1964

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

Utah Supreme Court

Sumner J. Hatch; Robert M. McRae; Attorneys for Appellant;
A. Pratt Kesler; Attorney for Respondent;

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 RESPONDENT

Appeal from the ruling of the Third Judicial District
Court for Salt Lake County
Honorable Ray VanCott, Jr., Judge

A. PRATT KESLER
Attorney General
RONALD N. BOYCE
Chief Assistant Attorney General
236 State Capitol
Salt Lake City, Utah
Attorneys for Respondent

SUMNER J. HATCH &
ROBERT M. McRAE
516 Boston Building
Salt Lake City, Utah
Attorneys for Appellant

TABLE OF CONTENTS

CASES CITED

TABLE OF CONTENTS — Continued

STATUTES CITED

TEXTS CITED

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STATEMENT OF THE NATURE OF CASE

The appellant, Ervin G. Richardson, appeals from the decision of the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable Ray VanCott, Jr., Judge, denying the appellant's petition for a writ of habeas corpus.

DISPOSITION IN LOWER COURT

On April 13, 1964, the petitioner filed a petition for a writ of habeas corpus in the District Court of Salt Lake County. On April 14, 1964, the writ of habeas corpus was issued scheduling a hearing for the 27th day of April. On the 27th day of April, 1964, the respondent filed its answer and return to the writ of habeas corpus and a hearing was had upon the petition. On May 6, 1964, the Honorable Ray VanCott entered findings of fact, conclusions of law, and judgment denying the petition for a writ of habeas corpus.

Subsequently, on May 25, 1964, the appellant filed his notice of appeal.

RELIEF SOUGHT ON APPEAL

The respondent submits the petition for writ of habeas corpus was properly denied by the trial court, and this court should affirm.

STATEMENT OF FACTS

The appellant filed his petition for writ of habeas corpus alleging that he was convicted in the Third Judicial District Court of Tooele County, Utah and committed to the Utah State Penitentiary (R. 1). The sole basis upon which the petitioner sought relief from his confinement was upon an allegation that the crime which the appellant committed took place on property under the exclusive jurisdiction of the United States Government (R. 1). The respondent answered, denying the allegation that the court was without jurisdiction. At the time of hearing, it was stipulated between the parties that the petitioner, Ervin G. Richardson, was convicted upon plea of guilty of the crime of taking indecent assault upon a child under the statutory age in violation of 76–7–9 of Utah Code Annotated 1953 (R. 15, 16). It was further stipulated that the physical contact constituting the assault occurred on Dugway Proving Grounds in Tooele, Utah. At the time of the commission of the crime, the appellant was living at 60A East Second Avenue, at the Dugway Proving Grounds in the southeast quarter section. Plaintiff's Exhibit 3 was admitted into evidence, which was a copy of order of the Secretary of Interior dated October 24, 1950, withdrawing certain portions of the public domain for use by the Army for military purposes. It was

further stipulated that the crime was committed on a portion of the lands withdrawn for military purposes (R. 17). It was further stipulated that the State of Utah never had ownership of the lands but that proprietary ownership rested in the United States (R. 17). At the time the crime was committed, the lands were being used as a part of a military reservation (R. 18).

There was no evidence before the court that the lands were being used for a military reservation at the time of statehood, or that the State of Utah ever ceded legislative jurisdiction over the lands. Further, there was no evidence that the United States or any official of the United States ever accepted exclusive jurisdiction over the area where the crime was committed. The trial court expressly found that the area wherein the crime was committed "never had a legislative jurisdiction ceded from the State of Utah nor has the Governor or other officials of the State of Utah filed or executed any deed of cession for said area" (R. 8). Further, the court found that the subject lands were dedicated to military uses by withdrawal from the public domain by the act of the Secretary of Interior and that at no time has the United States formally accepted exclusive jurisdiction from the State of Utah over the said area, nor has the State ever purported to transfer such jurisdiction (R. 9).

Based upon the above facts, it is submitted that as a matter of law, the appellants have not shown that the crime was committed in an area where the United States exercises exclusive jurisdiction.

ARGUMENT

POINT I

THE TRIAL COURT DID NOT ERR IN FINDING THAT THE DISTRICT COURT IN WHICH THE APPELLANT PLEAD GUILTY, WAS CONVICTED, AND COMMITTED, HAD JURISDICTION OVER THE PERSON AND SUBJECT MATTER AND THAT THE CRIME WAS NOT COMMITTED UPON A MILITARY RESERVATION OVER WHICH THE UNITED STATES EXERCISED EXCLUSIVE JURISDICTION.

The appellant's contention is that since the crime with which he was charged was committed upon a military reservation that the state was without jurisdiction to prosecute, it being contended that the federal government had acquired exclusive jurisdiction over the reservation. The relevant facts in this regard show only that in 1950 the Secretary of Interior withdrew from the public domain certain areas of land in Tooele County for the purposes of use by the Department of the Army. There is no evidence that prior to this withdrawal the subject lands (the lands upon which the crime was committed) were being used for military purposes. The letter of the Secretary of Interior, effecting the withdrawal, recites that the lands are being withdrawn from "public appropriation." Consequently, prior to the withdrawal, the lands were part of the general public domain subject to appropriation and private acquisition by compliance with the various homestead and mining laws of the United States. No evidence appears of record that the subject lands were being used for military purposes at the time of statehood or that at the time of statehood the United States reserved jurisdiction over the lands in question. Additionally, there is no evidence demonstrating, that the Legislature of the State of Utah ever consented to the acquisition of "legislative jurisdiction" over the subject lands or that the Governor of the State of Utah ever deeded

"legislative jurisdiction" by a deed of cession. The appellant relies in part for its contention upon a statement contained in Article III, paragraph 2 of the Constitution of the State of Utah disclaiming title to the unappropriated public lands in the State of Utah. Prior to determining the question of exclusive jurisdiction, it is well to note the difference between the power of the state to exercise its police authority, and the ownership and title to lands. The United States holds its lands primarily in a proprietary status. *Fort Leavenworth RR v. Lowe,* 114 U.S. 525 (1885). However, this is an entirely different thing than the question of legislative jurisdiction. It is essential that the United States have title to land before it may exercise jurisdiction thereover on the basis of land ownership alone. *Ex parte Hebard,* 11 Fed. Cas. 1010, No. 6312 (C.C.D. Kan. 1877). However, mere title alone does not give exclusive jurisdiction.

At the outset, it is important to ascertain the manner in which exclusive jurisdiction or even legislative jurisdiction of any kind may be obtained. The most comprehensive legal study in this area is *A Report of the Interdepartmental Committee for the Study of Jurisdiction over Federal Areas Within the States* 1957. The report was the result of the appointment of a committee by President Eisenhower under the Attorney General to study the problem of jurisdiction over federal areas within the states. Since the report is the most comprehensive legal treatise in the field, it will be cited in this brief in many instances. (It will be cited as Jurisdiction Over Federal Areas Within the States, Part II, 1957.) The Constitution of the United States, Article I, Section 8, Clause 17, is the only constitutional expression allowing the federal government to acquire exclusive jurisdiction over lands within state boundaries. This provision

grants to congress the power to exercise exclusive legislation over:

> "Such District as may become 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."

As can be seen, the constitutional provision grants only the power to exercise such exclusive jurisdiction over the District of Columbia and those places purchased with the consent of the Legislature of the state. In this instance there was no purchase of the lands upon which the crime was committed within the constitutional sense. See *United States v. Cornell,* 25 Fed. Cas. 646, No. 14867 (C.C.D. R.I. 1819). As Mr. Justice Story noted in 2 Story, *Constitution,* Section 1224 (1847) acquisition pursuant to the constitutional allowance "can only be exercised at the will of the state." Since it is as a matter of record that there was no consent by the State of Utah in the instant case to the acquisition of legislative jurisdiction over the lands at Dugway Proving Grounds involved in this case, appellant cannot predicate exclusive jurisdiction on the constitutional provision.

A second method by which jurisdiction may be obtained was recognized by the United States Supreme Court in *Fort Leavenworth RR v. Lowe,* 114 U.S. 525 (1885). In that case the Supreme Court held that the United States obtained exclusive jurisdiction over Fort Leavenworth military reservation when the State of Kansas by legislative enactment ceded to the United States the exclusive jurisdiction over the reservation. In the instant case, there was

no cession of legislative jurisdiction over the subject lands by the legislature of the State of Utah within the construction of the *Fort Leavenworth RR* case. Although 63–8–1, Utah Code Annotated 1953, provided a general grant allowing the federal government to take legislative jurisdiction over military reservations, the exercise of this grant is dependent upon the Governor executing appropriate conveyances ceding the jurisdiction, 63–8–2, Utah Code Annotated 1953. In the instant case, there has been no such conveyance. Further, even if it is assumed that the legislative grants in 63–8–1 operated as a cession on the part of the state, there has been no acceptance by the United States. R.S. 355, 54 Stat. 19, 33 U.S.C. 733, 40 U.S.C. 255, 50 U.S.C. 175, enacted February 1, 1940, provided as follows:

> "Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and *indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands, hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.*"

This statute, which would have been applicable to any action involving the subject lands of this case, requires affirmative action by the federal government expressly consenting to the state's cession. In *Adams v. United States,* 319 U.S. 312 (1943); *People v. Brown,* 69 Cal.App.2d 602, 159 P.2d 686 (1945), the provisions of the act of February 1, 1940 (40 U.S.C. 255) require that the head of the agency file notice of acceptance with the state. The agency involved to obtain jurisdiction in this instance, would have been the War Department and no such acceptance has been filed. Further, in *Adams v. United States,* supra, the United States Supreme Court through Mr. Justice Black, approved opinions of the Judge Advocate of the Army and the Solicitor of the Department of Agriculture that notice of acceptance must be filed if the government is to obtain concurrent (and necessarily exclusive) jurisdiction. This has not been done in the instant case. Exhibit 3 from the Secretary of Interior, who is not the authorized officer, is merely a notice of withdrawal and in no way attempts to consent to acceptance over jurisdiction. Consequently, the appellant cannot contend that there has been an appropriate acceptance. The appellant in his brief argues that the correspondence between the Secretary of Interior and Governor Maw should be deemed an acceptance. It is suffice to note that there is no evidence of record of any such correspondence and Governor Maw was not the Governor of the State of Utah at the time of the transfer of the lands involved in the instant case.

The third method by which the federal government may acquire exclusive jurisdiction over an area within the state is apparently the method the appellant relies upon. This is by federal reservation. This concept was recognized in *Fort Leavenworth RR v. Lowe,* supra. However, the reser-

vation must be a reservation at the time of statehood. Thus in *Military Reservations and Navigable Waters,* Department of the Army (1961), it is stated:

> "Congress has in several instances reserved jurisdiction over specified areas in connection with the admission of a state into the Union. This method of preserving legislative jurisdiction in the federal government was also recognized by the Supreme Court in the case of *Fort Leavenworth R.R. v. Lowe* wherein the court stated by way of dicta:
>
> > 'Congress might undoubtedly upon such admission have stipulated for retention of the political authority, dominion and legislative power of the United States over the Reservation, so long as it should be used for military purposes by the government; that is, it could have excepted the place from the jurisdiction of Kansas, as one needed for the uses of the general government.'
>
> "Where the enabling act admitting a state into the Union contains no provision retaining jurisdiction in the United States over a military reservation located in the state, federal jurisdiction over the reservation exists only if jurisdiction is ceded by the newly formed state."

See also *Rogers v. Squire,* 157 F.2d 948 (9th Cir. 1946), cert. denied, 330 U.S. 840 (1947); *Olsen v. McPortlin,* 105 F. Supp. 561 (D.C. Minn. 1952). In this instance the evidence shows the lands in question were not reserved for military purposes at the time of statehood, rather were only withdrawn from the public domain in 1950. Consequently, the appellant has no basis under the reservation theory either.

The appellant seems to argue that if the lands were withdrawn from the public domain for the uses of a fort, maga-

zine or arsenal, etc. and if the lands had never been used by the State of Utah or title vested in the State of Utah, that the withdrawal for military uses automatically vests exclusive jurisdiction in the United States. In *Jurisdiction Over Federal Areas Within the States*, Part II, supra (1957), page 45, it is noted:

> "It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise entirely by the State, subject to noninterference by the State with Federal functions, and subject to the free exercise by the Federal Government of rights with respect to the use, protection, and disposition of its property.
>
> "* * * The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State.* * *"

In *Military Reservations and Navigable Waters,* Department of the Army (1961) page 29, the following is stated:

> "There are three methods by which the United States acquires jurisdiction over land located within one of the several states: consent to purchase, cession, and reservation." (Citing People v. Godfrey, 117 Johns, R. 225, N.Y. 1819.)

See also AFM 110–3 *Civil Law*, Department of the Air Force (1959) page 50403.

In *Silas Mason Company v. The Tax Commission,* 302 U.S. 186 (1937) the United States Supreme Court noted

that the question of whether or not the state has yielded to the federal government exclusive legislative authority over lands acquired by the federal government is a federal question. In that case, the United States Supreme Court noted:

> "* * * The acquisition of title by the United States is not sufficient to effect that exclusion. It must appear that the State, by consent or cession, has transferred to the United States that residuum of jurisdiction which otherwise it would be free to exercise.* * *"

See also *United States v. Unzeuta,* 281 U.S. 138 (1930); Anno. 74 L.Ed. 138. It is apparent, therefore, that the United States cannot obtain exclusive jurisdiction over lands merely by withdrawing them from the public domain and restricting public entry by committing them to military purposes. In *Rothfels v. Southworth,* 11 U.2d 169, 356 P.2d 612 (1960), this court noted that some parts of Dugway Proving Grounds are under exclusive jurisdiction of the United States and other parts are not. Loc. Cit., page 173. In the instant case, the evidence before the trial court and that now before this court on appeal conclusively demonstrates that the actions necessary for the United States to obtain exclusive jurisdiction over the lands in question (and where the appellant committed the crime for which he is being held) have not been taken. The requirement for the United States to obtain exclusive jurisdiction involves the consent of the state; and with reference to acquisition under the constitutional powers of the United States it has been generally said that it "exclude[s] from its operation places which had been part of the public domain and have been reserved from sale." *Jurisdiction Over Federal Areas Within the States,* Part II (1957) page 67.

A case demonstrating the unreasonableness of the appellant's theory is that of *Six Cos. Inc. v. DeVinney,* 2 Fed. Supp. 693 (D.C. Nevada 1933). In that case, the plaintiff contended that the United States had obtained lands for a federal project by withdrawal from the public domain by the Secretary of Interior and that as a consequence, this vested exclusive jurisdiction in the United States thus divesting the State of Nevada of its tax power. The court expressly ruled that a portion of the public domain could not be withdrawn for a governmental purpose and thereby divest the state of jurisdiction. The court ruled that the Secretary of Interior had no power to establish a reservation by withdrawing from the public domain federal lands and committing them to specific governmental usages. (Headnote No. 4) The court noted that an expression of opinion contained in letters between the Secretary of Interior and the Governor of the State of Nevada were not effective to result in exclusive jurisdiction. The court stated:

> "It is here appropriate to say that expressions of opinion contained in the letters passing between the Secretary of the Interior and the Governor are without force as affecting the validity or invalidity of the reservation.* * *"

See also *St. Louis-San Francisco Railway Co. v. Satterfield,* 27 F.2d 586 (8 Circ. 1928). In that case, the facts are substantially similar to those in the instant case and the court held that the State of Oklahoma had not relinquished jurisdiction over Fort Reno so as to divest the state of its authority to exercise police and taxing powers on the reservation. The appellant relies upon the case of the *State v. Tully,* 31 Mont. 365, 78 P. 360 (1904) for the proposition that committing federal lands to military use gives the fed-

eral government exclusive jurisdiction. A reading of that case makes it manifest that it is inapplicable to the present situation. That case involved a situation where the Fort Missoula Military Reservation was created prior to statehood and where the Montana Supreme Court determined that there was a reservation of the area involved in the case by the United States and that the Montana Constitution, at the time of statehood, expressly relinquished jurisdiction over the reservation. Simple reading of the case shows that it is manifestly opposite to the case now before the court. Subsequently, in *United States v. Tully,* 140 F. 899 (C.C.D. Mont. 1905), the federal court determined that the United States did not have exclusive jurisdiction over the Fort Missoula Military Reservation. Since the question of exclusive jurisdiction is a federal question, another reason for not applying the Tully rule is apparent.

In this case, it is clear that:

1. The United States did not acquire exclusive jurisdiction over the subject lands whereon the crime was committed pursuant to Article I, Section 8, Clause 17 of the federal constitution since there was no purchase with the consent of the state.
2. The United States did not acquire exclusive jurisdiction by virtue of cession from the State of Utah since the State of Utah did not cede jurisdiction, the governor did not issue deeds of cession nor did the federal government accept exclusive jurisdiction. All that happened was a simple withdrawal of federal lands from the public domain.
3. The United States did not acquire exclusive jurisdiction by reservation at the time of statehood. Since the means by which exclusive jurisdiction may be obtained have not been shown in the instant case, it is apparent that appellant is properly being held pursuant to valid state process.

CONCLUSION

The appellant has filed for a writ of habeas corpus attacking the jurisdiction of the court before which he plead guilty and from which he received judgment. It is apparent that there was no basis in law or fact for the contention that the court was without jurisdiction. This court should affirm.

Respectfully submitted,

A. PRATT KESLER
Attorney General

RONALD N. BOYCE
Chief Assistant Attorney General
State Capitol
Salt Lake City, Utah
Attorneys for Respondent