1967

Jackie Lee Syddall v. John W. Turner, Warden Utah State Prison : Brief of Appellant

IN THE SUPREME COURT

OF THE STATE OF UTAH

JACKIE LEE SYDDALL,	:	
Appellant	:	
vs.	:	
JOHN W. TURNER, Warden Utah State Prison	:	CASE NO. 10950
Respondent	:	

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BRIEF OF APPELLANT

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:

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BRIEF OF APPEALANT

Appeal from the Judgment of the Third District Court for Salt LakeCounty, Hon. Stewart M. Hanson, Presiding Judge.

STATEMENT OF NATURE OF CASE

The Appellant brought a petition in the Third Judicial District Court for a writ of habeas corpus against the warden of the Utah State Prison, alleging the illegality of his confinement on a commitment which was based on a conviction for burglary obtained without due process of law.

DISPOSITION IN LOWER COURT

The Honorable Stewart M. Hanson, District Judge, called the matter, Vivil No. 167509, on for hearing the 10th day of March, 1967, and having heard both Plaintiff and Defendant took said cause under advisement.

April 13, 1967, an Order denying Plaintiff's petition for habeas corpus in Civil No. 167509, together with the Memorandum Decision was entered and filed (R-22).

April 21, 1967 appellant filed Notice of Appeal Designation of Record and Affidavit of Impecuniosity (R-23, 24, 25).

STATEMENT OF FACTS

Appellant was originally confined in the Utah State Prison pursuant to sentence imposed November 25, 1955, for the crime of Second Degree Burglary.

Appellent was arrested by REX HUNTSMAN, Sheriff, Sevier County, State of Utah, on the 15th day of September, 1955, and lodged in the Sevier County Jail, where he remained throughout the proceedings.

complained of in his petition for writ of habe corpus. Appellant was seventeen (17) years old at that time.

After being in the Sevier County Jail about twenty-five (25) days a warrant issued for appellant's arrest, and two days later, on the 10th day of October, 1955, said warrant was served upon appelant and he was taken before the Hon. KEN CHAMBERLAIN, presiding judge in the Juvenile Court of the Fourth Juvenile District (Ex. D-2/Transcript of Docket). A "Document" was typed and appellant was requested to sign, but being a Juvenile, a 17-year-old-young, Appellant would not sign his name to anything, because of the fact that he did not understand the proceedings taking place against him (Ex D-1, Page 2). Appellant later learned that he had been requested to waive all his Constitutional and Procedural Rights and Guarantees.

October 11, 1955, appeallant was taken before the said Juvenile Court, where he was advised that he had been charged with a criminal offense which could be transferred to the District Court. The

Court then read the charges to Appellant and, subsequently called Sheriff Rex Huntsman to testify against him, (Ex. D-1), the sheriff was sworn and gave testimony against Appellant.

Appellant did not cross-examine the Sheriff. Appellant was a 17-year-old-youth, without the aid of legal counsel. Appellant had never had a Preliminary Hearing in his life. Appellant was lost and confused, he had been in jail 25 days. Appellant was bound over to District Court to stand trial on the above mentioned Burglary charge. The Records are incomplete; and those available are in conflict as to whether or not Preliminary Hearing and Legal Counsel were in fact waived, the "Docment" prepared for Appellant(s signature was not signed by Appellant.

October 11, 1955, the transcript of docket and all papers in this matter were transmitted to the Sixth Judicial District Court (R-D-2, page 2, paragraph 4).

October 10, 1955 Appellant was before the Sixth Judicial District Court for arraignment and plea. The Information was read and filed. Appellant was never afforded a copy of the Informa-

Appellant was never advised that he could b sent to Prison, and if fact, was led to believe he would be returned to the State Industrial School. The fact that Appellant changed his plea six (6) times between October 10th and November 23rd shows his state of mind---the mind of a 17-year-old youth.

After being bound over to stand trial in the District Court by the Honorable Ken Chamberlain, Juvenile Judge, the records show that the Honorable Ken Chamberlain appeared for the State of Utah as Disctrict Attorney, against Appellant.

Being incomplete, the records fail to show that Appellant appeared before a District Court Judge during his first six (6) appearances in the Sixth Judicial District Court. On the 23rd day of November, Appellant appeared in court for the seventh time, and records show the Honorable John L. Sevy, Jr. sentenced him to the Utah State Prison.

An examination of the records in the instant case give evidence to only one fact: the records impeach themselves.

RELIEF SOUGHT ON APPEAL

Appeallant submits the decision of the lower court should be reversed and the case be remanded for a New Trial.

ARGUMENT

POINT I

APPELLANT HAS BEEN DENIED DUE PROCESS AND EQUAL PROTECTION OF LAWS.

That which law requires and makes essential on trial of defendant, charged with felony, cannot be dispensed with, either by consent of defendant or by his failure to object to unauthorized methods pursued by those in authority. (State v. Mannion, 19U. 505, 57 P. 542, 45 LRA 638, 75 Am. St. Rep. 753).

Does an illegal arrest--without more--violate the Fourth Amendment and Fourteenth Amendment Due Process? The lower court in denying Appellant's petition for habeas corpus says no. The United States Supreme Court has said that it does. See Henry v. United States, 361 U.S. 98, 100-01, 4 L.Ed. 2d 134-38, 80 S.Ct. 168, 170 (1959); Giordenello v. United States, 357 U.S. 480, 485-86,

2 L.Ed.2d 1503, 1509, 78 S.Ct. 1245, 1250 (1958); Albrecht v. United States, 273 U.S. 1, 5, 71 L. Ed. 505, 508, 47 S. Ct. 250, 251, (1927). Both logic and History point to the same direction. The Fourth Amendment guarantees "The right of the people to be secure, " first of all, "in their persons" and an unreasonable seizure of the person seems to be a greater invasion of liberty and privacy than the similar seizure of one's effects." See Barrett at 46-47; Foote, Safeguards in the Law of Arrest, 52 N.W.U.L. Rev. 16, 41-42 (1957).

Appellant submits that he was arrested and held twenty-five (25) days without a warrant being issued; that his arrest was illegal, and therefore; "No magistrate shall have jurisdiction over any defendant who has been brought before him by virture of an illegal arrest." (Note: 100 U. Pa. L. Rev. 1182, 1215 (1952).

POINT II

AN INCOMPLETE RECORD IS A DENIAL OF DUE PROCESS AND EQUAL PROTECTION WHERE POST-CONVICTION AND/OR APPEAL IS A MATTER OF RIGHT.

In Utah "an appeal may be taken by the defendant, (1) from a final judgment of conviction;

(c) from an order made, after judgment, effecting the substantial rights of the party." Section 77-39-3, Utah Code Annoated, 1953. Thus, where an appeal is a matter of right exercisable only by the defendant, or petition for habeas corpus by the defendant, who has means enough to pay for a transcript in advance there is a denaial of equal proction within the meaning of the 14th Amendment. The reasoning of the court is that the financial ability to pay costs in advance bears no rational relationship to a defendant's guilt or innocence and cannot be used to justify depriving defendent of a fair trial or hearing. Further, there is no meaningful distinction between a rule which would deny the poor the right to defend themselves in court and one which effectively denies the poor of an adequate appellate review, or examination of records in habeas corpus hearing, by demanding costs be pain in advance. (Griffin v. Illinois, 351 U.S. 12 (1956).

The financil ability to pay bears no more rational relationship to a defendant's guilt or innocence than does the accident of the forum and neither can be used to justify depriving a

defendant of a fair trial. If appellant had been charged with a misdemeanor in the District Court he would have been supplied with a verbatim record for purposes of post-conviction remedies or appeal, since a reporter would have been present during the entire trial. Having been charged, however, in the Juvenile court he was unable to obtain a complete record. Thus, Appellant was denied due process and equal protection within the meaning of the 14th Amendment. It is not sufficient to state that the part of the records not lost is sufficient to provide a clear record from which to exercise the right to post-conviction remedies, and/or appeal for no one can say that what is missing is immaterial without knowing exactly what information is being discounted. An incomplete record is just as bad as no record at all for the testimony or evidence which was most clearly prejudicial or erroneous affording grounds for a writ of habeas corpus may very well be that which is lost. There is no rational basis for distinguising between treatment in the District Court and in the Juvenile Court with regard to an adult offender charged with

a crime for the reason that Appellant was a juvenile at that time.

Due Process

In a case where the court reporter had died prior to completing the transcription of his notes and another person was allowed to try and decipher the notes with the aid of statements from the Judge and prosecutor, in the face of a formal protest from the Court Reporter's Association of Los Angeles to the effect that there was grave doubt that anyone could furnish a usable transcript from the notes due to the fact that many portions were completely indecipherable, the Supreme Court held that an ex parte settlement of the state court record violated petitioner's right to procedural due process in not having been represented at the hearings either in person or by counsel. The order of the court was to remand to the District Court to enter an order to allow California a reasonable time to perfect the record, petitioner being represented at such hearings and that failing to do so wtthin six months petitioner should be released. The reasoning of the court was the due process clause of the 14th Amendment required the opportunity for review on a reviewable

record. Chessman v. Teets, 354 U.S. 156 (1957).

In Palko v. Connecticut, 302 U.S. 319 (1937), the Supreme Court laid down the following guide lines as to whether state procedure violates 14th Amendment standards of due process:

> "Does it violate those fundamental principles of liberty and justice which die at the bese of all our civil and political institutions?" ...Or is it "so acute and shocking that our policy will not endure it?"

The court in PALKO in rejecting the defendant's claim of double-jeopardy as a bar to a new trial reasoned that "if the trial had been infected with error adverse to the accused, there might have been a review at his instance, and so often as necessary to purge the taint. A reciprocal privilege has now been granted the state." Pako v. Connecticut, supra.

In the stand case appellant's contention that an incomplete record is a denial of due process for purposes of his right to a full and complete hearing in habeas corpus proceeding unless this court reverse the lower court's judgment and grants appellant a new trial. It is a violation of fundamental principles of liberty and justice to

say that one has a right to post-conviction remedy on the basis of error as shown by the record when the record is incomplete. The very proof of error which might have deprived Appellant of due process may be hidden in the portion which was lost. (See State v. Baum, 47 Utah 7, 151 Pac 518 (1915); and

"Primarily, interpretation of written document is for trial court, but reviewing court is not bound by trial court's interpretation based on extrinsic evidence in which there is some conflict." In re Golder's Estate, 185 P. 2d 54.

POINT III

THE LOWER COURT ERRED IN HOLDING THAT APPELLANT IS NOT ENTITLED TO DISCHARGE IN HABEAS CORPUS WHERE HE WAS DENIED LEGAL COUNSEL DURING ORIGINAL TRIAL AND CONVICTION.

Available records show that Appellant was jailed October 7, 1955--Appellant contends he was arrested and jailed September 15, 1955--and; the Warrant was issued October 8, 1955; served October 10th, 1955 (Ex. P-10; Tr. 58, 59.)

Recital of the record (Ex. D-3) alleges that the court appointed J. Vernon Erickson as counsel, at the request of Appellant for legal assistance. Appellant contends that his mother asked Mr. Erickson to see what he could do for Appellant (Ex. 35); that Mr. Erickson advised that he had talked with the judge, and there was no need to be concerned because he would be placed on probation (Tr 36, 37); Appellant's mother, Mrs. Rasmussen, testified that she went and talked with Mr. Erickson (Tr. 75), to see if he would help. The manner by which Mr. Erickson came to be the counsel of record in Appellant's case is unimportant at this time, notwithstanding the fact that Appellant was released from the jail during the day time to go and work for Mr. Erickson (Tr. 37). The point complained of is that Appellant had no legal counsel until the 24th day of October, 1955, some 17 to 42 days after being arrested and placed in jail, subsequently to two (2) pleas of guilty and waiver ofpreliminay hearing and legal counsel The only evidence, if any, ever introduced in any court was the testimony of Rex Huntsman, Sheriff, taken on the 10th day of October in the Juvenile

Court (Ex. D-2, 3). Appellant was a seventeen (17) year old youth; never before had been in a District Court, Adding confusion to confusion, Ken Chamberlain was Juvenile Judge who bound Appelant over to stand trial in District Court, and when Appellant was brought into District Court, Ken Chamberlain appeared as Prosecutor for the State against Appellant. Can it be said that a seventeen year old boy could posibly understand the procedure complained in the instand case? No.

> "Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar tiwth the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetant evidence, or evidence irrelevant to the issue or otherwise inadmissable. He lacks both the skill and knowlegge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against. him. Without it, though he is not guilty, he faces the danger of vonviction because he does not know how to establish his innocence. If that be true of men of intellignence, how much more true of men of ignorance and illiterate, or those of feeble intellect." Powel v. Alabama, 287 U.S. 45 (1932); Gideon v. Wainwright, 372 US. 335 (1963).

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Appellant was a 17 year old boy. His opponent was the Honorable Ken Chamberlain, Judge, and District Attorney.

"The Constitutional Rights of an individual are fundamental and inallienable rights which cannot be destroyed nor diminished by legislative act, or failure to act; and the duty of seeing that such rights are protected and preserved inviolate falls squarely upon shoulders of judiciary, and the preformance of the duty is one of the inherent powers of the court." State v. Briggs, 255 P. 2d 1055 (1953).

> "A judgment not void on its face may be attacked on ground that prisoner did not completently and intelligently waive right guaranteed to him under Federal and State Constitutions to have aid of counsel before entering plea of guilty." Wilken v. Squier, 309 P. 2d 746; Commonwealth of Pennsylvania v. Claudy, 76 S.Ct. 223 (1955).

Appellant submits that the Juvenile Court was without authority or Jurisdiction to dispose of his constitutional rights and guarantees to have a preliminary hearing and the aid of legal counsel.

Appellant was a juvenile delinquent who had been illegally arrested without a warrant and detained in the Sevier County Jail in violation of his Federal and State Constitutional Rights and Guarantees. In defiance of such unlawful and unconsittutional actions as complained of, there is no need for Appellant to cite the great array of authorities condemning such treatment. Justice for the Appellant (protection of his rights) alone

is sought.

CONCLUSION

The Appellant respectfully submits that the lower court erred in denying his application for habeas corpus, and a reversal of the lower court's ruling should be had, appellant should be discharged from conviction and a new trial ordered in the instant case. Appellant urges that this court reverse and remand the cause.

Respectfully submitted,

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