1964

Ervin G. Richardson v. Warden John W. Turner : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT

of the

STATE OF UTAH

ERVIN G. RICHARDSON,
Plaintiff and Appellant,

vs.

WARDEN JOHN W. TURNER,
Defendant and Respondent.

Case No. 10164

BRIEF OF APPELLANT

Appeal from the ruling of the Third Judicial District Court for Salt Lake County

Honorable Ray VanCott, Jr., *Judge*

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TABLE OF CONTENTS

CASES CITED

STATUTES CITED

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STATEMENT OF KIND OF CASE

This is an action in which the appellant brought a petition for Writ of Habeaus Corpus which was denied.

DISPOSITION IN LOWER COURT

Appellant was charged in the Third Judicial Court in and for the County of Tooele for the crime of indecent assault, to which appellant entered a plea of guilty. Upon

said plea, appellant was sentenced to the Utah State Prison. After serving approximately one year, by a petition for writ of habeas corpus, plaintiff-appellant attacked the jurisdiction of the District Court for the County of Tooele to prosecute the crime allegedly committed by appellant. The petition was heard and denied, from which plaintiff-appellant appeals.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the ruling of the Honorable Ray Van Cott, Jr., Judge of the District Court in and for Salt Lake County, in denying the petition for writ of habeas corpus.

STATEMENT OF FACTS

As set forth in the information (Exhibit 1, R. 7), appellant was charged with the crime of indecent assault under 76-70-9, Utah Code Annotated 1953, in that appellant purportedly assaulted and took indecent liberties upon a child under the age of fourteen years. To that charge, upon the advice of court-appointed counsel, appellant entered a plea of guilty and was sentenced and committed to the Utah State Penitentiary by the Honorable Aldon J. Anderson (Exhibit 2, R. 7) on August 13, 1963.

In the stipulation of facts upon which appellant's writ of habeas corpus was predicated, counsel for Ward-

on John W. Turner and counsel for appellant stipulated as follows:

> ". . . if the petitioner were placed on the stand he would testify on the 25th day of July, 1962, he had no physical contact with the complaining witness or the minor Shirl Clarke other than on Dugway, the place where he was living at the time or where the petitioner was living at the time" (R. 16).

and further:

> ". . . that at the time he was living at 60 A East Second Avenue, which is in Dugway in the southeast quarter section" (record incomplete, but should have continued to state "of northeast quarter of Section 9, Township 7 South, Range 8 East" (R. 17).

It was further stipulated that Exhibit 3 (R. 7) was a certified copy from the Bureau of Land Management of a public land order from the public domain for military purposes in the creation of Dugway Proving Grounds, which was for the use of the Department of the Army, and which included the area above described (R. 17). The Stipulation went on to state:

> ". . . that the State of Utah has never had ownership (to these lands), that the proprietary ownership of these lands has remained in the United States" . . . since statehood (R. 17, 18)

and further, that on the date of the alleged crime, the

subject matter lands were being used for a fort or miltary garrison (R. 18).

The petition was submitted to Judge Ray VanCott, Jr., with argument on the law after the aforesaid stipulation, and from an adverse decision plaintiff-appellant herewith appeals.

POINT ON APPEAL

THE DISTRICT COURT DID NOT HAVE JURISDICTION OVER THE ALLEGED OFFENSE AS THE SAME WAS COMMITTED ON DUGWAY PROVING GROUNDS, WHICH WAS BEING OCCUPIED BY THE UNITED STATES ARMY AS A MILITARY FORT OR GARRISON, AND THEREFORE UNDER THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS.

ARGUMENT

The Constitution of Utah, Article 3, paragraph 2, states:

> "The people inhabiting this state do affirm and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries hereof. . . ."

Article 1, Section 8, Clause 17, Constitution of the United States, as it refers to the powers of Congress, vests in Congress the power "to exercise exclusive legislation in all cases whatsoever under the district (not exceeding ten miles square) as may, by cession of par-

ticular states and the acceptance of Congress becomes the seat of the government of the United States and to exercise like authority over all places *purchased* by the consent of the Legislature of the State in which the same shall be for the erection of forts, magazines, arsenals, dock-yards and other needful buildings. . . ." (emphasis added). Clause 18 thereof allows for Congressional delegatory effectuation of these powers by officers and departments of the federal government.

Appellant concedes that the instant case varies from the above cited section of the Constitution of the United States in that under our fact situation the federal government never parted with the proprietary interest in the subject matter lands. It is submitted that since exclusive legislative privileges are affixed to the Congress of the United States in cases of purchase or cession by individuals or states for the named federal uses, like exclusive federal jurisdiction should continue in the United States Courts to administer the laws governing persons within the boundaries of the named exclusive jurisdiction areas which were not acquired by cession or purchase. The law is clear on the immateriality of whether the subject matter plot of ground was being actually occupied for fortress purposes or residential purposes within the fortress boundaries, *United States v. Unzeuta,* 281 U.S. 138, (1930).

Principal cases of record involving the jurisdiction of a court being challenged in a criminal case where the

crime took place on governmental property covered in the named uses of Constitutional Clause 17, supra, and where the property on which the purported crime was committed was not purchased by the federal government are *State v. Tully,* Montana, 78 P. 760, and *United States v. Tully,* 140 Fed. 899, Cir. Ct. Dist. of Mont. Both cases involve the same fact situation. The defendant who was charged with the crime of murder, the same having taken place on the Fort Missoula military reservation and more particularly on the East half of Section 36, being one of the sections generally deeded by the United States Government to the States, to be used for the support of common schools. In the state prosecution, the Montana Supreme Court made a very detailed discussion covering the date of the school lands conveyances, and noted that Montana obtained its statehood subsequent to the general grant and prior to the alleged homicide and, further that the occupancy of the east one half of the school land section had not been deliberately intended by the Department of the Army to be used as part of the fort. The Court further noted that the only attempt at transfer of title to the material area was the Act of Congress which granted to the State of Montana ownership of this section and other school sections. The Montana Supreme Court after acknowledging that the Act of Congress vested title in the State in the East half of Section 36, reasoned as follows:

> "It is apparent, therefore, that the United States granted both title and sovereignty to the state or it granted neither, for, if the land was

> part of the military reservation at the time that the grant took effect, so that the title to the same did not pass, the sovereignty remains in the United States so long as such condition continues, for the Congress reserves exclusive jurisdiction over military reservations." *State v. Tully,* supra, 765.

Analogizing the State case reasoning to our own Constitution of Utah, Art. 3, paragraph 2, wherein we specifically ". . . disclaim all right and title to the unappropriated lands . . ." within the State of Utah, appellant submits that the Tully case and the reasoning contained therein is sound law to be applied to this case. It is submitted that the federal case of *United States v. Tully,* supra, and its reasoning is compatible with the state case, notwithstanding the different results.

For the benefit of explanation in this brief, after the defendant Tully was discharged for lack of jurisdiction in the Montana state courts to prosecute, federal authorities attempted to indict the defendant for the same charge which met with a plea to the jurisdiction in which the Court noted,

> "A man being tried for his life, of course, is not squeamish as to consistency, and, as its power (the Court's) is directly challenged, it is for this Court to decide, as did the Supreme Court of Montana, whether it has authority to try the offense charged in the indictment." *United States v. Tully,* supra, 900.

After setting forth essentially the same facts as did the

state court, to wit, the initial military occupancy of the school land section was inadvertent, the federal court made the following conclusion:

> "It will be observed that neither by Act of Congress nor by authority of the President was said section (Section 36) ever set apart as a part of said reservation; that the President did not, through the Secretary of War or otherwise, in fact reserve or attempt to reserve this land for military purposes. These being the only methods by which it could have been set aside, it must be held that Section 36 was not at the time of the state a part of said military reservation and it was not, therefore, a place within the exclusive jurisdiction of the Unted States." *State v. Tully,* supra, 902.

We concede that these two Courts have come up with diametrically opposed conclusions that one court held title did not pass until the military use was terminated and the other court held title had passed to the state. However, it is submitted that the essential question was the sovereignty of the United States over lands granted to the state. The common point was title and therefore jurisdiction. We have in the case on appeal an instance where the United States has always held title to the subject matter section of land and has merely withdrawn public use of this section for the purpose of creating a military reservation.

Directing the Court's attention, we request you to take judicial notice of the actions of former Governor

Herbert B. Maw, who on November 3, 1944 and by corrective deed on August 20, 1945, executed by deed of cession the rights of the State of Utah in some 13,600 acres of school land sections situate within the then-boundaries of what is now known as Dugway Proving Grounds, reserving only to the State the right to execute civil and criminal process on the deeded lands. We contend this action to be in accordance with the jurisidictional law governing the remainder of the military reservation.

Appellant concedes that we have no evidence of any compliance by the military with 54 Stat. 19, as amended, 40 U.S.C. 255 (1958), which sets forth the requirement that the United States accept exclusive jurisdiction over lands acquired by *transfer* or *cession* as a condition precedent to the acquisition by the federal government of exclusive jurisdiction. However, from the reasoning of the two Tully cases, the actions of Governor Maw, the acknowledgment that the proprietary interest in the subject matter section has always been in the United States, and that the action of the Department of the Interior (Exhibit 3, R. 7) in creating from United States lands a military reservation or garrison, is sufficient evidence and basis to conclude that this reservation should be deemed under the exclusive jurisdiction of the federal courts. It is completely illogical to assume that the State of Utah would be without power to prosecute this case had it been charged as being committed on a ceded school section, but could prosecute had the alleged offense been committed just across one of these sectional

lines on withdrawn public lands. The result would be to create, in effect, a checkerboard type of judicial quandary for the courts.

CONCLUSION

Appellant respectfully requests this Court to reverse the ruling of the Honorable Ray VanCott, Jr., and grant the petition for writ of habeas corpus releasing appellant from the custody of Warden John W. Turner and confinement in the Utah State Penitentiary.

Respectfully submitted,

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