

1992

City of Murray v. Robinson : Petition for Rehearing

Utah Court of Appeals

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Edwin Peterson; Attorney for Appellee.

Kaylin Robinson; Appellant.

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CKET NO. 920121

IN THE UTAH COURT OF APPEALS
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CITY OF MURRAY,
Plaintiff/Appellee

V.

KAYLIN ROBINSON,
Defendant/Appellant

Case No. 920121-CA

Priority Number 2

PETITION FOR REHEARING


Appeal from Order of the
Third Circuit Court, Murray Department
the Honorable L.H. Griffiths
presiding
finding Defendant to be not Impecunious
and denying transcripts for appeal purposes
Order dated January 23, 1992
Notice of Appeal filed January 31, 1992
Decision of the Court of Appeals Dated February 5, 1993

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FILED
Utah Court of Appeals

MAR 22 1993


Mary T. Noonan
Clerk of the Court

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EDWIN PETERSON
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5025 South State Street
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The Appellant, pursuant to Rule 35 of the Utah Rules of Appellate Procedure hereby petitions the Court for Rehearing.

Appellant, by her signature below does certify that this Petition is made in good faith and not for the purpose of delay.

Appellant asserts that the Court over-looked or misapprehended the following points of law:

Appellant's right to appeal is substantially impaired by the failure to require that the transcripts be prepared at the city's expense.

The Utah Constitution, Article 1, Section 12 guarantees the criminal defendant the "right to ... appeal in all cases."

After trial and conviction of any crime, an individual has a right to an appeal. That right extends to indigent persons as well as persons with money available to pay the costs of appeal.

The first appeal from a criminal matter is an appeal of right and the appeal of right from a Circuit Court Judgment is either to the Court of Appeals or the Supreme Court.

In the case of Griffin v. People of the State of Illinois, 351 U.S. 12, 75 S.Ct. 585, 100 L. Ed. 891 (1956) the Court stated that "It is well-established that a state must furnish a transcript at no cost to an indigent defendant on appeal."

The ability to appeal is damaged when, (1) for lack of transcripts the Appellate Court will sustain the findings of the lower court because it "cannot resolve or undertake to determine appeals involving factual matters without a transcript of the testimony." Sawyers v. Sawyers, 558 P.2d 607 (Utah 1976),

(Appellant has raised factual issues on appeal - See Docketing Statement); (2) The Defendant cannot afford the required cost for preparation of transcripts and; (3) the Court refuses to order that the prosecuting body be responsible for the costs of the appeal. If the ability to appeal is impaired the right to appeal is also damaged.

This Court should reconsider and determine that an appellant's right to appeal includes the requirement for the prosecuting body to pay the costs of preparation of transcripts.

The fact that the Court did not sentence Defendant to jail, does not lessen the Appellant's right to appeal nor can it release the City from its burden to bear the costs of preparation of transcripts.

In Argersainger v. Hamlin, the Court determined that a person must be provided with an attorney at no cost if he could not afford one in order to preserve his right to representation.

The right to appeal is a separate right, entitled to the same protection. If a criminal defendant has a right to appeal, he also has a right to have the city bear the costs of transcripts.

The failure to impose a jail sentence after the trial does not affect the Defendant's right to appeal the conviction.

Therefore the Court should reconsider and determine that an impecunious defendant is entitled to transcripts at the expense of the prosecuting body, in order to preserve the right to appeal "in all cases."

The Appellant should not be penalized for not spending more of the taxpayer's money.

Had the Appellant requested the Court appoint counsel prior to the trial a determination of impecuniosity would have been made at the beginning of the proceedings. At that time the Court would have had to determine whether or not it had to appoint counsel, based upon the impecuniosity of the Defendant.

The Court could have stated at that time that there was no likelihood of jail time being imposed and denied counsel.

The likelihood of the imposition of jail time is also considered when considering whether or not to grant a jury trial.

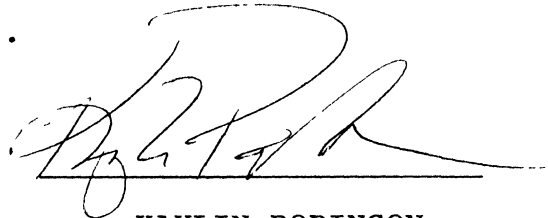
In this case, the Court did not make a determination of impecuniosity prior to trial because it was not asked to do so. The Court was not asked to appoint counsel, however, it was noticed that a jury trial was requested. It did not object to empaneling a jury because it had no intention of imposing a jail sentence. The failure to impose a jail sentence after the trial can not therefore be argued to overcome the city's obligation to supply a transcript at it's own expense.

The Court of Appeals' ruling seems to indicate that because the Appellant did not wish to spend the tax payer's money for an attorney (which if granted would have included the right to have transcripts prepared for appeal purposes) she cannot now expect to spend less of the taxpayer's money by merely asking for transcripts.

The Court should reconsider the matter and order the City to bear the costs of preparing the transcripts.

The argument that a Court is not required to appoint an attorney if there is no likelihood that a jail sentence will be imposed and therefore the city is not required to pay the costs of preparation of transcripts cannot be applied to this case.

DATED this 21st day of March 1993.



KAYLIN ROBINSON

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing PETITION FOR REHEARING was mailed via first class mail, postage prepaid, to Plaintiff's attorney addressed as follows:

EDWIN PETERSON
Attorney for Appellee
5025 South State Street
Murray, Utah 84157-0520

on the 22nd day of March, 1993.

