the interest of the child requires that further action be taken. This inquiry takes into consideration the home and environmental situation of the child, his previous history, and the circumstances of the conditions alleged. This is reported to the court in writing and if the court shall determine that formal jurisdiction should be required it shall authorize a petition to be filed.

Section 55-10-14 U.C.A., 1953, requires that a petition first be filed alleging facts that bring the child within the jurisdiction of the court and also state the name of the guardians or responsible persons.

Section 55-10-15 U.C.A., 1953, requires that after petition is filed, the court shall issue a summons reciting briefly the substance of the petition and requiring the appearance of the person who have control and custody to appear before the court and bring the child.

The juvenile court in this case religiously followed the above statutory procedure in bringing the appellant before it six times during a period of 18 months. At the fifth appearance the appellant was committed to the State Industrial School but the Court suspended the execution of that placement contingent upon "living up to the terms of his probation" in hopes that appellant would desist from his delinquent habits.

Upon learning that the appellant had violated the terms of his probation the juvenile court again served summons and notice upon the appellant and his parents and after a hearing the suspension was refused the appellant, and he was committed to the State Industrial School.

Appellant now complains that neither he nor his parents were aware that his probation would be suspended. This complaint is made notwithstanding the fact that his freedom had been contingent upon not violating his probation. Eight days prior to the last summons received by the appellant and his parents they had been explicitly told that if the appellant were to violate his probation he would be placed in the State Industrial School. Eight days later both appellant and his parents received a summons that alleged that he had violated his probation and specifically named six offenses which he had committed which violated the terms of his probation order. The appellant and his parents had ample opportunity to prepare a defense, or retain counsel to prepare a defense had they felt that they had sufficient grounds for a defense or would not get a fair and impartial hearing at the hands of the juvenile judge before whom they had appeared many times. It is untenable to conceive that the appellant or his parents were unaware that the juvenile court was about to revoke his probation and send him to the State Industrial School.

In the case of *In re Olsen*, 111 Utah 365, 180 P. 2d 210, relied upon by the appellant, the court in speaking of juvenile court law said,

“However, these statutes all require that the parents shall be given adequate notice of such a proceeding. In this case appellant was given no notice that the court would inquire into his present ability to support or to contribute something to her support. Apparently, the order was based upon evidence which was presented incident to neglect.”

The same cannot be said in this case. The notice to the appellant specifically named the alleged violations of his probation. He knew exactly of what the juvenile court would inquire. Less than two weeks prior to his final hearing, he had been told that his continued probation was contingent upon his living up to his probation. It cannot be said in this case as it was in the Olsen case that “apparently the order was based upon evidence which was presented incident to neglect” (or to the main inquiry).

Notwithstanding the meticulous way in which the juvenile court dealt with the appellant in affording him notice and hearing before suspension of his promotion it is doubtful whether such procedure would have been necessary. The Utah Supreme Court has held that a juvenile delinquent who violates the terms of his probation may be committed to the Industrial School *without notice to his parents*, especially where the parents had notice of the original proceeding. *Stocker v. Gowans*, 45 Utah 556, 147 Pac. 911 (1915); See also *In Re Jones*, 252 P. 2d 284, 41 Wash. 2d 764; *Ex parte Baeza*, 185 P. 2d 242. (Emphasis added)

Furthermore, a recent Utah Supreme Court case, *Ex parte, S. H.* 1 Utah 2d 186, 264 P. 2d 850 (1953) held

that a child placed on probation, after having been committed to the Industrial School is *not* entitled to a hearing before being taken back into custody.

Though it appears from the above case law that a juvenile delinquent who has violated the terms of probation may be committed to the State Industrial School without notice to his parents or a rehearing, the juvenile court in this case afforded the appellant and his parents the opportunity to appear before the court; and after a formal hearing was held, the suspended sentence was revoked, and the child was committed to the State Industrial School. The appellant cannot complain that notice to him of his violation of probation was insufficient, that he did not have ample opportunity and time to secure the services of counsel had he wished, or that the juvenile judge did not completely comply with the statutory requirements of notice and hearing before committing him to the State Industrial School for further training. Appellant's brief contains no mention of information or defense that could and would have been presented to the court in behalf of the appellant had he obtained counsel at the last hearing.

POINT II

THE ORDER OF THE JUVENILE COURT IN THE DECREE DATED JUNE 28, 1960, IS DEFINITE AND CERTAIN AND, THEREFORE, ENFORCEABLE.

From reading the order, one can readily comprehend that, (1) the appellant is declared a delinquent, (2)

that the prior suspended commitment to the Industrial School is revoked, and (3) that the appellant is now committed to the State Industrial School until he reaches the age of 21 years or is sooner released. Appellant does not allege specifically what renders the juvenile court's order so indefinite as to be enforceable, but merely says that it is ambiguous, indefinite, uncertain and not susceptible of clear and concise meaning. He also furnishes no authorities to substantiate his allegation of indefiniteness.

It is generally held that for an order of the juvenile court to be valid and binding the court must have jurisdiction, and the period of detention must be specified or fixed. The order of the juvenile court in this case complies with these requirements. See 43 C.J.S. Infants, Section 101, 102. Furthermore, the juvenile court strictly followed the statute pertaining to judgments in cases of delinquency. Section 55-10-30 U.C.A. 1953 states:

“At the conclusion of any hearing the court may dismiss the case, or may render a decree and judgment that the child is delinquent, dependent, neglected or otherwise within the provisions of this chapter. If the juvenile is adjudged delinquent, dependent, neglected or otherwise within the provisions of this chapter, the court shall enter in writing the facts constituting such delinquency, dependency, neglect or other offense and may further adjudge and decree as follows:

* * * *

(2) That the child be committed to the state industrial school or to any suitable institution, children's aid society or other agency incorporated under the laws of this state and authorized to care for children or to place them in family homes, or

to any such institution or agency provided by the state or a county; . . .”

It has further been held that surplusage contained in the order of commitment may be disregarded, 43 C.J.S., *supra*.

CONCLUSION

The juvenile court in bringing the appellant before it six times in a period of 18 months strictly complied with the statutes by which it receives jurisdiction. By its written order it instructed the appellant that unless he observed the order of the court and refrained from violating his probation order it would be revoked and he would be sent to the Industrial School. Appellant violated his probation and was promptly served with summons stating his exact violation. He had ample time to prepare his defense or retain counsel. Having not chosen to retain counsel he was nevertheless given a fair hearing, and an opportunity to refute his alleged violations. The court, having jurisdiction by reason of its compliance with the statutes, upon hearing the evidence, made a valid order which revoked appellant's prior suspension, and the appellant is presently receiving further training in accordance with this valid commitment to the State Industrial School.

Respectfully submitted,

WALTER L. BUDGE

Attorney General — State of Utah

By NEIL D. SCHAEFFER

Assistant Attorney General

Attorney for Respondent