1972

Walter L. Dillingham v. John W. Turner, Warden, Utah State Prison : Brief of Appellant

In The Supreme Court of the State of Utah

ALTER L. DILLINGHAM,

Plaintiff-Appellant

-vs-

HN W. TURNER, WARDEN,
UTAH STATE PRISON,

Defendant-Respondent

BRIEF OF APP

Appeal from denial of
by the Third Distric
nty, State of Utah,
ou, presiding.

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CASES CITED

In The Supreme Court of the State of Utah

WALTER L. DILLINGHAM,
Plaintiff-Appellant,

-vs-

JOHN W. TURNER, WARDEN, UTAH STATE PRISON,
Defendant-Respondent.

Case No. 12835

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the judgment and order of the trial court denying appellant's Writ of Habeas Corpus.

DISPOSITION IN THE LOWER COURT

Appellant's Writ of Habeas Corpus was dismissed pursuant to findings of fact and conclusions of law made from a hearing on appellant's petition.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the judgment and

order of the lower court denying his petition for a Writ of Habeas Corpus.

STATEMENT OF FACTS

The uncontradicted testimony of appellant at his habeas hearing in the court below establishes the following facts.

Appellant was asleep in his hotel room in August of 1964 when two police officers burst into the room and arrested him on a charge of public intoxication. The officers made a search of his room and seized a T.V. and other items.

Appellant was questioned by police at the time of his arrest and later the same night while in jail. This questioning related to items found in appellant's room and resulted in appellant's admission that the T.V. was in his possession. (R. 43) The questioning was made without advising appellant that he had a right to counsel (R. 43) and in disregard of appellant's indications to the police that he thought he should see a lawyer. (R. 42)

Items seized from appellant's room were introduced into evidence at appellant's perliminary hearing (R. 40), and appellant was bound over for Second Degree Burglary and Grand Larceny.

On the morning set for appellant's trial, he was chained to a Mr. Holts who was charged with murder and the two were taken to the courthouse. Because of

the publicity connected with Mr. Holt's case, appellant was subjected to view by a multitude of spectators and newsmen. (R. 44, 45, 46) Appellant was in jail clothes when taken to court for trial. (R. 51)

The day of trial appellant's attorney informed appellant that the jury would be told of appellant's past criminal record and on that basis appellant surely would be convicted. (R. 47) His counsel also advised appellant that he should plead guilty to grand larceny because if he went to trial he would be convicted of both burglary and grand larceny. (R. 46, 47)

Appellant's trial attorney never question appellant about the circumstances surrounding the seizure of evidence used against him. (R. 41)

At the time set for trial, appellant changed his plea to guilty of grand larceny. He was sentenced on November 9, 1964, by Judge Ray VanCott, Third Judicial District Court, Salt Lake County.

ARGUMENT

POINT I.

THE COURT BELOW ERRED IN FINDING THAT APPELLANT HAD BEEN ADEQUATELY REPRESENTED BY COUNSEL.

Appellant's testimony at his habeas hearing established a prima facia showing that he was unlawfully arrested, incriminating evidence was unlawfully seized

from his room, and he made prejudicial admissions while being questioned in violation of his right to counsel. Appellant's trial counsel never asked appellant about the circumstances surrounding appellant's arrest and the seizure of evidence used to support appellant's charge of grand larceny. (R. 41)

The State did not refute these contentions at appellant's habeas hearing, and the prejudicial effect of police questioning in the absence of counsel and failure of appellant's trial counsel to pursue the issues of appellant's arrest and seizure of evidence resulted in a denial of appellant's right to counsel.

POINT II.

THE COURT BELOW ERRED IN FINDING THAT APPELLANT'S PLEA OF GUILTY WAS VOLUNTARY AND INTELLIGENT.

Appellant wanted a jury trial (R. 47), but pleaded guilty because he was subjected to mental pressure in that he was pushed down a flight of stairs at the time of his arrest (R. 50, 51), he spent approximately two and a half months in jail awaiting trial (R. 44), he was taken to trial while dressed in jail clothes and subjected to view by a multitude of spectators and newsmen (R. 44, 45, 46, 51), and his trial counsel had told appellant that he would probably be convicted of both burglary and grand larceny, and he would be convicted becaus

of his past record. (R. 46, 47) Appellant's change of plea was also motivated by the fact that he did not know if any prospective jury members were in the crowd of spectators watching him chained to Mr. Holts going to court on a murder charge. (R. 51)

All the foregoing facts establish that appellant's change of plea was coerced and was not voluntary and intelligent.

A guilty plea is presumed to be involuntary unless the contrary is disclosed by the record of the proceeding at which the plea was entered. *Boykin v. Alabama,* 395 US 238 (1969).

CONCLUSION

The State established no evidence at appellant's habeas hearing which would refute appellant's claims that he was arrested illegally, evidence against him was seized illegally, he was denied his right to counsel, and his guilty plea was involuntary.

There is no evidence to support the lower court's findings of fact and conclusions of law and they are clearly in error.

The court below should be reversed and this court should grant appellant's Writ of Habeas Corpus.

Respectfully submitted,

RAYMOND S. SHUEY
Attorney for Appellant