

1974

Douglas Knudsen v. Samuel Smith : Brief of Appellant

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IN THE SUPREME COURT OF THE STATE OF UTAH

DOUGLAS KNUDSEN

Petitioner-Appellant,

vs.

SAMUEL SMITH, Warden,
Utah State Prison

Respondent.

Case No.
13666

BRIEF OF APPELLANT

Appeal from a Judgment of the District Court of the
Third Judicial District, in and for Salt Lake County,
State of Utah, The Honorable James S. Sawaya, Presiding.

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a judgment of the Third District Court denying appellant's petition for a writ of habeas corpus.

DISPOSITION IN THE LOWER COURT

The appellant, Douglas Knudsen, petitioned the Third District Court for a writ of habeas corpus releasing him from his incarceration at the Utah State

Prison. His petition was denied after a hearing before the Honorable James S. Sawaya on March 21, 1974.

RELIEF SOUGHT ON APPEAL

Appellant asks this court to reverse the judgment of the Third District Court and either issue a writ of habeas corpus releasing him from custody or remand the case to the lower court for that purpose.

STATEMENT OF FACTS

Appellant, Douglas Knudsen, plead guilty to the crime of Burglary, a felony of the Third Degree, on November 30, 1973, before the Honorable J. Robert Bullock, Judge of the District Court of the Fourth Judicial District, in and for Utah County, State of Utah. Appellant was sentenced to 0-5 year in the Utah State Prison where he is presently incarcerated.

Approximately February 20, 1974, appellant filed a complaint and petition for Writ of Habeas Corpus with the District Court of the Third Judicial District and also on that date the Legal Defender Association of Salt Lake County was appointed to represent the appellant.

On March 21, 1974, a hearing on appellant's complaint and petition was held before the Honorable James S. Sawaya, and shortly thereafter, appellant's petition was denied.

ARGUMENT

APPELLANT'S PLEA OF GUILTY TO THE CRIME OF BURGLARY WAS NOT KNOWING AND INTELLIGENT.

In the landmark case of *Boykin v. Alabama*, 395 U.S. 238, 23 L. Ed. 2d 274, 89 S. Ct. 1709 (1969) the United State Supreme Court held that before any court can accept a plea of guilty in a criminal case it must first find from an affirmative showing, that that plea was intelligent and voluntary. The Court further held that in order for a court to make such determination it must inquire of the defendant whether or not he realizes that by pleading guilty he waives three constitutional rights:

“First, is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth. . . . Second, is the right to trial by jury . . . Third, is the right to confront one’s accusers.” 395 U.S. at 243.

Clearly the United States Supreme Court held in *Boykin* that for a plea of guilty to be valid under the Due Process Clause it must be an “intentional relinquishment or abandonment of a known right of privilege.” In order to be certain a right is ‘known’ the Court said that right must be made clear *for the record* at the time a defendant pleads guilty.

In the instant case, appellant’s argument is simple. The transcript of hearing of his plea of guilty in the Fourth Judicial District, made a part of the record in

the matter before this Court, is silent as to whether the defendant was ever advised as to any one of the three constitutional rights expressed in *Boykin*, supra. Although the Court did seem to be thorough in all other matters, it did not inform Mr. Knudsen specifically of his right to a jury trial, his privilege against self-incrimination or his right to be confronted by the witnesses against him.

As the United States Supreme Court said in *Boykin*, supra, "We cannot presume a waiver of these three important federal rights from a silent record."

CONCLUSION

Appellant asks that this matter be remanded to the Fourth District Court for proceedings consistent with the *Boykin* decision, and that he be released from his illegal restraint at the Utah State Prison and to the custody of representatives of the Fourth Judicial District.