

1967

## Dennis Maxwell v. John W. Turner, Warden, Utah State Prison : Brief of Appellant

Follow this and additional works at: [https://digitalcommons.law.byu.edu/uofu\\_sc2](https://digitalcommons.law.byu.edu/uofu_sc2)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Dennis Maxwell; Appellant in Pro Se

---

### Recommended Citation

Brief of Appellant, *Maxwell v. Turner*, No. 10924 (1967).  
[https://digitalcommons.law.byu.edu/uofu\\_sc2/4321](https://digitalcommons.law.byu.edu/uofu_sc2/4321)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu).

IN THE SUPREME COURT  
OF THE  
STATE OF UTAH

---

DENNIS MAXWELL,  
Petitioner, IN PRO SE,  
Appellant,

vs.

JOHN W. TURNER, WARDEN,  
UTAH STATE PRISON. et al,

Respondent.

Case No.

10924

---

BRIEF OF APPELLANT

---

Appeal from the judgment of the Second  
Judicial District Court for Weber County  
Honorable Charles G. Cowley Judge

---

DENNIS MAXWELL  
Appellant IN PRO SE,  
P.O. Box 250  
Draper, Utah

MILL L. HANSEN  
Attorney General of State of Utah  
State Capitol Building  
Salt Lake City, Utah  
Attorney for Respondent.

FILED

1936

STATE OF UTAH

STATE OF ILLINOIS	1
IN THE CIRCUIT COURT OF THE COUNTY OF [REDACTED]	1
STATE OF ILLINOIS	1
IN THE CIRCUIT COURT OF THE COUNTY OF [REDACTED]	2-3
STATE OF ILLINOIS	3

SECTION 1 - THE CIRCUIT JUDICIAL DISTRICT COURT  
 HAS IN RECENT YEARS RECEIVED -  
 CASES OF VARIOUS OFFENSES AGAINST THE  
 STATE OF ILLINOIS AND HAS IN RECENT YEARS  
 DURING THE PAST FEW YEARS OF HIS  
 SERVICE RECEIVED CASES FOR THE -  
 STATE OF ILLINOIS TO CONSIDER THE  
 STATE OF ILLINOIS GIVE HIS BEST TO  
 GENERAL. 3

SECTION 2 - AN INDIVIDUAL HAS BEEN OF GUILTY  
 HAS BEEN THROUGH COGNITIVE METHODS  
 WHICH SUFFERING, AND THROUGH THE  
 HOLDING OUT OF FALSE MAPS, BY UNDER  
 COUNTY SHERIFF LEADY HODLEY, AND -  
 PRIVATE OFFICERS JOHN HOLLES. 4

CITING CASES

People v. Daniels, 189 U.S. 34, 33 (Ill, 1964). 4  
 People v. Illinois, 378, U.S. 679 (1964). 4  
 Hudson v. Mainwright, 372, U.S. 383 (1963). 4  
 White v. Maryland, 373, U.S. 50 (1963). 4  
 Hamilton v. Alabama, 4  
 People v. Alvey v. Johnson, Cal. 62 S. Ct. 244, 316  
 U.S. 101, 36 L. Ed. 1302. 5  
 U.S. Von Mark v. Callies, Mich., S. Ct. 114, 322  
 U.S. 700, 33 L. Ed. 309. 5  
 Hill v. State, App., 110 So. 2d. 464. 3  
 Hamilton v. U.S. Ct., 346, 7. 2d. 571.  
 Brown v. Russell, 6, 18. 46, 97, Am. Dec. 431; 5  
 [REDACTED] 5

Case No.

Appellant,  
vs.  
Respondent.

Appellant,  
vs.  
Respondent.

**STATE OF NEW YORK**

**IN SENATE**

This is an appeal from a denial of a Complaint-  
petition seeking a Writ of Habeas Corpus, rendered against  
appellant in the Second Judicial District Court, of Weber  
County, State of W.Va.

**PROCEEDINGS IN THE LOWER COURT**

The case was heard before the Honorable Charles-  
C. Cowley, Habeas Corpus Hearing April 24th 1907.  
Writ of Habeas Corpus was denied.

**RELEVANT PORTION OF RECORD**

The appellant seeks a reversal of the lower court's  
judgment, and discharge from the illegal sentence in  
question.

Appellant was illegally and unconstitutionally convicted on a mentally coerced plea of guilty, through misrepresentation and the holding out of false hopes.

Being deprived of due process and equal protection of the law, required under provisions of Utah Statutes, and the Constitution of the State of Utah Art. 1 Section-13, and pursuant to the Bill of Rights, under the Fourteenth Amendment to United States Constitution.

Appellant was sentenced February 19, 1962 to a term of from one to twenty years at Utah State Prison for the alleged crime of Burglary in the Second Degree.

Appellant was never at any stage of the proceedings against him, represented by legal counsel; Appellant was told by Sheriff Lohay Hadley, of Weber County, and by a Probation Officer, John Holmes, 'plead guilty and you will get probation'; & 'You don't need an attorney'. Appellant had known Sheriff Hadley the larger portion of his life, and subsequently being a personal friend and acquaintance of the Sheriff, he believed in him. Sheriff Hadley came to the residence of your appellant in the early part of 1962, located on Orchard ave. in Ogden, Utah; asked your appellant to talk some things over with him concerning the Burglary in question. At that time, your appellant refused to discuss the matter with Sheriff Hadley. The Sheriff failed to state the exact reason he had come to appellant, then after no response, advised appellant he was seeking information of the burglary in question. Upon failing to coerce information from your appellant, took your appellant to jail. (habeas corpus (Tr.5)). The Sheriff did not book nor place a charge on appellant until the following day (Tr.5). At arraignment in City Court, of Ogden, appellant requested counsel; the case was held over for two weeks in order for your appellant to contact an attorney. (refer to record). Appellant made bail and was released on bail pending preliminary hearing. Upon appellants release on bail, he was taken to Sheriff Hadley's office.

At the Sheriff's Office appellant was told by Sheriff Hadley that he only wanted to clear his books, and that if he would sign a statement and plead guilty, he, the Sheriff, would personally arrange and guarantee your appellant probation. Subsequently appellant waived his preliminary hearing and was bound over to District Court to face the burglary charge. Around the 5th day of Feb., or before your appellant appeared in District Court, appellant again was called to the Sheriff's Office where he was told by Sheriff Hadley, and by a Parole and probation officer, Mr. Holmes, that it would be arranged for him to get probation (Tr. 14-16-54-57). Appellant, based upon the promises of Sheriff Hadley, entered a plea of guilty, and also waived the right to be represented by counsel to aid and competently advise him.

The right to counsel is a basic and fundamental right in all criminal matters. Subsequently appellant through the misrepresentation and holding out of false hopes, was denied due process and equal protection of the law.

THE SECOND JUDICIAL DISTRICT COURT WAS IN ERROR DENYING APPELLANT'S APPLICATION FOR TEST OF MENTAL CAPACITY, SINCE THE RECORDS SHOW HE WAS NOT AT ANY TIME DURING THE PROCEEDINGS AGAINST REPRESENTED BY COUNSEL, NOR WAS APPELLANT IN A POSITION TO COMPETENTLY AND INTELLIGENTLY WAIVE THE RIGHT TO COUNSEL.

Under the provisions of the Sixth Amendment to the United States Constitution, the state of constitutional law is now such as to settle forever, in State prosecutions the United States Constitution guarantees the right to counsel in all criminal prosecutions through the Fourteenth Amendment in the Due Process Clause. The absence of counsel in every stage of the proceedings deprived appellant of due process and equal protection of the law provided through decided precedent decisions of the United States Supreme Court in interpreting the Constitution.

People v. Daniels, 190 N.E.2d 33, (Ill. 1964).

478

Escobedo v. Illinois, 378 U.S. 98 (1964).

Gideon v. Wainwright, 372 U.S. 335 (1963).

White v. Maryland, 373 U.S. 59 (1963).

In a line of cases starting with the case of Hamilton v. Alabama, preceding the landmark decision of Gideon v. Wainwright, and specifically in the case of White v. Maryland, at 373, U.S. 59, 10 Law Edition 193 and 83 - Supreme Court 1050. The United States Supreme Court held that a defendant is entitled to be represented by counsel at every stage of the proceedings against him in a criminal matter; In a brief excerpt from the last paragraph of White v. Maryland, "We repeat what we said in Hamilton v. Alabama, supra; 368 U.S. 55, that we do not stop to determine whether prejudice resulted; Only the presence of counsel could have enabled this accused to know all the defenses, and rights available to him, and to plead intelligently. The judgment below is and must be reversed.

The real question in the instant case at bar is or resolves itself into whether or not there was a competent waiver of, and intelligent waiver of the right to be represented by counsel. Appellant submits his waiver was not competently and intelligently waived.

In view of the foregoing argument your appellant submits that he was denied equal protection and due Process of law. And is entitled to discharge from the unlawful sentence imposed upon him.

#### POINT TWO

APPELLANT SUBMITS HIS PLEA OF GUILTY WAS ENTERED THROUGH COERCIVE MEANS, MISREPRESENTATION, AND THROUGH THE HOLDING OUT OF FALSE HOPES, BY WHEELER COUNTY SHERIFF LARRY HADLEY, AND PROBATION OFFICER JOHN HOLMES.

Appellant submits the foregoing argument to Point two. It is submitted that a plea of guilty must be entered freely and voluntarily by one competent to know the consequences thereof. A plea of guilty obtained by illegal coercion will not support a conviction based on it. *Shley v. Johnson*, 211 U.S. 964, 316 U.S. 101, 36 L.Ed. 1302.

Thus to authorize the acceptance and entry of a plea of guilty, and imposition of judgment and sentence thereon, the plea must be entirely voluntary. *See Polka v. Gillies*, Mich., 104 U.S. 218, 322 U.S. 708, 42 L.Ed. 309. *Hill v. State*, app., 110 So.2d 464.

and it must be not be induced by fear, by misrepresentation, by persuasion, or by the holding out of false hopes and or be made through inadvertence or by ignorance.

*Shelton v. U.S. C.A. Cal.*, 246, F. 2d 571.

As was said by Mr. Justice Coulter, in *Brown v. Hummel*, 6, Mo. 36, 97, 47, An. Dec. 431;

"See the humblest citizen comes into this court with the constitution of his country in his hand we dare not disregard the appeal."

### CONCLUSION

The appellant respectfully submits that the deprivation of due process and equal protection of law, through coercion and misrepresentation, the holding out of false contrary to constitutional provisions of Utah Constitution and United States Constitution, with regards to deprivation of adequate and competent representation by counsel. And to the entry of appellants plea of guilty obtained through illegal coercion. Requires this matter be reversed.

THIS APPEAL IS DISMISSED

Leona C. Maxwell  
LEONA C. MAXWELL, Appellant IN PRO SE;  
P.O. Box 250  
Cannonville, Utah

Submitted and sworn to before me this 19<sup>th</sup> day of July 1967.

James A. Johnson  
JAMES A. JOHNSON