

1992

Alvin Johnson v. M. Eldon Barnes, and Utah State Prison : Brief of Appellee

Utah Supreme Court

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Alvin Johnson; Pro Se.

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BRIEF

IN THE SUPREME COURT OF THE

STATE OF UTAH

ALVIN JOHNSON,	:	
	:	
Petitioner/Appellant,	:	Case No. 920075
	:	
v.	:	
	:	
M. ELDON BARNES, and Utah State	:	
Prison,	:	
	:	
Respondents/Appellees.	:	
	:	

BRIEF OF APPELLEES

APPEAL FROM A DENIAL OF A PETITION FOR WRIT OF HABEAS CORPUS IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE TIMOTHY R. HANSON, JUDGE, PRESIDING.

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FILED

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CLERK SUPREME COURT
UTAH

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
JURISDICTION AND NATURE OF PROCEEDINGS	1
STATEMENT OF ISSUES PRESENTED AND STANDARD OF APPELLATE REVIEW	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES	2
STATEMENT OF THE CASE	2
STATEMENT OF THE FACTS	3
SUMMARY OF ARGUMENT	3
ARGUMENT	
POINT I APPELLANT'S CLAIMS ARE IMPROPERLY BEFORE THIS COURT, AS HE FAILED TO RAISE THEM IN THE COURT BELOW	3
POINT II APPELLANT HAS FAILED TO PROVIDE ADEQUATE LEGAL ANALYSIS OR PROPERLY CITE TO THE RECORD BELOW	5
CONCLUSION	6

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>Jolivet v. Cook</u> , 784 P.2d 1148 (Utah 1989)	9
<u>State v. Amicone</u> , 689 P.2d 1341 (Utah 1984)	10
<u>State v. Archambeau</u> , 820 P.2d 920, (Utah App. 1991)	9
<u>State v. Carter</u> , 707 P.2d 656 (Utah 1985)	6
<u>State v. Day</u> , 815 P.2d 1345 (Utah App. 1991)	10
<u>State v. Price</u> , 827 P.2d 247 (Utah App. 1992)	9, 10
<u>State v. Webb</u> , 790 p.2D 65 (Utah App. 1990)4

CONSTITUTIONAL PROVISIONS, STATUTES & RULES

Utah Code Ann. § 78-2-2 (1987)	6
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IN THE SUPREME COURT OF THE
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 Petitioner/Appellant, : Case No. 920075

v. :

M. ELDON BARNES, and Utah State :
 Prison, :
 :
 Respondents/Appellees. :
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BRIEF OF APPELLEES

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a denial of a petition for writ of habeas corpus in the Third Judicial District Court. This Court has jurisdiction to hear the appeal pursuant to Utah Code Ann. § 78-2-2(3)(i) (1987).

STATEMENT OF ISSUES PRESENTED AND STANDARD OF REVIEW

1. Whether appellant's failure to articulate any argument concerning the issues he now raises on appeal to the habeas court constitutes a waiver of these issues on appeal. The question of whether appellant has waived the issues he now attempts to raise on appeal is a question of law. It requires no review of the decision of the habeas court since the habeas court was not presented with any issue raised by appellant on appeal. State v. Carter, 707 P.2d 656 (Utah 1985).

2. Whether the Court should address appellant's claims as appellant fails to provide the Court with adequate legal analysis on the matter. An appellate court may decline to rule on an issue if the proponent fails to support his argument with adequate legal analysis or authority. State v. Amicone, 689 P.2d 1341, 1344 (Utah 1984).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Any relevant text of constitutional, statutory, or rule provisions pertinent to the resolution of the issues presented on appeal is contained in the body of this brief.

STATEMENT OF THE CASE

Appellant was convicted of murder in the first degree, attempted murder, and aggravated sexual assault in the Third Judicial District Court, State of Utah. He did not appeal his conviction.

Appellant filed a pro se petition for writ of habeas corpus on or about July 31, 1989 in the Third Judicial District Court, in Salt Lake County. (R. at 2)¹ Appellee's responded to the original petition with a motion to dismiss. (R. at 75) Appellant amended his petition on or about March 1, 1991. (R. at 105) In response to appellant's amended petition, appellees filed a second motion to dismiss. (R. at 126) Appellant filed still another amended petition on or about May 21, 1991 to which appellees filed an

¹All references to the record index will be designated by an "R" followed by the beginning page number.

answer. (R at 155 and 340) The sole claim raised in appellant's final amended petition for writ of habeas corpus was that of ineffectiveness of counsel. After an evidentiary hearing on January 10, 1992, the Honorable Timothy R. Hanson denied the petition. (R. at 391)

STATEMENT OF FACTS

A statement of facts beyond that set forth in the foregoing Statement of the Case is not necessary to the resolution of the issues presented on appeal.

SUMMARY OF ARGUMENT

Appellant failed to raise any of his claims in the court below, therefore, they are improperly before this court. Appellant classifies his allegations as jurisdictional in order to circumvent the prohibition on raising issues for the first time on appeal. However, they are not; they clearly go to the merits of petitioner's case.

Furthermore, appellant's brief lacks adequate legal analysis and proper reference to the record below. Therefore, this Court should decline to rule on appellant's claims.

ARGUMENT

I. APPELLANT'S CLAIMS ARE IMPROPERLY BEFORE THIS COURT, AS HE FAILED TO RAISE THEM IN THE COURT BELOW.

Although appellant's allegations are vague and virtually unintelligible, he appears to be claiming that: (1) the trial

court declared him guilty based solely on the contents of the preliminary hearing transcript; (2) the judge disregarded the presumption of innocence; and (3) he has been denied equal protection of the law because the result of appellant's trial differed from the outcome in the Rimmasch case. See Br. of App. at 2.

In his amended petition for habeas corpus, appellant's only claim was that he received ineffective assistance of counsel. See Amended Petition at 2. Appellant now raises three entirely different issues that were never presented to the trial court. The general rule is that an appellant who "fails to raise a question before the trial court is barred from asserting it for the first time on appeal." State v. Archambeau, 820 P.2d 920, 922 (Utah App. 1991). See also State v. Webb, 790 P.2d 65, 77 (Utah App. 1990) ("As the Utah appellate courts have reiterated many times, we generally will not consider an issue, even a constitutional one, which the appellant raises on appeal for the first time.").

In order to assert a constitutional issue for the first time on appeal, appellant must demonstrate "plain error or exceptional circumstances." Archambeau, 820 P.2d at 922. See also State v. Price, 827 P.2d 247 (Utah App. 1992); Jolivet v. Cook, 784 P.2d 1148, 1151 (Utah 1989), cert. denied, 110 S.Ct. 751 (1990). In most circumstances, "the term manifest injustice . . . is synonymous with the 'plain error' standard." Archambeau, 820 P.2d at 922. Appellant has failed to demonstrate manifest injustice or exceptional circumstances, and therefore, has not provided this

Court with a basis for extending those exceptions to this case.

Although appellant attempted to disguise his claims as jurisdictional in order to raise them for the first time on appeal, they clearly relate to the merits of his case. Jurisdictional issues hinge on whether the court lacks authority to preside over a particular case. Appellant attacks the soundness of the trial court's decisions and procedures, with no discussion of the court's power to adjudicate appellant's case. Therefore, appellant has waived consideration of these issues by failing to raise them in the district court. Accordingly, appellant's claims should be dismissed.

II. APPELLANT HAS FAILED TO PROVIDE ADEQUATE LEGAL ANALYSIS OR PROPERLY CITE TO THE RECORD BELOW.

Although appellant's brief contains legal citations, it is devoid of legal analysis. Appellant simply lists numerous cases without explaining what they stand for and how they are relevant to his claims. See Br. of App. Appellant refers to the preliminary hearing transcript in "Point I" of his brief, but otherwise fails to cite to the record below. See Br. of App. at 10-23.

Utah appellate courts have "routinely refused to consider arguments which do not include a statement of the facts properly supported by citations to the record." State v. Price, 827 P.2d 247, 249 (Utah App. 1992). Utah courts have also "declined to reach the merits of an issue on appeal due to inadequate legal analysis." Id. See also State v. Day, 815 P.2d 1345 (Utah App. 1991); State v. Amicone, 689 P.2d 1341, 1344 (Utah 1984).

Like the appellant in State v. Price, 827 P.2d 247 (Utah App. 1992), appellant in this case fails to set forth "a coherent statement of issues and the appropriate standard of review for each issue" Id. at 250. Furthermore, appellant's "statement of the case . . . fails to provide a statement of the relevant facts properly documented by citations to the record." Id. Although every brief need not strictly comply with the Utah Rules of Appellate Procedure, "we do expect defendant's brief to intelligibly present the issues on appeal." Id.

Since appellant fails to present comprehensible claims or substantiate them with legal analysis, the Court should decline to rule on the merits of appellant's allegations.

CONCLUSION

As appellant failed to raise his claims in the court below, they are improper for appellate review and should be dismissed. Furthermore, appellant's allegations are vague and incoherent, and are not supported by meaningful legal analysis or proper reference to the record below. Therefore, this Court should decline to rule on appellant's claims.

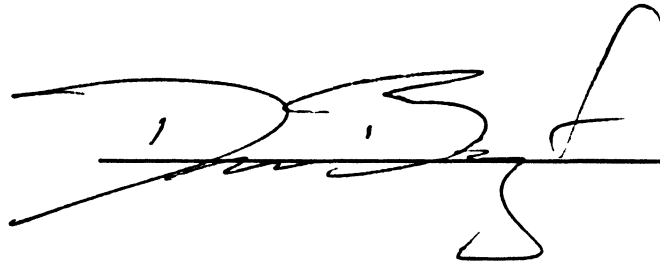
RESPECTFULLY SUBMITTED this 12th day of August, 1992.


DAVID F. BRYANT
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Brief of Appellees was mailed, postage prepaid, this 12th day of August, 1992 to:

Alvin Johnson
Appellant Pro Se
P.O. Box 250
Draper, Utah 84020

A handwritten signature in black ink, appearing to read 'Alvin Johnson', written over a horizontal line. The signature is stylized and somewhat cursive.