

1970

Dee Larrabee v. John W. Turner, Warden of Utah State Prison : Brief of Appellant

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IN THE SUPREME COURT
OF THE STATE OF UTAH

DEE LARRABEE, :

Plaintiff-Appellant, :

vs. :

Case No.
12100

JOHN W. TURNER, :
Warden of Utah State :
Prison, Draper, Utah :

Defendant-Respondent:

BRIEF OF APPELLANT

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BRIEF OF APPELLANT

NATURE OF CASE

This is an appeal from a judgment of the District Court in a habeas corpus proceeding denying plaintiff-appellant's release from the Utah State Prison.

DISPOSITION OF LOWER COURT

The District Court denied the plaintiff's petition for a writ of habeas corpus and remanded the petitioner to respondent's custody.

NATURE OF RELIEF SOUGHT

Appellant seeks to overturn the judgments and sentences of September 25, 1968, of the District Court of the Fourth Judicial District of the State of Utah, based on two counts of the information: One judgment was rendered on the first count for an intermediate term of not less than one or more than twenty years in the Utah State Prison, and the second judgment with respect to the second count was for a like period. Both judgments to run concurrently.

STATEMENT OF MATERIAL FACTS

Plaintiff Dee Larrabee, who is twenty-

three years of age, is a married man who resides in Utah. (R-31-32) Larrabee appeared before the Honorable Allen B. Sorensen, Judge of the District Court of Utah County, on the morning of September 25, 1968. He faced charges in two counts of second degree burglary. He informed the Judge he wished an attorney.

(R-15) Judge Sorensen did not appoint a counsel to advise appellant but said he would appoint one in a week or two (R-36), so Larrabee had the impression that his request for counsel angered the Judge. (R-38) He was then returned to the County Jail where the sheriff told him if he didn't plead guilty respecting the charges pending before Judge Sorensen, "he'd get me as an accessory" in another crime allegedly committed on September 24, 1968. (R-36) The Sheriff further told Larrabee, "****there's no sense in taking an attorney because he'd get

me for knowing about them other two charges in the first place, and I'd get just as much time one way or the other and so I might as well just go back, there's no use taking an attorney." (R-36-37) The other charges referred to by the Sheriff involved a burglary the night of September 24, 1968, by two men who Larrabee knew. Larrabee didn't know anything about the burglary until September 25, one day after the alleged offense. (Tr. 37)

About forty-five minutes after leaving Judge Sorensen's Court Larrabee returned thereto. At this point Larrabee, being confused and concerned because of the Sheriff's advice, as aforesaid, withdrew his request for counsel and the court then rendered judgment against him. (R-15-18) Larrabee was without financial

means to retain counsel. (R-6 and 13)

ARGUMENT

The Supreme Court in Gideon v. Wainwright, (March 18, 1963) 372 U.S. 335, pointed out that the Sixth Amendment to the Constitution provides:

"In all criminal prosecutions, the accused shall have the right *** to have the assistance of counsel for his defense."

This fundamental right of being represented by counsel, the Court stated, was protected against state invasion by the due process clause of the Fourteenth Amendment.

In the recent case of Coleman v. Alabama, (June 22, 1970--No. 72--Oct. Term 1969), _____ U.S. _____, 38 U.S.L.W. 4535, the United States Supreme Court cast new light with respect to the right of an indigent person to be represented by counsel. The Court in this case said as follows:

"This Court has held that a person accused of crime "requires the guiding hand of counsel at every step in the proceeding against him (Powell v. Alabama, 287 U.S. 45, 69 (1932)), and that that constitutional principal is not limited to the presence of counsel at trial.' It is central to the principle that in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from accused's right to a fair trial. United States v. Wade, 388 U.S. 218 (1967) "

Larrabee, an indigent, was returned to the Sheriff's custody after he requested that Judge Allen B. Sorensen appoint counsel to represent him. It is submitted that the Judge should have immediately appointed some attorney to advise Larrabee. There was no reason for delay. He stood alone before the Sheriff, who threatened him with dire consequences if he pursued his request for counsel. Larrabee needed

the guidance of an expert at this moment. He could not tell whether the advice of the Sheriff was right or wrong. He was concerned and confused as to the course he should pursue. Without guidance of a lawyer he accepted the Sheriff's advice and returned to the court, and as the Sheriff strongly urged, he waived his right to counsel and was sentenced.

Plaintiff-appellant prays that the two judgments against him be overthrown.

Respectfully submitted,

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