

1972

Benny Salazar v. John v. Turner, Warden, Utah State Prison : Brief of Appellant

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In The Supreme Court of the State of Utah

BENNY SALAZAR,

Plaintiff-Appellant,

-VS-

JOHN W. TURNER, WARDEN,
UTAH STATE PRISON,

Defendant-Respondent.

BRIEF OF APPEAL

Appeal from the dismissal of
for a Writ of Habeas Corpus
Court for Salt Lake County,
Honorable Joseph G. Jeppson, presiding.

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TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF FACTS	2
ARGUMENT	
POINT I	3
THE TRIAL COURT ERRED IN NOT GRANTING THE APPELLANT'S PETITION FOR A WRIT OF H A B E A S C O R P U S ON THE GROUNDS THAT THE APPELLANT WAS INEFFICIENTLY AIDED BY COUNSEL FOR HIS FAILURE TO OBTAIN AN INTERPRETER TO IN- SURE THAT THE APPELLANT UN- DERSTOOD EACH STAGE OF THE PROCEEDINGS.	
CONCLUSION	6
CASES CITED	
Cervantes v. Cox, 350 F.ed 855 (1965)	4
Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L.Ed.2d 799 (1963)	6

TABLE OF CONTENTS—Continued

	<i>Page</i>
Griffin v. People of the State of Illinois, 351 U.S. 12, 76 S. Ct. 585, 100 L.Ed. 891 (1956)	6
Parra v. Page, 430 P.2d 834 (1967)	4, 5
People v. Annett, 251 Cal. App. 2d 858, 59 Cal. Rptr. 888 (1967)	6
State v. Karuma, 126 P.2d 1047, 101 Utah 444 (1942)	5
State v. Vasquez, 101 Utah 444, 121 P.2d 903 (1942)	5
United States of America ex rel Rogelio Nieves - Negron v. New York, 310 Fed Supp. 1304 (1970)	6

In The Supreme Court of the State of Utah

BENNY SALAZAR,

Plaintiff-Appellant,

-vs-

JOHN W. TURNER, WARDEN,
UTAH STATE PRISON,

Defendant-Respondent.

Case No.
12803

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 LOWER COURT

Appellant's Petition for a Writ of Habeas Corpus was denied after an evidentiary hearing.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the judgment of the lower court denying his Petition for a Writ of Habeas Corpus.

STATEMENT OF FACTS

On November 16, 1971, the appellant filed a complaint and petition seeking a writ of habeas corpus. At the hearing it was the appellant's main contention that he was denied effective aid of counsel at the proceedings held in connection with a second degree burglary charge that was handled in September of 1966. The testimony of the appellant at the time of his hearing was that he did not understand the nature of the proceedings because he had insufficient knowledge of the English language and was not aided by an interpreter. The appellant further testified that he made unsuccessful requests of his attorney to obtain the services of an interpreter. (T. 7 and 9)

The appellant's confusion and inability to understand is generally demonstrated throughout his testimony at the hearing and more particularly demonstrated by his ignorance as to whether or not he entered a plea of guilty or was tried and convicted. (T. 10-12)

The testimony of appellant's appointed counsel at the time of his second degree burglary charge was inconclusive since he had no specific recollection of the case except to recognize the face of the appellant. (T. 17) The appointed counsel further testified that he had no record or file on the appellant and probably represented the appellant on the spur of the moment at the request of the court. (T. 21)

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN NOT GRANTING THE APPELLANT'S PETITION FOR A WRIT OF HABEAS CORPUS ON THE GROUNDS THAT THE APPELLANT WAS INEFFECTIVELY AIDED BY COUNSEL FOR HIS FAILURE TO OBTAIN AN INTERPRETER TO INSURE THAT THE APPELLANT UNDERSTOD EACH STAGE OF THE PROCEEDINGS.

It has been conceded by the State that an interpreter was not provided to appellant at the time of the proceedings on the second degree burglary charge in 1966. The only issues to be resolved is whether the appellant sufficiently demonstrated at his habeas corpus hearing that he needed one and assuming he did need one whether the failure of his attorney to retain one would constitute grounds for granting the writ.

It is submitted that the record as a whole demonstrates the appellant's ignorance and lack of understanding of the English language. The habeas corpus hearing was held more than five years from the day the appellant entered his guilty plea to second degree burglary. It is evident from reading the transcript that the appellant was not able to understand his own attorney during direct examination at the habeas corpus

hearing and probably should have been provided with the services of an interpreter at that time.

Even though the testimony of the appellant's appointed counsel is inconclusive because of his lack of recall, there are portions of his testimony which would strongly indicate that the whole proceedings were handled in a summary manner. The fact that the appellant's appointed attorney had no file or record of the case would certainly lend support to his statement that:

“. . .it was on the spur of the moment that I was in court and probably was requested to represent this individual, and without further notice except the negotiations with the district attorney and that they arrive at him pleading guilty on a charge of second degree burglary.”
(T. 21)

If the matter was disposed of as above described, the defendant's testimony concerning his lack of understanding and communications would certainly appear to be creditable.

It is recognized that a defendant's inability to communicate with his attorney may be a significant factor in determining whether or not he was denied effective assistance of counsel. *Cervantes v. Cox*, 350 Fed 855 (1965). In the case of *Parra v. Page*, 430 P.2d 834 (1967), the Oklahoma Supreme Court held that the minutes and record must show that the defendant understood what was taking place during the court pro-

ceedings when his knowledge of the English language is limited. The *Parra* case involving an un-educated Mexican-American migrant worker is very similar to the instant case not only because of the language difficulties but also because of the summary manner in which it was handled. The Oklahoma Supreme Court in Vol. 430 P2d on page 873 stated:

The minutes of the instant case do not reveal that petitioner was provided with these fundamental rights which guarantee a fair and impartial trial. His attorney was appointed on the day of the arraignment, according to the minutes, and could not possibly have had time to check into the facts of the case, or to determine whether petitioner had a meritorious defense, before entering a plea of guilty.

The testimony of the defendant's appointed attorney and State's Exhibit 1 would lead to the conclusion that the instant case was handled in a summary manner as above described by the Oklahoma Supreme Court.

The Utah Supreme Court has held that when a language barrier exists it is the duty of the trial court on its own motion to appoint an interpreter. *State v. Karuma*, 126 P.2d 1047 101 Utah 444 (1942); *State v. Vasquez*, 101 Utah 444 121 P.2d 903 (1942).

In a recent case involving an immigrant to the United States from Puerto Rico the United States District Court in the State of New York held that there

is an obligation upon the state court to advise a person with a language barrier, that if he so desires, he is entitled to a court-appointed interpreter. *United States of America ex rel Rogelio Nieves Negron v. New York*, 310 Fed Supp. 1304 (1970).

The following language on page 1308 of the *Negron* case indicates the importance of the issue involved in the instant case.

. . . the rudimentary demands of a fair trial required that his Sixth Amendment rights to confrontations and effective assistance of counsel be preserved during the trial. *Johnson v. Zebst*, 304 U.S. 458, 58 S. Ct. 1019, 82 L.Ed. 1461, (1938). This, of course, was impossible if Negron did not know what was said against him and was unable to properly confer with his attorney.

. . . From the teachings of *People v. Annett*, 251 Cal App2d 858, 59 Cal Rptr. 888 (1967) cert denied; *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L.Ed.2d 799 (1963) and *Griffin v. People of the State of Illinois*, 351 U.S. 12, 76 S. Ct. 585, 100 L.Ed. 891 (1956), it follows that it was the duty of the state to provide Negron with a Spanish interpreter, if he so desired, and to advise him of his right in advance of trial.

The case at bar never reached the trial level, nevertheless, it would appear equally important that an interpreter be appointed at the arraignment stage of the proceedings particularly when a plea of guilty is taken.

CONCLUSION

On the face of the record and on the basis of the cases cited by the appellant, it is submitted that the appellant is entitled to the relief sought on the writ of habeas corpus.

Respectfully submitted,

LYNN R. BROWN

Attorney for Appellant