1972

William Wilcox House v. John W. Turner, Warden, Utah State Prison : Brief of Appellant

In The Supreme Co
of the State of Ut

WILLIAM WILCOX HOUSE,

Plaintiff-Appell

-VS-

JOHN W. TURNER, WARDE
UTAH STATE PRISON,

Defendant-Resp

BRIEF OF AP

Appeal from the judgm
District Court, Salt Lake C
Honorable Ernest F. Bald

VERNON B. ROMNEY
Attorney General, State of Ut
State Capitol
Salt Lake City, Utah
Attorney for Respondent

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In The Supreme Court of the State of Utah

WILLIAM WILCOX HOUSE,
Plaintiff-Appellant,
-vs-
JOHN W. TURNER, WARDEN, UTAH STATE PRISON,
Defendant-Respondent.

Case No. 12704

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

The appellant, William Wilcox House, appeals from a decision of the Third Judicial District Court denying his release from the Utah State Prison upon a Petition for a Writ of Habeas Corpus.

DISPOSITION IN LOWER COURT

On September 3, 1971, William Wilcox House filed a petition for a writ of habeas corpus in the Third Judicial District Court, Salt Lake County, State of Utah alleging that his commitment to the Utah State Prison was invalid. The matter came on for hearing on October 21, 1971 before the Honorable Ernest F. Bald-

win who denied the petition on the same date.

RELIEF SOUGHT ON APPEAL

Appellant, William Wilcox House, seeks the reversal of the judgment and order of the court below.

STATEMENT OF FACTS

On June 21, 1971 in the Third Judicial District Court, in and for Salt Lake County, State of Utah, before the Honorable Joseph G. Jeppson, appellant plead guilty to the charge of possession for sale of a stimulant drug as contained in the information numbered 23084. On October 21, 1971, in the same district, a petition for writ of habeas corpus, numbered 201219, was heard and denied by the Honorable Ernest F. Baldwin. (References from the trial transcript will be referred to as "T", and references to the Habeas Corpus hearing will be referred to as "H" hereafter.)

Appellant was arrested on December 19, 1970, and was charged with the offense of sale of a stimulant drug in violation of 58-33-2(b), Utah Code Annotated, (1953). Appellant testified that when he appeared at the court house for his preliminary hearing in the latter part of March or prior to the first of June (H. 32) Deputy Gee, of the Salt Lake County Sheriff Office, placed appellant under arrest on another charge and informed him in the presence of his attorney, Mr. John Russell, that more charges were going to be filed until

he was convicted and placed in prison. (H. 32-33) Appellant also testified that he had other conversations with Deputy Gee (H. 33) and that he was informed that Deputy Gee would continue filing charges if appellant did not plead guilty. (H. 36) Although the hearing record is not clear as to dates involving various conversations and events, the record does disclose that additional charges were filed, (H. 31) and the Salt Lake City Clerk's Office records show that an additional complaint was issued on March 19, 1971 for the offense of sale of a stimulant drug. Mr. House testified that he knew he could not afford to keep going to trial and making bond on the new charges, even though he knew he was not guilty of the offenses charged. (H. 43) Appellant appeared with counsel Norman Wade on the date set for trial, June 21, 1971, and entered a plea of guilty to the offense of possession for sale of a stimulant drug. (T. 7)

POINT I

APPELLANT'S PLEA OF GUILTY WAS NOT VOLUNTARILY ENTERED.

Appellant contends that his plea of guilty that was eventually entered was not voluntary in that it was obtained by the use of threats and pressures directed against him in violation of his constitutional rights and standards established by judicial decision.

In *Brady v. United States,* 397 U.S. 742 (1970), the United States Supreme Court, although it affirmed

the lower court in denying relief, did set forth a standard to determine whether a plea is voluntary when the court said:

> The standard as to the voluntariness of guilty pleas must be essentially that defined by Judge Tuttle of the Court of Appeals for the Fifth Circuit:
>
> "[A] plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand trial unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises) or perhaps promises that are by their nature improper as having no proper relationship to the prosecutor's business. (e.g. bribes). [Citation] 25 L.Ed.2d at 760.

In *Lassiter v. Turner,* 423 F.2d 897 (1970), the United States Court of Appeals for the Fourth Circuit recognized that the promises or threats which deprive a plea of its voluntary character may not be in the form of threats to do physical harm, but rather they may be more subtle in character. In that case the defendant was induced to enter a plea of guilty to a lessor included offense because of a statement by the prosecutor that he was considering reinstating a charge that had been nolle

prossed at defendant's original trial some five years earlier. The court held that the plea was involuntary since it was induced by a threat to revive a prosecution which could not be revived, even though the prosecutor was also unaware of its forbidden character, since the defendant would have been denied the right to a speedy trial. In discussing the process of plea bargaining the court recognized its propriety, but also noted its dangers at page 900:

> ... In addition to other safeguards which limit the character of the negotiations and subsequent agreements, on overriding constitutional limitation is that the plea must not have been induced by promises or threats which deprive it of the character of a voluntary act....

Appellant does not contend that the state may not legitimately issue new complaints where the evidence and ethical considerations justify issuance. Neither is it appellant's position that plea bargaining is not a proper function of our judicial system. However, Petitioner does maintain that the threats made by Deputy Gee that new charges would be filed until a conviction was obtained, unless Mr. House were to enter a plea of guilty, were designed and intended to extract a plea and did in fact accomplish that result, thus depriving that plea of its voluntary character. Therefore, the judgment of the lower court must be reversed.

CONCLUSION

Appellant respectfully submits that it is apparent from the record that his plea was not voluntarily entered.

Respectfully submitted,

F. JOHN HILL

Attorney for Appellant