

Ex Parte William Super.

No. 3519

COURT OF CRIMINAL APPEALS OF TEXAS

175 S.W. 697

April 7, 1915, Decided

PRIOR HISTORY: Appeal from the County Court of Anderson. Tried below before the Hon. E. V. Swift.

Appeal from a habeas corpus proceeding denying relator's discharge on a void judgment before a justice of the peace on a plea of guilty to a gaming case; penalty, a fine of \$ 10.

The opinion states the case.

DISPOSITION: Relator discharged.

CASE SUMMARY:

PROCEDURAL POSTURE: Relator inmate sought review of a judgment of the County Court of Anderson County (Texas), which denied the inmate's discharge in a habeas corpus proceeding on an allegedly void judgment before a justice of the peace on a plea of guilty to a gaming case.

OVERVIEW: The inmate resorted to a writ of habeas corpus to obtain his discharge. The justice of the peace testified that the mother of the inmate appeared before him and entered a plea of guilty for the inmate. Upon such plea of guilty, the judgment convicting relation of a violation of the gaming laws was founded. The inmate was 22 years old at the time. The mother testified that she did not enter a plea for her son, the inmate, and that she was not authorized by him to do so. She claimed that he did not know that there was a case against him until he left the county. The mother also testified that the inmate was of age and married. Under these circumstances, the inmate claimed that the judgment was void and that he should be discharged. The court agreed and explained that the constitution and statutory law authorized defendant to appear in person or by counsel, either or both, and in finable misdemeanors a plea of guilty could be entered through his counsel, which was a limitation placed upon pleas of guilty. Otherwise, the law required the presence of defendant in court and that he entered the plea himself.

OUTCOME: The ordered the inmate discharged from custody.

COUNSEL: Kay & Seagler, for appellant. -- On question of plea of guilty in misdemeanor cases: *Johnson v. State*, 48 S.W. 70; *Harkins v. Murphy et al.*, 112 S.W. 136; *Ex parte Jones*, 80 S.W. 995.

C. C. McDonald, Assistant Attorney General, and Jno. R. Moore. County Attorney, for the State.

JUDGES: Davidson, Judge.

OPINION BY: DAVIDSON

OPINION

[**697] DAVIDSON, Judge. -- Relator having been arrested under a commitment issued by the justice of the peace under a judgment convicting him for violation of the gambling laws, resorted to a writ of habeas corpus to obtain his discharge.

The statement of facts, in substance, discloses that Emerson, justice of the peace of precinct No. 4, Anderson County, entered a judgment in favor of the State, on a complaint filed in his court, charging relator with gaming, assessing his punishment at a fine of \$ 10. This occurred in May, 1914. On the 6th day of March, 1915, *capias profine* was issued to Ellis County. Relator was taken in custody and brought back and placed in jail in Anderson County. The jus-

tice of the peace testified that Mollie Super, mother of relator, appeared before him and entered a plea of guilty for relator; and it is upon this plea of guilty that the judgment was founded. The mother of relator testified that he is twenty-three years of age, being twenty-two at [**698] the time he is charged with gaming; that about the 18th day of May, 1914, she went to see the justice of the peace, Emerson, about James Super, another son, against whom there was pending a charge. She says at that time she did not know they had any charge against relator, and that she never entered any plea of guilty for him, nor for her son James. She further testified relator did not authorize and has never authorized her to plead guilty for him; that he was at the time a grown man with a family, and that she is not an attorney at law. Relator himself testified that he was not arrested on a charge of gaming; that he never gave bond, and did not appear in court about that time nor since, and that he did not authorize his mother nor anyone else to enter a plea of guilty for him. That he did not know there was a case against him when he left Anderson County and went to Ellis County. That he is of age and married. Under this state of case relator claims he should be discharged from custody in that the judgment was void.

This question came before the court in *Ex parte Jones*, 46 Tex. Crim. 433, and was there decided favorably to relator's contention. The Constitution and the statute authorize the defendant to appear in person or by counsel, either or both, and in finable misdemeanors a plea of guilty may be entered through his counsel. But this seems to be a limitation placed upon pleas of guilty; otherwise the law would seem to require the presence of the defendant in court, and that he enter the plea himself. This matter was discussed in the Jones case, supra, and it is unnecessary to review it further. The relator is ordered discharged from custody.

Relator discharged.