1967

Charles E. Stinnett v. John W. Turner, Warden, Utah State Prison : Brief of Respondent

In The Supreme Co
of the State of U

CHARLES E. STINNETT,

Petitioner-
Appellant,

v.

JOHN W. TURNER,
Warden, Utah State Prison,

Respon

BRIEF OF RESP

Appeal from the Judgment of the
Salt Lake County, Hon. A.

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Att

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Ass

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In The Supreme Court of the State of Utah

CHARLES E. STINNETT,
Petitioner-Appellant,

v.

JOHN W. TURNER,
Warden, Utah State Prison,
Respondent.

Case No. 10762

BRIEF OF RESPONDENT

STATEMENT OF NATURE OF CASE

The appellant, Charles E. Stinnett appeals from the denial of his petition for a writ of Habeas Corpus.

DISPOSITION IN LOWER COURT

The appellant filed his petition for a writ of Habeas Corpus in the District Court of the Third Judicial District, in and for Salt Lake County. A pre-trial hearing was held on October 7th, 1966, before

the Honorable A. H. Ellett, judge presiding. The trial court denied appellant's petition for a Writ of Habeas Corpus.

RELIEF SOUGHT ON APPEAL

Respondent submits the decision of the trial should be affirmed.

STATEMENT OF FACTS

On September 10, 1955, appellant entered a plea of guilty to a charge of robbery, and was sentenced to the Utah State Prison for the term provided by law. It is appellant's claim in his petition for a writ of Habeas Corpus that certain constitutional rights were denied him prior to his entry of a plea of guilty. Appellant's petition for a writ of Habeas Corpus was filed on the 19th day of September, 1966. (R. 19). Gerald G. Gundry of the Salt Lake Legal Defenders Association was appointed to represent the appellant at the pretrial hearing. The matter came on for hearing on the 7th of October, 1966, the court received testimony from Aldon J. Anderson on October 24, 1966 (R. 25, 29). An order denying the petition for a writ of Habeas Corpus was entered on October 28, 1966. Other pertinent facts will be mentioned on the argument portion of this brief.

ARGUMENT

POINT I

THE RECORD AT THE PRETRIAL HEARING DISCLOSES NO EVIDENCE THAT THE COURT WAS PREJUDICED AGAINST THE APPELLANT.

Appellant in his brief apparently argues that certain of the statements between the court and respondent counsel were prejudicial to him. On a careful reading and subsequent re-reading of the transcribed testimony respondent finds no evidence of a bias or prejudice toward appellant by the court. To support his argument of prejudice, appellant cites the following language:

> "THE COURT: All right then I will deny his writ if Anderson files an affidavit denying that any such deals were made. If he admits it, the boy ought to be freed and remanded to the custody of the sheriff, and the district attorney can proceed to try him." (R. 27).

Appellant cites in his brief only the first sentence in the above quoted statement. The statement itself is the summary as to what respective counsel had agreed with respect to corroborating an allegation made in appellant's petition. It was the opinion of the court and counsel on both sides at the pre-trial hearing that the only claim with even a trace of merit was that appellant had involuntarily entered his plea of guilty. (R. 25). It is clear that if the district attorney had promised appellant that he would be granted probation in exchange for a plea of guilty then the writ should have issued. On the date on which appellant entered his plea of guilty the district attorney was the Honorable Aldon J. Anderson, now judge of the Third Judicial District of the State of Utah. In order to corroborate appellant's claim, it was agreed that an affidavit from Judge Anderson would be sufficient.

In substance, all that was discussed at the pretrial hearing was the manner in which the only witness named in the petition would have his testimony made a matter of the record. Throughout the transcript of that hearing there is no evidence that the court was biased or prejudiced against appellant. On the contrary, the court was entirely fair and even vigorously attempted to secure testimony to support appellant's claim.

> "THE COURT: **and if Aldon Anderson told him that [appellant would receive probation if he entered a plea of guilty] and persuaded him to enter a plea of guilty something should be done . . ." (R. 26)**

Thus, it is clear the court fairly and without prejudice entertained appellant's contentions.

POINT II

COURT APPOINTED COUNSEL AT THE PRETRIAL HEARING ADEQUATELY AND ETHICALLY REPRESENTED APPELLANT.

From a careful reading of appellant's brief it appears that he complains about the following: (a) that counsel failed to research and subpoena witnesses; (b) that counsel failed to call appellant to testify in his own behalf; (c) that counsel failed to inquire into the loss of an important exhibit. All these points appellant urges as evidence of counsel's "negligence and incompetence." In the light of the record herein, such an allegation is unwarranted, unsupported, irresponsible, and is a wholly unjustifiable attack on a competent and respected

member of the Utah State Bar. The answers to the points raised in appellant's second argument are very simple: first, counsel did not fail to research and subpoena witnesses because there were no witnesses other than Judge Anderson mentioned in appellant's petition. Counsel is not charged with knowledge of witnesses not mentioned in the petition. **Harding v. Logan,** 251 F. Supp. 710 (D. N.C. 1966). Judge Anderson did, in fact, testify and his testimony was in direct conflict to appellant's claim (r. 29-30); secondly, no purpose would be served by having appellant testify in his own behalf since his sworn petition is accorded every bit as much weight as would be given his direct testimony. **Long v. Hudspeth,** 164 Kan. 720, 192 P.2d 169 (1948); thirdly, a transcript of the original proceedings was not necessary to his defense since taking all of the allegations in the petition as true, the only one that would support the issuance of a writ of habeas corpus was the allegation that the district attorney had wrongly induced a plea of guilty. That allegation was conclusively refuted by Judge Anderson's testimony. There is in the record no evidence that appellant's counsel was negligent or incompetent in any way.

POINT III

THE COURT DID NOT FAIL TO CONSIDER EACH AND EVERY ALLEGATION IN APPELLANT'S PETITION.

Throughout his petition appellant repeatedly makes vague claims of a denial of his constitutional

rights. It must be assumed that the trial court gave careful consideration and read appellant's petition in its entirety. Aside from his claim that his guilty plea was involuntary, if we assume, as obviously the trial court in this case must have done, that everything in said petition was true, appellant has still presented no grounds for issuance of the writ of Habeas Corpus. **Ramseur v. Blackwell,** 361 F.2d 123 (5th Cir. 1966); **Smoake v. Willingham,** 359 F.2d 386 (10th Cir. 1966). Appellant apparently is arguing that the recent case of **Miranda v. Arizona,** 384 U.S. 436 (1966), should apply to him. However, that **Miranda** does not have retroactive scope has been clearly stated in **Johnson v. New Jersey,** 384 U.S. 719 (1966).

> "In this case we are called upon to determine whether **Escobedo v. Illinois** and **Miranda v. Arizona** should be applied retroactively. We hold that **Escobedo** affects only those cases in which the trial began after June 22, 1964, the date of that decision. We hold further that **Mirada** applies only to cases in which the trial began after the date of our decision one week ago. The convictions assailed here were obtained at trials completed long before **Escobedo** and **Miranda** were rendered, and the ruling in those cases are therefore in applicable to the present proceeding."

Thus, it is clear that the only meritorious argument presented in appellant's petition for writ of habeas corpus is that concerning the voluntariness of his plea as that issue is discussed in Point IV of

this brief. Therefore, the denial of appellant's petition is conclusive evidence that the court construed each possible argument in a manner most favorable to appellant and decided as a matter of law that none were sufficient to justify the issuance of the writ.

POINT IV

APPELLANT'S PLEA OF [redacted] GUILTY WAS ENTERED FREELY AND VOLUNTARILY SINCE HE WAS ADVISED BY COMPETENT COUNSEL AT THE TIME OF ENTERING HIS PLEA; AND FURTHER, PETITIONER'S UNSUPPORTED AND UNCORROBORATED ALLEGATIONS OF COERCION WILL NOT SUPPORT THE ISSUANCE OF A WRIT OF HABEAS CORPUS.

Although appellant makes many claims that he was deprived of certain constitutional rights in the original proceedings, in light of the record here presented, respondent submits that all of said claims are wholly without basis. Appellant was provided with court appointed counsel in the original prosecution for robbery, and in the absence of evidence to the contrary, it must be assumed that he was represented adequately. (R. 17). His counsel at the time was and is a highly respected member of the Utah State Bar. Consequently it must be assumed that appellant was fully aware of his rights at the time of entering his plea. **Burge v. State,** 90 Idaho 473, 413 P.2d 451 (1966).

It is evident from the discussion in the trial court that all parties were agreed that had the district attorney made promises to the defendant to the effect

that there would be probation if he would plead guilty, then this would surely require a Habeas Corpus hearing. With this premise, the respondent is in agreement. **Williams v. Swope,** 186 F.2d 897 (9th Cir. 1951). However, where the record refutes the claim that a guilty plea was not freely and knowingly entered, the court is correct in denying a hearing. **Webb v. Crouse,** 359 F.2d 394 (10th Cir. 1966); **Hicks v. Hand,** 189 Kan. 415, 369 P.2d 250 (1962). It is not denied that were his allegations with respect to the statements made to him by the district attorney true, he would have to be remanded for a new trial. **Milewski v. Ashe,** 362 Pa. 48, 66 A.2d 281 (1949). However, a trial court is not required to believe unsupported testimony of a habeas corpus petitioner even though the respondent might not offer any evidence in contradiction. **Ex Parte Farrell,** 189 F.2d 540 (1st Cir. 1951), Cert.Den., **Farrell v. O'Brien,** 342 U.S. 839 (1951). In the case now before this court the trial court did not have only the petitioner's own statements, the court was afforded the opportunity to have the person who allegedly had made the promise to the petitioner testify to the matter. As a result, the claim of petitioner is clearly and emphatically contradicted. Absent some evidence to support this claim, a writ will not issue. **Jackson v. Sanford,** 79 F. Supp. 74 (D. Ga. 1947), **Ex Parte Matthews,** 85 Okla. Cr. 173, 186 P.2d 840 (1947); **Blevins v. Hudspeth,** 166 Kan. 117, 199 P.2d 171 (1948).

CONCLUSION

It is submitted that all of the arguments in both

appellant's brief and petition for the writ of Habeas Corpus are without merit. They constitute a scurrilous and unfounded attack on the legal profession and its members. A careful reading of the entire record in this case merely convinces the respondent of the adequacy of the original proceedings and also those of the pretrial hearing on the petition. The appellant has been given every benefit; every concession has been made for him; there is absolutely no evidence that he has been denied any rights protected by the constitution; no evidence that all efforts have not been made to guarantee appellant fair treatment. This appeal is without merit and the denial of the writ of Habeas Corpus should be affirmed.

Respectfully submitted,

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