1972

# Robert P. Pacheco v. John W. Turner, Warden, Utah State Prison : Appellant's Brief

# In The Supreme Cou
# of the State of Uta

ROBERT P. PACHECO,

*Plaintiff-Appellant,*

-vs-

JOHN W. TURNER, WARDEN,
UTAH STATE PRISON,

*Defendant-Respo*

## APPELLANTS'

Appeal from the denial of a
Habeas Corpus by the Third J
in and for Salt Lake County, Sta
able Joseph G. Jeppson, presidi

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# In The Supreme Court of the State of Utah

ROBERT P. PACHECO,
*Plaintiff-Appellant,*
-vs-
JOHN W. TURNER, WARDEN, UTAH STATE PRISON,
*Defendant-Respondent.*

Case No. 12910

## APPELLANTS' BRIEF

### STATEMENT OF THE NATURE OF THE CASE

The Appellant, Robert P. Pacheco, appeals from the decision of the Third Judicial District Court denying his release from the Utah State Prison upon a Petition for a Writ of Habeas Corpus.

### DISPOSITION IN THE LOWER COURT

Robert P. Pacheco filed a Complaint and Petition seeking a Writ of Habeas Corpus alleging that his commitment to the Utah State Prison was invalid. The matter came on for hearing on the 4th day of April, 1972,

before Judge Joseph Jeppson, who denied the Petition on the same day.

## RELIEF SOUGHT ON APPEAL

The Appellant, Robert P. Pacheco, seeks reversal of the court below with the direction that he be released from the custody of the Respondent upon a Writ of Habeas Corpus.

## STATEMENT OF THE FACTS

Richard P. Pacheco entered a plea of guilty to the charge of attempted burglary on the 26th day of February, 1970, before the Honorable Aldon J. Anderson. He was sentenced on the 16th day of March, 1970, to be committed to the Utah State Prison for the indeterminate term provided by law. (Exhibit 1)

At the habeas corpus hearing, Mr. Pacheco testified that he pleaded guilty to attempted burglary on the advice of his counsel, Mr. Barney. He further testified that his counsel told him he would be convicted of every charge and of the habitual criminal act if he failed to plead guilty. (R. 43) Furthermore, Mr. Pacheco testified that the motivating factor that caused him to plead guilty was his counsel's advice that he would be convicted of the habitual criminal act. (R. 43, 47) Mr. Pacheco had been convicted of only one prior felony. (R. 42) Mr. Barney, appellant's counsel, admitted that he may

have indicated to appellant that he could be convicted of the habitual criminal act. (R. 51)

## ARGUMENT

### POINT I

### THE COURT BELOW ERRED IN FINDING THAT APPELLANT'S PLEA OF GUILTY WAS ENTERED VOLUNTARILY AND KNOWINGLY.

Appellant contends that this plea of guilty was not voluntarily nor knowingly made in that it was entered as a result of coercion, threats and under duress.

In a relatively early case, *Kercheval v. United State*, 274 U.S. 220, 47 S.Ct. 582, 71 L.Ed. 2d 1009 (1927), the Supreme Court recognized that a plea of guilty is itself a conviction, and like a verdict of a jury it is conclusive. Thus, the court pointed out that out of just consideration for persons accused of crimes, courts must be careful that a guilty plea shall not be accepted unless made voluntarily after proper advice and with full understanding of the consequences. The court added that it would vacate a plea of guilty shown to have been unfairly obtained, or given through ignorance, fear or inadvertence.

Appellant contends that the lack of proper advice or the erroneous advice from his attorney causes his guilty plea to lose its voluntary character. Appellant

testified that the motivating factor that caused him to plead guilty was his counsel's advice that he could be convicted of the habitual criminal act if he failed to so plead. (R. 43, 47) Mr. Barney, appellant's counsel, admitted that he may have indicated to appellant that he could be convicted of the habitual criminal act. (R. 51) Counsel's advice to appellant about the operation of the habitual criminal act was completely erroneous. Appellant had been convicted of only one felony (R. 42) and the habitual criminal act (U.C.A. 76-1-18) provides that a person has to have been previously convicted of two felonies before he will be deemed an habitual criminal. Appellant's reliance upon this erroneous advice deprives his guilty plea of its voluntary and knowing character and makes it void.

The standard as to the voluntariness of guilty pleas is essentially that defined by Judge Tuttle of the Fifth Circuit of Appeals in *Shelton v. United States,* 246 F.2d 571 (1957), at page 115, and cited approvingly in *Brady v. United States,* 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed. 2d 747 (1970), at page 755:

> A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats, (or promises to discontinue improper harrassment), misrepresentation. . .

Appellant contends that the Shelton test as to the voluntariness of guilty pleas was not met because his plea was entered as a result of coercion, threats and under duress. Evidence of coercion is found in Appellant's testimony that his counsel told him to plead guilty or he would be convicted of all the charges against him. (R. 43) Additionally, evidence of coercion is found in Appellant's testimony that he plead guilty on his counsel's erroneous advice that the habitual criminal act could be invoked against him if he failed to so plead. (R. 43, 47) Furthermore, this fear of the habitual criminal act was the motivating factor behind Appellant's plea of guilty. (R. 43, 47) Mr. Barney admitted that he may have told Appellant that the habitual criminal act could be invoked against him (R. 51) and this would seem to corroborate Appellant's allegation. Appellant's reliance upon this erroneous advice as to the operation of the habitual criminal act renders his guilty plea void.

Because Appellant's guilty plea was prompted by his counsel's erroneous advice about the operation of the habitual criminal act, and was induced by threats of additional convictions, and thus deprived of its voluntary and knowing character, Appellant contends that his confinement is illegal and void, and that he must be granted a Writ of Habeas Corpus.

## CONCLUSION

For the reason above stated, that Appellant did not knowingly and voluntarily enter his guilty plea, Appel-

lant respectfully submits that the judgment of the court below should be reversed and that he should be granted the Writ of Habeas Corpus.

Respectfully submitted,

RAYMOND S. SHUEY

*Attorney for Plaintiff-Appellant*