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Bell v. Bower

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NO. 79 SA 90

IN THE
SUPREME COURT
OR THE

STATE OF COLORADO

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO
MAY 18 1979

David W. Brezina

MELVIN BELL
Petitioner-Appellant,

v.

ERNEST D. BOWER, SHERIFF
OF WELD COUNTY,

Respondent-Appellee.

Appeal from the
District Court of
Weld County

Honorable
HUGH H. ARNOLD
Judge

REPLY TO ANSWER BRIEF

PRO SE
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RECEIVED
MAY 18 1979

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No. 79 SA 90

IN THE
SUPREME COURT
OF THE
STATE OF COLORADO

| | | |
|---------------------------|---|-------------------|
| MELVIN BELL, |) | |
| |) | Appeal from the |
| Petitioner, Appellant, |) | District Court of |
| |) | Weld County |
| v. |) | |
| |) | |
| ERNEST D. BOWER, Sherriff |) | |
| of Weld County |) | Honorable |
| |) | HUGH H. ARNOLD |
| Respondent-Appellee. |) | Judge. |

REPLY TO ANSWER BRIEF

INTRODUCTORY STATEMENT

The petitioner-Appellant, Melvin Bell, was convicted of second degree sexual assault in Weld County, Colorado on July 20, 1977(see record in People v, Bell, Colo. App., No. 77-895, ff. 173-75. 223, 1038), on the basis of contradictory and falsified evidence of two 16-year old girls that solicited a ride from the petitioner in Cheyenne, Wyoming, the petitioner was urged to drive to a remote area by one of the girls, Sexual intercourse was performed with the consent of all participating parties, nothing that occurred was a result of force nor intimidation. The petitioner, prior to the trial had entered a plea of "guilty" to federal charges under the Mann Act as a result of plea bargaining, on the same incident(People v. Bell, Colo. App., No. 77-895, ff. 235-37), and is now serving the federal and state of Colorado sentences. The petitioner request that this Honorable Court vacate his Colorado conviction on the basis that he was improperly removed from federal custody by Colorado agents.

SUMMARY OF ARGUMENT

The distict court erred in dismissing the petition for a writ of habeas corpus, because they claimed that it was untimely filed and a petition for a writ of habeas corpus is never untimely

ARGUMENT

THE DISTRICT COURT ERRED IN DISMISSING
THE PETITION FOR A WRIT OF HABEAS CORPUS
BECAUSE SUCH A WRIT IS NEVER INEFFECTIVE
BECAUSE OF UNTIMELY FILING.

The Petitioner was by admission of the respondent in federal custody in Wyoming at the time of his arrest by Colorado agents. His claim that he was kidnapped is supported by the illegal and invalid warrant(Exhibit A), which did not nor does not authorize the arresting of the petitioner in any place outside of Colorado. Respective of its incorrectness the Colorado conviction is invalid. And also because of denial of access to the court back in March of 1977, by virtue of the courts ignoring of that petition and denial of this subsequent petition for relief by that same court.

Under most statutes, to constitute the crime of kidnapping it is sufficient if there is an asporation of the injured party without any lawful warrant or authority thereof, with the intent of imprisoning or secreting the victim without authority of law.

Keith v State, 120 Fla 847, 163 So 136.

Although an officer who makes an arrest in good faith and under a warrant cannot be found guilty of kidnapping, this protection extends only to arrests within his jurisdiction.

Collins v. Frisbie (346 Mich) 189 F2d 464, revd on other grounds 342 US 519, 96 L ed 541, 72 S Ct 500, reh den 343 US 937, 96 L ed 1344, 72 S Ct 768, "No matter how depraved or vicious a person may be, the Lindberg Law is violated if he is seized and forcibly brought from one state to another by police officers acting beyond their territorial jurisdiction.

A petition for writ of habeas corpus should contain a statement of the facts that constitute the illegal restraint, *McAvoy v Jones*, 149 Neb 613, 31 NW 2d 740 as did the petitioners petition. The statement should consist of direct averments of ultimate facts, as does the petitioners petition, *Cramer v Washington*, 168, US 124, 42 L ed 407, 18 S Ct,

A general averment of detention
contrary to the constitution and
laws is a conclusion of law.

Kohl v Lehlback, 160 US 293, 40 L ed 432, 16 S Ct 304.

In other words to entitle the applicant to the writ, there must be at least a prima facie showing in the application that detention or confinement is unlawful. In other words the petitioner-Appellant is entitled to the great Writ of Habeas Corpus.

A court will not exercise jurisdiction which rests upon service of process on a defendant who has been decoyed, enticed, or induced to come within the court's reach by any false representation, deceitful contrivance, or wrongful device for which the plaintiff is responsible. *Siro v American Express Co.* 99 Conn 95, 121 A 280, 37 ALR 1250. The basis of this is not that the court did not acquire jurisdiction, but that it should abstain from exercising jurisdiction in view of the unfair manner in which it was procured. *Zenker v Zenker*, 161 Neb 200, 72 NW 2d 809.

CONCLUSION

The judgement of the district court should be overturned, ruled against and null and void. The petitioner-Appellant should be and prays that this court grants his petition for the great writ or orders the district court to do so.

PRO SE

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Melvin Bell, Petitioner, Appellant
19716-148, B-Unit
P. O. Box W
Lompoc, CA. 93438

CERTIFICATE OF SERVICE

I Melvin Bell do hereby certify that pursuant to the laws of perjury and the United States of America that on this 16 day of May 1979, I mailed a copy of the forgoing document to Lynn Ford, 6798 Assistant Attorney General of Colorado, to the following address, State Services Building 1525 Sherman Street, Denver, Colorado 80203.

PRO SE

Melvin Bell
Melvin Bell, Petitioner-Appellant
19716-148- B-Unit
P. O. Box W
Lompoc, CA. 93438

Exhibit A

FORM 595 A

WARRANT FOR ARREST OF DEFENDANT UPON INFORMATION — DISTRICT COURT

STATE OF COLORADO

County of WELD

WARRANT

In the District Court of the

County of WELD

Criminal Action No. 10272

PEOPLE OF THE STATE OF COLORADO

vs.

MELVIN DONALD BELL

SHERIFF'S OFFICE WELD CO. COLO
RECEIVED

FEB 1 - 1977

1 2 3 4 5

THE PEOPLE OF THE STATE OF COLORADO

TO: Any person authorized to execute warrants within the State of Colorado, Greetings:

You are hereby commanded to arrest MELVIN DONALD BELL

(Name)

and bring him without unnecessary delay before the District Court in and for the County of

Weld

, Colorado, to answer an information charging him with

SEXUAL ASSAULT IN THE FIRST DEGREE (F-3)

In violation of C. R. S. ~~1966~~ 1973: 18-3-402

Bail fixed by the Court in the amount of \$10,000.00. (Said Bond, Bail or Recognizance to be approved by the Clerk of this court.) (Bond returnable 02-07-77, 9:30 a.m.-Div, III)

Dated January 31, 1977

(s) MARY M. CONNELL

Clerk of the District Court

By

Deputy Clerk

STATE OF COLORADO

RETURN OF SERVICE

County of _____

I duly served the within warrant by arresting _____

(Name)

as required therein, on _____, 19____

FEES - Service - - - - \$ _____

Mileage, - - - - \$ _____ (s) _____

Return, - - - - \$ _____

Sheriff

Total, - - - - \$ _____

By _____

Deputy Sheriff