

2003

Justin Brent Peterson v. Sheriff Aaron D. Kennard, Chief Paul Cunningham, salt Lake County Jail, and Taylorsville Justice Court : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

JUSTIN BRENT PETERSON,

Petitioner and Appellant,

-vs-

SHERIFF AARON D. KENNARD,
CHIEF PAUL CUNNINGHAM, SALT
LAKE COUNTY JAIL, and
TAYLORSVILLE JUSTICE COURT,

Respondents and Appellees.

Case No. 20030264-CA

SUPPLEMENTAL BRIEF OF THE TAYLORSVILLE JUSTICE COURT

Appeal from the Order of the Honorable Sandra Peuler Dismissing
Appellant Justin Brent Peterson's Petition for Post-Conviction Relief

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PROCEDURAL BACKGROUND

By order dated February 20, 2003, the Third District Court, Salt Lake County, denied the petition of Appellant Justin Brent Peterson ("Peterson") for post-conviction relief. In his petition, Peterson challenged his sentence, contending that it was imposed in violation of his Sixth Amendment right to counsel. Peterson appealed the District Court's denial of his petition to this Court.

Peterson filed his Brief of Appellant ("Peterson's Original Brief") with this Court on February 23, 2004. The Taylorsville Justice Court ("Taylorsville") filed its responsive Brief of The Taylorsville Justice Court ("Taylorsville's Original Brief") on March 31, 2004.

On April 13, 2004, Peterson moved this Court to stay further briefing pending the outcome of the petition of writ of certiorari to the Utah Supreme Court

in the case of Lucero v. Kennard, et al. By Order of this Court dated May 2, 2004, the briefing on this appeal was stayed pending the outcome of Lucero.

Lucero is similar to this appeal in that it involved a defendant's post-conviction collateral challenge to a sentence imposed by a justice court. Lucero v. Kennard, 2005 UT 79, ¶ 3, 125 P.3d 917. The Utah Supreme Court granted certiorari in Lucero, and affirmed the conviction. Id. at ¶ 1.

This Court's May 2, 2004 Order directed the parties to file supplemental briefs concerning the impact of Lucero. Taylorsville accordingly submits this Supplemental Brief.

ARGUMENT

I. THE HOLDING IN LUCERO IS NOT DIRECTLY ON POINT.

Lucero held that the Post-Conviction Remedies Act¹ "does not limit this court's authority to grant post-conviction relief to justice court defendants." Id. at ¶ 47. Lucero also held that the petitioner "failed to exhaust his legal remedies and that he is not otherwise entitled to a review of his petition for post-conviction relief under the unusual circumstances exception." Id.

The holdings in Lucero do not affect this appeal. Taylorsville has not argued on this appeal that the Post-Conviction Remedies Act limits the Court's authority to grant post-conviction relief to Peterson. Likewise, Taylorsville has not

¹ Utah Code Ann. § 78-35a-101 et seq. (2002).

contended on this appeal that Peterson is precluded from seeking post-conviction relief by his failure to seek a trial de novo.²

While Lucero is not directly on point, certainly some of its reasoning is directly applicable to this appeal. The Lucero decision affirms key aspects of the analysis presented in Taylorsville's Original Brief, and rejects the analysis presented in Peterson's Original Brief.

II. THE REASONING OF THE LUCERO COURT AFFIRMS THE ANALYSIS IN TAYLORSVILLE'S ORIGINAL BRIEF.

A. The Burden is on Peterson to Show that his Waiver of the Right to Counsel was Invalid.

Taylorsville's position is that because this appeal arises out of Peterson's post-conviction collateral challenge to his sentence, there is a strong presumption of regularity that attaches to Peterson's waiver of his right to counsel.

Taylorsville's Original Brief at 15-16. Lucero confirmed that Taylorsville's position is correct. Under Lucero, the presumption of regularity attaches if "there is some evidence that the defendant affirmatively acquiesced to the waiver of counsel."

Lucero, 2005 UT at ¶ 25. "If such evidence is presented, the defendant has the burden of proving the right to counsel was not knowingly, intelligently, and

² Taylorsville moved to dismiss Peterson's petition in the court below, arguing that the petition was barred by his failure to request a trial de novo. R. 145:2-5. The court below denied Taylorsville's motion to dismiss on these grounds, citing the "interest of justice." R. 145:22-24. Taylorsville has not challenged the denial of its motion to dismiss Peterson's petition.

voluntarily waived.” Id.

By contrast, Peterson made the following argument in Peterson’s Original Brief:

There is a presumption against waiver of the right to counsel, “and doubts concerning waiver must be resolved in the defendant’s favor.” Heaton, 958 P.2d at 917; see also State v. Arguelles, 2002 UT 104, ¶ 70, 459 Utah Adv. Rep. 3 (“we indulge every reasonable presumption against waiver of the right [to counsel]”).

Peterson’s Original Brief at 14-15 (emphasis added).

The presumption of regularity attaches in this case. There is ample evidence that Peterson “affirmatively acquiesced to the waiver of counsel.” Lucero, 2005 UT at ¶ 25. In particular, Peterson admitted that he was asked during the plea colloquy if he wanted a lawyer, R. 145:49, and Peterson indicated that he did not want a lawyer. Id.

Peterson also admitted that he signed Defendant’s Waiver of Constitutional Rights (Exhibit 7), which stated in part:

COUNSEL. I have the right to consult with and be represented by an attorney. If the judge were to determine that I am too poor to be able to hire a lawyer, then the judge could appoint one to represent me. I might later, if the judge determined I was able, be required to pay for the appointed lawyer’s service to me.

Exhibit 7. Peterson indicated his consent to the waiver by signing his initials after this paragraph. Moreover, Peterson also admitted that Judge Michael W. Kwan asked Peterson during the plea colloquy if Peterson understood that by entering a guilty plea, Peterson was giving up the rights listed on the Waiver. R 145:50.

Given the substantial (and uncontradicted) evidence that Peterson waived his right to counsel, the presumption of regularity attaches. As detailed in pages 18-23 of Taylorsville's Original Brief, Peterson has utterly failed to meet his "burden of proving that the right to counsel was not knowingly, intelligently, and voluntarily waived." Lucero, 2005 UT at ¶ 25.

B. This Court's Review is not Limited to the Record of the Plea Hearing.

Taylorsville has contended that this Court's review is not limited to the record of the plea hearing, but may include any competent evidence of the proceedings in the Taylorsville Justice Court. This includes the testimony of those present at the plea hearing, court dockets, and written waivers of constitutional rights. Taylorsville's Original Brief at 17-18.

By contrast, Peterson seemingly contended that The Taylorsville Justice Court's status as a court not of record alone would invalidate any waiver of the right to counsel in that court:

Arguably, the lack of a record in justice court cases precludes higher courts from ever concluding that the defendant made a knowing and voluntary waiver of the right to counsel because in the absence of a record, there is no way of ascertaining whether the justice court judge conducted penetrating and in depth questioning and otherwise delved into the matter sufficiently to demonstrate a knowing and voluntary waiver of the right to counsel.

Peterson's Original Brief at 22. Such a position would invalidate the entire justice court system in the State of Utah.

Peterson argued, as a fall-back position, that “even if this Court were to look beyond the lack of an on-the-record colloquy, the review should be limited to a consideration of information found in the justice court docket and filings.” Peterson’s Original Brief at 22.

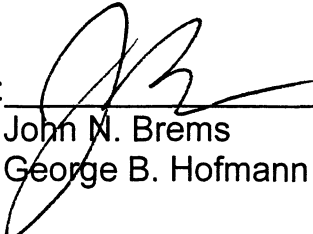
Peterson’s fall-back position was squarely rejected by the Lucero court. “While we have previously recognized the difficulty that an appellate court may have in deciding whether to grant post-conviction relief without a record of the proceedings below, we have also reviewed petitions for post-conviction relief without the aid of a record.” Lucero, 2005 UT at ¶ 22. Indeed, Lucero specifically endorsed reviewing the docket sheet and considering testimony of individuals present at the plea hearing. Id. Lucero also approved determining “whether a party is entitled to post-conviction relief by deciding who has the burden of proof and whether that burden has been met.” Id. at 23. This is the very method urged by Taylorsville. Taylorsville’s Original Brief at 18-23.

CONCLUSION

Although Lucero is not directly on point, it did affirm key aspects of Taylorsville's argument on this appeal. Where, as in this case, there is evidence that the right to counsel was waived, a presumption of regularity attaches to the proceedings. It is therefore Peterson's burden to prove by a preponderance of the evidence that "the right to counsel was not knowingly, intelligently, and voluntarily waived." Lucero, 2005 UT at ¶ 25. The evidence to be considered in this determination extends well beyond the record and the justice court docket, but includes testimony and any other competent evidence of what transpired during the plea hearing. See Lucero, 2005 UT at ¶ 22-23. Peterson cannot meet this burden, and indeed has never asserted that his waiver was not knowing, voluntary, or intelligent. Accordingly, this Court should affirm the dismissal of Peterson's Petition.

Respectfully Submitted this 8th day of February, 2006.

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CERTIFICATE OF SERVICE

I certify that two true and correct copies of the Supplemental Brief of Taylorsville Justice Court were mailed by first class mail this 8th day of February, 2006, to Joan C. Watt, Salt Lake Legal Defender Association, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, and to Karl L. Hendrickson, Salt Lake County District Attorney's Office, 2001 South State Street, Suite S3600, Salt Lake City, Utah 84190-1200.



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