1972

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

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. 12761

BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE ALLEN B. SORENSEN, PRESIDING

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TABLE OF CONTENTS

CASES CITED

Federal

State

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Defendant-Respondent.

Case No. 12781

BRIEF OF RESPONDENT

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

Respondent asks this court to affirm the judgment of the court below dismissing the Petition for a Writ of Habeas Corpus.

STATEMENT OF FACTS

The respondent agrees with the Statement of Facts as set out by the appellant.

ARGUMENT

POINT I.

THE COURT BELOW PROPERLY DENIED PETITIONER'S WRIT WITHOUT AFFORDING HIM AN EVIDENTIARY HEARING.

Having raised the same issues that were decided in his appeal, petitioner is now seeking to, "under the guise of this petition, relitigate those issues." *Scandrett* v. *Turner*, 26 Utah 2d 371, 389 P. 2d 1186 (1971) at 1187. The District Court had available the Utah Supreme Court's opinion of this case on appeal which fully detailed the facts in its exploration of the same issues.

Questions decided by the highest court of appeal are considered law. When the issues presented before a State District Court in a petition for a Writ of Habeas Corpus are the same as have been decided against petitioner on appeal to the State Supreme Court, the District Court

is under no obligation to hear the evidence again and has no authority to overrule the State Supreme Court on those issues.

This tactic is not new and neither have the courts allowed it to be successful. Writs of Habeas Corpus are not subject to the doctrine of Res Judicata and the courts are therefore, often confronted with successive writs elaborating the same issues with a slightly different twist. There is an inevitable attraction in the position that a person convicted of a serious crime should receive a new trial whenever a later decision of the highest court indicates that, with the benefit of hindsight, a different course should have been followed at his trial. Of this the Supreme Court commented: "Litigation in these criminal cases will be interminable." *Sunal* v. *Large*, 332 U. S. at 182, 91 L. Ed. 1982, 67 S. Ct. 620 (1946).

Furthermore, the facts found in an evidentiary hearing for the express purpose of a writ of habeas corpus are no more binding on the Federal Courts than are facts found in a hearing which has litigated the same issues at the original trial. The call for repetition is an unmerited harassment of the judicial process.

CONCLUSION

There is no need for an evidentiary hearing at any level so long as the issues remain the same as those already confirmed through the appeal process.

To summarily deny such a writ is a prudent exercise of judicial authority and a wise preservation of the court's time.

Respectfully submitted,

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