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IN THE SUPREME COURT
OF THE
STATE OF UTAH

COY RINGO, et al.,
Plaintiff-Appellant,

— vs. —

JOHN W. TURNER, Warden
Utah State Prison,
Defendant-Respondent.

BRIEF OF RESPONDENT

Appeal from the Judgment
3rd District Court for Salt Lake
Honorable Thornley K. Swan

PHIL L. HA
Attorney Gener

RONALD N.
Chief Assistant
Attorneys for Re

ROBERT E. SCHOENHALS
902 Kearns Building
Salt Lake City, Utah
Attorney for Appellant

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

COY RINGO, et al.,
Plaintiff-Appellant,
— vs. —
JOHN W. TURNER, Warden
Utah State Prison,
Defendant-Respondent.

Case No. 10255

BRIEF OF RESPONDENT

STATEMENT OF THE KIND OF CASE

The appellant Coy Ringo appeals from the denial of his petition for writ of habeas corpus by the District Court of the Third Judicial District of Salt Lake County, State of Utah.

DISPOSITION IN LOWER COURT

The appellant Coy Ringo and others filed a petition in the District Court of Salt Lake County, State of Utah, challenging their detention in the California State Prison at Folsom, California, pursuant to an interstate compact agreement between the State of Utah and the State of California. The respondent, subsequent to the filing of appellant's petition, filed a motion to dismiss on the grounds that the petition failed to state a claim upon which relief could be granted. On August 28, 1964, the matter was heard before the Honorable Thornley K. Swan, sitting in

the Third Judicial District. On October 9, 1964, Judge Swan made a minute entry denying the appellant's petition for habeas corpus and granting the state's motion to dismiss the petition. Subsequently, on the 4th day of November 1964, a notice of appeal was filed. No order was ever entered by the court reflecting the court's judgment as recited in the minute entry.

RELIEF SOUGHT ON APPEAL

The respondent submits that the appeal should be dismissed.

STATEMENT OF FACTS

The appellant Coy Ringo was committed to the Utah State Prison for the crime of robbery on November 15, 1955. Subsequently, on May 23, 1962, the appellant was transferred, pursuant to action by Governor George D. Clyde and in accordance with the Western Interstate Corrections Compact adopted in 1959, to the State of California for imprisonment where he is now being held in Folsom Penitentiary. Between the time of appellant's original commitment to the Utah State Prison and his transfer to the California authorities, he was adjudged guilty of another crime, being assault on a convict with malice aforethought, in violation of 76–7–12, Utah Code Annotated 1953; *State v. Ringo,* 14 U.2d 49, 377 P.2d 646.

ARGUMENT

POINT I

THE APPEAL SHOULD BE DISMISSED SINCE NO FINAL ORDER HAS EVER BEEN ENTERED IN THE INSTANT CASE.

In *Aldridge v. Beckstead,* 396 P.2d 830 (Utah 1964), this court observed that where the appellant had failed to

have a final judgment entered in a habeas corpus proceeding, the appeal was premature and should be dismissed. In the instant case the record reflects no final judgment by the trial court. The only evidence of the trial court's decision was a minute entry to the effect that the state's motion to dismiss the appellant's petition was granted. It is well established that a minute entry, showing the entry of order, is not a final judgment which will sustain an appeal. *Robison v. Fillmore Commercial & Savings Bank,* 61 Utah 398, 213 P. 790; *Lukich v. Utah Construction Co.,* 46 Utah 317, 150 P. 298. Consequently, it is submitted that the instant appeal should be dismissed.

POINT II

THE SUBSTANCE OF THE APPELLANT'S PETITION FOR HABEAS CORPUS SHOWS ON ITS FACE THAT THERE IS NO BASIS FOR RELIEF.

The appellant's sole contention is that his confinement at Folsom Prison in California, pursuant to the Western Interstate Corrections Compact, is contrary to the Constitution of the United States, Article I, Section 10, and contrary to the Constitution of Utah, Article I, Section 18, in that it has an ex post facto application to the appellant.

Section 77–63–1, U.C.A. 1953, adopted the Western Interstate Corrections Compact into law on behalf of the State of Utah in 1959. It allows the State of Utah to enter into a contract with the various thirteen western states, including California, in order to

> "* * * improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, * * *."

Pursuant to the Western Interstate Corrections Compact, a contract was entered into between the State of Utah and the State of California and as a result thereof the appellant was transferred, from the State of Utah to the State of California in accordance with the act, to undergo his confinement at Folsom Penitentiary in California. 77–63–2, U.C.A. 1953, empowers the Board of Corrections to transfer any inmate to any institution within or without the State of Utah, pursuant to Article III of the Compact, after a contract has been entered into. The governor, pursuant to 77–63–5, U.C.A. 1953, is expressly authorized to enter into contracts with states which are parties to the Western Interstate Corrections Compact. The compact does not provide for an increase in the minimum or maximum sentence which an inmate may serve. In no way does the compact increase the penal sanctions imposed against the individual inmate. The sole purpose of the compact and the result that it achieves is to allow the states to use institutions of other states which may be more suitable for confinement of a particular prisoner.

It is well established that the provisions of Article I, Section 10, of the United States Constitution, and Article I, Section 18, of the Utah Constitution apply only to penal laws which have the effect of applying retroactively to make criminal an act done which was not criminal when performed, or to aggravate a crime or intensive the punishment, or alter the legal rules of evidence, making for an easier conviction. 11 Am. Jur., *Constitutional Law,* Section 351 notes:

> "The expression 'ex post facto laws' is a technical one which was in use long before the Revolution and had acquired an appropriate meaning by legislators,

> lawyers, and authors. The phrase is one which relates exclusively to criminal or penal statutes."

In this regard, in *In re Clark,* 86 Kan. 539, 121 P. 492, it was ruled that a Kansas statute providing for the restraint and care of the criminally insane, enacted subsequent to the commission of the crime, was not ex post facto since it was not a criminal act but was one prescribing for the care and treatment of insane persons. In Rubin, et al., *The Law of Criminal Correction,* page 279, speaking with reference to interjurisdictional cooperation, it is stated:

> "* * * 'a prisoner has no constitutional right to be incarcerated in a particular geographic location. Prisoners confined in federal penitentiaries, for example, may be confined in any part of the United States without violation the "due process" clause of the Fifth Amendment.' "

Congress has apparently felt that there is no constitutional objection to allowing state prisoners to be confined in federal penitentiaries since they have expressly authorized the Attorney General to receive state prisoners for confinement in federal correctional institutions. 18 U.S.C. 5003. The sole purpose of such interjurisdictional compacts is to provide a modern device for rehabilitation. See Hinkle, *Interstate Cooperative Institutionalization — a Modern Device for Rehabilitation,* 8 Journal of Public Law 509 (1959). As is noted in Rubin, et al., *The Law of Criminal Correction,* page 284, the principal purpose behind acts similar to the Western Interstate Corrections Compact is to allow the transfer of prisoners to meet the best needs of the prisoner and the confinement system:

> "The legislature has full authority to determine where prisoners may be sent. It usually delegates the

> responsibility to the courts, but it may also assign it to an administrative agency, and this is not an invasion of judicial power. The power is important for a correction department whose institutions have been diversified. Thus it has been observed that 'the difference between the various institutions in our penal system is no longer a difference in the degree of discomfort each will impose upon prisoners, but rather a difference in the security or treatment that is needed for particular individuals, since all our penal institutions today seek to rehabilitate the prisoner. In order to use the various institutions to the best practical advantage, it is necessary that certain prisoners be transferred from time to time for the benefit of those around them and themselves.' Transfers are commonly made for reasons of discipline or security, reclassification, or hospital treatment."

It is obvious from what has been noted above that this does not constitute ex post facto legislation.

In *Calder v. Bull,* 3 Dall. (U.S.) 386, the United States Supreme Court enumerated the factors that may make a law ex post facto:

> "* * * 1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3rd. Every law that changes the punishment, and inflicts a greater punishment than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offence, in order to convict the offender."

An analysis of the corrections compact against the enumerated forms of ex post facto legislation makes it mani-

fest that the Western Interstate Corrections Compact is not ex post facto legislation merely because a prisoner, subsequent to its enactment, has his place of confinement changed.

In *Fletcher v. Peck,* 6 Cranch (U.S.) 138, the Supreme Court of the United States stated:

> "* * * A ex post facto law is one which renders an act punishable in a manner in which it was not punishable when committed."

In the instant case, the appellant's conviction has always been punishable by confinement in a prison for a period of the rest of his natural life. The mere fact that the place of his confinement is changed does not enhance the punishment or change the nature of the sentence. See also Corwin, *Constitution of the United States of America,* (1952), page 327. In *Malloy v. South Carolina,* 237 U.S. 180 (1915), South Carolina changed the punishment for a capital crime from hanging to electrocution and provided that it would take place in the state penitentiary and further made various changes in the manner in which the execution would be carried out. The United States Supreme Court ruled that this was not ex post facto legislation. This court in the case of *Garrett Freightlines, Inc. v. State Tax Commission,* 103 Utah 390, 135 P.2d 523 (1943), noted that the Utah and federal constitutions prohibiting ex post facto legislation are limited to criminal and penal matters.

In the instant case it is apparent that the purpose of the legislation was to assist in carrying out the correctional purposes of prison confinement to rehabilitate and to maintain adequate discipline. There is no basis for a conclusion that the instant legislation is ex post facto merely because it was

enacted after the appellant's first conviction which he is still serving.

POINT III

HABEAS CORPUS IS AN INAPPROPRIATE REMEDY TO CHANGE THE PLACE OF CONFINEMENT.

It is well established that habeas corpus is not an appropriate remedy to challenge the place of a prisoner's confinement. Consequently, the court was well within its prerogatives in dismissing the petition as an attempt to use an inappropriate remedy for the result the appellant sought to achieve. In *Ex parte Truitt,* 54 F.Supp. 999 (D.C. E.D. Ill. 1944), the court observed that habeas corpus was not an appropriate remedy to challenge the place of confinement even if the petitioner's commitment directed he serve in an institution different from that where he was being held. In *U.S. ex rel Gapinski v. Ragen,* 152 F.2d 268 (7th Cir. 1945), a state prisoner challenged his transfer from the Illinois State Penitentiary to an institution for the criminally insane. In rejecting his petition for habeas corpus, the court states:

> "Petitioner's complaint is directed to his transfer from Joliet to Menard. This is an administrative function and one which is authorized by the Illinois Statutes. See Ill.Stat.Ann. Chap. 108, Secs. 110–112. In fact, the officials are required to make periodic examinations in order to determine whether or not any inmate of a penal institution should be transferred to the Psychiatric Division. The record demonstrates that the administrative officials followed the statute relative to petitioner's transfer. His complaint is without foundation for purposes of this petition."

See also *Swanson v. Jones,* 151 Neb. 767, 39 N.W.2d 557 (1949); *Vigileos v. State,* 84 Ariz. 404, 330 P.2d 116

(1958). In the latter case, the Arizona Supreme Court acknowledged that the petitioner's confinement was at an institution contrary to specific directives of the Arizona Constitution but ruled that habeas corpus was an inappropriate remedy to effect the transfer.

This court has heretofore recognized limitations on the power of habeas corpus. *Jones v. Moore,* 61 Utah 383, 213 P. 191; *Chapman v. Graham,* 2 U.2d 156, 270 P.2d 821. Certainly the petitioner has no basis for habeas corpus attacking the place of his confinement whereas here the transfer is obviously for the purpose of discipline or because the conditions of petitioner warrant the transfer and where the transfer is authorized by law. 39 C.J.S., *Habeas Corpus,* Sec. 29–1.

It is submitted, therefore, that the trial court acted properly in dismissing the appellant's petition.

CONCLUSION

The appellant's contention that his confinement, pursuant to the Western Interstate Corrections Compact, is in violation of the Federal or Utah Constitutions is patently without merit. If any event, the petitioner may not attack the place of his confinement by writ of habeas corpus.

This court should affirm.

Respectfully submitted,

PHIL L. HANSEN
Attorney General

RONALD N. BOYCE
Chief Assistant Attorney General
Attorneys for Respondent

IN THE SUPREME COURT OF

THE STATE OF UTAH

COY RINGO, et al, :

Plaintiff and Appellant :

vs. :

JOHN W. TURNER, et al, :

Defendants and Respondents :

Case No. 10255

APPELLANT'S BRIEF

Appeal from the Judgment of the Third District Court for Salt Lake County, Honorable Thornley K. Swan, Judge

---

Robert E. Schoenhals
903 Kearns Building
Salt Lake City 1, Utah
Attorneys for Appellant

Attorney General of the State of Utah
State Capitol Building
Salt Lake City, Utah
Attorney for Respondents

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APPELLANT'S BRIEF

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STATEMENT OF THE KIND OF CASE

This is a habeas corpus proceedings in which Coy Ringo seeks relief from his being unlawfully and illegally restrained of his liberty in the California State Prison at Folsom, California by John W. Turner, Warden of the Utah State Prison and the Utah Board of Corrections.

DISPOSITION IN THE LOWER COURT

The State of Utah moved to dismiss plaintiff's petition for writ of habeas corpus on the grounds that said petition failed to state a cause of action upon which relief could be granted. The District Court of Salt Lake County granted the State's motion to dismiss.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the judgment dismissing plaintiff's petition for a writ of habeas corpus.

STATEMENT OF FACTS

On August 4, 1958, Coy Ringo was convicted upon his plea of guilty to the offense of robbery in the District Court of Salt Lake County, State of Utah. Subsequently he was sentenced "to be confined and imprisoned in the Utah State Prison for the indeterminate term as provided by law for the crime of robbery". On the 5th day of August, 1958, he was delivered to the custody of Warden John W. Turner of the Utah State Prison.

Subsequent to the conviction of said Coy Ringo and his delivery to the Utah State Prison, the 1959 Utah Legislature enacted the Western Interstate Corrections Compact, which compact provides for the incarceration in other states of prisoners convicted in Utah of crimes committed in Utah; and likewise provides

for prisoners convicted of felonies in other states to be confined in Utah. On or about May 23, 1962, appellant Coy Ringo was removed from the Utah State Prison and transferred to the California State Prison at Folsom, California, where he is presently confined.

ARGUMENT

Point 1. Facts alleged in appellant's petition must, for the purpose of this appeal, be assumed to be true.

Point 2. Ex post facto laws are prohibited by the Utah State Constitution and the Constitution of the United States.

Point 3. The Western Interstate Corrections Compact is ex post facto when applied to persons who were convicted and sentenced prior to its passage.

Point 4. Neither the legislative nor the executive branches of government can reverse or alter the judgment of courts except in instances provided for prior to the time the judgment was rendered.

A R G U M E N T

POINT ONE

FACTS ALLEGED IN APPELLANT'S PETITION MUST, FOR THE PURPOSE OF THIS APPEAL, BE ASSUMED TO BE TRUE.

It should also be pointed out that the State of Utah in its Motion to Dismiss agrees substantially with the facts claimed by appellant.

Secondly, in 5 Am. Jur. 2d Appeal and Error, Section 879, it is stated:

> "In passing on a demurrer, a motion to dismiss, or any other form of attack on the sufficiency

> of a pleading purporting to state a cause of action or defense, all the facts alleged and properly set forth in the pleading thus attacked must, for the purpose of the ruling on the attack, be assumed to be true."

Also, in the case of Slater vs. Salt Lake City, found at 115 U. 476, 206 P. 2d 153, the Supreme Court of the State of Utah held that where the trial court had sustained a general demurrer, the Supreme Court must accept the allegations of fact contained in the complaint as being true.

In the case of Thomas G. Hearst and Lois V. Hearst, his wife vs. Highway Department of the State of Utah, found at 397 P. 2d 71, ____ U. ____, the Utah State Supreme Court again indicated that where the District Court dismisses a complaint, that for the purposes of an

appeal, the Supreme Court must accept the facts alleged therein as true.

POINT TWO

EX POST FACTO LAWS ARE PROHIBITED BY THE UTAH STATE CONSTITUTION AND THE CONSTITUTION OF THE UNITED STATES.

Article I, Section 18 of the Constitution of Utah provides:

> "No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed."

Article I, Section 10 of the Constitution of the United States provides as follows:

> "No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money, emit bills of credit, make anything but gold and silver coin in tender of payment of debts, pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or to grant any title of nobility."

POINT THREE

THE WESTERN INTERSTATE CORRECTIONS COMPACT IS EX POST FACTO WHEN APPLIED TO PERSONS WHO WERE CONVICTED AND SENTENCED PRIOR TO ITS PASSAGE.

In Wharton's Criminal Law Section 20 at page 43 it is stated as follows:

> "By virtue of the provisions of the United States Constitution, neither the Congress nor the state legislatures may adopt ex post facto legislation, that is, a statute is unconstitutional which attempts to apply retroactively a penalty or punishment to an act which was innocent when done, or which increases the penalty which was attached to the act at the time of its commission, or in any way alters the position of the defendant to his disadvantage."

One of the major issues presented by the appellant in his petition for a writ of habeas corpus and in his appeal is whether the Western Interstate Correc-

tions Compact is ex post facto as to a person who was tried, convicted and sentenced prior to the passage thereof. Both the Utah State Constitution and the Constitution of the United States prohibit ex post facto legislation.

In the case of Ex Parte Flora found at 31 N. E. 2d 482, the Supreme Court of the State of Ohio was confronted with a similar situation. In the Ohio case, an individual had been sentenced to serve a term in the Ohio State Reformatory. Subsequently, an act became effective which permitted the transfer of the prisoner to the Ohio State Penitentiary. The prisoner was thereafter confined in a prison farm at the state penitentiary. The Ohio Supreme Court held that particular act ex post facto as to Mr. Flora and granted relief.

Where Utah prisoners are taken from the Utah State Penitentiary and incarcerated in various places of confinement throughout the several states which are members of the Compact, the Utah prisoners are deprived of their rights to confer with their local spiritual advisor, their local counsel, and are prohibited from visiting with their friends and relatives. This is obviously an alteration of their punishment to their detriment and disadvantage. The application of the Western Interstate Corrections Compact is therefore ex post facto as to persons who were tried, convicted and sentenced prior to its passage.

POINT FOUR

NEITHER THE LEGISLATIVE NOR THE EXECUTIVE BRANCHES OF GOVERNMENT CAN REVERSE OR ALTER THE JUDGMENT OF COURTS EXCEPT IN

INSTANCES PROVIDED FOR PRIOR TO THE TIME THE JUDGMENT WAS RENDERED.

It is to be remembered that for the purpose of this appeal the facts set forth in the petition for writ of habeas corpus must be assumed to be true. In the petition it is alleged that the District Court of Salt Lake County ordered the petitioner be confined and imprisoned in the Utah State Prison (emphasis ours).

In an early case decided by the Supreme Court of the Territory of Utah known as In Re Rudger Clawson, found at 5 U. 358, the Supreme Court for the Territory of Utah was confronted with a situation in which a prisoner had been convicted and sentenced on two charges, one polygamy and the other co-habitation. Subsequently a law was passed providing

for the shortening of sentences for good conduct. The Court in holding that the subsequent statute could not affect the prior sentence and conviction, stated:

> "If we should allow the act of the legislature passed since the sentence to control, it in effect is to say that the legislature can, after judgment, nullify the judgment and set the prisoner free. If the legislature can reduce the sentence at all, subsequent to the sentence, it can reduce it to an unlimited extent. This would be encroaching upon the authority of the executive, as it is the province of the executive, and not the legislature, to reprieve or pardon. It would also be allowing the legislature to interfere with the judicial branch of the government, and to usurp its duties, and to make a sentence and judgment different from that entered in court."
> (emphasis ours)

The District Court ordered the petitioner to be imprisoned in the Utah State Prison. His present confinement in

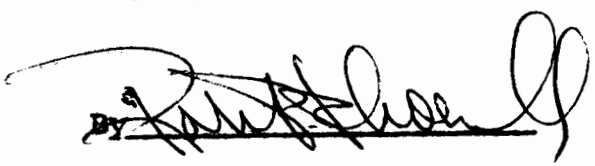
the California State Prison at Folsom, California, is in violation of that order, and is therefore without authority.

CONCLUSION

Plaintiff's petition for a writ of habeas corpus states a cause of action upon which relief can be granted, and the action of the District Court in dismissing said petition should be reversed.

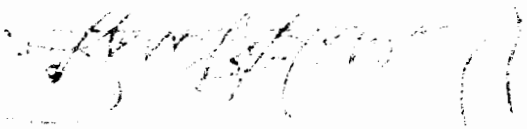
Respectfully submitted,

MARK & SCHOENHALS

By 

903 Kearns Building
Salt Lake City 1, Utah

Attorneys for
Plaintiff and
Appellant.



Received two copies of the foregoing Brief this 15th day of January, 1965.

Attorney General of the
State of Utah

By_____