

1993

Lyle C. Hendricks v. State of Utah : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Lyle C. Hendricks v. State of Utah*, No. 930532 (Utah Court of Appeals, 1993).
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BRIEF

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DOCKET NO. 930532 IN THE UTAH COURT OF APPEALS

LYLE C. HENDRICKS,

Petitioner-Appellant,

v.

STATE OF UTAH,

Respondent-Appellee.

:

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:

:

:

:

Case No. 930055-CA

Priority No. 3

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A DISMISSAL OF A PETITION FOR WRIT
OF HABEAS CORPUS, IN THE SECOND JUDICIAL
DISTRICT COURT, IN AND FOR WEBER COUNTY, STATE
OF UTAH, THE HONORABLE MICHAEL J. GLASMANN,
PRESIDING.

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FILED
Utah Court of Appeals

JUL 7 1993


Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

LYLE C. HENDRICKS,	:	
Petitioner-Appellant,	:	
v.	:	Case No. 930055-CA
STATE OF UTAH,	:	
	:	Priority No. 3
Respondent-Appellee.	:	

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IN THE UTAH COURT OF APPEALS

LYLE C. HENDRICKS,	:	
Petitioner-Appellant,	:	
v.	:	Case No. 930055-CA
STATE OF UTAH,	:	
	:	Priority No. 3
Respondent-Appellee.	:	

BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from the district court's dismissal of a petition for writ of habeas corpus involving a first degree felony. Appellee has filed a motion to transfer this appeal to the Utah Supreme Court, based upon rule 44 of the Utah Rules of Appellate Procedure, and Utah Code Ann. § 78-2a-3(2)(g) (Supp. 1992). Section 78-2a-3(2)(g) explicitly excludes from this Court's jurisdiction, appeals from petitions challenging convictions of first degree felonies. Jurisdiction properly lies with the Utah Supreme Court pursuant to Utah Code Ann. § 78-2-2(3)(i), as this is an appeal "from the district court involving a conviction of a first degree or capital felony."

STATEMENT OF ISSUE PRESENTED ON APPEAL AND
STANDARD OF APPELLATE REVIEW

This case involves the summary dismissal of a petition for writ of habeas corpus. The issue raised on appeal is:

Did the district court properly dismiss the petition as frivolous? In reviewing a dismissal of a habeas corpus petition, the appellate court examines the record "in the light most favorable to the findings and judgment . . . and will not reverse if there is a reasonable basis in the record to support the trial court's denial of the writ." Hall v. Utah Board of Pardons, 806 P.2d 217 (Utah App. 1991) (citations omitted). See also Wagstaff v. Barnes, 802 P.2d 774, 778 (Utah App. 1990); Medina v. Cook, 779 P.2d 658 (Utah 1989); Bundy v. DeLand, 763 P.2d 803, 805 (Utah 1988).

However, no deference is accorded the lower court's conclusions of law underlying the dismissal of the petition. Rather, the appellate court reviews such determinations for correctness. Gerrish v. Barnes, 844 P.2d 315, 318-19 (Utah 1992) (citing Fernandez v. Cook, 783 P.2d 547, 549 (Utah 1989)).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional provisions, statutes or rules pertinent to the resolution of the issue presented is contained in the body of this brief.

STATEMENT OF THE CASE¹

Petitioner was convicted of aggravated robbery, a first degree felony, in violation of Utah Code Ann. § 76-6-302 (1987)

¹Appellee relies on many documents that are not part of the record on appeal, but were considered by the district court in dismissing the petition. Therefore, appellee has filed a motion to supplement the record, which is currently before this Court.

(Addendum A). On February 22, 1988, petitioner was sentenced to a term of five years to life, along with a one year firearm enhancement (Id.). Petitioner timely appealed his conviction (Addendum B). On appeal, petitioner claimed that: (1) his admissions to police while in custody were improperly admitted at trial; (2) the evidence was insufficient to support his conviction; (3) he received ineffective assistance of counsel; and (4) he was subjected to prosecutorial misconduct (Addendum C). The Utah Court of Appeals affirmed petitioner's conviction in a memorandum decision dated February 5, 1990 (Id.).

On November 20, 1989, petitioner filed a motion for new trial in the Second Judicial District Court (Addendum D). In his motion, petitioner claimed that newly discovered evidence demonstrated his right to a new trial (Id.). Specifically, petitioner argued that his attorney, Stephen Laker, perjured himself when he told the trial court that he had spoken to attorney Scott Jensen concerning petitioner's case (Id. at 4). Petitioner further claimed that Scott Jensen's testimony would have contradicted that of Detective Miner (Id.). The district court denied petitioner's motion for new trial on December 12, 1989, finding that, even after a review of Scott Jensen's affidavit, there was no substantial evidence to support petitioner's claims (Addendum E).

On or about October 29, 1990, petitioner filed a "Motion for an Order of Dismissal of Information" in the Second Judicial District Court (Addendum F). At a minimum, petitioner claimed

that: (1) the district court lacked jurisdiction "of the subject-matter of aggravated robbery"; (2) Detective Miner perjured himself; and (3) the evidence was insufficient to support his conviction (Id. at 5, 6, 9). The district court denied petitioner's motion to dismiss on December 26, 1990 as being wholly without merit (Addendum G).

On April 27, 1992, petitioner filed a "petition for writ of error coram nobis in trial court" in the Second Judicial District Court (Addendum H). Petitioner claimed that: (1) his trial counsel, Stephen Laker, failed to contact petitioner's previous attorney, Scott Jensen, regarding Detective Miner's testimony; (2) Detective Miner lied under oath regarding a jailroom conversation; and (3) Scott Jensen's affidavit constituted "newly discovered evidence" supporting petitioner's claims (Id.). On May 15, 1992, the district court dismissed the petition as frivolous, on the ground that it was repetitious of motions previously made and denied (Addendum I).

On December 1, 1992, petitioner filed a "writ of extraordinary relief", hereinafter referred to as "petition", in the Second Judicial District Court (R. 1-4; Addendum J). Petitioner alleged that: (1) Detective Miner perjured himself; (2) his counsel, Stephen Laker, was ineffective for failing to challenge the perjured testimony; (3) the evidence was insufficient to support his conviction; and (4) the affidavit of Scott Jensen constituted "newly discovered evidence" (Id.). On January 13, 1993, the district court dismissed the petition as frivolous on the

ground that it was "repetitious of motions previously made and denied" (R. 13; Addendum K). Petitioner filed a notice of appeal in the district court on January 25, 1993 (R. 15; Addendum L).

STATEMENT OF FACTS

A statement of facts beyond those set forth in the above Statement of the Case is not necessary to resolve the issue presented on appeal.

SUMMARY OF THE ARGUMENT

The district court properly dismissed as frivolous the December 1992 petition for writ of habeas corpus; the court reviewed the file from petitioner's criminal proceedings and correctly determined that petitioner's allegations were repetitious of motions previously denied. Petitioner's claims either were raised and litigated on appeal, or should have been raised on appeal. Furthermore, petitioner's claims are time-barred by the statute of limitations.

ARGUMENT

POINT I

THE DISTRICT COURT PROPERLY DISMISSED THE PETITION AS FRIVOLOUS: PETITIONER'S CLAIMS EITHER WERE RAISED AND DECIDED OR SHOULD HAVE BEEN RAISED ON APPEAL.

In Hurst v. Cook, 777 P.2d 1029 (Utah 1989), the Utah Supreme Court set out the standard of review for claims previously adjudicated on appeal. Specifically, the Court stated that

A ground for relief from a conviction or sentence that has once been fully and fairly

adjudicated on appeal or in a prior habeas proceeding should not be readjudicated unless it can be shown that there are "unusual circumstances." For example, a prior adjudication is not a bar to reexamination of a conviction if there has been a retroactive change in the law, a subsequent discovery of suppressed evidence, or newly discovered evidence.

Lairby v. Barnes, 793 P.2d 377 (Utah 1990) (quoting Hurst, 777 P.2d at 1036). Petitioner's claims that: (1) Detective Miner perjured himself; (2) his counsel, Stephen Laker, was ineffective for failing to challenge the perjured testimony; and (3) the evidence was insufficient to support his conviction, were all raised and adjudicated on petitioner's direct appeal (Addendum C). Petitioner claims he did not raise these claims on his appeal because he did not have the affidavit of Scott Jensen, which he characterizes as "newly discovered evidence" (R. 2; Addendum J). However, petitioner's claim is unfounded. Petitioner procured Mr. Jensen's affidavit, which is dated December 6, 1988, several years ago, and attached it to his motion for new trial (Addendum D). Furthermore, review of the appellate court's memorandum decision reveals that petitioner submitted Mr. Jensen's affidavit to the court on his direct appeal (Utah Court of Appeals memorandum decision dated February 5, 1990, attached as Addendum C). Specifically, the court of appeals stated,

[a]ppellant's claim that attorney Jensen's testimony at trial would support appellant's argument that Miner lied about the confessions is unsupported by the record. Jensen's affidavit acknowledges that he may have been present at the prearrest meeting with Miner but has no recollection of the meeting or any discussions. We find no error in

defense counsel not calling Jensen as a witness at trial.

Id. at 4. Since Mr. Jensen's affidavit is not newly discovered evidence, there are no unusual circumstances warranting reexamination of petitioner's claims.

Even if the exact claims contained in the petition were not raised on appeal, petitioner is barred from now obtaining habeas corpus relief. A writ of habeas corpus is not a substitute for direct appeal and cannot be used to fulfill the purpose of regular appellate review. Codianna v. Morris, 660 P.2d 1101 (Utah 1983). See also Wagstaff v. Barnes, 802 P.2d 774 (Utah App. 1990); Hurst v. Cook, 777 P.2d 1029 (Utah 1989). The Utah Supreme Court has stated:

It is therefore well settled in this state that allegations of error that could have been but were not raised on appeal from a criminal conviction cannot be raised by habeas corpus or postconviction review, except in unusual circumstances.

Codianna, 660 P.2d at 1104. The Court further noted that habeas corpus may be invoked

only when the court had no jurisdiction over the person or the offense, or where the requirements of law have been so disregarded that the party is substantially and effectively denied due process of law, or where some such fact is shown that it would be unconscionable not to re-examine the conviction.

Id. at 1105 (emphasis added) (citations omitted). If the alleged error is known or should have been known to the petitioner at the time 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 further attack, except in some such unusual circumstance as we have mentioned above. Were it otherwise, the regular rules of procedure governing appeals and the limitations of time specified therein would be rendered impotent.

Id. (citations omitted). Accord Gerrish v. Barnes, 844 P.2d 315 319 (Utah 1992).

Petitioner's claims should have been known to petitioner by the time he was sentenced. Therefore, petitioner should have raised these claims on direct appeal. Petitioner claims that he did not raise the issues on direct appeal because he did not have Scott Jensen's affidavit, which petitioner characterizes as "newly discovered evidence", enabling him to bypass the requirement of bringing all claims on appeal (R. 2). However, the foregoing demonstrates that Mr. Jensen's affidavit is not "newly discovered evidence". Therefore, petitioner has not demonstrated unusual circumstances warranting his failure to raise all claims on direct appeal. Since petitioner's claims are not proper for habeas corpus or post-conviction relief, the district court properly dismissed the petition as frivolous.

POINT II

THE DISTRICT COURT CORRECTLY DISMISSED
THE PETITION AS FRIVOLOUS: PETITIONER'S
CLAIMS WERE REPETITIOUS OF PREVIOUS
MOTIONS WHICH HAD BEEN DENIED.

The district court's dismissal of the petition as frivolous was based upon the finding that the petition "is

repetitious of motions previously made and denied" (R. 13; Addendum K). A review of petitioner's file from his criminal proceedings clearly supports the district court's conclusion. The claims contained in the petition were previously raised by petitioner in his: (1) motion for new trial; (2) motion for an order of dismissal of information; and (3) petition for writ of error coram nobis in trial court (Addenda D, F, and H). Petitioner merely reasserted claims previously raised and denied in order to get one more bite at the apple. As already noted, claims which have been previously litigated should not be reasserted in a petition for habeas corpus or post-conviction relief, absent unusual circumstances. See Hurst, 777 P.2d at 1036. Therefore, the district court properly dismissed the petition as frivolous. Since petitioner has failed to demonstrate the impropriety of the district court's ruling, this Court should affirm the dismissal of the petition.

POINT III

PETITIONER'S CLAIMS ARE TIME-BARRED BY THE STATUTE OF LIMITATIONS CONTAINED IN UTAH CODE ANN. § 78-12-31.1.

Utah Code Ann. § 78-12-31.1, which governs habeas corpus and post-conviction relief, provides that such actions must be filed:

Within three months:

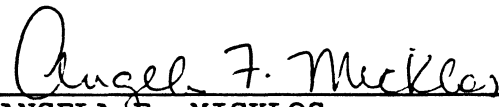
For relief pursuant to a writ of habeas corpus. This limitation shall apply not only as to grounds known to petitioner but also to grounds which in the exercise of reasonable diligence should have been known by petitioner or counsel for petitioner.

Utah Code Ann. § 78-12-31.1 (1992). Since all of petitioner's allegations relate to matters which occurred at trial, petitioner should have raised his claims by May 22, 1988, three months after he was sentenced. However, the petition was not filed until December 1, 1992, over four years beyond the statutory period. All of petitioner's allegations are based on grounds which were known or should have been known by petitioner through the exercise of reasonable diligence. For this reason, petitioner's claims are time-barred.

CONCLUSION

Based on the foregoing, this Court should affirm the district court's dismissal of the petition for habeas corpus relief as frivolous.

RESPECTFULLY submitted this 7th day of July, 1993.



ANGELA F. MICKLOS
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing BRIEF OF APPELLEE was mailed, postage prepaid, this 7th day of July, 1993 to:

Lyle C. Hendricks
Appellant Pro Se
P.O. Box 250
Draper, Utah 84020

Angel F. Miklas

A D D E N D A

A D D E N D U M A

8908

FEB 26 9 50 AM '88

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

State of Utah,
vs.
LYLE HENDRICKS,
Defendant.

RICHARD GREENE
JUDGE, SENTENCE, AND
COMMITMENT TO UTAH STATE
PRISON
No. 18592

123

--00000--

Defendant having been convicted by ☒ a jury; ☐ the court; ☐ plea of guilty;
☐ plea of no contest; of the offense of AGG. ROBBERY, a
felony of the 1st degree, being now present in court and ready for sentence,
is now adjudicated guilty of the above offense and is now sentenced as follows:

Judge's
initials

THE BASIC SENTENCE

- ☐ not to exceed five (5) years at the Utah State Prison;
☐ not less than one (1) year nor more than fifteen (15) years at Utah State Prison;
☒ not less than five (5) years and which may be for life at Utah State Prison;
☐ to pay fine in the amount of \$ _____.

ENHANCED PUNISHMENT FOR FIREARM USE

Defendant is additionally sentenced as follows:
☒ one (1) year at Utah State Prison, pursuant to 76-3-203(1), (2) or (3);
☐ not to exceed five (5) years at Utah State Prison pursuant to 76-3-203(1), (2) or (3);
☐ not less than five (5) years nor more than ten (10) years at Utah State Prison,
pursuant to 76-3-203(4);
said sentence to run consecutive to the basic sentence as set forth above.

HABITUAL CRIMINAL ALTERNATIVE PUNISHMENT

Upon a finding that the defendant is in the status of an habitual criminal, the
defendant is sentenced to:

- ☐ not less than five (5) years and which may be for life at Utah State Prison.

RESTITUTION

- ☐ Defendant is ordered to pay restitution in the amount of \$ _____, to
_____.

Defendant is remanded into custody of:

- ☐ the Sheriff of this county, for delivery to the Warden or other appropriate
official at the Utah State Prison for execution of sentence; or
☒ the Warden for execution of this sentence.

DATED this 22nd day of February, 1988.

CONCURRENT SENTENCE

ATTEST: RICHARD GREENE, County Clerk [Signature] DISTRICT JUDGE

A D D E N D U M B

7
Honorable Judge Roth
3rd District Court
Weber County, UT

FEB 24 10 49 AM '88

WEBER COUNTY CLERK
RICHARD R. GREENE

Hyle C. Hendricks
Feb. 22, 1988
CO

"Notice of Appeal"

Case No. # 11592

Dear Sir:

This letter concerns my intent to appeal
The conviction for "Aggravated Robbery" which
I recieved in your Court on Jan. 21. 88.
Because I am unlearned at law, please afford
me liberal construction in the instant matter.

Accept This letter as both Notice of appeal
and Motion to appoint counsel, other than
than he who represented me at trial.

"Thank you Sincerely"

Hyle C. Hendricks
Hyle C. Hendricks

Oliver H. Jones

8/25/89
my Commission expires

A D D E N D U M C

-----00000-----

Mary T Noonan
Clerk of the Court
Utah Court of Appeals

On appeal, appellant argues that his admissions to police while in custody were inadmissible at trial, the evidence is insufficient to support the conviction, appellant was denied the effective assistance of counsel and the prosecutor committed misconduct. Appellant's supplemental brief does not add any substantial additional issue requiring our discussion but merely reargues these contentions.

We observe that in pretrial lineups and at trial the pharmacist and his assistant unequivocally identified appellant as the robber and gave clear descriptions of the aggravated robbery incident. Police officers testified regarding appellant's capture and arrest and the subsequent inculpatory statements he made after he was advised of his rights. Appellant did not testify at trial and did not present any evidence in his defense. Yet on appeal, appellant attempts to bolster his pro se arguments by asserting facts not in the record and by relying upon his own version of the events to excuse his conduct. Appellant draws conclusions and asserts motives which are not supported by any evidence at trial.

First, appellant claims that his admissions to detective Miner at the time of arraignment, the day after appellant's arrest, were inadmissible because appellant was not readvised of his Miranda rights. It is undisputed that, at the time of the arrest, appellant was advised of his rights by Detective Miner. Appellant said he knew his rights. After the arrest, he was advised of his rights again prior to a lineup proceeding, expressly waived them, and initiated conversations with police detectives. Appellant proffered an alibi that his friend had taken his samari, but that he, appellant, had not been near the pharmacy. When his story was questioned, appellant admitted that he had gone to the pharmacy to get some cold medicine.

The next morning, while awaiting a video arraignment at the jail, appellant asked to speak with Detective Miner. Appellant told Miner that his own attorney had withdrawn from representation. A legal defender attorney, Mr. Jensen, was present to assist with other criminal arraignments and to assist appellant in his arraignment. Jensen listened while appellant talked to Miner. During his conversation with Miner, appellant confessed to the crime and admitted his guilt.

Detective Miner testified at trial regarding the admissions by appellant in this conversation. Although appellant did not offer any rebuttal evidence at trial, he now tries to claim that his confession was coerced and he was improperly interrogated without the presence of his own attorney. He relies upon the detective's failure to read him his Miranda rights a third time before talking to him.

A Miranda warning is not required before each and every conversation with an accused. Cf. Edwards v. Arizona, 451 U.S. 477, 483-5 (1981). Appellant knew and understood his rights to

counsel and to remain silent. He knowingly and voluntarily relinquished them. The evidence is clear that appellant himself initiated his conversation with Detective Miner. Furthermore, his admissions were knowing and voluntary. There was no evidence that the police exerted any improper influence or inducement, made any threat of harm or abuse, or offered any improper promise. And, an attorney from the legal defender's office (who also represented defendant at trial) was present when defendant sought out Miner in conversation. Appellant's admissions were properly admitted into evidence. See State v. Bishop, 753 P.2d 439, 466-7 (Utah 1988); State v. Moore, 697 P.2d 233, 235-6 (Utah 1985); See also Oregon v. Bradshaw, 462 U.S. 1043 (1983).

Appellant also argues that the evidence is insufficient to support the first degree felony of aggravated robbery because defendant was "just fooling" and lacked the necessary intent. Under Utah Code Ann. § 76-6-302(3)(1989), a person commits aggravated robbery if he uses a dangerous weapon (e.g. automatic firearm) while attempting a robbery. Appellant's demand for controlled narcotics was enforced by intimidation and fear of his automatic weapon which he pointed at the pharmacist. Testimony of appellant's conduct and demeanor were unchallenged at trial. Whether appellant was serious, or was not serious, and had the requisite intent to commit the robbery was a fact for the determination of the jury. State v. Brown, 607 P.2d 261, 267 (Utah 1980); State v. McQueen, 14 Utah 2d 311, 383 P.2d 921 (1963). Intent is rarely susceptible to direct proof. To ascertain appellant's true intent, the jury was entitled to resort to reasonable inferences based upon an examination of all the surrounding circumstances. State v. Gutierrez, 714 P.2d 295, 296 (Utah 1986); see also State v. Royball, 689 P.2d 1338, 1339 (Utah 1984). The evidence is not so lacking or insubstantial that reasonable minds must have a reasonable doubt of defendant's intent to commit a robbery, even though the robbery was not completed. We reject appellant's unsupported contention that the jury was "mislead" and "lied to."

Appellant personally argues that he was denied the effective assistance of counsel at trial because his court appointed attorney failed to adequately investigate the facts, failed to present a defense, and had a conflict of interest.

Appellant complains that his attorney failed to discover and bring out at trial that the pharmacist had been previously involved in illegal distribution of controlled narcotics.

Appellant fails to show the relevance or admissibility of such evidence at trial. The absence of such evidence to impeach the witness was, at best, harmless error in view of the unequivocal testimony of the other eyewitness to appellant's crime and defendant's admissions. Appellant fails to show that he was unfairly prejudiced by the lack of this evidence. Moreover, there is no basis to argue that this evidence would support a claim that defendant was "just fooling around."

Appellant's claim that attorney Jensen's testimony at trial would support appellant's argument that Miner lied about the confessions is unsupported by the record. Jensen's affidavit acknowledges that he may have been present at the prearrest meeting with Miner but has no recollection of the meeting or any discussions. We find no error in defense counsel not calling Jensen as a witness at trial.

Appellant says he was denied a defense at trial. But he does not articulate what defense he "insisted" be presented by counsel and what facts would have supported that defense. Even assuming that the defense tactics of appellant's attorney taken at trial should not be accorded the widest latitudes, there is no support for the contention that appellant was precluded from asserting his innocence at trial. State v. Wood, 648 P.2d 71, 92 (Utah 1981).

In State v. Frame, 723 P.2d 401 (Utah 1986), the Utah Supreme Court applied the principles of Strickland v. Washington, 466 U.S. 668 (1984) and recognized the "strong presumption" that counsel rendered adequate assistance and exercised reasonably professional judgment.

It is not enough to claim that the alleged errors had some conceivable effect on the outcome or could have had a prejudicial effect on the fact finders. To be found sufficiently prejudicial, appellant must affirmatively show that a "reasonable probability" exists that, but for counsel's error, the result would have been different. We have defined "reasonable probability" as that sufficient to undermine confidence in the reliability of the verdict.

[These principles] . . . are guides to the ultimate focus upon the fundamental fairness of the proceeding challenged [W]e need not determine whether counsel's performance was deficient if appellant fails

to satisfy his burden of showing that he suffered unfair prejudice as a result of the alleged deficiencies. Frame, 723 P.2d at 405.

See also State v. Julian, 771 P.2d 1061 (Utah 1989); State v. Verde, 770 P.2d 116 (Utah 1989); State v. Pursifell, 746 P.2d 270 (Utah Ct. App. 1988).

Just as in Frame and Strickland, if appellant fails to show that he was unfairly prejudiced, we need not, and do not, agree with appellant's lengthy arguments that counsel's efforts at trial were deficient. Strickland, 486 U.S. at 697. Frame, 723 P.2d at 405. Upon the record as a whole and considering the overwhelming evidence against appellant, we are persuaded that the alleged errors of his trial attorney had no reasonable effect on the verdict. Appellant does not show that, absent the alleged errors, the result would have been different with any reasonable probability. Our confidence in the reliability of the verdict and the fundamental fairness of the trial is not undermined. Frame, 723 P.2d at 405.

Finally, we reject appellant's claim of prosecutorial misconduct because the prosecutor referred to defendant's admissions in her closing argument and did not tell the jury that Detective Miner was "lying". Also, there was no conflict of interest between appellant's attorney and by Attorney Jensen. There is not one shred of evidence in the record or one fact identified by appellant that supports his claim of defective counsel or prosecutorial misconduct.

We have also separately examined and reject the numerous other contentions by appellant. They are unsupported by the record and we need not to discuss them here. Appellant's conviction is affirmed.

ALL CONCUR:


Regnal W. Garff, Judge


Judith M. Billings, Judge


Richard C. Davidson, Judge

A D D E N D U M D

IN THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY STATE OF UTAH

Nov 20 10 40 AM '89

STATE OF UTAH
PLAINTIFF,

v.

LYLE C. HENDRICKS
DEFENDANT,

CASE NO. 18542

NOV 21 1989

MOTION FOR NEW TRIAL BASED ON NEWLY
DISCOVERED EVIDENCE

NOW COMES THE DEFENDANT, LYLE C. HENDRICKS, PROCEEDING IN PRO SE, AND MOVES THE COURT FOR AN ORDER FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE, AND THAT HIS RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH, AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE 1 SECTION 12, 7, OF THE CONSTITUTION OF UTAH HAVE BEEN VIOLATED.

THIS MOTION IS SUPPORTED BY DEFENDANT INCORPORATES BY REFERENCE THE BRIEF IN SUPPORT OF THIS MOTION."

DATED THIS 13th day OF NOVEMBER 1989

RESPECTFULLY Submitted

Lyle C. Hendricks

LYLE C. HENDRICKS

P.O. Box 250

DRAPER, UTAH 84020

SUBSCRIBED AND SWORN TO before ME
THIS 13th DAY OF NOVEMBER 1989

My Commission Expires:

_____.
NOTARY PUBLIC

Residing AT _____.

Prison Refused To Notarized
Witnessed

1 Willie Laughlin

2 Dennis Reese

3 Kon & Bateman

4 Curtis Laughlin

5 David Anderson

IN THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY STATE OF UTAH

STATE OF UTAH
Plaintiff,

v.

LYLE C. HENDRICKS
Defendant,

CASE NO. 18592

BRIEF IN SUPPORT OF MOTION FOR
NEW TRIAL BASED ON NEWLY DISCOVERED
EVIDENCE,

THE DEFENDANT, LYLE C. HENDRICKS HAS
MOVED THE COURT FOR AN ORDER FOR NEW
TRIAL BASED ON NEWLY DISCOVERED
EVIDENCE, AND THAT HIS RIGHTS UNDER
THE FIFTH, SIXTH, AND FOURTEENTH
AMENDMENTS TO THE UNITED STATES CONSTITUTION
AND ARTICLE 1, SECTION 12, 7, OF THE
UTAH CONSTITUTION HAVE BEEN VIOLATED.

THE DEFENDANT, MAINTAINS THAT HIS
RIGHTS WERE VIOLATED UNDER THE FIFTH
SIXTH AND FOURTEENTH AMENDMENTS TO THE
UNITED STATES CONSTITUTION AND ARTICLE 1,
SECTION 12, 7, OF THE UTAH CONSTITUTION

BECAUSE THE DEFENDANT LYLE C. HENDRICKS WAS IN TRIAL AND THE HON. DAVID E. ROTH CALLED A CONFERENCE IN CHAMBERS, AND TOLD COUNTY ATTORNEY KRISTINE KNOWLTON, AND DEFENDANTS. COURT APPOINTED COUNSEL STEPHEN A. LAKER
SEE TRIAL TRANSCRIPT PAGE 116 (7) TO 12

"IF SCOTT JENSEN WERE HERE, AND HE TESTIFIED TO FACTS INCONSISTENT WITH WHAT DETECTIVE MINER SAID, IF YOUR CLIENT TESTIFIED TO FACTS INCONSISTENT, I WOULD BE IN A POSITION TO WEIGH BOTH SIDES OF THAT ISSUE AND MAKE A DETERMINATION, IF I DO THAT NOW WE HAVE GOT A MISTRIAL."

STATEMENT OF FACTS

ON JANUARY 20, 1988 THE HON. DAVID E. ROTH GAVE THE DEFENDANTS COURT APPOINTED COUNSEL STEPHEN A. LAKER

UNTIL JANUARY 21, 1988 TO CONTACT SCOTT JENSEN, AND IF HIS STATEMENT WAS INCONSISTENT WITH DETECTIVE MINER THE HON. DAVID E. ROTH WOULD HAVE A MISTRIAL.

THE DEFENDANT LYLE C. HENDRICKS OFFERS THE TRIAL RECORD AND THE AFFIDAVIT OF G. SCOTT JENSEN IS SUPPORTED OF THIS MOTION FOR NEW TRIAL BASED ON NEWLY DISCOVERED EVIDENCE.

ARGUMENT

ON JANUARY 21, 1988 ATTORNEY STEPHEN A. LAKER USED UNETHICAL CONDUCT IN CONNECTION WITH THIS CASE. THE DEFENDANTS COURT APPOINTED COUNSEL AND A OFFICER OF THE COURT TOLD THIS COURT THAT HE HAD SPOKEN WITH ATTORNEY "SCOTT JENSEN" AND IN FACT ATTORNEY STEPHEN A. LAKER NEVER DID SEE OR TALK TO ATTORNEY SCOTT JENSEN, AS HE TOLD THE COURT

He did.

SEE AFFIDAVIT OF SCOTT JENSEN
ATTACHED hereto AS Exhibit (A)

WE CAN NOT SAY WHAT THIS COURT WOULD HAVE done IF ATTORNEY SCOTT JENSEN HAD TESTIFIED TO FACTS INCONSISTENT WITH Detective Miner.

THE DEFENDANT, LYLE HENDRICKS, WAS DENIED A FAIR TRIAL BY HIS COURT APPOINTED COUNSEL, WHEN THAT ATTORNEY TOLD THIS COURT THAT HE HAD TALKED TO ATTORNEY SCOTT JENSEN.

CONCLUSION

THE FACTS OF THIS CASE AND THE NEWLY DISCOVERED EVIDENCE THAT SCOTT JENSEN WAS NOT THE ATTORNEY WHEN DETECTIVE MINER QUESTIONED THE DEFENDANT, LYLE C. HENDRICKS THIS COURT MUST GRANT THE DEFENDANT

LYLE C. HENDRICKS A NEW
TRIAL BASED ON NEWLY DISCOVERED
EVIDENCE.

DATED THIS 13th day of NOVEMBER
1989

by Lyle C. Hendricks
LYLE C. HENDRICKS
P.O. Box 250
DRAPER UTAH 84020

SUBSCRIBED AND SWORN TO before
ME THIS 13th day of NOVEMBER 1989

My Commission Expires:
_____.

NOTARY PUBLIC

Residing AT _____.

Prison Refused To Notarized

Witnessed,

1. Willie Laughter

3. Ron E. Bateman

4. Curtis Laughter

AFFIDAVIT OF G. SCOTT JENSEN

I, G. SCOTT JENSEN, being first duly sworn upon oath, depose and say as follows:

1. That I am an attorney licensed to practice law in the State of Utah.

2. That on December 9, 1987 I worked on a part-time basis with the Weber County Public Defender Association.


3. It is possible on December 9, 1987 I stood with Mr. Lyle C. Hendricks for an arraignment.

4. After discussing the matter with Martin Gravis, the history of the case sounded vaguely familiar and I might have been the one who stood up with Lyle during his arraignment.

5. I do not remember having an conversation with Stephen Laker regarding Mr. Lyle Hendricks.

6. If I was the attorney who was present with Mr. Hendricks during his arraignment, I have no recollection of what took place at the arraignment, or of any conversation with Stephen Laker.

DATED this 6 day of December, 1988.

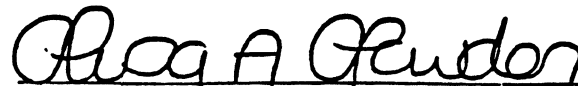


G. SCOTT JENSEN
Attorney at Law

SUBSCRIBED AND SWORN to before me this 10 day of December, 1988.

My Commission Expires:

9/18/91



Notary Public
Residing at: Harrisonville, Utah

Lyle G. Hendricks

"I hereby CERTIFY THAT A COPY
OF THE foregoing motion for new
trial based on newly discovered
evidence was mailed to Ms.
Kristine Knowlton Weber, County
Attorney's office 7th Floor Municipal
Bldg. Ogden Utah 84401 on November
13th 1989

NOV 21 1989

871918592

CERTIFICATE OF SERVICE
NOV 20 10 43 AM '89

CLERK COUNTY

A D D E N D U M E

DEC 12 3 05 PM '89

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

LYLE HENDRICKS,

Defendant.

}

ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL

}

Case No. 871918592

}

DEC 12 1989

Having reviewed the memoranda and affidavits on file, I
find and rule as follows:

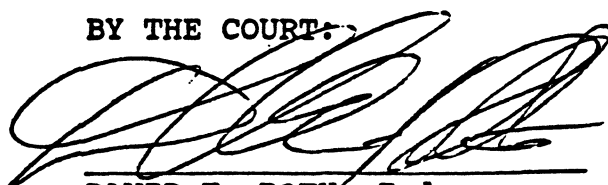
Defendant alleges that one of his attorneys, Scott
Jensen, should have testified at his trial and that his
testimony would contradict the testimony of Detective Shane
Minor. None of defendant's affidavits or copies of
correspondence from Mr. Jensen suggest that Mr. Jensen can
recall any facts concerning this case.

Absent substantial evidence that Mr. Jensen recalls facts
significantly inconsistent with the testimony of Detective
Minor, I find that there is no basis for defendant's request for
a new trial.

Defendant's motion is denied.

DATED this 12 day of December, 1989.

BY THE COURT:



Page 2
Order Denying Defendant's
Motion for a New Trial
Case No. 871918592

CERTIFICATE OF MAILING

I hereby certify that on the 12 day of December,
1989 I sent a true and correct copy of the foregoing Order
Denying Defendant's Motion for a New Trial to counsel as follows:

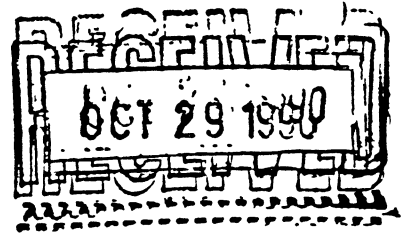
Kristine M. Knowlton
Attorney for Plaintiff
7th Floor Municipal Building
Ogden, Utah 84401

Lyle C. Hendricks
defendant pro se
P. O. Box 250
Draper, Utah 84020



A D D E N D U M F

Lyle E. Hendricks
P.O. Box 250
Draper, Utah 84020



In the Second Judicial District Court
County of Utah, State of Utah

In the matter of:

The State of Utah

Plaintiff, Respondent

Lyle E. Hendricks

Defendant-Movant

2 Motion for an order of
2 Dismissal of "Information".

2 Case No. _____

2 Hon. David Roth
2 Second District Court Judge

The Defendant-Movant above named, Lyle E. Hendricks respectfully moves the captioned Court for its order dismissing the "Information" filed in the instant case, and vacating and setting aside the "Sentence, Judgment and Commitment" issued pursuant thereto and upon the grounds hereinafter respectfully presented.

= Statement of Jurisdiction =

The Movant respectfully submits that the Legislature conferred jurisdiction upon this Honorable Court in its following directive at 77-35-25(4) U.C.A. in the following words:

IT-35-25 (RULE 25) Dismissal without Trial:

(a) In its discretion, for substantial cause and in furtherance of justice, the Court may, either on its own initiative or upon application of either party ORDER AN INFORMATION OR INDICTMENT DISMISSED.

(b) The Court shall dismiss the information or indictment WHEN:

(A) THE COURT IS WITHOUT JURISDICTION

Further, the Supreme Court of the State of Utah has ruled that:

"The question of the trial court's lack of jurisdiction may be raised at any time."
of STATE V. MURPHY, 23 UTAH 273, 64 P. 764

And when "a judgment is rendered by a court without jurisdiction having been invoked according to law, such judgment must be declared a nullity".

of STATE V. JEFFORD, (Utah) 74 P. 2626

Additionally, the Supreme Court of the United States has declared that:

"The question of the ineffectiveness of counsel may be raised for the first time on appeal."

= Grounds Relied upon For Relief =

I.
Because the Utah Legislature has failed to comply
with the provisions of ARTICLE VI, Section 22, of
Constitution of Utah specifically:

"EXCEPT GENERAL APPROPRIATION
BILLS, and BILLS for the
redemption and general
revision of laws, NO BILLS
SHALL BE PASSED CONTAINING
MORE THAN ONE SUBJECT
which shall be clearly expressed
in its title."

ARTICLE VI, SEC. 22, Const. of
Utah, (in part pertinent)

And for such specific reason, it must also be
noted the Utah Legislature, by its non-compliance
ALSO FAILED TO invest subject-matter jurisdiction
of the subject of:

"AGGRAVATED BATTERY"

and

"Attorned Battery"

And consistent with the fact that "subject-matter
jurisdiction" cannot be WAIVED (California
V. IRUE, 409 U.S. 109 (1973)), there is no
renewable ascertainable basis upon which the

In support of the foregoing contentions, the Movant respectfully submits that the attached Appendix-H conclusively establishes the following obvious truths:

1. That NO EXPRESS OR IMPLIED mention of "Aggravated Robbery" is found in the "TITLE OF THE ACT" of HOUSE BILL #166 (1973).
(Movant's Appendix-H)

2. Further, HOUSE BILL #162 is totally devoid of any reference whatsoever to: (a) "ATTEMPTED ROBBERY" nor (b) "immediate flight after a 'Robbery'".

And therefore, specifically because the "TITLE OF THE ACT" does NOT contain the most serious offense of "Aggravated Robbery", a "5 years to life" (against degree of felony") per U.C.A. 32-6-302 U.C.A. The Utah Legislature was NOT AT LIBERTY TO INCLUDE "Aggravated Robbery" in the "Utah CRIMINAL CODE" in light of the apparent - (APPENDIX-H/HOUSE BILL #162) fact that "Aggravated Robbery" is NOT COVERED WITHIN THE scope of the Utah Code.

and for such specific reason, the trial court's jurisdiction of the subject-matter of "aggravated battery" has not been conferred by the Legislature of the State of Utah and the United States Supreme Court has held:

"subject-matter jurisdiction
cannot be waived, nor conferred
upon the courts by stipulation
of the parties."
of CALIFORNIA V. LA RUE, 409
U.S. 109 (1973)

Thus, the trial court was totally without jurisdiction ~~over~~ proceed in the instant case and when, as occurred, the trial court proceeds without its jurisdiction having been invoked according to law, the Utah Supreme Court has said:

"whenever a court renders a
judgment without its
jurisdiction having been invoked
according to law, such
judgment must be declared a
nullity."
of STATE V. TELFORD, 72 P.2d 626

Therefore, the judgment rendered in the instant case should be declared "a nullity" consistent with the cited directive of the Utah Supreme Court in STATE V. TELFORD, supra.

Inasmuch as the United States Supreme Court has

not perform as MERE COUNSEL OF RECORD but must exercise representation... "In the Role of ADVOCATE" and both Defense counsel and Prosecuting counsel... remained SILENT as Detective Shane Alvin gave False testimony under Oath despite both the Utah Supreme Court and the United States Supreme Court expressly condemning convictions that are effected by the use of False Testimony and from such FATAL DEFECTS, it must follow that the convictions of the Defendant should not be allowed to stand.

In support of the foregoing contentions, the Defendant respectfully submits that the United States Supreme Court in its majority opinion in MITCHELL V. LUCEY, 474 U.S. 377 (1985) declared that Appellate counsel must be more than MERE COUNSEL OF RECORD but "must perform in the Role of Advocate" and it is respectfully contended that IF, Appellate Counsel had satisfied his Constitutionally required Role of "ADVOCATE" (ADVOCATE), he would have refocused the Court's attention to the Utah Legislative "Affirmative defense" at 76-2-307 U.C.A. that is worded as follows - 76-2-307 - VOLUNTARY TERMINATION OF FURTHER PROSECUTION.

"It is an affirmative defense to a prosecution in which an actor's criminal responsibility

... "being a party to an offense under section 76-2-201 M.C.A., 76-2-202) that prior to the commission of the offense, the actor VOLUNTARILY TERMINATED HIS EFFORTS to promote or facilitate its commission and Either:

(1) GAVE TIMELY WARNING TO THE PROPER LAW ENFORCEMENT AUTHORITIES"

=OR=
"THE INTENDED VICTIM

OR
(2) WHOLLY DEPRIVES HIS PRIOR EFFORTS OF EFFECTIVENESS IN THE COMMISSION"

While Appellate Counsel at Page Eleven (11) clearly brings the above "AFFIRMATIVE DEFENSES" into play with the following words:

"The witnesses all relate (clearly) that the Defendant immediately turned around and walked out of the store the same way he had entered, making the comment:

"I WAS ONLY KIDNAPING ANYWAY"

Transcript - page 37, lines 13-18)

Still the Record is TOTALLY SILENT as to Appellate Counsel seeking to have the Supreme Court of Utah

(CASE # 880277) to address the obvious and indisputable application of the "affirmative defenses" of the foregoing provisions of 76-2-307 U.C.A. especially in light of the Defendant's Movant's

1. EXPRESSLY... giving notice
and then and there giving
warning to the intended
victim

Before
any "Setback" occurred that
he was:

"Just kidding anyway"
and thereby satisfied the
Requisites of 76-2-307(1)
U.C.A.

= FIN II =

2. Abandoning (TERMINATING)
any and all

"PRIOR EFFORTS OF
EFFECTIVENESS IN
COMMISSION"

by walking away from the
Scene without taking anything
from anyone and thus no "Setback"
as defined at 76-2-304 U.C.A. can
be established where nothing is

...the for stated "affirmative" findings
at 76-2-307 (2) U.C.H. are clearly
and indisputably satisfied and
consistent with such CRIMINAL
TRUTH, the conviction of the servant
where: (A) NOTHING WAS TAKEN

-AND-

(6) A no apparent serious
ascertainable attempt
to accomplish any
criminal activity

and as a LEGAL consequence
thereof the Repeated Rulings of the Supreme Court
of the United States have declared:

"A CONVICTION WITHOUT EVIDENCE OF GUILT
VIOLATES THE PROCESS OF LAW"

Thompson v. City of Louisville, 392 U.S.

199 (1960)

Sumner v. Louisiana, 368 U.S. 157 (1962)

Addonley v. Florida, 385 U.S. 39 (1966)

Johnson v. Florida, 391 U.S. 596 (1968)

Flannix v. United States, 404 U.S.

1232 (1974) (1972)

Whelan v. New Hampshire, 414 U.S.

478 (1974)

Jackson v. Virginia, 443 U.S.

307 (1979)

Wherefore, the Defendant-Movant prays that this Honorable Court will order the "Information" filed in the instant case dismissed and consistent therewith will vacate and set aside the Judgment rendered pursuant to the (subject) "Information" in the interest of a fair administration of Justice.

Dated this 24th. day of October, 1990

Respectfully Submitted

Lyle C. Hendricks
LYLE C. HENDRICKS, Defendant-Movant

= Certificate of Mailing =

I, Lyle C. Hendricks, do hereby certify that an EXACT COPY of the foregoing "Motion" was mailed -
Postage Prepaid to:

Mr. Reed Richards
Weber County att.
2547 Wash Blvd
Ogden, Utah 84401

1206

This 26 day of October, 1990

Lyle C. Hendricks
LYLE C. HENDRICKS, Defendant-Movant

A D D E N D U M G

086609

DISTRICT COURT
WEBER COUNTY

IN THE SECOND JUDICIAL DISTRICT OF WEBER COUNTY
STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

LYLE C. HENDRICKS,

Defendant.

}

}

}

RULING ON DEFENDANT'S
MOTION TO DISMISS

Case No. 871918592

Having examined the memoranda and other documents on
file, I find and rule as follows:

I find the contentions of defendant to be totally without
merit and not worthy of further comment other than to rule that
defendant's motion is denied.

DATED this 26 day of December, 1990.



DAVID E. ROTH, Judge

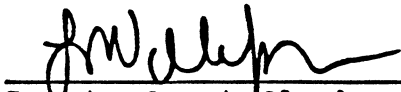
Ruling on Defendant's Motion to Dismiss
Case No. 871918592
Page 2

CERTIFICATE OF MAILING

I hereby certify that on the 26 day of December, 1990, I sent a true and correct copy of the foregoing Ruling on Defendant's Motion to Dismiss to counsel as follows:

Lyle C. Hendricks
P.O. Box 250
Draper, Utah 840

Kristine M. Knowlton
Weber County Attorneys Office
2549 Washington Blvd, 7th Floor
Ogden, Utah 84401



Deputy Court Clerk

A D D E N D U M H

Lyle C. Hendricks
Attorney Pro-Se
Utah State Prison
P.O. Box 250
Draper, Utah 84020

SECOND DISTRICT COURT
WEBER COUNTY
MAR 27 PM 1 12

**IN THE SECOND DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH**

Lyle C. Hendricks	:	Petition for Writ of Error
Petitioner	:	Coram Nobis in Trial
	:	Court.
v.	:	MAY 01 1992
State of Utah	:	Case No: <u>18592</u>
Respondent	:	Judge: <u>David E. Roth</u>

COMES NOW, Petitioner, Lyle C. Hendricks, pursuant to Rule 60 (B) and Rule 65 (B) of the Utah Rules of Civil Procedure, and for cause of action alleges as follows:

1. A Commitment order was issued on the 22nd day of February, 1988 by the Honorable David E. Roth, Judge of the Second District Court in and for the County of Weber, State of Utah, in a criminal complaint which had charged petitioner with Aggravated Robbery.
2. That petitioner was sentenced to a term of 5 to life at the Utah State Prison, plus 1 year enhancement for using a firearm.
3. The judgement of conviction which resulted in the confinement complained of has been reviewed on appeal. Petitioner's conviction was appealed by his court appointed counsel and on or about February 5th 1990, petitioner's sentence was affirmed by the Utah Court of Appeals.
4. That petitioner is currently located at the Utah State Prison, P.O. Box 250, Draper, Utah, 84020.

5. That petitioner's restraint by respondent is unlawful and unconstitutional in that there was a substantial denial of his rights under the constitution as follows:
5. A. That counsel for petitioner failed to contact petitioner's previous counsel to investigate and question the testimony of detective Minor.
- B. That detective Minor assigned to the case lied under oath and perjured himself in court by testifying that he and the petitioner had a conversation in one of the jail interview rooms where detective Minor, petitioner and the public defender were present. Where detective Minor states that the public defender kept leaving the interview room to go to where the video arraignments were being held, then the public defender would return for a couple of minutes and leave the room again until finally he came back and said it was petitioners turn, that detective Minor testifies that during this conversation in the jail interview room, that the petitioner told him that he wanted some drugs, and petitioner went on to tell detective Minor that he had been taking cocaine that day, and was coming down and had, had a confrontation with an individual and that he planned on killing the individual. Detective Miner testifies that the petitioner was coming down off of the cocaine, and he wanted to stay high, he did not want to back out of it, and wanted to go through with the killing. (See Transcript Exhibits)

- C. Petitioner contends that the only conversation he had with detective Minor was in the hallway. Where petitioner stopped detective Minor and asked why he was being charged with a first degree felony. Where in detective Minor stated, because a firearm was used. The public defender who was representing the petitioner has supplied an affidavit in which he supports the petitioners contentions regarding this matter. (See Affidavit of **G. Scott Jensen**)
- D. Through diligence, Petitioner was finally able to bring to recall, the facts by send attorney **G. Scott Jensen**, a photograph of petitioner and trial transcripts, where upon **Attorney G. Scott Jensen** sent petitioner an affidavit supporting his claims, which is now "**Newly Discovered Evidence**", material for the party making the petition, which he could not, with reasonable diligence, have discovered and produced at his trial". "Like wise, petitioner did not, nor could not, produce this evidence at the time of appeal.
- E. Petitioner recalls this perjurious testimony being brought to the attention of Kristine Knowlton, Deputy District Attorney and the Honorable David E. Roth, in this Judge's Chambers, and that the result of the trial would have been different, the court then multiplied the error made by the officer by allowing it to be introduced before the jury. There is no doubt that the error was significantly prejudicial to the ability of the defendant to gain a fair

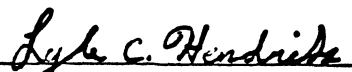
trial.

6. That Pursuant to URCP Rule 65 B (i) (7) and URCP Rule 65 B (i) (9),
Petitioner request that this court, order the state to obtain such transcripts
of proceedings or court records as may be relevant and material to this
case and requests that the county in which petitioner was originally
charged be directed to pay the costs of the proceedings.

Wherefore, Petitioner prays that this Court:

1. Schedule on evidentiary hearing at which time petitioner may be
present and represented by counsel.
2. Permit petitioner, who remains indigent, to proceed without pre-
payment of costs, fees or other assessments.
3. Grant petitioner the authority to obtain subpoenas in Forma
Pauperis, for witnesses and documents necessary to assist in the
proof of the facts alleged in the petition as stated above.
4. Issue an order for post conviction relief to have the petitioner
brought before it, to the end that he may be discharged from the
illegal and unconstitutional confinement and restraint.

Dated this 22nd day of April 1992.



Lyle C. Hendricks
Attorney Pro-Se

Certificate of Service

I hereby certify that I mailed a true and correct copy of the forgoing Petition for Writ of Error Coram Nobis and Post Conviction relief to Judge David E. Roth Second District Court, 2549 Washington Blvd. Ogden, Utah, 84401 to the office of the court clerk, Municipal Building, Ogden, Utah, 84401. And Reed M. Richards, Weber County Attorney 7th floor Municipal Bldg. Ogden, Utah, 84401.

This 22nd day of April, 1992.

Lyle C. Hendricks
Lyle C. Hendricks
Attorney Pro-Se

A D D E N D U M I

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH

LYLE C. HENDRICKS,

Plaintiff,

vs.

STATE OF UTAH,

Defendant.

}

}

}

RULING ON PETITION FOR
WRIT OF ERROR CORAM
NOBIS IN TRIAL COURT

Case No. 871918592

92 MAY 15 3 51 PM '92

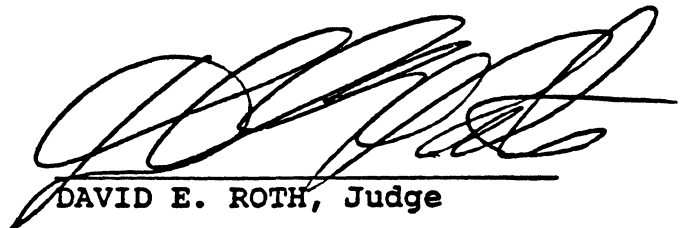
DISTRICT
CLERK

19218

MAY 15 1992

Having examined the filed in the above entitled case, I find that defendant's petition is repetitious of motions previously made and denied and I therefore am dismissing the petition.

DATED this 15 day of May, 1992.



DAVID E. ROTH, Judge


Ruling on Petition for Writ of Error Coram Nobis in Trial Court
Case No. 87198592
Page 2

CERTIFICATE OF MAILING

I hereby certify that on the 5 day of May, 1992, I
sent a true and correct copy of the foregoing Ruling on
Petition for Writ of Error Coram Nobis in Trial Court to counsel
as follows:

Lyle C. Hendricks
P.O. Box 250
Draper, Utah 84020

Reed M. Richards
7th Floor Municipal Bldg
Ogden, Utah 84401


Deputy Court Clerk

A D D E N D U M J

ALP

DISTRICT COURT
IN THE SECOND DISTRICT COURT OF WEBER COUNTY,
STATE OF UTAH 10 36

Lyle C. Hendricks
Petitioner,

: WRIT OF
EXTRAORDINARY RELIEF
:

-v-

State Of Utah,
Respondent

DEC 01 1992

Case No. 920900575

MICHAEL D. LYON

JURISDICTION

Jurisdiction of this matter is invoked upon this court pursuant to the Utah and the United States Constitutions. This matter is being filed under Rule 65 B Ut. R. C. P. 1 and 2. Petitioner's claim is timely under Rule 65 in that he has been provided with new evidence. Petitioner's confinement is a result of substantial denial of his rights at trial.

FACTS

1. Petitioner is currently confined at the Utah State Prison. This commitment was a result of a jury trial where petitioner was found guilty of Aggravated Robbery. Petitioner was sentenced in the District Court of Weber County on February 22, 1988 to a term of 5 years to life.
2. Petitioner claims his constitutional rights have been violated in this trial. The

record of the trial contains perjured testimony. This testimony and the prosecutions referral to it during closing argument establish "intent" of the crime. Without this perjured testimony petitioner would not have been found guilty of aggravated robbery.

3. Petitioner also claims his rights were violated in that he was denied effective assistance of counsel during his trial. Petitioners attorney refused to believe the testimony of Det. Minor during trial was perjured. Petitioners attorney simply allowed the testimony into the record unchallenged.

4. Petitioner has appealed this conviction. These appeals have been denied. The claims raised in this petition have not been appealed as they are based on newly discovered evidence. This evidence was not available to petitioner at the time of trial or during Filing of post conviction relief.

STATEMENT OF THE ISSUES

1. Petitioner was found guilty of the offence of aggravated robbery. This trial by jury establish petitioners presence during this alleged robbery. The evidence however does not establish intent to commit aggravated robbery. The evidence does show in fact nothing was taken during the robbery. Even that trial court agreed there may be a question as to intent and agreed to allow jury instructions to include lesser included offenses of attempted robbery. The prosecutor in his closing argument told the jury they could find both the elements of the robbery and the intent to commit the robbery in the testimony of Detective Minor.

2. Detective Minor testified that petitioner confessed to him about the crime. Mr. Minor said in his confession petitioner stated he needed to do the robbery to get drugs

so he could go through with a killing. Mr. Minor testified this confession took place with petitioners attorney, G. Scott Jensen present.

3. During the testimony of Detective Minor petitioner objected. A conference was held in judges chambers and petitioners trial counsel was told to contact Mr. Jensen. At this point the court recognized if Det. Minor's testimony about the confession were untrue the jury had been tainted and a mistrial would be in order. To now claim that Det. Minor's testimony was not a major part of the juries verdict is an abuse of discretion.

4. Petitioner's trial attorney did not attempt to contact Mr. Jensen as the court instructed. It is only through petitioners own efforts that he has obtained an affidavit from Mr. Jensen. Petitioner's trial attorney was not acting in his best interest during trial. His indifference allowed his perjured testimony to enter into the record and this testimony played a major part in the juries verdict.

CONCLUSION

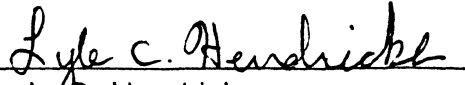
Petitioner's rights were substantially denied in this case. Perjured testimony is and abuse of the system. To allow this testimony to go before a jury and play a major part in their verdict is a constitutional violation of due process. This issue has not been properly addressed and petitioner has a right to a hearing on this matter.

PRAYER FOR RELIEF

Wherefor petitioner prays this court;

1. Order petitioner be allowed to proceed in this matter without payment of costs.

2. Assume jurisdiction over this matter.
3. Order briefing be done on this petition pursuant to rule 65-B U.R.C.P.
4. Set a hearing for oral arguments.
5. Order petitioners conviction be reversed.


Lyle C. Hendricks
P.O. Box 250
Draper, Utah 84020

A D D E N D U M K

025120

DISTRICT COURT

93 JAN 13 PM 3 42
IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
STATE OF UTAH

LYLE C. HENDRICKS,

Plaintiff,

vs.

STATE OF UTAH,

Defendant.

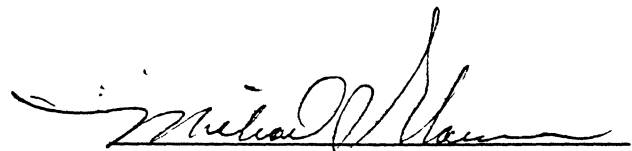
RULING ON WRIT OF
EXTRAORDINARY RELIEF

Case No. 920900575

JAN 13 1993

Having examined the file in the above entitled case, I find that defendant's petition is repetitious of motions previously made and denied and I therefore am dismissing the petition on the ground that is frivolous.

DATED this 12 day of January, 1993.


MICHAEL J. GLASMANN, Judge


Ruling
Case No. 920900575
Page Two

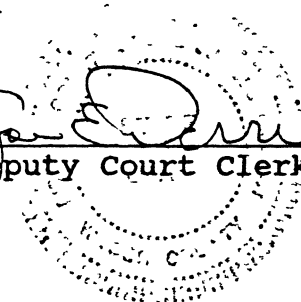
CERTIFICATE OF MAILING

I hereby certify that on the 13th day of January,
1993, I sent a true and correct copy of the foregoing Ruling to
counsel as follows:

Lyle C. Hendricks
P.O. Box 250
Draper, UT 84020

Reed M. Richards
7th Floor Municipal Bldg.
Ogden, UT 84401


Deputy Court Clerk



A D D E N D U M L

JAN 25 1993

**IN THE SECOND DISTRICT COURT OF WEBER COUNTY,
STATE OF UTAH**

Lyle C. Hendricks	:	PETITIONERS NOTICE OF APPEAL
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Plaintiff, Petitioner,

:

-v-

:

JAN 26 1993

State Of Utah,

:

Defendant, Respondent,

Case No: 920900575

:

Petitioner hereby notifies this court of his intention to appeal the judgement entered in this matter by the Honorable Michael J. Glassmann, on January 12, 1993. Petitioner believes he is entitled to the relief sought in the writ and will file for such in the Utah Court of Appeals.

Respectfully Submitted

Lyle C. Hendricks
Lyle C. Hendricks, Petitioner

1-22-93
Date

CERTIFICATE OF SERVICE

Petitioner hereby certifies that he mailed a copy of the attached Notice of Appeal to the parties named below. This was done by placing copies in the U. S. mail postage prepaid on the attached date.

Jan Graham, Attorney General, State of Utah
236 State Capitol Bldg.
Salt Lake City, Utah 84111

Clerk of the Court
Second District Court
Ogden, Utah 84401

Lyle C. Hendricks
Lyle C. Hendricks, Petitioner

1-23-93
Date