

1984

State of Utah v. Harley F. Willett : Brief of Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent,	:	
	:	Case No. 19277
vs.	:	
	:	
HARLEY E. WILLETT,	:	
	:	
Defendant/Appellant.	:	

BRIEF OF APPELLANT

APPEAL FROM A SENTENCE ENTERED
IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY

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FILED

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Clark, Supreme Court

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BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

Appellant was charged with Murder in the Second Degree, a First Degree Felony, in violation of 76-5-203 and 76-2-202, Utah Criminal Code, as amended, in that on or about the 20th day of November, 1982, at Utah County, Utah, he, acting with the mental state required for the commission of the offense of murder in the second degree, did intentionally aid Duane M. Willett to intentionally or knowingly cause the death of Dan Okelberry, by the use of a firearm.

DISPOSITION IN LOWER COURT

Appellant entered a plea of guilty to the charge before the Honorable Allen B. Sorensen, Judge. Appellant was sentenced to an indeterminate sentence in the Utah State Prison of not less than 5 years but which may be for life. In addition, the Appellant was sentenced to an additional one year sentence in the Utah State Prison to be served consecutively and not concurrently to the 5 to life sentence. In addition, the Appellant was sentenced to a 5 year term in the Utah State Prison to be served consecutively and not concurrently to the first two

sentences. It is from the sentence imposed by the Court that the Appellant appeals.

RELIEF SOUGHT ON APPEAL

Appellant seeks modification of the sentence imposed by the lower court to eliminate the second enhancement penalty of 5 years to be served consecutively to the two other penalties imposed by the court.

STATEMENT OF FACTS

Appellant was originally charged with capital homicide in this matter. After plea negotiations between the Appellant and his counsel and the State's attorney, Appellant agreed to enter a plea to the amended charge of second degree homicide. The information was amended to state the charge of second degree homicide by use of a firearm and the Appellant duly entered his plea. The Court then imposed the statutory sentence for a first degree felony of not less than 5 years but which may be for life, added an additional 1 year consecutive sentence for the use of a firearm in the commission of the offense pursuant to the provisions of Utah Code Annotated 76-3-203(1), and then additionally sentenced Appellant to a consecutive term of 5 years in the Utah State Prison also allegedly pursuant to the provisions of 76-3-203(1).

ARGUMENT

THE SENTENCE IMPOSED BY THE COURT RESULTED IN A VIOLATION OF APPELLANT'S RIGHT NOT TO BE TWICE IN JEOPARDY FOR THE SAME OFFENSE.

It is the position of the Appellant that by imposing the third sentence of a consecutive 5 years after having imposed an additional year's consecutive sentence for the use of a firearm in the commission of the crime, the Appellant was put twice in jeopardy for the same offense. Utah Criminal Code, 76-3-203(1) in prescribing the punishment to be imposed for a felony of the first degree

provides as follows:

In the case of a felony of the first degree, for a term of not less than five years and which may be for life but if the trier of fact finds a firearm or a facsimile of a firearm was used in the commission or the furtherance of the felony, the court shall additionally sentence the person convicted for a term of one year to run consecutively and not concurrently; and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run consecutively and not concurrently;

The constitutional reading and application of the foregoing statute would require the sentencing court to impose at least one year as enhancement for the use of a firearm during the commission of the felony. The sentencing court would have the option of imposing a longer term of up to five years to run consecutively to the basic sentence as enhancement for the use of the firearm in lieu of the mandatory year enhancement. The imposition of both the year enhancement penalty and the five year enhancement penalty as was done in the present case requires an unconstitutional application and interpretation of the statute.

The Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States protects against being put twice in jeopardy of "life or limb" for the same offense. Likewise, Article I Section 12 of the Constitution of the State of Utah provides "...nor shall any person be twice put in jeopardy for the same offense." The United States Supreme Court, in interpreting the double jeopardy protection has held that Double Jeopardy Clause "protects against multiple punishments for the same offense," North Carolina vs. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 2076, 23 L.Ed.2d 656 (1969).

The United States Supreme Court also considered the issue of double jeopardy through enhancement penalties in the case of Simpson vs. United

States, 435, U.S. 6, 98 S.Ct. 909, 55 L.Ed.2d 70, in the defendant had been prosecuted for committing a bank robbery under 18 U.S.C. Section 2113(a) and 2113(d). The bank robbery punishment under Section 2113(a) may be enhanced if the robbery is committed by the use of a dangerous weapon or device. In addition, Simpson was subjected to a penalty under the provisions of Title 18 U.S.C. section 924(c) which provides that whoever uses a firearm to commit any felony for which he may be prosecuted in a court of the United States," shall be subject to an additional penalty in addition to the punishment provided for the commission of the original crime. The Court at 98 S.Ct. 912, stated, "Cases in which the Government is able to prove violations of two separate criminal statutes with precisely the same factual showing, as here, raise the prospect of double jeopardy...". The Court did not find it necessary to reach the issue of whether or not the statutes in question in the Simpson case violated Simpson's constitutional rights as applied. The Court decided the case upon the basis of statutory construction and legislative intent, finding that the purpose envisioned by Congress in enacting the enhancement statute was served where a statute already contained an enhancement provision and that the Congress did not intend to additionally enhance crimes already containing enhancement provisions within the statute.

Although the present case does not deal with two separate enhancement statutes, the interpretation placed upon 76-3-203(1) by the lower Court in the sentence imposed upon the Appellant achieves the same unfair result. In effect, the Appellant has been subjected to an additional penalty for the same criminal conduct in addition to the enhancement penalty.

This Court has previously considered the constitutional implications of the enhancement provisions of 76-3-203 in State vs. Angus, 581 P.2d 992. In

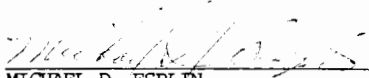
that case, the defendant alleged the enhancement provisions of 76-3-203 to be unconstitutional as imposing separate sentences for the same act. The defendant in that case had been charged with aggravated assault by the use of a firearm. This Court held that the legislature had intended to enhance the penalty for use of a firearm in the commission of offenses and such enhancement was proper. The defendant in Angus was sentenced to indeterminate term of up to 5 years in the state prison and an additional consecutive indeterminate term not to exceed 5 years. The distinction between Angus and the present case is obviously the imposition of the second enhancement penalty of not more than 5 years imposed upon Appellant after the court had already enhanced the punishment by the imposition of the 1 year consecutive sentence.

Appellant submits that the present sentence imposed upon him exceeds the bounds of that intended by the legislature, and, more importantly, constitutes a violation of his right not to be put in jeopardy for the same offense. The Appellant committed no additional acts to warrant the imposition of the second enhancement penalty, therefore, the Court cannot constitutionally uphold the sentence.

CONCLUSION

Appellant respectfully alleges that the lower court improperly imposed two enhancement penalties upon him in violation of his right not to be put twice in jeopardy for the same offense and contrary to the intent of the Utah State legislature in enacting the enhancement statute. This Court should modify his sentence to omit the 5 year consecutive penalty or, in the alternative, remand this case to the lower court for sentencing consistent with the constitutional right of the Appellant.

DATED this 13th day of April, 1984.


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DELIVERY CERTIFICATE

I hereby certify that I delivered two copies of the foregoing Brief of Appellant to the Utah Attorney General, DAVID L. WILKINSON, at 236 State Capitol, Salt Lake City, Utah 84111 this 13 day of April, 1984.

