1969

Juan Jaramillo v. John W. Turner : Brief of Respondent

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.Vernon B. Romney, Lauren N. Beasley, and David S. Young; Attorneys for Respondent

In The Supreme Court of the State of Utah

JUAN JARAMILLO,
Plaintiff-Appellant,

vs.

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

Case No. 11634

BRIEF OF RESPONDENT

Appeal from the District Court of the Third
District, Salt Lake County, State of
The Honorable Stewart M. Hanson, Judge

VERNON
Attorney
LAUREN
Chief
General
DAVID
Assistant
236 State
Salt Lake
Attorneys for

JUAN JARAMILLO
Appellant In Pro Se
P. O. Box 250
Draper, Utah

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STATEMENT OF THE NATURE OF CASE

Appellant seeks a hearing pursuant to a denial of his petition for habeas corpus in the Third District Court, Salt Lake County, State of Utah.

DISPOSITION IN THE LOWER COURT

After examining the transcript, the District Court, upon its own motion, ordered that the petition for a writ of habeas corpus be dismissed.

RELIEF SOUGHT ON APPEAL

The respondent prays that the decision of the trial court be affirmed.

STATEMENT OF FACTS

On the 13th day of February, 1968, John Jaramillo pled guilty to a felony offense of robbery. He was represented by Mr. Jay Barney of the Salt Lake Legal Defenders Association. The court thereafter sentenced Mr. Jaramillo to confinement in the Utah State Prison for an indeterminate term (R.4).

The respondent points out that no appeal was taken from this conviction. The appellant did, however, petition for a writ of habeas corpus on or about April 2, 1969. In that petition, the appellant stated that his only ground was that he had not been warned of the consequences of a plea of guilty to this particular crime and punishment (R.2).

The District Court of Salt Lake County, State of Utah, dismissed the petiion wihout a hearing. After an examination of the transcript, the court stated:

> ". . . [I]t clearly appears therefrom that the petitioner was properly sentenced, that he had very competent counsel, and it is the Court's opinion that the Writ should be denied." (R.6).

It is from this Order of Dismissal that the appellant has prosecuted this appeal.

ARGUMENT

POINT I

THE WRIT OF HABEAS CORPUS IS NOT THE PROPER REMEDY UNDER THE FACTS OF THIS CASE.

The appellant alleges two grounds in his brief for which he seeks review. Briefly stated, the alleged grounds of reversal are: (1) because the trial judge failed to advise Mr. Jaramillo of the maximum penalty for robbery, and (2) that Jay Barney inadequately defended him. Both of these alleged grounds were known to Juan Jaramillo at the time of his commitment to the Utah State Prison. No appeal from this commitment was made. According to Utah law, the proper procedure would have been to appeal his sentence.

Juan Jaramillo is trying to use the writ of habeas corpus as a means of appellate review. This is not the purpose for which the writ was established. A good discussion of the purpose is found in *Bryant v. Turner,* 19 Utah 2d 284, 431 P.2d 121 (1967), wherein the following is found:

> ". . . The writ is, as our rules describe it, an extraordinary writ, to be used to protect one who is restrained of his liberty where there exists no jurisdiction or authority, or where the requirements of the law have been so ignored or distorted that the party is substantially and effectively denied what is included in the term due process of law, or where some other such circumstance exists that it would be wholly unconscionable not to re-examine the conviction." *Id.* 19 Utah 2d at 286-287, 431 P.2d at 122-123.

When the same facts alleged in a petition for writ of habeas corpus were known to the petitioner at the time of his judgment, his proper remedy is not a writ. In the

recent case of *Brown v. Turner*, 21 Utah 2d 96, 440 P.2d 968 (1968), the petitioner contended that he was denied a right to counsel and that he did not understand the consequences of his guilty plea. The Supreme Court of Utah held that the petitioner was not entitled to habeas corpus remedies. The court correctly pointed out the following:

> ". . . If the contention of error is something which is known or should be known to the party at the time the judgment was entered, it must be reviewed in the manner and within the time permitted by regular prescribed procedure, or the judgment becomes final and is not subject to futher attack, except in some such unusual circumstance as we have mentioned above. Were it otherwise, the regular rules of procedure governing appeals and limitations of time specified therein would be rendered impotent." *Id.* 21 Utah 2d at 98-99, 440 P.2d at 969.

The facts and circumstances surrounding Mr. Jaramillo's commitment to the Utah State Prison are close to the fact situation in *Brown v. Turner, supra.* In that case the Utah Supreme Court noted:

> ". . . [T]he questions as to whether he was accorded the right of counsel and was properly advised as to the consequences of his plea of guilty are primarily questions of fact. The trial court having heard the evidence relating thereto and having found the issues against the plaintiff, it is our further duty to indulge the usual credit due

his findings and judgment." *Id.* 21 Utah at 99, 440 P.2d at 970.

That case should be binding authority here, and the ruling of the lower court should be sustained.

POINT II

THE ISSUE OF COMPETENCY CANNOT BE CONSIDERED BY THE SUPREME COURT BECAUSE IT WAS NOT PRESENTED BELOW.

In his complaint and petition for writ of habeas corpus, Mr. Jaramillo lists only one ground—that he was not warned or informed of the consequences to a plea of guilty in a robbery charge (R.2). Nowhere in the complaint is there a challenge made to Jay Barney's competency. The only place this issue is mentioned in the Record on Appeal is in the Order of Dismissal by Judge Stewart Hanson, who stated that he had read the transcript and had found therefrom that ". . . the petitioner was properly sentenced, that he had very competent counsel. . . ." (R. 6).

Utah has passed on this issue before. In the case of *Burleigh v. Turner*, 15 Utah 2d 118, 388 P.2d 412 (1964), the petitioner made the same legal move as Mr. Jaramillo. The court expressed the law in this manner:

> "Appellant contends in his brief that the failure to appeal the Third District Court's judgment was due to the failure of counsel, appointed by this court, to prosecute the appeal. This matter was not presented in the pleadings or the hearing before the

> Fourth District Court. It is raised for the first time upon this appeal. Habeas corpus being a civil remedy it is not necessary for this court to consider this point." *Id.* 15 Utah 2d at 120, 388 P.2d at 414.

It would therefore follow that the court need not consider the issue of Mr. Barney's competency as counsel since it was not challenged in Juan Jaramillo's complaint and was not an issue before Judge Hanson.

There have been no findings of fact on this issue. No testimony has been received by any prior proceeding. The only information the court has on this subject is the appellant's statement of facts. The court is not compelled to believe self-interested witnesses. *State v. Knepper,* 18 Utah 2d 215, 418 P.2d 780 (1966); *Aagard v. Dayton & Miller Red-E-Mix Concrete Co.,* 12 Utah 2d 34, 361 P.2d 522 (1961). The competency of Mr. Barney is therefore not ripe for review.

Even if the court were to review the issue of Jay Barney's competency as counsel, the court would still have to find for the respondent.

In order to justify habeas corpus relief on the ground that the appointed counsel was inadequate, California requires the petitioner to show that the trial was reduced to a farce or sham. *In Re Beaty,* 54 Cal. 2d 760, 414 P.2d 817, 51 Cal.Rptr. 521 (1966).

In Arizona, the court allows a contention of deprivation of right to counsel to be asserted in habeas corpus proceedings only in extreme cases. If the appellant sets forth no facts which indicate the appointed at-

torney's performance was so substandard as to render the trial a farce or sham, the petition is properly denied. *Barron v. State*, 7 Ariz.App. 223, 437 P.2d 975 (Ariz.Ct.App. 1968).

The Utah standard is a little different. In Utah a habeas corpus remedy is allowed only if the circumstances indicate that it would be wholly unconscionable to re-examine the petitioner's conviction. *Bryant v. Turner*, *supra*. The method the Utah court uses in deciding this issue is to look at the record.

In the case of *Syddall v. Turner*, 20 Utah 2d 263, 437 P.2d 194 (1968), the court looked to the record to see if anything suggested that the prisoner had been improperly induced to enter his plea of guilty. Since nothing was shown, the court held that he had been adequately represented by counsel.

The record in the present case clearly shows that Mr. Jaramillo pleaded guilty voluntarily. The transcript quoted on page 9 of this brief shows that Mr. Barney and the court were very careful about this matter.

In the case of *Washington v. Turner*, 17 Utah 2d 361, 412 P.2d 449 (1966), the court seems to look at the record for suggestions of bad faith conduct on the part of the attorney. There is nothing in the record of the present appeal which suggests there was any bad faith on the part of Jay Barney.

Since the record is devoid of any suggestion of bad faith, absent a showing that the trial was reduced to a farce or sham, and without any indication that it would be unconscionable not to re-examine the conviction, the court must affirm Judge Hanson's decision to dismiss.

POINT III

JUAN JARAMILLO WAS PROPERLY SENTENCED BY JUDGE SNOW.

Even if the court were to find that the writ of habeas corpus is the proper remedy for Mr. Jaramillo, it still must find for the respondent. The complaint challenges Mr. Jaramillo's custody on the ground that the trial court inadequately explained the consequences of a guilty plea to him. To support this ground, appellant relies on Utah Code Ann. § 77-24-6 (1953). That section is set out below:

> "Where the defendant is not represented by counsel, the court shall not accept a plea of guilty until it shall have explained to the defendant the consequences of such a plea." *Id.*

It is clear that this statute does not apply in the present fact situation where Mr. Jaramillo was given the privilege of court-appointed counsel. When the defendant in a criminal action has counsel, the Judge need not perform the defense counsel's function of explaining the consequences of a guilty plea.

Even if the court were to find inadequate representation by Mr. Barney, the explanation given to the defendant by the Judge was sufficient.

In *Brown v. Turner, supra,* the court advised the defendant:

> "... that he was charged with a felony, that it was punishable by a prison sentence, and he had a right to a trial by jury. . . ." *Id.* 21 Utah at 99-100, 440 P.2d at 970.

The reviewing court looked at the defendants' past criminal activity and held the explanation adequate.

Under the facts of the instant case, the trial court questioned Mr. Jaramillo as to his guilty plea in the following manner:

"MR. BARNEY: Mr. Jaramillo, is it your desire at this time to change your plea from not guilty?

"MR. JARAMILLO: Plead guilty and get sentence right away. Waive anything.

"MR. BARNEY: Has anyone made any threats or promises to you to coerce you at any time into making such a plea?

"MR. JARAMILLO: No.

"MR. BARNEY: And you enter this plea at this time on your own free will?

"MR. JARAMILLO: Yes.

"MR. BARNEY: And without any reservation or coercion?

"MR. JARAMILLO: Yes.

"MR. BARNEY: Your Honor, at this time we would request the right to withdraw the plea of not guilty previously entered and to enter a new plea.

"THE COURT: You understand by so doing, Mr. Jaramillo, it means the Court will sentence you to an indeterminate term in the Utah State Prison?

"MR. JARAMILLO: Yes." (T.8-9).

From the transcript, as cited above, the following

three things are noticed: (1) the plea was voluntarily made; (2) the defendant was informed that he would be serving sentence at the Utah State Prison (felony charge); and, (3) the term would be indeterminate.

Since Judge Snow not only appointed counsel for Juan Jaramillo, but also explained the consequences of a guilty plea to him, the following language from *Brown v. Turner, supra,* would again be applicable:

> "It appears to us that Judge Snow actually exercised commendable care in making sure that plaintiff understood the consequences of waiving a trial by jury and the entering of a plea of guilty." *Id.* 21 Utah 2d at 100, 440 P.2d at 970-971.

CONCLUSION

For the reasons herein set out, respondent submits that the decisions reached in the lower court must be affirmed.

Respectfully submitted,

VERNON B. ROMNEY
Attorney General

LAUREN N. BEASLEY
Chief Assistant Attorney General

DAVID S. YOUNG
Assistant Attorney General

236 State Capitol
Salt Lake City, Utah
Attorneys for Respondent