

1972

State of Utah v. Steven Lynn Clark : Brief of Appellant

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In The Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Appellant,

-vs-

STEVEN LYNN CLARK,

Defendant-Respondent.

BRIEF OF APPELLANT

APPEAL FROM A DISMISSAL
SECOND JUDICIAL DISTRICT
AND FOR THE COUNTY OF DEWEE
OF UTAH, THE HONORABLE
HYDE, JUDGE, PRESIDING.

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FILED

MAY 23 1972

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In The Supreme Court of the State of Utah

STATE OF UTAH,

Plaintiff-Appellant,

-vs-

STEVEN LYNN CLARK,

Defendant-Respondent.

} Case No.
12877

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

Appeal from the dismissal of charges against defendant by the Second Judicial District Court, in and for Davis County, State of Utah, in harmony with Utah Code Ann. § 77-39-4 (1953). See *State v. Callahan*, 488 P.2d 1048, 26 Utah 2d 304 (1971); *State v. Shumway*, Case No. 12124, Supreme Court of Utah, September 28, 1971.

DISPOSITION IN LOWER COURT

On February 24, 1972, a motion to dismiss was heard before the Honorable Ronald O. Hyde, Judge of the Second Judicial District, Davis County, State of

Utah. At that time, after hearing argument, the judge dismissed the action for lack of jurisdiction under Utah Code Ann. § 77-65-2 (1953).

RELIEF SOUGHT ON APPEAL

Respondent seeks the reversal of the district court decision.

STATEMENT OF THE FACTS

On November 11, 1971, defendant, Steven Lynn Clark, was arrested for the alleged crime of burglary in the second degree. Also, on the 11th day of November, 1971, a complaint was issued by the Honorable S. Mark Johnson, Bountiful City Judge, upon the oath and testimony of Ron Ballantyne, a Bountiful City Police Officer, who investigated the alleged crime.

Defendant Clark was returned to the Utah State Prison sometime thereafter as he was on parole, being a resident of the Halfway House.

On November 15, 1971, defendant Clark signed and had delivered to John W. Turner, Warden of the Utah State Prison, a notice and request for final disposition of pending charges pursuant to Utah Code Ann. § 77-65-1 (1953).

Preliminary hearing was held on February 1, 1972, before Bountiful City Judge, S. Mark Johnson and defendant was bound over to district court.

An information was signed and filed by Dale E. Stratford, District Attorney for the Second Judicial District on February 10, 1972, alleging the defendant Clark committed the felony of burglary in the second degree.

Arraignment on the charge was held on February 15, 1972, and a plea of not guilty was entered at that time. Trial was set for February 25, 1972.

On February 24, 1972, a motion to dismiss was entertained before Judge Ronald O. Hyde, District Court Judge of the Second Judicial District on the grounds that a trial was not held within 90 days pursuant to Utah Code Ann. § 77-65-1 (1953).

Judge Hyde, after arguments ruled he did not have jurisdiction to hear the matter as trial was not commenced within 90 days after defendant signed the notice for final disposition.

POINT I

THE DISTRICT COURT HAD JURISDICTION OVER THE DEFENDANT AND THEREFORE, THE DISMISSAL OF THE CHARGES WAS IMPROPER.

Utah Code Ann. § 77-65-1 (1953) states:

“(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of this state, and whenever

during the continuance of the term of imprisonment there is pending in this state any untried indictment, information or complaint against the prisoner, he shall be brought to trial within ninety days after he shall have caused to be delivered to the county attorney of the county in which the indictment, information or complaint is pending and the appropriate court written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint”

Utah Code Ann. § 77-65-2 states:

“In the event that the action is not brought to trial within the period of time as herein provided, no court of this state shall any longer have jurisdiction thereof, nor shall the untried indictment, information or complaint be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.”

The question to be answered by the court is a simple one. From what point in time does the 90 day period as set out in Utah Code Ann. § 77-65-1 (1953) begin to run?

The Utah Supreme Court has in two recent cases come to seemingly two contradictory results regarding

the meaning of Utah Code Ann. § 77-65-1 (1953), hence, the reason for clarification sought herein.

In *State v. Wilson*, 453 P.2d 158, 22 Utah 2d 361 (1969), the court felt that the 90 day period ran from the date of filing of the notice if there was at least a complaint pending against the defendant at that time.

Justice Tuckett, with Justices Callister and Ellett concurring, stated in upholding the dismissal:

“The legislature has expressed its intent in simple and concise language which needs no construction by the court. The case before us clearly falls within the provisions of the statutes above referred to and we need only comment about one aspect of the case.”

In *Wilson* there was only a complaint against the defendant at the time of filing the notice for final disposition.

The same court a year and a half later decided a case which is in direct opposition to *Wilson*. In *State v. Belcher*, 475 P.2d 60, 25 Utah 2d 37 (1970), the defendant was accused of having made an assault upon a guard with malice aforethought. A complaint was filed on August 6, 1969. A preliminary hearing was held on September 19, 1969. Prior to that date, the defendant served notice upon the Warden of the Prison requesting final disposition of the charges which he alleged were pending against him. This notice was made pursuant to Utah Code Ann. § 77-65-1 (1953).

Justice Ellett, with Justices Crockett, Callister, Tuckett and Henroid concurring first outline the function of filing a complaint:

“In felony cases the filing of a complaint is the process by which the defendant is held until a preliminary hearing can be held to permit the magistrate to determine if the defendant should be bound over to the district court for trial. (21 Am.Jur.2d Crim. Law § 443) . . . The accused cannot plead to the complaint in a felony matter but must plead to and be tried under the information or indictment, as the case may be. It is only when the charge against him is a simple misdemeanor that the plea is made to the complaint and he can be tried thereunder.”

There were three reasons why the Court upheld the conviction as attacked under Utah Code Ann. § 77-65-1 (1953). The first two do not concern us here due to the factual situation. The third, however, is the hinge upon which the whole matter swings. The Court stated regarding defendant's request for final disposition:

“. . . and in the third place, there was no way to dispose of the matter finally until the information was filed. His request was premature. He could not enter a plea of guilty to the complaint; and if the complaint had been

dismissed, the matter would not be disposed of finally, since the dismissal would not be res judicata and another complaint could be filed at any time within the statute of limitations (four years from date of crime, Sec. 77-9-2, U.C.A. 1953)."

It is clear then that the more recent decision of *Belcher* should be controlling over *Wilson* in the instant case.

The defendant in the instant case served the Warden with notice on November 15, 1971. This was prior to the filing of the information which occurred on February 10, 1972. Under the *Belcher* decision that notice was premature since the defendant could not plead to a complaint in a felony matter.

The information in the present case was not signed until February 10, 1972. Thus the 90 day period would not have elapsed until May 13, 1972.

Therefore, the District Court on February 24, 1972, the date of the hearing on the motion to dismiss, still had jurisdiction over the matter and should not have dismissed for lack of it.

CONCLUSION

The appellant respectfully submits that the lower court decision be reversed. This Court in *Belcher* clearly stated that a notice served upon the Warden prior

to filing of an information is premature. Furthermore, *Belcher* is controlling in the present situation since it is later in time than *Wilson*.

Respectfully submitted,

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