

1972

Michael Nielson v. John v. Turner, Warden, Utah State Prison : Brief of Appellant

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In The Supreme Court of the State of Utah

MICHAEL NIELSON,

Plaintiff-Appellant,

-vs-

JOHN W. TURNER, WARDEN,
UTAH STATE PRISON,

Defendant-Respondent.

Case No.
12781

BRIEF OF APPELLANT

Appeal from the dismissal of appellant's Petition for Writ of Habeas Corpus by the Third District Court for Salt Lake County, State of Utah, the Honorable Allen B. Sorenson, presiding.

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12781

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the judgment of the trial court dismissing appellant's Petition for a Writ of Habeas Corpus.

DISPOSITION IN THE LOWER COURT

Appellant's Petition for a Writ of Habeas Corpus was dismissed on motion of the respondent without an evidentiary hearing.

RELIEF SOUGHT ON APPEAL

Petitioner seeks a reversal of the judgment of the lower court dismissing his Petition for a Writ of Habeas Corpus.

STATEMENT OF FACTS

The petitioner was convicted on the 6th day of February, 1970 of the crimes of Second Degree Arson, in violation of Utah Code Annotated, § 76-6-2, (1953) and of Habitual Criminal, in violation of Utah Code Annotated, § 76-1-18, (1953). The trial was held in the First Judicial District, in and for Cache County, State of Utah, with the Honorable DeVoy Christoffersen presiding with a jury. Petitioner was sentenced to the Utah State Prison on the 9th day of February, 1970 with both sentences to run concurrently. Petitioner appealed this conviction to the Utah Supreme Court, and his conviction was affirmed, with instruction to remand to the lower court in order to impose the correct sentence, *State v. Michael Nielson*, 25 Utah2d 11, 474 P.2d 725 (1970). In his petition for a Writ of Habeas Corpus the subject of this appeal, petitioner raised the same issues raised in his original appeal. On the 27th day of December, 1971, the Honorable Allen B. Sorensen, who was presiding in the District Court of the Third Judicial District, in and for Salt Lake County, State of Utah, granted respondent's motion to dismiss, citing *Scandrett v. Turner*, 26 Utah2d 371, 389 P.2d 1186 (1971).

ARGUMENT

POINT I

PETITIONER CONTENDS THAT THE TRIAL COURT SHOULD HAVE AFFORDED

HIM AN EVIDENTIARY HEARING ON
THE MERITS OF HIS PETITION.

Petitioner contends that the lower court should have afforded him an evidentiary hearing on the merits of his petition. In doing so, petitioner realizes he is asking the court to reverse its position established in *Scandrett, supra*, but he feels this approach is necessary to clarify and perfect his position in terms of exhaustion of state remedies before proceeding to federal court. Petitioner contends that *Scandrett, supra*, should be reversed. Appellant contends that all petitions for writs of habeas corpus should be considered with evidentiary hearings to promote an orderly and consistent approach for petitioners seeking to gain relief in federal court.

Respectfully submitted,

F. JOHN HILL

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