1966

James Floyd Workman v. John W. Turner : Brief of Appellant

IN THE SUPREME COURT OF THE

STATE OF UTAH

James Floyd Workman,	/	
Plaintiff-Appellant,	/	
vs	/	Case No.
John W. Turner, Warden,	/	10615
Utah State Prison,	/	
Defendant-Respondant.	/	

BRIEF OF APPELLANT

Appeal from the Order of the District Court of the Third Judicial District Denying Appellant's Complaint for Writ of Habeas Corpus.

Honorable A. H. Ellett, Judge

PHIL L. HANSEN
Attorney General

Attorney for Respondant

JAMES FLOYD WORKMAN
Pro Se, Not by Election
P.O. Box 250
Draper, Utah

CASE INDEX

IN THE SUPREME COURT OF THE

STATE OF UTAH

JAMES FLOYD MORGAN,	/	
Plaintiff-Appellant,	/	
vs	/	Case No.
JOHN W. TURNER, Warden,	/	10615
Utah State Prison,	/	
Defendant-Respondant.	/	

BRIEF OF APPELLANT

STATEMENT OF KIND OF CASE

The appellant appeals from the judgment of the District Court of the Third Judicial District, denying his petition for writ of habeas corpus.

DISPOSITION IN LOWER COURT

The appellant filed a petition for writ of habeas corpus in the District Court of Salt Lake County, challenging his detention in the Utah State Prison by the respondant and assailing his conviction in the Fourth Judicial District Court. On March 16, 1966, the Honorable A. H. Ellett, Judge entered a memorandum decision denying the application for a writ of habeas corpus, indicating that the writ was dismissed on the grounds that appellant had waived his rights to preliminary hearing and counsel. An appeal was subsequently filed and an appearance entered in the case by Mr. Jimi Mitsunaga. Subsequently, Mr. Mitsunaga has indicated that he is unwilling to represent the appellant on appeal by his conclusions that appellant has insufficient grounds for appeal. Appellant wrote the Clerk of the Utah Supreme Court for appointment of

counsel to which appellant was informed he would be required to file his own briefs and that the record would be available if necessary along with an extension of time if this be required. The record was received for reference.

RELIEF SOUGHT ON APPEAL

The appellant submits that the decision of the trial court should be reveresed.

STATEMENT OF FACTS

The appellant, a prisoner confined in the Utah State Prison, filed a complaint for writ of habeas corpus in the District Court of Salt Lake County. The basis upon which the appellant contends that he is entitled to habeas corpus are that he was not informed of his rights by police or the courts and that he was not accorded counsel for his defense while not so being informed by the trial court of the consequences to which he plead guilty without benefit of counsel.

Appellant shows from the record that he received a hearing before the Honorable A. H. Ellett which produced a bias and prejudicial decision from the contects found lucidly spoken from the record which substaniates the foundation for appeal to the Supreme Court of the State of Utah. It also seems that in this same Hearing the question of innocence is a subject for contention on page 2, line 19 thru 30.

ARGUMENT

The trial court has error in its findings for writ of habeas corpus in the fact that the complaint states a verified claim for relief.

On page 2, line 11 thru 18 shows that counsel for appellant stated that the record of trial proceedings showed error in the fact that

[illegible] of pleading before the Fourth District [illegible] appellant was without advise of counsel.

Miranada vs Arizona decision rendered on [illegible] 13, 1966, by the United States Supreme Court clearly stated that an accussed must be represented at all points of the procedure. Sentencing is without a doubt an important juncture of procedure and arraignment as well which shows that the court failed to extend "Due Process" to your appellant.

> Blacks law Dictionary says, "Due Process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law. Ziegler vs Railroad Co., 58 Ala. 599."

On page 42, line 22, the Honorable A. H. [illegible] uses for conclusion that since appellant had been in prison before that he intelligently waived preliminary hearing. But this is not true, and shows the bias reigns moreso here because nowhere in the transcript was appellant ever asked if on prior conviction had he been accorded a preliminary hearing, for if it had been scrutinized the court would have found appellant never has had a preliminary hearing in either case so he would not have intelligently known the value of such.

Appellant with an 8th grade education cannot know the value of a preliminary hearing and susceptible to weak advice of those around him which was the case heretofore.

Too many Americans are ready to seize

the necessities of the moment, to dispense with the protections given to the individual, and to cry for quick justice. Justice which is quick and which dispenses with the protection of freedom is rarely justice. The Bill of Rights and the fundamental rights which all Americans can claim have no clauses excepting those accused of disloyalty from their protection.

On page 2, line 19 thru 30 shows the immediate intersession of the point as to the guilt or innocense of your appellant which has no bearing on this cause since its allegations are based upon "Due Process" which was not accorded to appellant and as in the past to often conclusion bar the adjutication as to the facts which are brought before the bar. Appellant takes time to add a reference which clearly he alleges and shows within the transcript to have been perpertrated.

People vs Gilbert, Cal. 154 P. 2d 657, 25 C. 2d 422.
State vs Sevell, S.D., 12 N.W. 2d 198, 69 S.D. 494.

"Plea of guilty must not be induced by fear, by misrepresentation, by persuasion, or by the holding out of false hopes nor be made through inadvertence or by ignorance."

With an 8th grade education it was easy for those arresting officers and custody persons to inflict the strong will of speech to the point that your appellant gave up any hope for justice, and that it was induced for just such purpose. If appellant would have undertaken defense, with its ability of cross examination there might have been found the proper defense to the State's case.

Smith vs O'Grandy, 312 U.S. 329, 61 S.Ct. 572, 85 L.Ed. 859 (1941) we find;

"Due process was denied by misrepresentations which obtained a plea of guilty without benefit of counsel."

"It violates the Fourteenth Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case."

Here we find a direct decision which bears the vintage as to the dereliction of your appellants rights have been violated, not only by the original conviction but by the lower court hearing petition for habeas corpus. Unfounded conclusions which reflect refusal to be adjudged by previous rulings of the Supreme Court cannot be condoned as following the law as written.

Powell vs Alabama 287 U.S. 45, L.Ed. 158, 53 S.Ct. 55. Mr. Justice Sutherland states;

"The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense; to do that is not to proceed promptly in the calm spirit of regulated justice but to go forward with the haste of the mob."

In other words it seems that as in this case, appellant was rushed for "CONVICTION", but in post-conviction proceedings is again denied with the same haste and prejudicial interpertation this is seen in the Courts hearing of March 16, 1956 when on page 2, line 27 thru 30 the Honorable A. H. Ellett, with enuendo offers suggested

inference that defense attorneys finding malfunctions with judicial procedures have to be considered administrators of fraud. It seems that it would be the duty of trial judges to hamper and forbid illegal procedures so that defense attorneys were not finding their frauds to expose. This abstract interpertation again comes at the opening juncture of habeas corpus proceedings showing that a prejudicial and bias attitude was affixed even before conclusion of proceedings which could not have been fair to appellant.

> Miller vs United States, 357 U.S. 301, 313 (1958) is an example or above allegation.
>
> "However much in a particular case insistence upon such rules may appear as a technicality that inures to the benefit of a guilty person, the history of the criminal law proves that tolerance of shortcut methods in law enforcement imparis its enduring effectivness."
>
> Byars vs United States, 273 U.S. 28 (1927); Lustig vs United States 338 U.S. 74 (1949);
>
> "Denying shortcuts to only one of two cooperating law enforcement agencies tends naturally to breed legitimate suspicion of "working arrangements" whose results are equally tainted."

Appellant does not intend to qualify that the Honorable Courts from which this appeal has been brought forward was in collusion with any infringment agency but tends to show that it takes strength to so openly express a decision which causes a policy change of view, but as under the rulings of the United States Supreme Court it must be that strength for which facts are viewed and interpeted, no matter what past precident might have been.

Page 54, line 9 thru 30, and page 55, line 1 thru 20, appellant wishes to show that at no point does the record show that there was not an attorney assigned at any part of the procedure including the time that a statement was taken by the police officers. It would seem to show that there was not the offered protection of appellant due to the simple fact that the arresting officers did question from day to day, which would mean there should have been ample evidence an attorney would have been mandatory for the protection of rights guaranteed by the United States Constitution and the Constitution of the State of Utah.

Griffin vs Illinois, 351 U.S. 12, 100 L.Ed. 891, 76 S.Ct. 585. Mr. Justice Frankfurter puts those responsibilities of the courts before us clearly pointing out those duties;

> "But neither the fact that a State may deny the right of appeal altogether nor the right of a State to make an appropriate classification, based on differences in crimes and their punishment, nor the right of a State to lay down conditions it deems appropriate for criminal appeals, sanctions differentiations by a State that have no relation to a rational policy of criminal appeal or authorize the imposition of conditions that offend the deepest presuppositions of our society..... But when a State deems it wise and just that convictions be susceptible to review by an appellate cout, it cannot by force of its exactions draw a line which precludes convicted indigent persons, forsooth erroneously by disabling them from bringing to the notice of an appellate tribunal errors of the trial court which would upset the conviction were pratical opportunity for review not foreclosed."

On September 25th, 1966, the Honorable Phil L. Hansen, Attorney General, State of Utah filed the following press release with the Salt Lake Tribune:

> Attorney General Phil L. Hansen has warned Utah Law Enforcement officers that a recent U.S. Supreme Court decision requires them to assure criminal suspects of their access to legal counsel in nearly all circumstances except initial scene of the crime questioning.
>
> In an opinion requested by Charles Semken jr., Utah Peace Officers Assn. president, the attorney general said the courts Miranda vs Arizona case concerns the suspects right to silence or counsel when questioning is initiated by law enforcemen officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant ways.

This article went further into the rights of suspects and here in the case before the Bar we find that everyone understands those recent rulings of the United States Supreme Court, but when a case comes before the Honorable A. H. Ellett, he chooses to deny same by the adding of conclusions which are unfounded.

Findings of Fact and Conclusions of Law, the Honorable A. H. Ellett states on the 2nd page, section 5, that in his opinion, petitioner perjured himself, but nowhere in the transcript is this brought out. In fact, from a layman's point of view, it would seem the testimony given by the State's witnesses is inconclusive of any proven fact and clearly derivitive of imagination to cover this specific situation.

Adamson vs California, 332 U.S. 46, 91 L.E , 67 S.Ct. 1672. Mr. Justice Reed cites;

> "To consider Due Process of law as merely a shorthand statement of other specific clauses in the same amendment is to attribute to the authors and proponents of the Amendment ignorance of, or indifference to, a historic conception which was one of the great instruments in the arsenal of the constitutional freedom which the Bill of Rights was to protect and strengthen."

This would necessarily answer the interpertation which has been extended to the proven facts that appellant shows within the record. If the courts of the land are to have their own interpertation of the law, then it is not necessary for the Supreme Court to render decision, but since the Utah Constitution, in ARTICLE I, clearly states that this be the Supreme Law of the land, it must be mandatory that this law and these decisions be followed without interpertation.

Within the body of the transcript of the hearing for habeas corpus before the Honorable A. H. Elliott, it must be shown that it clearly signifies in reference of the appellant being in prison before, and presently is incarcerated. This cannot help but show a prejudicial and bias attitude and bring forward reference to the the Consolid Silver Mining & Milling Co. Vs Commonwealth of Pennsylvania, 125 U.S. 191 where it states;

> "The inhibitation what no state shall deprive any person within its jurisdiction of equal protection of the laws was designed to prevent any person or class of persons from discriminating and hostile legislation."

Appellant shows that there seems to have been considerable substance layed in the fact that he was a former resident of the Utah State Prison, and presently residing there that shows the court

... that puts foundation to the allegation.

Escobedo vs Illionis, 378 U.S. 478 (1964).
Hamilton vs Alabama, 368 U.S. 52 (1961).
Gideon vs Wainwright, 372 U.S. 335 (1965).
White vs Maryland, 373 U.S. 59 (1963).
Powell vs Alabama, 287 U.S. 45 (1962).
Miranda vs Arizona, June 13th, 1966.

Above we find six (6) cases where the United States Supreme Court has rendered decisions which directly point to those rights which your appellant has been disallowed. Though it has been stated that certain sections of his procedure was waived, it must be asked who so advised of this, and we come directly back to the fact that appellant was without competent counsel for legal advice. It is the duty, it is the right to find the courage to respect the law, and sitting as appellant's peers there has to be no other thought then to simply verify the fact, was he accorded "Due" Process" of the law? In a laymen's view, he was not given this protection.

United States vs Lee, (1882) 106 U.S. 196 clearly shows the duty of the Court and citizens;

> "No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the goverment from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system or goverment and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives."

Appellant shows the above reference in the fact that thought the decision might give inference

[illegible] which had no bearing to the case before [illegible] bar, it is evident that failure of representatio[illegible] counsel was a serious infringment upon his rights which are guranteed by the Constitution of the United States.

Page 42, line 15 thru 17, the Honorable A. M. Ellett states; "The Supreme Court has spoken on matters that I think are none of their business, but they have spoken, and I am bound by it and propose to follow their rulings."

This is quoted, but this is not the actions followed with denying appellant's writ of habeas corpus on the grounds heretofore brought to the attention of this Honorable Court.

Irvin vs Dowd, 359 U.S. 384, P. 405 (1959).

> "the state courts, equally with the courts of the union....to guard, enforce and protect every right granted or secured by the Constitution of the United States."

United States vs Handford, 2 U.S.C.A. 5A 249 F. 2d 295;

> "The duty of the courts to have a double burden owing a heavy obligation to the goverment dedicated to conduct his case zealousy, butaalso as a representative of goverment dedicated to fairness and equal justice to all owing a heavy obligation to accuser."

Then, we find above two (2) references which show that even though it might be directly against the moral belief of that person so sitting in judgment to release appellant, the law which has been shown grants said relief as law without the need of refusing to accept the responsibility.

On the 21st day of September, 1966, appellant was notified by the herein Honorable Court, that he would be required to file his own brief due to the fact that representing counsel, Jimi Mitsunaga, had withdrawn because he could not find reversable error of the judgment. This seems to be a strange correspondance on two reasons.

First: Jimi Mitsunaga Esq., legal defender from Salt Lake City, was the representing counsel before the Honorable A. H. Ellett and alleges the facts which he presented to the court in support for the requested writ of habeas corpus. It seems that he represented his cause sufficiently that as a layman, I bring the appeal before this Honorable Body of the State of Utah. Then, to withdraw without explicit reasoning then that in file with the Supreme Court does not sustain the merits in which he represented himself on March 16, 1966 in the lower court. It would seem that the pending political campaign in which he is presently involved might be a reason that the overburden of work is to demanding and this was a good case to leave for future reference.

Second: Though the Supreme Court might have appointed Mr. Mitsunaga as counsel, appellant desires to point to the Court that it was his withdrawal from the case that caused the request for counsel that has been herewith refused. As in a recent ruling of the Utah Supreme Court in which counsel was dismissed by plaintiff, the court there found that another attorney was not required. In the case mentioned appellant does not agree, but a comparison to his cause cannot be made because appellant did not dismiss counsel, but appointed legal defender withdrew on his own accord.

Crandall vs Novada, 6 Wall. 35, 18 L.Ed. 745; Mr. Justice Miller states as follows;

> "If the government has rights on her own account, the citizen also correlative

rights. He has the right to come to the seat of government to assert any claim he may have upon that government or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions."

In this case of appeal, the above referenc is certainly true due to the requirement of appellant being forced to construct his own briefs, but the fact remains that he is not receiving "Due Process" by the refusal of not only the Honorable Court to appoint legal representation, but in the fact that legal counsel withdrew after representation in the lower court.

Respectfully drawing attention to Utah Statute '77 - 64 - 1 where counsel is guaranteed indigent persons it must be shown that this same is completly ignored after post-conviction proceedings have been initiated. Though this might be contested by the State, there cannot be a logical rebuttal because a zealous attack has not been conducted and refusal to proceed cannot allow section six (6) of said statute to be invoked as might be attempted.

Johnson vs Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 1023, 82 L.Ed. 1461 states;

> "Where the right to counsel is of such critical importance as to be an element of Due Process under the Fourteenth Amendment, a finding of waiver is not lightly to be made."

Appellant contends that above is exactly the attitude which has been extended in the case before the lower court in which said judgment so allowed conclusions to remain that he intelligently waived his rights to counsel and preliminary hearin with such a slight education, never having under- full procedure in the past, appellant has not his rights to counsel or procedure.

Appellant contends the opinion brought [illegible] for writ of habeas corpus [illegible] fact that judgment of the court was openly [illegible] conviction was initiated as to his [illegible] writ by the Honorable A. M. Ellett [illegible] about a condition that could not [illegible] possible for the lower court to render [illegible] decision. This is found on page 2, [illegible] 23 of the transcript of Hearing held [illegible] March 16th, 1906.

Hill vs Texas, 316 U.S. 400, p 406;

> "Nor is this Court at liberty to grant or withold the benefits of equal protection which the Constitution commands for all, merely as we may deem the defendant innocent or guilty....."

There is no question that the lower court misinterpreted its duty to bare in mind the fact that appellant was not attempting to contest the merits of his innocence or guilt, and this was pointed out in the fact by representing counsel that the point in question was irrelevant which only received a one sided conclusion by the court.

Davis vs Mills, 194 U.S. 451, p 457;

> "Constitutions are intended to preserve practical and substantial rights, not to maintain theories."

Consequently, using above reference the appellant declares the facts used as foundation [illegible] by the lower court were nothing more than theories of one person, sitting alone in [illegible] which was clearly shown to contain sub-[illegible] fact that became clouded by outside [illegible] irrelevant to the case.

[illegible] vs Madison, (1803) 1 Cranch 137, p 177

"It is emphatically the provence and duty of the judicial department to say what the law is."

Appellant points to the above reference to illustrate the fact that the law has been interperted but in his case refused to be applied to his cause.

CONCLUSION

"Evidently it also needs to be repeated that the overriding responsibility of this Court is to the Constitution of the United States, no matter how late it may be found to exist. We must be deaf to all suggestions that a valid appeak to the Constitution, even by a guilty man, comes to late, because courts, including this Court, were not earlier able to enforce what the Constitution demands."

Chessman vs Teets 354 U.S. 156, p 165 (1957)

Appellant has given those facts, supported by references as above to the duty of the courts to fulfill their obligation to render a decision granting his petition for writ of habeas corpus on the grounds that he has not been accorded Due Process of the law under the Constitution of the United States and requests the Honorable Court to reverse the decision of the lower court.

Respectfully submitted,

James Floyd Workman - Petitioner
P.O. Box 250
Draper, Utah

AFFIDAVIT OF IMPECUNIOSITY

COUNTY OF SALT LAKE)
(SS
STATE OF UTAH)

I, JAMES FLOYD WORKMAN, of Salt Lake County, State of Utah, Petitioner-Plaintiff in the foregoing entitled action, do swear that I am impecunious and unable to pay the costs in the said action and the following is necessary for the best interest of justice, to-wit:

1. Filing of this Petition for Writ of Habeas Corpus with the Utah Supreme Court.

2. Court Order

Dated this 10th day of October, 1966.

James F Workman
JAMES FLOYD WORKMAN - Petitioner

Subscribed and sworn to before me this 10th day of October, 1966.

Leonard Flora
NOTARY PUBLIC FOR THE STATE OF UTAH, COUNTY OF SALT LAKE

My Commission Expires: 9-20-67