

1995

Herman D Frontz v. Hank Galetka, Warden Utah State Prison: Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Mrs Jan Graham Utah State Attorney General; Attorney for Appellee.

Herman D Frontz; Pro Se .

Recommended Citation

Brief of Appellant, *Frontz v. Warden*, No. 950180 (Utah Court of Appeals, 1995).

https://digitalcommons.law.byu.edu/byu_ca1/6524

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DISTRICT COURT
BRIEF
DOCKET NO. 950180 CA

IN AND BEFORE THE COURT OF APPEALS STATE OF UTAH

HERMAN D. FRONTZ,

Case No. # 950180 - CA

Petitioner / Appellant,

APPELLANT'S
BRIEF

VS.

HANK GALETKA, Warden
Utah State Prison,

Respondent / Appellee.

BLUE
COVER SHEET

Appeal From The Denial of Appell-
ant's Petition For Writ of Habeas
Corpus Entered On 8 February 1995
By The Honorable Pat B. Brian
Judge of The 3rd Judicial Dis-
trict Court, Salt Lake County
State of Utah

Mrs. Jan Graham
Utah State Attorney General
236 State Capitol Bldg.
Salt Lake City, Utah
84114

Attorney for Appellee

Herman D. Frontz
#11606
Utah State Prison
P.O. Box 250
Draper, Utah 84020
Pro se

FILED

JUL 17 1995

Table of Contents

Page :

Table of Authorities	ii
Statement of Jurisdiction	i
Statement of Issues	i
Standard of Review	2
Constitutional Provisions / Statutes / Rules	3 - 4
Statement of the Case	4
Statement of Facts	5 - 7
Summary of Argument	7 - 8
Argument One	8 - 10
Conclusion / Relief Sought	11 - 12
Certificate of Service	12
Attachment	

Table of Authorities

Page :

<u>Chess v. Smith</u> , 617 P.2d. 341 (Utah 1980)	10
<u>Farrow v. Smith</u> , 541 P.2d. 1077 (Utah 1973)	11
<u>Hill v. Lockhart</u> , 474 U.S. 52, 59 (1985)	2
<u>Hurst v. Cook</u> , 777 P.2d. at 1035 (Utah)	2
<u>Lancaster v. Cook</u> , 753 P.2d. 505 (Utah 1988)	8
<u>Padilla v. Utah Bd. of Pardons</u> , 198 Utah Adv. Rep 47	2
<u>Strickland v. Washington</u> , 466 U.S. 688 (1984)	2
<u>Summers v. Cook</u> , 759 P.2d 341 (Utah App 1988)	7, 9, 10
<u>Termunde v. Cook</u> , 786 P.2d. 1341, (Utah 1990)	2
<u>Wells v. Shulsen</u> , 747 P.2d. 1043	10

Constitutional Provisions/Statutes & Rules

<u>Utah Code Annotated</u> §78-2a-3 (2) (g)	1
<u>Rule 11 Utah Rules of Criminal Procedure</u>	4
<u>Rule 65B Utah Rules of Civil Procedure</u>	4, 11
<u>Article I Section 7, Utah State Const.</u>	3
<u>Article I Section 11, Utah State Const.</u>	3
<u>Article I Section 12, Utah State Const.</u>	3-4
<u>Amendment Fourteen U.S. Const.</u>	4

HERMAN D. FRONTZ #11606
Appellant Pro se
Utah State Prison
Post Office Box 250
Draper, Utah 84020

IN AND BEFORE THE COURT OF APPEALS STATE OF UTAH

HERMAN D. FRONTZ,

Appellant

vs.

HANK GALETKA, Warden
Utah State Prison,

Appellee.

APPELLANT'S
BRIEF

Case No # 950180 - CA

STATEMENT OF JURISDICTION

Jurisdiction of this appeal is properly
conferred upon this Court pursuant to Utah Code
Annotated § 78-2a-3 (2) (g).

ISSUES PRESENTED

I.

IS THE TRIAL COURT'S BASIS FOR DISMISSING
APPELLANT'S PETITION FOR WRIT OF HABEAS CORPUS
IN ERR ?

STANDARD OF REVIEW

The trial court's conclusions of law are reviewed for correctness and accorded no deference by the appellate court. e.g. Paddilla v. Utah Board of Pardons, 198 Utah Adv. Rep 47 at 48 citing Termunde v. Cook, 786 P.2d 1341, 1342 (Utah 1990).

Likewise, "The general judicial policy favoring the finality of judgments cannot ... always prevail against an attack by a writ of habeas corpus. As important as finality is, it does not have a higher value than constitutional guarantees of liberty. Hurst v. Cook, 777 P.2d at 1035.

With respect to appellant's claims of ineffective assistance of counsel, it appears that the standard of review applicable, is that standard as articulated in Strickland v. Washington, 466 U.S.

CONSTITUTIONAL PROVISIONS/STATUTES/RULES & REGULATIONS

In addition to the jurisdictional statutory provisions supra, appellant submits that the following Constitutional Provisions, Statutes, Rules & Regulations appear to be relevant to this appeal:

A. Article I Section 7 of the Utah State Constitution. "No person shall be deprived of life, liberty or property, without due process of law";

B. Article I, Section 11 of the Utah State Constitution. "All courts shall be open, and every person; for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party";

C. Article I, Section 12 of the Utah State Constitution. "In Criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature

and cause of the accusation against him, ... to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf...."

D. Amendment Fourteen of the Constitution of the United States [in relevant part]: "No state ... shall deprive any person of life, liberty, or property, without due process of law";

E. Rule 11 Utah Rules Criminal Procedure inclusive.

F. Rule 65B Utah Rules of Civil Procedure.

STATEMENT OF THE CASE

This appeal is from the lower courts Final Order denying appellant's Petition For Habeas Corpus entered by the honorable Pat B. Brian, Judge of the Third Judicial District Court, Salt Lake Co., State of Utah On 8 February 1995. See Attachment No #1. hereto.

Appellant timely filed Notice of Appeal on or about 9 March 1995, in the 3rd Judicial District Court. This appeal now ensues.

STATEMENT OF FACTS *

On or about 17 December 1992, at a change of plea hearing and on the advice of ineffectively counsel, appellant entered a plea of guilty to Attempted Sexual Abuse of a child a Third Degree Felony (See Ex. No. I attached to habeas petition).

On the advice of my counsel E. Spafford, (i.e. that it would be best for everyone concerned, that I should plead guilty) I changed my plea of NOT GUILTY to guilty to the above referenced crime.

*. The majority of the facts here represented, are reproduced from the Petition For Habeas Corpus pgs 2 & 3 thereof.

Attorney Spafford informed me that I "would never receive a fair trial" and further, that if I entered a plea of guilty I would receive favorable consideration by the court.

At no time prior to entering the plea in question did I understand the nature of the accusation charged against me (i.e. the relationship of the law to the facts). Additionally, had I been fully advised of the elements and facts of the crime charged, I would not have entered the plea, but instead, I would have continued to stand on my NOT GUILTY plea, proceeded to trial, and I would have exercised my constitutional rights of compulsory process and further confronted and cross-examined my accusers. (Compare Affidavit

of Petitioner attached to habeas petition ¶ 5 and ¶ 10 respectfully).

In early December 1993, I filed a pro se motion to withdraw the plea now in issue and, despite the fact that I have never received any form of adjudication on that motion, the lower court has now denied my habeas corpus petition on the sole basis that said motion to withdraw is pending

SUMMARY OF ARGUMENT

Appellant is entitled to an evidentiary hearing in addition to having his motions for production of documents, transcripts and/or recordings granted. As, this Court held in Summers v. Cook, 759 P2d 341 (Utah App. 1988):

Where challenge to a guilty plea is made collaterally, no prior motion to withdraw [the plea] is required.

[C]hallenge may be made to a guilty plea either directly or collaterally. If it is made directly, it must be in the context of a motion to withdraw a guilty plea, the denial of which can be appealed. E.g. Gibbons. If it is made collaterally, no prior motion to withdraw is required. E.g. Lancaster. In either scenario, an evidentiary hearing must ordinarily be held unless the record of a prior hearing shows petitioner is clearly not entitled to relief. See, e.g. Lancaster. (emp. added).

ARGUMENT ONE

The Trial Court's Basis For Dismissing Appellants Petition For Habeas Corpus Relief Is In Err.

As stated supra under statement of the case, appellant submitted a motion to withdraw his plea circa 16 months past. Likewise, it was on the basis that said motion was "still" pending before the honorable Judge Murphy that Judge [redacted] denied appellant's

pro se petition for habeas corpus relief.

Ironically, it is on the same basis [i.e. that Mr. Frontz's motion to withdraw, his plea has in fact been so pending for such an extended period of time] that, Mr. Frontz was compelled to exercise his constitutional right to petition for habeas corpus. Placed on the horns of a dilemma, in that no decision had been rendered upon his motion to withdraw, appellant could not very well appeal from a denial of his motion to withdraw his plea if the motion was never subjected to adjudication by the court.

As stated by this Court in Summers supra, [A] "challenge to a guilty plea may be made either directly in the form of a motion to withdraw or alternatively by

collateral attack via habeas corpus."

If the direct route of filing a motion to withdraw is selected, further review must be in the form of appeal from denial of the motion and failure to appeal would ordinarily be conclusive. Wells v. Shulsen, 747 P.2d. 1043. However, where the failure to appeal... is due to ... other good cause, review... may be had by collateral action. e.g. Chess v. Smith, 617 P.2d. 341.

Simply, appellant has filed both directly and collaterally, and in "neither scenario" has "an evidentiary hearing" been held. yet, as stated by this Court in Summers, "In either scenario, an evidentiary hearing must ordinarily be held unless the record of a prior hearing shows petitioner is clearly not entitled to relief." No such determination is a matter of law has been made.

CONCLUSION / RELIEF SOUGHT

According to Rule 65B of the Utah Rules of Civil Procedure¹ and on the basis that Mr. Frontz carries the burden of presenting convincing evidence that he has been wrongfully convicted (See generally Farrow v. Smith, 541 P.2d 1107 (Utah 1975)) appellant asks this court, to reverse the lower court's sua sponte denial of his habeas corpus petition, that the court reinstate the writ and direct the lower court to grant appellant [petitioner's] motion for production of documents & transcripts Lastly, appellant asks this Court to direct the lower court to set the matter for an evidentiary hearing

1. This Rule requires that a habeas corpus petitioner attach relevant documents and transcripts to his petition in support of his claims

consistent with this court's opinion in this case.

Submitted in good faith this 17 day
of July, 1995.

Herman D. Frontz
HERMAN D. FRONTZ / Pro se

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of this brief w/attachment to be served upon Ms Jan Graham, Utah State Attorney General, Attorney For Appellee by mailing said copy addressed to her at 236 State Capitol Bldg, S.L.C., Utah 84114, postage paid in the U.S. Mail on this 17 day of July, 1995.

Herman D. Frontz
HERMAN D. FRONTZ / Pro se

A T T A C H M E N T 1

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

HERMAN D. FRONTZ,

Petitioner,

vs.

HANK GALETKA, WARDEN

Respondent.

:
:
:
:
:
:
:
:
:
:
:


COURT ORDER

Civil No. 950900699 HC

JUDGE PAT B. BRIAN

Petitioner's Writ of Habeas Corpus and Motion for Production of Documents and Transcript of Recordings are denied. Petitioner's Motion to Withdraw his Guilty Plea is pending before Judge Michael R. Murphy of the Third District Court.

DATED this 8 date of February, 1995.


Judge Pat Brian

