

1986

State of Utah v. Fredrick George Olsen : Brief of Appellant

Utah Supreme Court

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Fredrick George Olsen; pro se.

David L. Wilkinson; attorney general; attorneys for respondent.

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BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

860272

THE STATE OF UTAH, :
 Plaintiff/Respondent :
 vs. :
 FREDRICK GEORGE OLSEN, : Case No. 860272
 Defendant/Appellant :

BRIEF OF APPELLANT

Appeal from an Order Denying Petitioner/Appellant's Petition for a Writ of Habeas Corpus entered in the Third Judicial District Court in and for the County of Salt Lake, State of Utah, in Civil No. C-86-791, the Honorable Judge Scott Daniels, presiding.

FREDRICK GEORGE OLSEN
 Petitioner/Appellant
 In Propria Persona
 P. O. Box 250
 Draper, Utah 84020

DAVID L. WILKINSON
 Attorney General
 236 State Capitol Building
 Salt Lake City, Utah 84114
 Attorney for Respondent

FILED

OCT 30 1986

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT
OF THE STATE OF UTAH

FREDRICK GEORGE OLSEN,)
)
)
)
 Petitioner/Appellant, In Propria Persona;)
)
 VS.) SUPREME COURT
)
)
 GARY DELAND, DIRECTOR, UTAH STATE) Civil Case No. 860272
 DEPARTMENT OF CORRECTIONS, et al.,)
)
)
 Respondent's/Appellee's)
)
)

BRIEF OF APPELLANT

STATEMENT OF THE CASE

Comes now Petitioner/Appellant, In Propria Persona; and respectfully submits that this is an Appeal from an Order Denying Petitioner/Appellant's Petition for a Writ of Habeas Corpus entered in the Third Judicial District Court in and for the County of Salt Lake, State of Utah, in Civil No. C-86-791, said Order Denying Writ of Habeas Corpus was Ordered by the Honorable Scott Daniels, presiding Judge on April 17, 1986.

STATEMENT OF THE FACTS

In the case at bar, Petitioner/Appellant filed a Petition for a Writ of Habeas Corpus, In Propria Persona, having elicited the aid and Assistance of a fellow inmate. Petitioner/Appellant filed his Petition for a Writ of Habeas Corpus along with a Memorandum of Points and Authorities in Support of his Habeas Corpus Petition through service of the United States Mail.

Petitioner/Appellant's Petition for a Writ of Habeas Corpus was filed in the Third Judicial District Court and an Order was issued by the Honorable Scott Daniels directing that the matter be brought before the Court for Trial of the issues in Civil No. C-86-791 at 8:30 a.m.

Petitioner/Appellant raised meritorious claims and issues in his Petition for a Writ of Habeas Corpus and he verily believes that even though he is a layman unversed in the law, the facts and the record support his claims. Petitioner/Appellant verily believes that he was not afforded a Fair Evidentiary Hearing allowing him to properly prove his allegations. Even though Petitioner/Appellant's two main allegations centered around the ineffective aid and assistance of counsel and the validity of his plea, and notwithstanding Petitioner/Appellant's belief that he met his burden of proof in compliance with the two part standard set forth in Strickland v. Washington, 466 U.S. 668, 104, S.Ct. 2052, 80 L.Ed. 2d 674 (1984) and Ake v. Oklahoma, _____ U.S. _____, 105, S.Ct. 1087, 84 L.Ed. 2d 53 (1985). Petitioner/Appellant verily believes that, had he been afforded an opportunity to elicit testimony from his Trial Counsel, all of his claims would have been established.

Petitioner/Appellant verily believes that the decision of the Honorable Scott Daniels, directing the denial of his Petition for a Writ of Habeas Corpus was biased and not based upon the facts but rather on the nature of Petitioner/Appellant's crime and the possible politics involved.

In the case at bar, Petitioner/Appellant verily believes that the denial of a Writ of Habeas Corpus amounts to the unconstitutional suspension of the Writ of Habeas Corpus, as well as the denial of Access to the Courts guaranteed under a long line of precedents and authorities beginning with Ex Parte Hull, 312 U.S. 546, 61 S.Ct. 640, 85 L.Ed. 1034 (1941), reh. denied 312 U.S. 716, 61 S.Ct. 823, 85 L.Ed. 1146.

ISSUES RAISED ON APPEAL

I. PETITIONER/APPELLANT ALLEGES THAT A REVERSAL SHOULD BE GRANTED DIRECTING THAT THE LOWER COURTS DENIAL OF HIS PETITION FOR A WRIT OF HABEAS CORPUS BE VACATED AND SET ASIDE AND THAT A WRIT OF HABEAS CORPUS SHOULD BE GRANTED AS ORIGINALLY PRAYED FOR IN THE PETITION FOR A WRIT OF HABEAS CORPUS, FOR THE REASON THAT PETITIONER/APPELLANT WAS EFFECTIVELY DENIED THE ESSENCE OF PROCEDURAL DUE PROCESS AS SECURED AND GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN VIEW OF THE FACT THAT THE ESSENCE OF PROCEDURAL DUE PROCESS IS A FAIR HEARING. PETITIONER/APPELLANT VERILY BELIEVES THAT HE WAS EFFECTIVELY DENIED ACCESS TO THE COURTS, THAT THE COURTS DENIAL OF A WRIT OF HABEAS CORPUS AMOUNTS TO THE UNCONSTITUTIONAL SUSPENSION OF THE WRIT OF HABEAS CORPUS IN VIOLATION OF ARTICLE 1, SECTION 5, OF THE CONSTITUTION OF THE STATE OF UTAH, AND THAT THE COURTS DENIAL OF A WRIT OF HABEAS CORPUS WAS NOT BASED UPON THE FACTS BUT RATHER WAS A BIASED DECISION IN LIEU OF POLITICS AND THE HEINOUS NATURE OF THE OFFENSE PETITIONER/APPELLANT WAS CONVICTED FOR. EFFECTIVELY CAUSES THE DEPRIVATION OF RIGHTS SECURED AND GUARANTEED TO PETITIONER/APPELLANT THROUGH

THE FORCE AND EFFECT OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

2. PETITIONER/APPELLANT RESPECTFULLY ALLEGES AND SUBMITS THAT THIS COURT SHOULD REVERSE THE LOWER COURTS DECISION DENYING HIS PETITION FOR A WRIT OF HABEAS CORPUS FOR THE REASON THAT EVEN THOUGH A FAIR EVIDENTIARY HEARING WAS NOT AFFORDED, FACTS ELICITED THROUGH TESTIMONY OF WITNESSES CLEARLY ESTABLISHED AND PROVED THAT PETITIONER/APPELLANT WAS CONVICTED AND INCARCERATED AS THE RESULT OF HIS BEING DEPRIVED OF THE EFFECTIVE AID AND ASSISTANCE OF COMPETENT LEGAL COUNSEL DURING EACH OF THE CRITICLE STAGES OF THE PROCEEDINGS AGAINST HIM. SUCH TESTIMONY CLEARLY MET PETITIONER/APPELLANT'S BURDEN OF PROVING THE TWO PART STANDARD REQUIRED UNDER THE MANDATE SET FORTH IN STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984) EVEN THOUGH THE LOWER COURT FAILED TO CALL PETITIONER/APPELLANT'S COUNSEL TO GIVE PETITIONER/APPELLANT AN OPPORTUNITY TO QUESTION AND CROSS EXAMINE HIM OR TO ALLOW SAID COUNSEL TO REFUTE THE ALLEGATIONS AGAINST HIM. PETITIONER/APPELLANT SUBMITS THAT IN ORDER TO ASSURE THAT HE HAS BEEN AFFORDED DUE PROCESS AND EQUAL PROTECTION OF THE LAW AS GUARANTEED TO HIM UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, HE SHOULD HAVE BEEN AFFORDED AN OPPORTUNITY TO QUESTION AND CROSS EXAMINE COUNSEL IN ORDER TO

CLEARLY PROVE HIS CLAIM OF INEFFECTIVE AID AND ASSISTANCE OF COMPETENT COUNSEL DURING EACH OF THE CRITICAL STAGES OF THE PROCEEDINGS AGAINST HIM. SAID TESTIMONY OF COUNSEL WOULD HAVE FURTHER PROVEN EACH OF PETITIONER/APPELLANT'S OTHER CLAIMS.

3. BECAUSE OF THE INEFFECTIVE AID AND ASSISTANCE OF COUNSEL, PETITIONER/APPELLANT'S PLEA OF GUILTY WAS NOT ENTERED FREELY, VOLUNTARILY AND UNDERSTANDINGLY BY ONE FULLY AWARE OF THE CONSEQUENCES THEREOF BUT INSTEAD, SAID PLEA WAS ENTERED AS THE RESULT OF THREATS, PROMISES AND INDUCEMENTS. THEREFORE SAID PLEA OF GUILTY MUST BE VACATED AND SET ASIDE AS CONSTITUTIONALLY NULL AND VOID BECAUSE OF THE DEPRIVATION OF PETITIONER/APPELLANT'S RIGHTS AS SECURED UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

SUMMARY OF ARGUMENT

In summarizing his argument on appeal, Petitioner/Appellant submits that he has shown the denial of access to the courts pursuant to the mandates set forth in the long line of authorities following Ex Parte Hull, 312 U.S. 546, 61 S.Ct. 640, 85 L.Ed. 1034 (1941).

Based on the fact that the decisions of the lower court was not based upon the facts adduced at the lower court evidentiary hearing and the fact that he was deprived of a full and fair evidentiary hearing. Petitioner/Appellant further verily believes he has shown the unconstitutional suspension of the Writ of Habeas Corpus in violation of Article I, Section 5, of the Utah Constitution and the mandate set forth in Jones v. Smith, 505 P. 2d 194.

Petitioner/Appellant submits that he has established that he has been deprived of his Sixth and Fourteenth Amendment Rights to the effective aid and assistance of competent legal counsel under the authorities of Strickland v. Washington, 466 U.S. 638, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984), and Ake v. Oklahoma, _____ U.S. _____, 105 S.Ct. 1087, 84 L.Ed. 2d 53 (1985).

And finally, Petitioner/Appellant has established that his Plea of Guilty must be declared constitutionally null and void pursuant to the long line of authorities beginning with Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. 2d 274 (1969) through Ake v. Oklahoma, _____ U.S. _____, 105, S.Ct. 1087, 84 L.Ed. 2d 53 (1985).

Petitioner/Appellant verily believes that he has established his cause and that he has raised meritorious issues and is entitled to plenary consideration.

ARGUMENT POINT ONE

Petitioner/Appellant respectfully submits that the right of prisoners to be afforded access to the courts embraces and includes the right to a fair hearing. The essence of due process is the right to a fair hearing. The United States Supreme Court mandated that prisoners are entitled to access to the courts in a long line of authorities beginning with Ex Parte Hull, 312 U.S. 546, 61 S.Ct. 640, 85 L.Ed. 1034, (1941). Smith v. Bennett, 365 U.S. 708, 81 S.Ct. 895, 6 L.Ed. 2d. 39 (1961). Johnson v. Avery, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed. 2d. 718 (1969). Haines v. Kerner, 404 U.S. 519, 520, 92 S.Ct. 594, 595, L.Ed. 2d 652 (1972). The right of prisoners to have an "adequate" opportunity to present their claims fairly is set out in Ross v. Moffitt, 417 U.S., at 616, 94 S.Ct., at 2446. The court here is further referred to the authorities of Younger v. Gilmore, 404 U.S. 15, 92 S.Ct. 250, 30 L.Ed. 2d 142 (1971), - and Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed. 2d 72 (1977).

Article I, Section 5, of the Utah Constitution guarantees that the Writ of Habeas Corpus shall not be suspended unless in the case of rebellion or invasion of the public safety requires it."

And the Utah Supreme Court has declared that:

"There is no reason why habeas corpus cannot be brought anytime a person is wrongfully restrained of his freedom, whether before trial or after trial." Jones v. Smith, 550 P. 2d 194.

ARGUMENT POINT TWO

Petitioner/Appellant submits that the decision of the lower court was not based upon the evidence and facts as presented and he was not afforded and adequate opportunity to present his claims fairly as required under the authority of Ross v. Moffitt, 417 U.S., at 616, 94 S.Ct., at 2246.

Petitioner/Appellant submits that he has met his burden of proof in establishing his Sixth and Fourteenth Amendment rights were denied under the two part standard set forth in Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984)., Ake v. Oklahoma, ____ U.S. ____, 105 S.Ct. 1087, 84 L.Ed. 2d 53 (1985). In assessing whether someone is functioning as the "counsel" guaranteed by the Sixth Amendment, Justice O'Connor indicated that the proper standard is that 'of reasonable effective assistance'; this was not the case in the case at bar. Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist his client, the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest.

ARGUMENT POINT THREE

Petitioner/Appellant's conviction should have been vacated and set aside under the authority of Boykin v. Alabama, 395 U.S. 328, 89 S.Ct. 1709, 23 L.Ed. 2d 274 (1969)., based upon the fact that the evidence adduced at the lower Court Evidentiary Hearing clearly shows Petitioner/Appellant's constitutional rights were violated under the two part standard set forth in Strickland v. Washington, 466 U.S. 668, 104, S.Ct. 2052, 80 L.Ed. 2d 674 (1984) and Ake v. Oklahoma, ____ U.S. ____,

105, S.Ct. 1087, 84 L.Ed. 2d 53 (1985). In the case at bar, Petitioner/Appellant's Plea of Guilty was entered and accepted without Petitioner/Appellant being made aware of the requisite element of the offense to which his plea was entered. See Henderson v. Morgan, 426 U.S. 637 (1976).

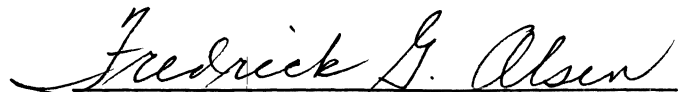
CONCLUSION

WHEREFORE: Based upon the facts of record and the evidence adduced at the lower court hearing, Petitioner/Appellant respectfully submits that he verily believes that he has meritorious cause of action and that this court should reverse the decision of the lower court. Directing that he be granted a Writ of Habeas Corpus as prayed for. Or, in the alternative, that the matter be returned to the lower court for a full and fair evidentiary hearing with a decision to be rendered upon the facts and evidence as presented.

Petitioner/Appellant respectfully prays that this Court afford his cause of action plenary consideration.

Dated this 30 day of October, 1986.

RESPECTFULLY SUBMITTED



FREDRICK GEORGE OLSEN
Petitioner/Appellant
In Propria Persona
P. O. Box 250
Draper, Utah 84020

CERTIFICATE OF SERVICE

I, Fredrick George Olsen, hereby certify that four copies of the foregoing Brief of Appellant will be delivered to the Attorney General's Office at 236 State Capitol Building, Salt Lake City, Utah 84114, this 30 day of October, 1986.

Fredrick G. Olsen

FREDRICK GEORGE OLSEN, APPELLANT

Delivered by *Anna Belle Mattson* this 30 day of October, 1986.

ADDENDUM

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

FREDRICK GEORGE OLSEN,	:	ORDER DENYING WRIT
Petitioner,	:	OF HABEAS CORPUS
vs.	:	CIVIL NO. C-86-191
GARY DELAND, DIRECTOR, UTAH STATE DEPARTMENT OF CORRECTIONS, et al.,	:	
Respondents.	:	

Petitioner's essential claim in this case is that he was denied due process of law due to ineffective counsel. I have read the transcript of the petitioner's sentencing before Judge Bunnell. It is clear to me that he understood at that time the consequences of his plea, and freely and voluntarily waived his constitutional rights and pled guilty.

The Petition for Writ of Habeas Corpus is denied.

Dated this 17 day of April, 1986.

51 Scott Daniels
SCOTT DANIELS
DISTRICT JUDGE