1972

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

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 RESPONDENT

APPEAL FROM A DISMISSAL OF THE DISTRICT COURT OF DAVIS COUNTY, STATE OF UTAH, THE HONORABLE RONALD O. HYDE, JUDGE, PRESIDING

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STATEMENT OF THE NATURE OF THE CASE

Appeal by the State of Utah from an Order of Dismissal of charges against Defendant in proceedings held in the District Court of Davis County, State of Utah.

DISPOSITION IN LOWER COURT

Respondent's written Motion to Dismiss was heard on February 24, 1972 before the Honorable Ronald O.

Hyde, District Judge, in Davis County, State of Utah, and after hearing argument of counsel, said Judge granted Respondent's Motion and dismissed the action pursuant to the provisions of the "Disposition of Detainers Against Prisoners Act", 77-65-1 et seq., U.C.A. 1953.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the Order of the District Court.

STATEMENT OF FACTS

Respondent substantially agrees with the Statement of Facts set forth in Appellant's brief, noting, however, that the record reflects that Respondent requested no continuances or delays and in no way contributed to the delay resulting in his failure to be tried within the required ninety (90) day period. Respondent so testified at the hearing before Judge Hyde. The record further reflects that the Court at no time granted any continuances nor was the Court requested to do so by the State.

ARGUMENT

I

THE TRIAL COURT ACTED PROPERLY IN GRANTING RESPONDENT'S MOTION TO DISMISS.

The record clearly shows that Respondent fully complied with the provisions of the "Disposition of Detainers Against Prisoners Act" (77-65-1 et seq., U.C.A., 1953) and that he was not tried within ninety (90) days as required by the provisions of that Act.

A. HISTORY OF THE DETAINER ACT. The Act was adopted by the Legislautre in 1965 and titled:

> "An Act providing for mandatory disposition of detainers against persons confined in penal and correctional institutions within the State."

A "detainer" is defined by Black's Law Dictionary, Fourth Edition, page 535 as:

> "The act (or the juridical fact) of withholding from a person lawfully entitled the possession of land or goods, or the restraint of a man's personal liberty against his will; detention."

This definition and the ones found in 12 Words and Phrases, 1971 supp., p. 40, indicate that the term detainer means a physical restraint or custody of a person.

B. JUDICIAL HISTORY OF ACT. This Court first construed the Act in *State v. Wilson,* 22 Utah 2d 361, 453 P. 2d 158 (1969). In that case, the Court noted that similar statutes have been adopted by a number of other states for the purpose of carrying into effect the constitutional guarantee of a speedy trial and more precisely to define what is meant by "speedy trial." This Court stated (453 P. 2d 158, 159):

> "It is apparent that the intent of the Legislature was to prevent those charged with enforcement of criminal statutes from holding over the head of a prisoner undisposed of *charges* against him. It would appear that the statute was intended to provide for the trial of *charges* against an accused while witnesses are available and their memories fresh (Italics added).
>
> The Legislature has expressed its intent in simple and concise language which needs no construction by the Court."

The constitutional provisions granting an accused in criminal cases the right to a speedy trial are, of course, found in the Sixth Amendment to the Constitution of the United States and Article I, § 12 of the Constitution of Utah.

The Court next considered this Act in *State vs. Belcher*, 25 Utah 2d 37, 475 P. 2d 60 (1970). Appellant contends that this case is contradictory to the holding of the *Wilson* case. Respondent disagrees. In the *Belcher* case, the Court discussed three reasons why the defendant was not entitled to exoneration because he was not tried within the ninety (90) day period referred to in the Act. Only the first of these reasons is essential to the holding of the case, and the other two reasons are discussed by way of dictum and do not, therefore, constitute a part of the Court's holding in the *Belcher* case. The *Belcher* case is not, therefore, in conflict with the *Wilson* case.

The Act itself provides in 77-65-1, U.C.A., 1953, that

> " . . . (T)he Court having jurisdiction of the matter may grant any necessary or reasonable continuance."

In the *Belcher* case, the Court found that the trial Court for good cause shown continued the trial date and that the Act was therefore not applicable. This was a reason within the purview of the Act itself why the provisions of the Act had not been violated. By way of dictum, the Court went on to say that the Act was not applicable because the trial had been delayed at the instance of the defendant when he entered a plea of insanity requiring a delay for necessary mental examinations. By way of further dictum, the Court indicated the third reason that the Act was not applicable was that there could be no final disposition of the felony charge until the formal information had been filed.

Respondent contends that only the first reason found within the provisions of the Act itself being essential to the holding, that the latter two discussions constitute dictum and that the *Wilson* and *Belcher* cases are not therefore in conflict.

The Court has considered the Act in two subsequent cases, *State vs. Bonny,* 25 Utah 2d 117, 477 P. 2d 147, (1970), and *State vs. Carlsen,* 25 Utah 2d 136, 478 P. 2d 327, (1970) and in both cases refused to apply the Act on behalf of the defendant, in essence bottoming the decisions upon the fact that the trial Court, for good cause shown, had continued the trial date and had not, therefore, violated the provisions of the Act.

As already indicated, Respondent urges that the *Wilson* case and the *Belcher* case are not in conflict. In arguing that there is a conflict, the State overlooks several vital points:

1. A man is the object of a "detainer" just as effectively whether he is being held to answer a complaint, indictment or information. As the title ofthe Act itself indicates, the purpose of the Act is to provide for a mandatory disposition of *detainers.* The Legislature chose to use the word "detainers" and it must be presumed that there was some valid reason and purpose for that language.

2. The *Wilson* case specifically holds that the language of the statute was intended to provide for the trial of *charges* against an accused. In holding that the Legislature had expressed its intent in simple and concise language requiring no construction by the Court, the *Wilson* case saw no need to differentiate between the nature of the charge pending against a person being detained.

3. The most serious objection to Appellant's position is that its adoption would severely frustrate the obvious intent and purpose of the Act in question. If Appellant's view were adopted, there could be interminable delays in all felony proceedings between the time of arrest and the time of filing an information against the accused and such delays would not violate the provisions of the Act. If the purpose of the Act is truly to implement the constitutional guarantees of

a speedy trial, the interpretation urged by Appellant most certainly is not that which was intended by the Legislature.

4. Adoption of Appellant's proposal would mean that in felony matters all that the Act would do would require that such matters be tried within ninety (90) days after the information was filed if the detained defendant complied with the notice provisions of the Act. This view overlooks the fact that the Code of Criminal Procedure already contains [77-51-1(2) U.C.A., 1953] a provision to implement the requirement for a speedy trial *after* filing of an indictment or information. The State would thus have us believe that in adopting the Act, the Legislature was adopting new legislation for no apparent purpose.

C. OTHER AUTHORITIES. In the recent case of *United States vs. Marion*, 404 U.S. 307, 30 L. Ed. 2d 468, 92 S. Ct. 455 (1971), the Appellees claimed that their rights to a speedy trial were violated by a delay of approximately three years between the end of the criminal scheme charged and the return of the indictment. The U. S. Supreme Court declined to accept this view. In so doing, the Court said:

> "Legislative efforts to implement federal and state speedy trial provisions also plainly reveal the view that these guarantees are applicable only after a person has been accused of a crime . . . characteristically, these statutes to which the Court referred are triggered only when a citizen is *charged or accused*. The statutes vary

greatly in substance, structure and interpretation, but the common denominator is that [i]n no event [does] the right to a speedy trial arise before there is some *charge or arrest,* even though the prosecuting authorities had knowledge of the offense long before this." [Italics added].

The Court further stated:

"So viewed, it is readily understandable that *it is either a formal indictment or information or else the actual restraint imposed by arrest and holding to answer a criminal charge that engages the particular protections of speedy-trial provision of the Sixth Amendment.*

Invocation of the speedy-trial provision thus need not await indictment, information or other formal charge. But we decline to extend the reach of the Amendment to the period prior to arrest. Until this event occurs, the citizen suffers no restraints on his liberty and is not the subject of public accusations. *His stiuation does not compare with that of a Defgendant who has been arrested and held to answer."* [All italics added.]

This case is persuasive in support of Respondent's position and is in line with the *Wilson* case in holding that the provisions for a speedy trial are implemented when a defendant is *charged or arrested.* The statutory rules enacted to implement the constitutional guarantees of a speedy trial should become efficacious and attach at the time one is arrested, charged, accused or held to answer to a criminal offense and not upon the occurrence of some later event which simply formalizes the

charge of which the defendant has been accused and upon which he has been arrested and held to answer. He is just as effectively "detained" upon a complaint prior to preliminary examination as he is after being bound over and having an information filed against him in the District Court. All that happens is that the name of the document *charging* the defendant with the criminal offense is changed from "complaint" to "information."

The substance of the law and intent of the Legislature coupled with the simple and concise language of the statute compel affirmance of the District Court's Order of Dismissal.

CONCLUSION

The Order of Dismissal should be affirmed.

Respectfully submitted,

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