

1995

John O. Wulffenstein v. Board of Pardons : Brief of Appellant

Utah Court of Appeals

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John O. Wulffenstein Appellant w/out Counsel.

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In The Utah Supreme Court

John O. Wulffenstein
Appellant

✓

95-0708-CA

Case 950365

Board of Pardons
Appellee

Appellants Brief

**UTAH COURT OF APPEALS
BRIEF**

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DOCKET NO. 950708 CA

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Utah Court of Appeals

OCT 6 - 1995

Marilyn M. Branch
Clerk of the Court

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In The Utah Supreme Court

John O. Wueffenstein
Appellant

v.

Board of Pardons
Appellee

Case 950365

Jurisdictional Statement

This is an appeal from the decision, of Honorable David S. Young of the Third District Court of Salt Lake County, to dismiss Petition for Writ of Habeas corpus. Because appellant is incarcerated under 5 to Life sentence. Jurisdiction of this appeal falls under 78-2-2 (1)

Statement of Issues

Issues presented in this appeal is whether Respondent, Board of Pardons, are required to follow Statutory Law and if so, does their failure to do so violate Due Process of Law?

Further, if the Statute hold jurisdictional ramifications, does the Board of Pardons lose jurisdiction, if They allowed appellant to leave Utah without properly transferring of Supervisory authority, jurisdiction, as required by Statute?

(Question I) Board of Pardons failure to follow 77-27-24 UCA "Uniform Act for Out-of-State Supervision" prior to allowing appellant to leave Utah, removes jurisdiction from Board of Pardons?

(Question II) Board of Pardons failure to properly transfer jurisdiction for supervision of appellant to Oklahoma prior to allowing appellant to leave Utah, removes Board of Pardons authority to return appellant to Utah?

(Question III) Board of Pardons failure to follow 77-27-24 and 64-13-21 Violates Procedural Due Process of Law?

(Question IV) Honorable David S. Young's determination is based on false and unsupported information

(Question V) Board of Pardons actions amount to Abuse of Power.

Constitutional & Statutory Provisions

Utah State Constitution Article I Section 7

No person shall be deprived of life, liberty
or property, without due process of law.

United States Constitution XIV Amendment.

--- No shall any state deprive any person of
life, liberty, or property, without due process
of law.---

64-13-21 Utah Code Unannotated (1992)

The department, except as otherwise provided
by law, shall supervise sentenced offenders
placed in the community on probation by
the court, on parole by the Board of Pardons
--- or upon acceptance for supervision under
the terms of the Interstate Compact for
the supervision of parolees and probationers---

77-27-24 Utah Code Unannotated (1993)

The Contracting states solemnly agree:

(a) That it shall be competent for the duly
constituted judicial and administrative authorities
of a state party to this compact therein

called sending state) to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called receiving state) while on probation or parole, if

(1) Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there.

(2) Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of ~~the~~ such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than six continuous months...

Statement of Case

Appellant was convicted on July 20, 1981, of aggravated robbery by gang in Second District Court of Weber County. Honorable Calvin Gould presiding. #14280 and sentenced to 5 yrs to life at Utah State Prison.

On November 3, 1989 appellant was heard by the Board of Prisons to determine if and under what conditions he would be paroled. The Board's decision was to parole appellant on 3-13-90 with the conditions that he complete "ISP if in Utah" and "Unemployment".

It was agreed that appellant should leave Utah upon his being paroled (See Board Hearing transcript not available to appellant).

On 3-13-90 appellant was released from Utah State Prison and reported to parole officer Gaspar Robles who wrote out a travel permit allowing appellant to leave Utah for 30 days.

On or about 3-15-90 appellant reported to the Kuyfiska Office of Oklahoma parole department and contacted Lee Smith, Parole officer for Oklahoma. Mr. Smith informed appellant that he had not received any information from Utah.

Appellant did not return to Utah on 4-13-90 and no warrant was issued for apprehending.

In late 1990 Mr Smith ask appellant what he was on parole for and how long. Smith stated he had been unable to get any information from Utah. Smith stated he was going to make one more attempt to obtain information and if he did not receive it he would be unable to continue supervision.

on 9-10-92 appellant plead Guilty to charges in Oklahoma and was sentenced to Oklahoma Department of corrections.

A warrant for arrest for Parole Violation, No Allegation of absconding was present, was issued by Utah Board of Pardons on 8-28-92

Appellant was returned to Utah State Prison on 5-4-95 under warrant of Board of Pardons.

Statement of Fact

on 11-3-89 Board of Pardons consented to appellants leaving Utah on 3-13-90 (See Board hearing transcript)

Board of Pardons did not allege Absconding for failure of appellant to return to Utah on 4-13-90.

Board of Pardons did not transfer authority to supervise appellant to Oklahoma prior to 3-13-90 as required by Interstate Compact for Supervision of parolees and Probationers.

Summary of the Argument

The issues presented in this appeal are simple to address in two arguments (1) Does the Respondent Board of Pardons have to follow Statutory Law, if so, what happens if they don't? (2) Did Judge Young base his decision on false information?

Appellant will address the actions of Board of Pardons first and Judge Young second.

Argument

Questions I II III IV

Appellant contends that 77-27-24 VCA outlines the process required to allow persons under supervision to transfer from one state to another. The purpose of this Statutory Provision was and is two fold (1) to allow supervised persons to transfer to family connections or available employment. (2) allow teaching of dangerous convicted felons while allowing receiving state the opportunity to refuse and/or accept supervision of same.

The Procedural Process in 77-27-24 has been accepted by both Utah and Oklahoma the two states this appeal deals with.

Appellant's entire contention centers around the Procedural Process which is Due the Transfer of persons under supervision, and the requirement of that process to transfer Supervisory Jurisdiction to the receiving state (Oklahoma)

Appellant relies on Utah Statute which grants Supervisory jurisdiction to of persons under supervision pursuant to "Interstate Compact" 77-27-24

64-13-21 UCA enacted (1987)

The Department, except as otherwise provided by law, shall supervise sentenced offenders placed in the community on probation by the court, on parole by the Board of Pardons --- or upon acceptance for supervision under the terms of the Interstate Compact for the Supervision of Parolees and Probationers---

It would appear that respondent's failure to properly transfer Supervisory Jurisdiction to Oklahoma by allowing "acceptance for Supervision" as outlined in 77-27-24 left Oklahoma without the authority to supervise appellant, or Utah the legal standing to send him to Oklahoma. In fact, Utah cannot supervise out-of-state persons without "accepting supervision under the terms of" 77-27-24

Jurisdiction over appellant must be maintained by respondent, Board of Pardons, in order to validate warrant for return of appellant to Utah.

It is a basic rule that a judgment is void and subject to collateral attack if lack of jurisdiction in the court appears on the face of the record. Bowen v. Olsen 122 Utah 66, 246 P.2d 602 (1952)
Utah Rules of Civil Procedure (1987) P. 196

The Board of Pardons functions as the sentencing court and therefore must maintain jurisdiction
Foots v. Utah Board of Pardons 156 Utah Adv. Rep 3

The Court by indefinitely suspending sentence, and permitting defendant to go on his own recognizance, lost jurisdiction of him, so that it could not afterward have him requested and sentence him. In re Flint 25 Utah 338; 71 P. 531 (1903) Utah Rules of Criminal Procedure (1987) P. 385

The Board of Pardons actions, either voluntarily or

otherwise, can cause the loss of jurisdiction. The Board of Pardons, failure to follow the Procedural Process mandated by Statutes 77-27-24 and 64-13-21, and allowing appellant to leave Utah and remain in Oklahoma beyond expiration of 30 day travel permit, was a Voluntary act which removed their Authority, jurisdiction, to have appellant returned to Utah from Oklahoma.

Argument Question IV

Judge Youngs decision states that Utah properly issued a warrant based on appellants failure to return to Utah at expiration of 30 day travel permit. There is no such allegation on warrant (see docketing statement)

Conclusion

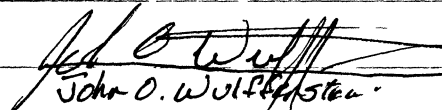
Because Board of Pardons Authority is granted by Constitutional and Statutory Mandates, and their function is essentially the sentencing Court, they are required to maintain jurisdiction to the same degrees as the sentencing Court.

Because Board of Pardon failed to follow Procedural Due Process of Law, or that process which is mandated by Statute, by transferring authority to supervise appellant to Oklahoma. They lost the authority to reincarcerate appellant.

Because Board of Pardon allowed appellant to roam freely outside Utah, without authorized supervision, beyond 30 day travel permit expiration for 2 1/2 years and did not issue warrant alleging Obsecouring. Board of Pardon lost jurisdiction over him.

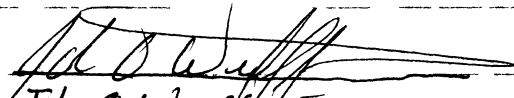
For the herein named reasons this Court should grant appellants Writ of Habeas Corpus and order the Board of Pardon to release him from this unconstitutional detention forthwith.

Submitted this 2nd day of October 1995


John O. Wolf
Appellant w/out Counsel
P.O. Box 290
Deer Park, Utah 84020

Certificate of Mailing

I, John O. Wulffenstein, do hereby Certify
that I mailed 2 copies of Appellants
Brief to Utah Attorney General, State Capital
236 State Capital Bldg., Salt Lake City Utah
24114 First class postage paid on this 2nd
day of October 1995


John O. Wulffenstein