

2002

Keith A. Brown v. State of Utah : Brief of Appellant

Utah Court of Appeals

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Keith A. Brown #46445
Crossroads Corrections Center
Post Office Box 916
Shelby, Montana
59474

IN THE COURT OF APPEALS
OF THE STATE OF UTAH

No. 20020978

Keith A. Brown,
Defendant/Appellant,

VS.

State of Utah,
Plaintiff/Appellee,

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT
IN AND FOR THE COUNTY OF SALT LAKE

OPENING BRIEF OF APPELLANT

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I.
Statement of The Case

1). On August 5th 1999, the Utah Third Judicial District Court, in and for the County of Salt Lake, issued an arrest warrant for the Appellant. (Please See Exhibit A).

This warrant was served upon the Appellant while he was incarcerated at the Montana State Prison, on June 27th 2000. (Please See Exhibit A). Please notice the date of the faximile.

2). From May the 23rd 2000, the Appellant has consistently tried to be Extradited to the State of Utah so as to appear and defend on the charge against him. (Please See Exhibit B).

3). On June 16th, 2000, pursuant to the request of the Appellant, (Please See Exhibit B), the Records Department of the Montana State Prison informed the Appellant that there was no active warrant for his arrest from the State of Utah. (Please See Exhibit C).

4). On June 13th, 2000, the Appellant filed under the Interstate Agreement on Detainers Act, to have a final disposition of this case. (Please See Exhibit D).

5). As shown by Exhibit A, the State of Montana, was served with a Warrant from the State of Utah on June 27th, 2000. (Please See Exhibit A).

6). On September 8th 2000, the Records Department still stated that they had no active warrant from the State of Utah. (Please See Exhibit E).

7). Case manager Cheri Peterson, from the Missoula Regional Prison,, during February of 2001, talked to Mr. Greg Bown of the County Attorney's Office in Salt Lake County Utah, who informed Ms. Peterson that "they would not Extradite" the Appellant.

8). During July of 2002, the Appellant personally contacted the office of the County Attorney of Salt Lake County, offering to enter a Plea Bargain.

The State never responded.

9). On October 21st, 2002, the Appellant filed a motion to dismiss this case, pursuant to the Interstate Agreement on Detainer's Act.

10). On October 31st 2002, the Third Judicial District Court, in and for Salt Lake County, denied to the Appellant the aforementioned motion to dismiss. The Appellant filed a timely notice of appeal.

II.
Issues For Review

A). Did the District Court err when it denied the motion to dismiss?

B). Has the Appellant been denied Due Process of Law?

III.
Argument of Law

The Petitioner has requested, on numerous occasions, to have this Detainer dropped. (Please See Exhibits A through D).

The County Attorney of Salt Lake County, Mr Bown, seems to think that it is perfectly alright to allow this detainer to remain in effect, and then "If Mr. Brown comes to Salt Lake, we will deal with it then".

This is wrong!! The Interstate Agreement on Detainers Act, which has been signed by the State of Utah, mandates dismissal if a final disposition is not had in 180 days of such a request.

More than two years have passed since the Appellant has asked for a final disposition of this case, and the State of Utah has failed to comply with the mandatory terms of the Interstate Agreement on Detainers Act.

To deny to the Appellant the use of the laws of the State of Utah is a denial of Due Process of Law.

"A States failure to abide by it's own statutory commands, is a violation of the Due Process clause of the Fourteenth Amendment to the United States Constitution".
Hicks V. Oklahoma, 447 U.S. 343, 65 L.Ed.2d 175, (1979).

IV.
Conclusion

Wherefore, the Petitioner asks this Court to enter an Order of Dismissal of this case, for failure of the State of Utah to act within the confined of the Interstate Agreement on Detainers Act, which Mandates, dismissal if not tried within 180 days of notification of a waiver of extradition which the Appellant has clearly requested.

The Appellant has shown that he has requested a final disposition of this case. (Please See Exhibit D).

More that 2 years have passed, and the State of Utah has not complied with the time restraints of the Interstate Agreement on Detainers.

V.
Relief Requested

Wherefore, the Appellant respectfully requests that this Court enter an Order dismissing with prejudice this case.

VI.
Oath of Appellant

Comes now, Keith A. Brown, the Appellant, in the above referenced cause of action, who avers and states as follows:

I am the Appellant herein, I have read the enclosed document, know the contents thereof and believe them to be true and correct to the best of my belief.

12/2/02
Dated,


Keith A. Brown,



OFFICE OF
DISTRICT ATTORNEY
FOR SALT LAKE COUNTY



DAVID E. YOCOM
DISTRICT ATTORNEY

STICE DIVISION
In Office

JERRY G. CAMPBELL
CHIEF DEPUTY

CHARD S. SHEPHERD
Division Director

FAX COVER SHEET

TO: Ed Foley
AGENCY: Montana Parole?
FAX NO: 406 846 2963
FROM: Greg Brown
DATE: 6/27/00
MESSAGE: This is what the court has
on Keith Brown

TOTAL NUMBER OF PAGES (Including Cover Sheet) 3

OFFICE OF DISTRICT ATTORNEY FOR SALT LAKE COUNTY
231 EAST 400 SOUTH, SALT LAKE CITY, UTAH 84111
(801) 363-7900 FAX NO. (801) 366-7891

PRIVILEGE AND CONFIDENTIALITY NOTICE

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THIRD DISTRICT COURT - SLC COURT
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	ARREST WARRANT (NCIC)
Plaintiff,	:	
	:	
	:	
vs.	:	Case No: 991914799 FS
	:	
	:	OTN No: 10607178
KEITH A BROWN,	:	Judge: WILLIAM A THORNE
Defendant.	:	Date: August 5, 1999

DDB: 9-23-06

CHARGES

1. FORGERY - 3rd Degree Felony

To any Peace Officer:

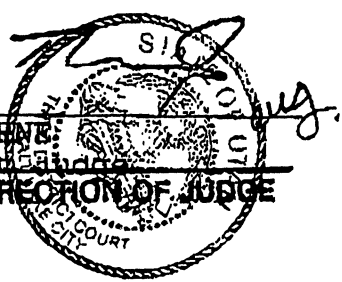
You are commanded to arrest and deliver the defendant to the Salt Lake county jail.

Issue warrant on Failure to Appear for non mandatory court violation.

Bail is set at \$10000.00.

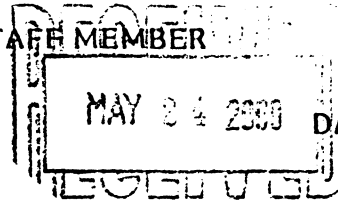
Issued: August 5, 1999

Dated this 5 day of August, 19 99.

W. A. Thorne
WILLIAM A THORNE
By District Court Judge
STAMP USED AT DIRECTION OF JUDGE


MONTANA STATE PRISON
INMATE REQUEST TO STAFF MEMBER

TO: John
(Name and title of officer)



DATE: 5/23/00

FROM: BRAIN, Keith AO 46445
NAME NUMBER

UNIT REC Y-7 AO 46445
WORK ASSIGNMENT

SUBJECT: State completely the problem with which you desire assistance. (Give details, use other side, if necessary)

During my class session I was informed that I had a detainer from the state of Utah.

I wish to sign a warrant of extradition and start the extradition process in the state act.

I was told in the county jail that this was not actually a detainer, that it was still pending investigation and not a charge. I used a copy of the warrant sent to me immediately.

Moreover, if in fact this is a detainer I need this information immediately.

Sincerely,

DISPOSITION: (Do not write in this space)

**RECORD'S DEPARTMENT
MONTANA STATE PRISON**

STAFF RESPONSE TO INMATE REQUEST

BROWN, Keith A0 46445 A
NAME NUMBER UNIT

In response to your kite to the Record's Department please see the response checked below.

- ☐ When your dates are calculated they will be sent to you.
- ☐ Parole eligible _____ Discharge date _____
If your dates are recalculated, you will be notified of any change.
- ☐ There was no amount of jail time given in the Judgment. If you feel you are entitled to jail time, contact your attorney or the County Attorney for an amended order. After we receive a certified copy of the amended order, your dates will be recalculated and sent to you.
- ☐ Please send a transfer to cover the cost of the copy work, which is \$.10 per page.
- ☒ At this time there are no warrants filed against you with the Record's Department. You can contact the County Attorney and ask them to send a certified copy of the warrant to the Record's Department.
- ☐ Interstate Agreement on Detainers does not apply to probation violations or parole violations. If a warrant for a probation violation or a parole violation has been filed against you with the Record's Department, the requesting state will be notified prior to your release from Montana State Prison.

Comments: _____

Michelle Russ
RECORD'S DEPARTMENT

6-16-2000
DATE

JUL 20 2000

NOTICE

Notice is hereby given to Mike Mahoney, Warden of Montana State, that ^{AO#46445} KEITH A. BROWN, seeks an immediate and final disposition to any and all detainers that might be lodged against him. This notice is made in agreement with Article III of the Interstate Agreement on Detainers. Please make notice to any and all requesting agencies and advise me when such notice has been made. If no such detainers exist please advise me of such.

Thank you for your time and consideration in this matter.

A handwritten signature in black ink, appearing to be "John A. Brown", written over a horizontal line.

June 13, 2000

RECORD'S DEPARTMENT
MONTANA STATE PRISON

STAFF RESPONSE TO INMATE REQUEST

Keith Brown A0 46445 A
NAME NUMBER UNIT

In response to your kite to the Record's Department please see the response checked below.

☐ When your dates are calculated they will be sent to you.

☐ Parole eligible _____ Discharge date _____
If your dates are recalculated, you will be notified of any change.

☐ There was no amount of jail time given in the Judgment. If you feel you are entitled to jail time, contact your attorney or the County Attorney for an amended order. After we receive a certified copy of the amended order, your dates will be recalculated and sent to you.

☐ Please send a transfer to cover the cost of the copy work, which is \$.10 per page.

☒ At this time there are no warrants filed against you with the Record's Department. You can contact the County Attorney and ask them to send a certified copy of the warrant to the Record's Department.

☐ Interstate Agreement on Detainers does not apply to probation violations or parole violations. If a warrant for a probation violation or a parole violation has been filed against you with the Record's Department, the requesting state will be notified prior to your release from Montana State Prison.

Comments: Attached is a copy of the form you
requested. We cannot proceed with IAD
when we don't have a warrant for
your arrest. As stated above, you can contact
Utah and have them send us a warrant

Janet Coy
RECORD'S DEPARTMENT

9-8-00
DATE

Certificate of Service

I hereby certify that I have served a true and correct copy of the foregoing Opening Brief of Appellant by placing the same in the U.S. Mail to:

Office of the Attorney General
Utah State Capitol Office
236 State Capitol
Salt Lake City, UT 84114-0810

Utah Court of Appeals
Appellate Clerks Office
450 South State, Fifth Floor
P.O. Box 140230
Salt Lake City, Utah 84114-0230

s


KEITH A. BROWN