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# Thomas Glenn Conners & James Edwards Martin v. John W. Turner, Warden, Utah State Prison : Brief of Respondent

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IN THE

# SUPREME COURT

OF THE

# STATE OF UTAH

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THOMAS GLENN CONNERS &
JAMES EDWARD MARTIN,
*Plaintiffs-Appellants,*

vs.

JOHN W. TURNER, Warden, Utah
State Prison,
*Defendant-Respondent.*

Case Nos.
12866 &
12894

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## BRIEF OF RESPONDENT

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APPEAL FROM A DENIAL OF A PETITION FOR WRIT OF HABEAS CORPUS IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE JOSEPH G. JEPPSON, PRESIDING.

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| THOMAS GLENN CONNERS & JAMES EDWARD MARTIN,<br>*Plaintiffs-Appellants,*<br>vs.<br>JOHN W. TURNER, Warden, Utah State Prison,<br>*Defendant-Respondent.* | Case Nos.<br>12866 &<br>12894 |

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## BRIEF OF RESPONDENT

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## STATEMENT OF THE NATURE OF THE CASE

The appellants, Thomas Glenn Conners & James Edward Martin, appeal from a denial of a petition for a writ of habeas corpus in the Third Judicial District Court, Salt Lake County, State of Utah.

## DISPOSITION IN THE LOWER COURT

The appellants pleaded guilty to charges of Grand Larceny on May 7, 1971, and were thereafter committed to the Utah State Prison for the term prescribed by law. On December 10, 1971, appellants petitioned for a writ

of habeas corpus in the Third Judicial District Court, Salt Lake County, State of Utah. The petition was denied on March 28, 1972.

## RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the order of the lower court denying the petition for a writ of habeas corpus.

## STATEMENT OF FACTS

Appellants, Thomas Glenn Conners & James Edward Martin came to Salt Lake City in an automobile that was registered and licensed in the State of Texas. While appellants were applying for a license and title change at the Department of Motor Vehicles, it was discovered that the automobile had been reported stolen in the State of Texas.

On March 4, 1971, a complaint was filed charging appellants with the crime of Grand Larceny. Appellants were arrested the same day pursuant to a warrant of arrest. Subsequently, the appellants pleaded guilty to the crime charged in case numbers 23285 and 23302 in the Third Judicial District Court of the State of Utah, the Honorable Bryant H. Croft presiding. The pleas were accepted and on March 4, 1971, the appellants were committed to the Utah State Prison.

On December 10, 1971, the appellants petitioned the same court for a writ of habeas corpus, which petition was denied March 28, 1972 following a hearing. It is of

the denial of the petition for a writ of habeas corpus that appellants seek review.

## ARGUMENT

### POINT I.

### THE LOWER COURT HAD JURISDICTION OF THE CRIME OF GRAND LARCENY TO WHICH APPELLANTS PLEADED GUILTY.

The information filed against appellants charged them of the crime of grand larceny in violation of § 76-38-1 and § 76-38-4 (U. C. A., 1953), to wit:

> "That on or about the 28th day of February, 1971, in Salt Lake County, State of Utah, the said James Edward Martin aka Raymond Gordon Bryant and Thomas Glenn Conners stole personal property having a value in excess of $50.00, lawful money of the United States, from Charles Robelia."

The crime of grand larceny is defined in § 76-38-1 as follows:

> "Larceny is the felonious stealing, taking, carrying or driving away the personal property of another. Possession of property recently stolen, when the person in possession fails to make a satisfactory explanation, shall be deemed prima facie evidence of guilt."

The degree of larceny to which appellants pleaded guilty is covered by the portions of § 76-38-4 set forth below:

> "Grand larceny is committed in either of the following cases:
>
> (1) When the property taken is of value exceeding $50. . . ."

Utah courts sitting in counties into which property stolen in other states has been brought have the appropriate jurisdiction conferred upon them under § 77-8-16 (U. C. A., 1953), which provides:

> "The jurisdiction of a criminal action for stealing in any territory or other state the property of another, or receiving it knowing it to have been stolen, and bringing the same into this state, is in any county into or through which such stolen property has been brought."

Appellants pleaded guilty to stealing a 1969 Oldsmobile which had a value in excess of $50.00 (T. 4). Thus, appellants' theft satisfies the requirements of the aforementioned statutes, and constitutes an actionable wrong which was properly redressed in the lower court pursuant to the jurisdiction conferred upon it by § 77-8-16.

Appellants claim, however, that a conviction under § 76-38-4 cannot lie since the automobile was stolen in Texas and not in Salt Lake County, Utah. However, § 76-38-13 (U. C. A., 1953) is very explicit regarding the stealing of property in another state and bringing it into the State of Utah.

> "Every person who in another state or country, steals the property of another, or receives such property knowing it to have been stolen, and brings the same into this state, may be convicted

> and punished in the same manner as if such larceny or receiving had been committed in this state."

This section clearly makes it a crime to bring stolen property into the State of Utah, and represents the majority view regarding this problem in the United States. 156 American Law Review 862,866. Hence, appellants' contention in Point III of its brief that Utah has no "interest" and therefore no constitutional right to punish crimes committed in another jurisdiction is based upon an erroneous premise. § 76-38-13 does not undertake to punish for an offense committed in Texas, but for bringing into Utah property stolen without its limits with a view of *protecting the citizens of the State of Utah* from purchasing stolen property which might later be recovered by the rightful owner. Such a statute has consistently withstood a variety of constitutional objections. 156 A. L. R., supra, at 886-889.

Appellants further claim that the action was improperly brought under § 76-38-4. However, § 76-38-13 states that any person bringing stolen goods into the state may be convicted "in the same manner as if such larceny . . . had been committed in this state." Thus, § 76-38-4 would be the proper section under which appellants' action should be brought. Had the legislature intended that such actions be brought under § 76-38-13, it would have otherwise indicated.

Appellants also argue that the so-called "extraterritorial" effect of § 76-38-13 might result in one being

punished for a felony in Utah when the state in which the offense originally occurred could only punish for a misdemeanor. In the instant case, however, had appellants been convicted of larceny in Texas, they would have been required to serve in the state prison for a minimum of two years as opposed to the one year minimum in Utah. Vernal's Texas Penal Code, §§ 1410, 1421 (Vol. 3, 1953) cf. § 78-38-6 (U. C. A., 1953). Thus, the very statute against which appellants argue theoretically confers a benefit upon them.

Even assuming arguendo, there had been a minor defect in the information, any defect was waived when appellants failed to object to the information prior to the pleading thereto. *State* v. *Warwick*, 11 Utah 2d 116, 355 P. 2d 703 (1960), involved an alleged misuse of the defendant's confession in a murder case. The court said:

> "Since the defendant pleaded to the information in the district court without first objecting to the information, he is conclusively presumed to have waived any defect." *Id.* at 705.

There can be no doubt that appellants were guilty of the crime of grand larceny, and that the information to which they pleaded was proper.

## POINT II.

## BY PLEADING GUILTY TO THE CRIME OF GRAND LARCENY, APPELLANTS WAIVED THE RIGHT TO COMPULSORY PROCESS OF WITNESSES.

Before accepting the guilty pleas entered in the lower court, the Honorable Bryant H. Croft carefully apprised appellants of their constitutional rights. The applicable portions of the trial transcript are set forth below:

> "In this court you have various constitutional rights under our state constitution, as well as the federal constitution. One of them is a right to a trial by jury. Any defendant charged with the crime in this case is entitled to come into court, pick a jury of eight people and require the State to present its evidence to the jury and convince the jury beyond a reasonable doubt of guilt. You are entitled to such a jury trial.
>
> "In case of a jury trial, you have a right to be confronted by witnesses against you. That means that you have a right to come into court, require the State to call its witnesses; put them under oath and on the witness stand, and give your attorney the right at cross examination.
>
> "And in trying the case to the jury, the State must satisfy all eight jurors of guilt. It must be a unanimous decision. And in connection with the jury trial, you are each entitled if you have any witnesses, to call to have them subpoened in by the court at State expense.
>
> "[And] by pleading guilty, each of you waives the various constitutional rights that I have mentioned to you" (T. 4).

A more thorough explanation of the right to compulsory process cannot be conceived. Additional explanations by the judge manifests beyond doubt that the appellants waived the right to compulsory process of

witnesses, along with other constitutional rights, by an intelligent, knowing, and voluntary plea of guilty (T. 5-9).

The record on its face compels the conclusion that appellants' argument regarding compulsory process is irrelevant. The Supreme Court of Utah is not a forum for abstract legal debates.

## CONCLUSION

For the reasons above stated, respondent moves that the order of the court below denying appellants' petition for a writ of habeas corpus be affirmed.

Respectfully submitted,

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