

2007

Lawrence M. Jackson v. The State of Utah : Reply Brief

Utah Court of Appeals

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Peggy E. Stone; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General.

Lawrence M. Jackson.

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witnessed by Ricardo Rodriguez #20796
11/08 Ricardo Rodriguez

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UTAH APPELLATE COURTS

APR - 2 2008

IN THE UTAH COURT OF APPEALS

Lawrence M. Jackson
Appellant,

v.

THE STATE OF UTAH, et al.,
Appellees.

APPELLANT'S REPLY BRIEF

Civil No: 20070588 CA

Judge,

APPELLANT'S REPLY BRIEF

Appeal from A memorandum Decision Granting Summary Judgment

Sixth District Court
Sanpete County, State of Utah
Judge, Wallace A. Lee

Peggy E. Stone (6658)
Assistant Attorney General
Mark L. Shurtliff (4666)
Utah Attorney General
Attorneys for the Appellees
160 East 300 South, 6th Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856

Lawrence M. Jackson #28879
Quinn II-207-B
Utah State Prison
P.O. Box 250
Draper, Utah 84020

IN THE UTAH COURT OF APPEALS

Laurence M. Jackson
Appellant,

APPELLANT'S REPLY BRIEF

v.

Civil No: 20070588CA

THE STATE OF UTAH AND
Lisa SOPER, RN At (CLCF)
Appellees.

Judge,

APPELLANT'S REPLY BRIEF

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Peggy E. Stone (6658)
Assistant Attorney General
Mark L. Shurtleff (4666)
Utah Attorney General
Attorneys for the Appellees
160 East 300 South, 6th floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856

Laurence M. Jackson #28879
Oquirrh II-207-B
Utah State Prison
P.O. Box 250
Drapers, Utah 84020

IN THE UTAH COURT OF APPEALS

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v.	Civil No: <u>20070588CA</u>
STATE OF UTAH, et al., Appellees.	Judge,

APPELLANT'S REPLY BRIEF

Appeal from A memorandum Decision Granting Summary Judgment
Sixth District Court
Sanpete County, State of Utah
Judge, Wallace A. Lee

STATEMENT OF JURISDICTION

Jackson appeals from a memorandum Decision by the Sixth District Court granting summary judgment to the defendants in a complaint for medical malpractice And Constitutional Rights Violations. The Utah Court of Appeals has Jurisdiction in this case under Utah Judicial Code § 78-2a-3 (1)(a)(2)(j).

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Reasons Exist That Support An Exceptional Circumstance, Plain Error, And In The Interest of Justice Finding By The Court To Entertain Issues Raised For The First Time On Appeal, Deficient Brief, AND IN A Reply Brief For The First Time.

The state, when it failed to submit a memorandum in opposition to Plaintiffs' motion for summary judgment was, by the plain language of Utah Rules of Civil Procedure Rule 56(c), "in default." Under the applicable default rules, Ut. R. Civ. P. Rule 55(c) the court was bound to follow the procedures set forth in Ut. R. Civ. P. Rule 54(c) and Rule 55 entering judgment against defaulting parties, and was "not at liberty to deviate from those rules just because one party is in default and is not entitled to be heard on the merits of the case." Russell v. Martell, 681 P.2d 1193 (Utah 1984). It was therefore plain error for the trial court to allow the state to then file the "Martinez Report", and have it construed as a motion for summary judgment.

Additionally, the "Interest of Justice" concept is properly invoked in this case where the events that culminated in the filing of the "Martinez Report" even while the state was in "default", and with the state, (including Joni J. Jones, Assistant Attorney General) tampered with plaintiffs' pleadings placed in the prison mail system, first prevented plaintiffs' motion to strike the "Joint Motion And Stipulation", wherein the "timeliness" issue of the state's memorandum in opposition to Plaintiffs' motion for summary judgment, ("default"), and thereafter the court refused to rule on plaintiffs' memorandum. In Reply to Defendants' memorandum in opposition to Plaintiffs' motion to strike "Joint Motion And Stipulation", which renewed the timeliness issue, and the court's refusal to hear the motion, manifest injustice aggravated by reversible error was committed by the trial court. Thus, the plaintiff should be entitled to raise these issues for the first time on appeal and in the Reply Brief.

Standard of Review:

Respecting the trial court's refusal to enter a default judgment against the defendants though not appearing clearly in the annotations to Rule 55, it suggested the issue should be reviewed for correctness, see: Stevens v. Colvard, 837 P.2d 593.

(Utah Ct. App. 1992), modified on other grounds, 863 P.2d 534 (Utah Ct. App. 1993) "In an action for modification of the custody provisions in a divorce decree, it was appropriate for the trial court to rule on appellee's petition absent any responsive pleading, and accept the allegations in the petition as true in resolving the threshold requirement of whether appellant's circumstances had materially changed; however, it does not follow that the appellee's petition entitled her to relief. A trial court asked to render a judgment by default must first conclude that the uncontroverted allegations of an applicant's petition are, on their face, legally sufficient to establish a valid claim against the defaulting party."

Preservation of The Issue :

The issue of the default by the defendants was first raised in the plaintiff's motion and memorandum in support of motion to strike Defendants' "Joint motion and stipulation", and later raised in the plaintiff's Reply to Defendants' memorandum in opposition to Plaintiff's motion to strike "Joint motion and stipulation", pg. 6-11; filed with the motion for reconsideration of the court's decision on Martinez Report; filed on August 2007; and appellate brief, pg. 24, attached to the motion to reconsider, and appellate brief and labeled as exhibit R. The memorandum in Reply to Defendants' memorandum in opposition to Plaintiff's motion to strike Defendants' "Joint motion and stipulation", was filed on : 2-26-07.

II. The Trial Court's Grant of Summary Judgment To The State Should Not Be Affirmed Because : 1). The State failed to submit A memorandum in opposition to Plaintiff's motion for summary judgment and was therefore in default; 2). The State committed Criminal Acts and otherwise Acts Repugnant To The Administration of Justice in the Procurement of The Summary Judgment; and 3). The Plaintiff Submitted Evidence To Refute The State's Claims in The State's Answer To The Amended Complaint And The Martinez Report.

The State's arguments that the trial court's findings that "there are no genuine issues of material fact", and that "those facts entitle the party to judgment as a matter of law," in the context of a default judgment proceeding would have, if established, entitled the state to a trial on the merits of the case, see : McKee v. Mountain View Mem. Estates, Inc., 17 Utah 2d 323, 411 P.2d 128 (1966), in the absence of a showing by

the plaintiff that the "applicant's petition are, on their face, legally sufficient to establish a valid claim against the defaulting party." see: Stevens v. Collard, 837 P.2d 593 (Utah Ct. App. 1992), modified on other grounds, 863 P.2d 534 (Utah Ct. App. 1993), and not a motion for summary judgment by way of Martinez Report. Since the Plaintiff had established the requisite showing in order to obtain the default judgment, the state's only recourse would be proceedings to set aside the default judgment in accordance with Utah Rules of Civil Procedure Rule 60(b).

Standard of Review:

On review of a summary or a motion on the pleadings treated as a motion for a summary judgment under Rule 12(c), the party against whom the judgment has been granted is entitled to have all the facts presented, and all inferences fairly arising therefrom, considered in a light most favorable to him." Winegar v. Freerer Corp., 813 P.2d 104 (Utah 1991).

Additionally, "Inasmuch as a challenge to summary judgment presents for review conclusions of law only, because, by definition, summary judgments do not resolve factual issues, the Appellate Court reviews those conclusions for correctness without according deference to the trial court's legal conclusions." Mountain States Tel. & Tel. Co. v. Garfield County, 811 P.2d 184 (Utah 1991).

Preservation of The Issues:

The issue of the court's grant of summary judgment was raised for the first time in a motion to strike Defendant's "Joint Motion And Stipulation" which was forwarded to the Sixth District Court, first class mail pre-paid through the prison mail system. That document was intercepted and destroyed. A copy of which was attached as Exhibit 6 to the Appellate Brief. see: pg. 24, para 2. The issue was raised again in appellants' memorandum in reply to Defendant's memorandum in opposition to Plaintiff's motion to strike Defendant's "Joint Motion And Stipulation", filed on 2-27-07, and attached to the Appellate Brief and Motion For Reconsideration and labeled as Exhibit R. (R 962-1027)

III. The Trial Court's Interlocutory Rulings And Discretionary Decisions Respecting The Conduct of Litigation Should Not Be Affirmed Because The State Is Not Entitled To Summary Judgment.

A. GRAMA REVIEW :

The State's argument that, "a plaintiff who fails to raise an issue before the trial court is generally barred from asserting it for the first time on appeal," and that, "this applies to constitutional questions," leaves out the fact that when the court of appeals is not obliged to, "strike or disregard marginal or inadequate brief", and the court of appeals has the discretion to hear issues raised for the first time on appeal, issues, including those pointed to in the Appellate's Brief may be heard in the court of appeals.

Standard of Review :

This question does not involve the review of the trial court's order and therefore no standard of review is identified.

Preservation of The Issue :

The denial of the instant GRAMA Records Request and subsequent denial of the petition for Judicial Review came in the trial court's memorandum decision of 7-3-07, therefore it is proper under the circumstances to bring up the denial of the GRAMA Request for Judicial Review within the same memorandum decision that is the subject of this appeal. see: Cth Dist, Ct, memo, Decis, #040600383; entered: 7-3-07; pg. 4-6 (R1548-1569)

B. Martinez Report :

The State argues that, "the trial courts have broad discretion to determine how a case will proceed." Further that; "the state requested the trial court's permission to file a martinez report, a document that creates an administrative record to help the court determine whether the inmates' claims have any factual or legal basis." By the state's own admission in the Appellee's Brief, pg. 10, para. 3, and pg. 33, para. 2, the state did not file a memorandum in opposition to plaintiff's motion for summary judgment. This act, (or omission), is a "capitulation," of the averments in plaintiff's motion for partial summary judgment therefore the martinez report was an improper means of overcoming a default in the summary judgment motion filed by the appellant.

Standard of Review :

The trial court has considerable discretion in granting or denying a motion to set aside a default judgment, see: Beard of Educ. v. Cox, 14 Utah 2d 385, 384 P.2d 806 (1963), the trial court does not appear to have that discretion in the application of Rule 54(c)(2) and 55 procedures to be followed by the courts. A review for correctness therefore should be applied in this issue.

Preservation of The Issue :

The appellant raised the issue of the Martinez Report for the first time in a memorandum in opposition to Defendants' motion that the state be allowed to file a Martinez Report and for a stay of proceedings until Martinez Report is filed, entered on: 4-27-07. The issue was again raised in the motion for reconsideration of Court's decision on Martinez Report August, 2007. Again, the appellant raised the issue in the appellate brief, pg. 54-58. (R 1608-1903), motion opposing Martinez Report, (R 1138-1172).

C. Motion To Compel :

The state argues that, "the trial courts have broad discretion in handling discovery matters. Jackson filed a motion to compel the state to provide him with certain documents, but neither the motion nor its supporting memorandum included a description of the documents he wanted. Did the trial court abuse its discretion when it denied Jackson's motion to compel?"

Pro-se litigants' pleadings are to be construed liberally, with respect to the motion to compel which appellees refer is the plaintiffs' Second Request for Discovery. Whatever insufficiency in the petition was not serious enough to warrant dismissal without the opportunity to fix the deficiency. Also the record shows that a petition for Judicial Review of GRAMA Request Appeal, filed: 4-12-07, requesting records from the prison mailroom of all incoming and outgoing legal mail, intended to determine where plaintiffs' pleadings forwarded to the court's whereabouts, and to document other intentional delays in delivery of outgoing and incoming legal mail in order to substantiate my complaint of legal mail confiscation and destruction in order to deny appellant a fair trial. The court dismissed this petition without any sort of ruling or decision. Also, the plaintiffs' first request for Discovery was apparently sufficiently descriptive, but the court also dismissed without any ruling or order, or memorandum decision. Did the trial court abuse its discretion when it dismissed appellants

Petitions for Judicial Review of GRAMA Records Request Appeal?

Standard of Review:

To the extent the Utah Rules of Civil Procedure Rule 34 apply, the standard of review would be for abuse of discretion.

Preservation of the Issue:

The appellant raised the denial in the appellate brief.

D. Motion for Reconsideration:

The State argues that the Court of Appeals "has already denied Jackson's appeal from the denial of his motion for Reconsideration." The trial court did not rule on the merits of the motion, but the procedural questions. This court is urged, in the interest of justice to reconsider the issues raised in the motion for the just and proper disposition of this appeal.

Constitutional Provisions, Statutes, Rules, and Regulations whose Interpretation is Determinative.

1). United States Constitution Amendment VIII (Cruel and Unusual Punishment)
"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

2). Constitution of Utah Article I, Section 9 [Excessive bail and fines - Cruel punishments]
"Excessive bail shall not be required; excessive fines shall not be imposed; nor shall cruel and unusual punishments be inflicted. Persons arrested or imprisoned shall not be treated with unnecessary rigor!"

3). Utah Judicial Code §78-35-5 Penalties for Wrongful Act of Defendants.
"If the defendant attempts to evade the service of the writ of habeas corpus, or if the defendant or any officer willfully fails to comply with the legal duties imposed upon him, or if he disobeys the order of discharge, he is guilty of a class B misdemeanor, and shall also forfeit to the person aggrieved not more than \$5,000. Any person knowingly aiding or abetting invalidation of this section is subject to the same punishment and forfeiture." 1991

4) Utah Judicial Code § 78-32-1 (5)(12). Contempt. "The following acts or omissions in respect to a court or proceedings therein are contempts of the authority of the court:

(5). Disobedience of any lawful judgment, order, or process of the court;

(12). Disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer." 1953.

STATEMENT OF THE CASE

The appellant is an insulin dependant diabetic with a history of volatile and uncontrolled bloodsugar levels. In September 11, 2001, appellant obtained a Utah Rules of Civil Procedure Rule 65A Injunction subsequent to filing a writ for Extraordinary Relief pursuant to Ut. R. Civ. P. Rule 65B. The court order required the respondents: "[t]o administer regular and timely medical treatment." further, "by means of providing him with regular doses of insulin and administer to petitioner timely and regular foodstuff in accordance with all orders of the treating physician." This court order was promptly violated on November 15, 2001, and was consistently violated thereafter both in the letter and the spirit, and with impunity.

On or about November 7, 2003 a Registered Nurse, Lisa Soper refused the appellant a prescribed dose of insulin in violation of the court order, and ordered the appellant to take a lesser amount of insulin. In the interest of avoiding being subjected to the effects of hypoglycemia due to a change in treatment regime, appellant declined to take the lesser amount and requested to see the treating physician, or Physician's Assistant. The request was both verbally and written, but appellant was denied. Because appellant was not taking insulin, appellant also avoided eating in order to avoid a condition known as hyperglycemia, (excessively high bloodsugar levels). Approximately (5) five days later because I had not had any insulin and food, I suddenly lost consciousness, fell in my cell, striking the left side of my face on a heavy metal stool embedded in

The cement floor and sustained grievous injury to my face, head, and neck including the left cheek bone was crushed; left eye was forced back into my head; the left orbital socket was fractured and flesh from around the left eye was caught in the fracture, After the injury, the Prison delayed surgical intervention which resulted in permanent damage including double-vision, and glaucoma. Appellant was later diagnosed with glaucoma in the injured eye and suffers frequent and severe headaches, and also later found serious cervical spinal injuries including herniated, (bulging disc), and degenerative disc disease, and ventral canal stenosis.

COURSE OF THE PROCEEDINGS

1). On 11-17-04 appellant filed a complaint for medical malpractice And constitutional rights violations. (R 1-22). The court entered an Order, "Notice to be served on 1-20-05. (R 31-32).

2). On 1-6-06, the trial court entered a memorandum Decision on the appellee's Rule 12(b)(6) motion finding that: 1). "The plaintiff named "Lisa" in the Notice and the court finds that the assertions in the claim are sufficient to allege malice against her; 2). That Eighth Amendment claims against "Lisa", the court finds that the allegations of the plaintiff's complaint are sufficient to state a cause of action against Lisa under the Eighth Amendment; 3). The Eighth Amendment claims against the state, "even if the plaintiff's allegations are true, they are simply insufficient to state a claim against the State of Utah; 4). The state constitutional claims. "The court finds that these basic allegations are sufficient to minimally state a cause of action for a "flagrant" violation of the plaintiff's constitutional rights under Article 2, section 9 of the Utah Constitution; and 5). The motion to dismiss the state constitutional claim is granted as to Warden, Jerry Jorgensen because he is not a party to this suit. However, the motion is denied as to the State of Utah and medical Technician, "Lisa". (R 169-184). The court ordered the appellee to answer the Amended Complaint.

3). The state answered the amended complaint on 4-28-06. (R 309-315). On 5-12-06 the state then filed a motion for Judgment on The Pleadings arguing that the state enjoys "sovereign immunity". (R 320-344) including the memorandum in support of.

4). On 6-8-06 appellant filed a motion for summary judgment arguing in chief
(pg. 8)

that the state admitted appellees denied appellant a "prescribed dose of insulin in violation of the court order and in violation of the state and Federal Constitution (R 397-398), and the memorandum In support of (R 399-405).

5). The appellees filed a Request to Submit for Decision and Request to Stay Briefing on Plaintiff's motion for Summary Judgment on 7-13-06, (R 468-473). The court, on 8-4-06 entered an Order staying briefing on the appellants' motion for Summary judgment. (R 512-513). The Order required of the appellees: "[I]f the state's motion for judgment on the pleadings is denied, then the state, must file its memorandum opposing Plaintiff's summary judgment within Thirty days of the court's ruling." (R 512-513).

6). The appellant filed a motion for reconsideration of the court's Ruling on the Eighth Amendment claim against the state which was dismissed in the court's memorandum Decision of 1-6-06 (R 1-22). Motion for Reconsideration, was filed: 7-19-06 (R 474-475).

7). On 12-13-06 the court entered a memorandum decision granting the motions that were outstanding motions including the motion to Reconsider based upon Title II of (ADA) of 1990. (R 733-780). Because the state missed its date to file a memorandum In Opposition to plaintiff's motion for Summary judgment, and when the "Joint motion And stipulation", (R 700-764) filed on 11-17-06, was objected and a motion to strike the "Joint motion And stipulation" prepared and forwarded to the court the state sought, ex parte, a telephone conference which was convened on 12-20-06. (R 786). The state filed a memorandum In Opposition to appellants' motion to strike the "Joint motion And stipulation" even though the court did not receive its original motion (R 818-889). The plaintiff filed a memorandum In Reply to Defendants' memorandum In Opposition to Plaintiff's motion to strike "Joint motion And stipulation", on 2-26-07, (R 962-1027).

8). The appellees filed a motion To Be Allowed To File H Martinez Report on 3-15-07, (R 1084-1086), and the court granted the motion on 3-28-07. (R 1098-1099). Upon Notice, The appellant filed a memorandum In Opposition To The states' motion To Be Allowed To File Martinez Report on 4-27-07 (R 1138-1172). The court then on 7-3-07 the court entered a memorandum decision granting Summary Judgment to appellees. (R 1548-1569), and later entered an Order for summary judgment on

8-16-07. (R 1576-1602),

9). The appellant then filed a motion for Reconsideration of Court's Decision in Martinez Report on 10-9-07 (R 1924-1926). The State filed a memorandum in Opposition on 10-18-07 (R 1965-1967), and the court ruled in favor of appellees on 10-24-07 (R 1971-1972) and appellant appealed on 7-11-07 (R 1570-1571).

STATEMENT OF THE FACTS

1). The appellant filed a motion for summary judgment on 6-8-06. (R 44-45) based on the appellee's answer to the Amended Complaint on 4-28-06. See (R 309-315). The motion for summary judgment argued in chief that the state admitted that I was not given the amount of insulin I asked for, as it was, and is the "prescribed amount of insulin," and then admitted I went at least (2) two days without eating or taking insulin. This was a violation of the court order and also violates State and Federal constitution.

2). The state was required to answer the appellant's motion for summary judgment within (30) thirty days of the date of the order staying the briefing on Plaintiff's Motion for Summary Judgment. The time in which to submit the memorandum in Opposition began to run on 9-29-06. The state failed to submit the memorandum in Opposition, in violation of Ut. R. Civ. P. Rule 56 (c).

3). The state approached the appellant with a proposed "Joint Motion And Stipulation," ostensibly to settle outstanding motions between the parties. The "Joint Motion And Stipulation" showed to be for the purpose of causing the appellant to acquiesce in the appellant's motion for summary judgment and for the state to avoid a default judgment.

4). The appellant protested to both the court and the state's attorney the "Joint Motion And Stipulation," and the state sought and obtained a telephone conference with the court and the parties, which was convened on 12-20-06. (R 786). The state asked the court to be given "some sort of control over the case so that there aren't constant motions, ect. we're responding to." After that statement, appellant's motion to strike the "Joint Motion And Stipulation" disappeared from the prison

mail system, and other documents were delayed up to 22 or more days.

5). On 3-13-07 the State filed a motion requesting that the state be allowed to file a Martinez Report, (R 1084-1086), and the trial court granted the motion on 3-28-06. (R 1098-1099), the appellant filed a memorandum In Opposition To Defendant's motion That The State Be Allowed To File A Martinez Report on 4-5-07, and that motion was entered on the record on 4-27-07. While the appellant was awaiting a ruling on the memorandum In Opposition to the Martinez Report, the court entered a memorandum decision granting Summary judgment to the state.

6). On 7-11-07 appellant filed a timely Notice of appeal. (R 1548-1569).

7). The trial Court later entered a signed order summarily dismissing the case on 8-16-07 (R 1576-1602).

8). On 10-9-07 appellant filed a motion for Reconsideration of the court's Decision on Martinez Report, and the state filed a memorandum In Opposition on 10-18-07. (R 1965-1967). The trial court on 10-24-07 entered a memorandum Decision dismissing the motion for Reconsideration, on procedural grounds. The court determined the memorandum Decision of 7-3-07 was a final decision therefore the U.S. R. Civ. P. Rule 54 (b) motion must be dismissed.

SUMMARY OF THE ARGUMENTS

The Court of Appeals should entertain the issues raised in the appellate brief and in this Reply Brief because there are exceptional circumstances, plain error, and issues that must be examined by this court in the interest of justice.

The state, did not bother to submit a memorandum In Opposition to the appellant's motion for summary judgment, and later committed acts prejudicial to the administration of justice to deny appellant a fair trial.

The state also obtained their own Summary judgment by fraud and criminal acts of confiscating appellant's pleadings from the U.S. mail, destroyed and delayed those pleadings until they obtained the rulings they wanted.

The state was not entitled to be allowed to file a martinez Report nor have that martinez Report treated as a motion for summary judgment while they were in default in the plaintiff's motion for summary judgment. The state must be held accountable for violations of the rules of civil procedure, and criminal laws and statutes as I am incarcerated for crimes.

ARGUMENTS

I. Reasons Exist That Support An Exceptional Circumstances, Plain Error, And In The Interest of Justice Finding By The Court To Entertain Issues Raised For The First Time on Appeal And In A Reply Brief.

The appellant is a pro-se litigant and the appellants pleadings are to be liberally construed. see: McCormick v. City of Chicago, 230 F.3d 319 (7th Cir. 2000); Beag v. McDougall, 454 U.S. 364, 70 L.Ed.2d 551, 102 S.Ct. 700 (1982); Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594 (1972) ("Pro-se litigant's pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with pleading requirements"). The appellant has access to a volume of Utah Court Rules Annotated, 1988 Edition. Unfortunately, the Rules of The Utah Court of Appeals Rule 24 Briefs, has no annotations, and it is not apparent from this edition that, it is improper to use addendum to incorporate arguments by reference that should be in the body of the brief." State v. Jirani, 846 P.2d 1249 (Utah Ct. App. 1993). This annotation I found during one of my infrequent and prison policy discouraged access to another inmate's 2002 Edition of Utah Court Rules Annotated.

This assertion, of lack of legal research material that inhibits a pro-se prisoner litigant's ability to conform to all the rules and appellate procedure is bolstered by the Supreme Court's observations in a case entitled: Adams v. State, 123 P.2d 400, 2005 UT 62 at **23, (quoting) Julian v. State 966 P.2d 249, 253-54 (Utah 1998). The petitioner brings a Ut. R. Civ. P. Rule 65C Petition asserting a defense to the charges against him utilizing the "involuntary intoxication" theory in his case well after the

Statute of limitations had run for timely assertion of this claim. The petitioner claims the "in the interest of justice exception" to the statutory limitation asserted by the state. The Utah Supreme Court, in its analysis of the "reason for untimely filing argument", writes, in relevant part:

"As Justice Zimmerman explained in his Julian concurrence, it is nearly impossible for even the most conscientious prisoner to discover possibly valid claims of error and pursue them completely. In Utah, most minimal legal research materials are lacking at the prison, and the legal services provided to assist the prisoners are grossly inadequate. Under such circumstances, it is a cruel joke to presume as the legislature has that virtually all prisoners are abusing the system when they file . . . petitions more than a year after their conviction."

This court should take into consideration Judge Zimmerman's observations, and the direction the Supreme Court took on this issue, when this court considers exercising its discretion in hearing the issues herein, even if the issues were improperly briefed, or were brought up for the first time on appeal or in a Reply Brief. see: Utah Rules of Appellate Procedure Rule 24, and see: State v. Irwin, 924 P.2d 5 (Utah Ct. App. 1996), cert. den. 931 P.2d 146 (Utah 1997) ("An Appellate court may address an issue raised for the first time on appeal if appellant establishes that the trial court committed plain error, if there are exceptional circumstances, or in some situations, if a claim of ineffective assistance of counsel is raised on appeal").

The exceptional circumstance concept serves to assure that manifest injustice does not result from the failure to consider an issue on appeal").

On the issue of if the trial court committed, "plain error", the appellant takes a cue from the state's appellee's Brief, Argument I; pg. 18, para. 2 that, "Rule 56(e) does not entitle a moving party to a default judgment if the motion is not opposed!" When the appellees use the term, "default", some interesting concepts are advanced on the subject in Utah Rules of Civil Procedure Rule 55(a)(1), which provides:

(a)(1). "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided in these rules

and that fact is made to appear the clerk shall enter his default."

see also: (e). Judgment against the state or officer or Agency thereof. "No judgment by default shall be entered against the state of Utah or against an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court." (Amended effective Sept. 4, 1985).

To establish that appellant is entitled to a judgment by default the appellant sought the procedures for establishing the entitlement; appellant found:

"In an action for modification of the custody provision in a divorce decree, it was appropriate for the trial court to rule on appellee's petition absent any responsive pleading, and accept the allegations in the petition as true in resolving the threshold requirements of whether appellant's circumstances had materially changed; however, it does not follow that appellee's petition entitled her to relief. A trial court asked to render a judgment by default must first conclude that the uncontroverted allegations of an applicant's petition are, on their face, legally sufficient to establish a valid claim against the defaulting party."

Stevens v. Collard, 837 P.2d 543 (Utah Ct. App. 1992), modified on other grounds, 863 P.2d 534 (Utah Ct. App. 1993).

The appellant's basic allegations in the motion for summary judgment, that the appellees did not respond to, and this they openly admit, see: Appellees' Brief; pg. 15; F.N. #4; and pg. 33, para. 2, is that, "the state and medical personnel knowingly violated this provision, (the court order), by not giving the appellant a "prescribed dose of insulin." Plaintiff's memorandum in support of motion for summary judgment, pg. 4-5. (R 399-405).

The above referenced court order was obtained through the Third District Court with the underlying legal action or complaint being a Utah Rules of Civil Procedure Rule 65B Petition for Extraordinary Relief. see: Exhibit 2; 3rd Dist. Ct. Dock. Evt. Statmt; pg. 1, see also: Exhibit 3; 3rd Dist. Ct. Ord.; case # 010904240; entered: 9-12-01. Enforcement of the court order is thus pursued under Utah Judicial Code § 78-35-5. That provision states the following:

Penalties For Wrongful Acts of Defendants. "If the defendant attempts to evade the service of the writ of habeas corpus, or if the defendant or any officer willfully
(pg. 14)

fails to comply with the legal duties imposed upon him, or if he disobeys the order of discharge, he is guilty of a class B misdemeanor, and shall also be fined to the person aggrieved not more than \$5,000. Any person knowingly aiding in or abetting invalidation of this section is subject to the same punishment and forfeiture." 1991.

And, at the very least, the court order is enforceable under Utah Judicial Code §78-32-1 (5) & (12), which provides:

"The following acts or omissions in respect to a court order or proceedings therein are contempts of the authority of the court:

(5). Disobedience of any lawful judgment, order or process of the court.

and; (12). Disobedience by an inferior tribunal, magistrate or officer of the lawful judgment, order or process of a superior court, or proceeding in an action or special proceeding contrary to law, after such action or special proceeding is removed from the jurisdiction of such inferior tribunal, magistrate or officer. Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of such officer."

Thus, the appellant demonstrates entitlement to relief because the plaintiff can recover on a violation of the court order at the very least. The state did not show neither in their answer to the amended complaint, nor even in the Martinez Report, any iota of evidence that they did not violate the court order by refusing appellant a "prescribed" amount of insulin as required by the court order; only conjecture, and unsupported assertions by persons other than the treating physician. Therefore it was plain error for the court to not follow the above cited rules. see: Russell v. Martell, 681 P.2d 1193 (Utah 1984) ("Rule 54 (c)(2) and this rule prescribe the procedure to be followed by trial courts in entering judgments against defaulting parties, and courts are not at liberty to deviate from those rules just because one party is in default and is not entitled to be heard on the merits of the case"). (The state never told appellant to take the proffered insulin dose until I could see a healthcare provider. The state was resolute as to what the prescription dose was).

The trial court also erred in granting the motion for Martinez Report. Under the Ut. R. Civ. P. Rule 56 (e), the state capitulated in the question of whether or not there was a genuine issue of material fact. see: Williams v. Barber, 765 P.2d 887 (Utah 1988)

("Defendant's failure to oppose plaintiff's motion for partial summary judgment in an action for legal malpractice was a capitulation only on the question of whether there was a genuine issue of material fact with respect to his breach of duty, and granting judgment did not relieve plaintiff of the obligation to prove any damages he sustained that were proximately caused by defendant's negligence").

The rule, Ut. R. Civ. P. Rule 55 is clear that once the applicant establishes that the petition is legally sufficient to establish a valid claim against the appellees, the court must enter judgment by default then it is the state's duty to proffer a defense that might justify setting aside the judgment, that would merit a trial on that issue. Downey State Bank v. Major Blakemey Corp., 545 P.2d 507 (Utah 1976).

In fact, even if the court of appeals don't find that the motion to strike the "Joint Motion and Stipulation" cannot be construed as an application for a judgment by default because application was not made to the clerk of the court, see: Ut. R. Civ. P. Rule 55(a)(1), the state had still capitulated under the provisions of Ut. R. Civ. P. Rule 56(c). see: Williams v. Barber, 765 P.2d 887 (Utah 1988).

The exceptional circumstance appellant claims in this case is exemplified in the state's request of the court in the 12-20-06 telephone conference wherein the state's attorney, Joni J. Jones, Assistant Attorney General said to the court, in relevant part:

"so my purpose here is certainly not to prevent Mr. Jackson from pursuing his claims, but I would like some control over this case so that there aren't constant motions, ect. that we're responding to". (R 786) pg. 2.

Ms. Jones' Frustration is understandable when the record up to 12-20-06 is reviewed. It is obvious that the motions that were particularly significant was ruled upon in the court's memorandum decision of 12-13-06 (R 773-780), the motion for reconsideration of the court's ruling and for leave of the court to Amend the complaint.

The court made no response to the state's request to be given control over the case in order to stop the appellant from filing motions, nor did the state waste any time acting upon their desire to stop me from filing motions. see: minutes to Telephone conference (R 786), pg. 3, para. 3. the appellant told the court that "motions were being prepared and getting copied and getting them ready to send to the court within (pg. 16)

ing what my difficulty was with what she proposed in the "Joint Motion And Stipulation". This motion was put into the prison mailbox on January 2, 2007, about 2 weeks after the telephone conference. That motion was the motion to "strike the Joint Motion And Stipulation", and it has since disappeared and never found.

The plaintiff sets forth in some detail how the state took the motion to strike the "Joint Motion And Stipulation" from the U.S. mail, (prison mail system), and the series of strategic delays in delivery of the mail that operated to allow the state to seek and obtain the Martinez Report, and through the delays submit its Martinez Report unopposed; essentially switching positions with the appellant, going from being in default to obtaining a summary judgment. See: Plaintiff's Memorandum In Support of Motion for Reconsideration of the Court's Decision On Martinez Report; pg. 48, para. 2 - pg. 50; para. 1. The motion for reconsideration the Court's Decision on Martinez Report should be considered for two reasons: 1), because the issues raised, particularly the evidence refuting the state's argument that (a). The appellees did not refuse the appellant a "prescribed" dose of insulin; (b). That the appellant was required to take any amount they offered; and (c). That defendant, Lisa Soper, RN believed the amount of insulin she ordered me to take was the correct amount and, "even if it was 'nt the "correct" amount, she didn't refuse it to him," and 2), because of how the appellees delayed incoming and outgoing mail affected my ability to be heard on the pleadings submitted after 12-20-06, and because of when the state provided the medical records the only opportunity to present them was in the Motion for Reconsideration. An additional reason that they should be heard by this court is because the trial court took extraordinary measures to allow the state to bring their arguments out in the Martinez Report even as they were in default, it is only just, and "in the interest of justice that appellants' evidence rebutting the states' arguments be entertained. See: State v. Gambelin, 2000 Ut. 44, 1 P.3d 1108 ("Defendant's brief did not adequately set forth an argument as required by subsection (a)(9) of this rule. However, because the court was not obligated to strike or disregard a marginal or inadequate brief, in the interest of justice, the court chose to address defendant's arguments"). The same rational applies to reply briefs. see: Romrell v. Zions Bank Nat'l Bank, 611 P.2d 342 (Utah 1980).

The appellant respectfully request that in the interest of justice, and because there are "exceptional circumstances the court, in its discretion consider those issues deemed not to be briefed properly, brought for the first time on appeal, and in a reply brief.

II. The Trial Court's Grant of Summary Judgment To the State Should Not Be Affirmed Because: 1). The State Failed To Submit A Memorandum In Opposition To Plaintiff's Motion For Summary Judgment And Therefore In Default; 2). The State Committed Criminal Acts And Otherwise Acts Repugnant To The Administration Of Justice In The Procurement Of The Summary Judgment; and 3). The Plaintiff Submitted Evidence To Refute The State's Claims In The State's Answer To The Amended Complaint And Martinez Report.

The appellees argue in their brief that the court of appeals should affirm the trial court's summary judgment in favor of the appellees. The appellant has shown, however, that the trial court committed plain error by allowing the appellees to file the Martinez report or to have it treated as a motion for summary judgment. Once the appellees failed to file an opposing memorandum to appellant's summary judgment motion, they capitulated on the issues raised in the motion for partial summary judgment, see: Williams v. Barber, 765 P.2d 887 (Utah 1988). In fact, even if the appellant did not meet the "burden of production," or of proving every element of the claims as charged, the state, being in default, or otherwise not responding or defending, the best the state could hope for is a ruling upon an "excusable neglect". see: Heathman v. Fabian & Clendenin, 14 Utah 2d 60, 377 P.2d 189 (1962). And if the state had responded, and absent a cross motion for summary judgment, the best the state could hope for is to defeat the summary judgment motion with facts controverting appellant's assertions in the motion for summary judgment. see: Jackson v. Dabney, 645 P.2d 613 (Utah 1982).

But, even if the court of appeals finds that the trial court could entertain a Martinez Report in the circumstances above, there are several areas in the appellees' arguments that do not support their argument that the court of appeals should affirm the trial court's grant of summary judgment.

1). The appellees' argument in appellees' Brief; pg. 18, para. 2 that "Rule 56(c) does not entitle a moving party to a default judgment if the motion is not opposed." Further that, unless a moving party has not met its initial burden of production under Rule 56(c), "summary judgment must denied even if no opposing evidentiary matter is presented." This argument first fails because I averred that the state violated the court order by refusing appellant a "prescription dose of insulin", and the state

offered offered no evidence to disprove this overment, the judge should have made a finding that there is no genuine issue of material fact in favor of the appellant. See: Dupler v. Yates, 10 Utah 2d 251, 351 P.2d 624 (1960) ("Where defendants in an action in deceit based upon misrepresentation produced evidence that pierced the allegations of the complaint and the plaintiff did not controvert, explain, or destroy that evidence by counter affidavit or otherwise, the court would be justified in concluding that no genuine issue of fact was present and that summary judgment should be rendered for the moving party"). Even the court found it impossible to tell what the prescribed amount of insulin was. memo. Decis.; entered: 7-3-67 (R1548-1569) pg. 11, para. 4. If the trial court had not been biased toward the defendants, the plaintiff could have provided the evidence that was subsequently presented in the motion for reconsideration. The appellant can show court order violation and an entitlement to relief on that issue alone. Appellee's acts also violate: Henry v. Deland, U.S. Dist. Ct. case # 89-C-1124 J.

2). The appellees argue that, "the court correctly determined that Jackson's motion for summary judgment and his supporting affidavits did not meet his burden to show that summary judgment was appropriate. The needed evidence was in the exclusive control of the appellees, and they are at fault for the evidence that was presented in the motion for reconsideration not being presented in the motion for summary judgment. This argument has already been made in the Appellate Brief, pg. 27-28. Also, the argument as shown above is inaccurate. The plaintiff averred that the court order was violated and in doing so the U.S. Constitution and the constitution of Utah was violated and the state did not respond. The state is not immune to the Ut. R. Civ. P. Rule 56(c) provisions. Also, the state continued that, "Instead, the material facts and the governing law established that the state was entitled to "judgment". The state does not specify which "governing law," it is, however, the state may not disobey a legally binding court order, it is unlawful. See: UTE § 78-35-5, and UTE § 78-32-1 (5)(12). Since the court order mandated only what is constitutionally due, the state and federal constitutions were thus violated. Then, the appellees argue, blatantly, that "contrary to Jackson's assertions, the court did not grant summary judgment to the state based on Jackson's failure to respond. The court considered the two motions together." This argument should be flatly put down by the court of appeals first because if the trial court had not turned a blind eye to the criminal acts of the Office of the Utah Attorney General in confiscating legal mail from the U.S. Mail in order to prevent the appellant to receive

a fair trial, particularly the motion to strike the 'Joint Motion And Stipulations,' and delayed other incoming and outgoing legal mail in the prison mail system, the issues raised in the motion for reconsideration of the court's Decision on Martinez report would have come before the court and based on the fact that the appellees had failed to oppose the appellants' motion for summary judgment, there would not have been two motions to consider, and even if the appellants' motion for summary judgment were to be denied the appellees would not be entitled to file for summary judgment while in default.

3). The appellees next argue: "Next, based on its determination of the essential facts, the trial court analyzed governing law. The court concluded that the state was entitled to judgment because the state's actions constituted neither deliberate indifference nor unnecessary rigor." As stated above, the appellees impermissibly controlled appellants' filing of motions and other papers, such a determination if made would be inaccurate. The issues raised and the evidence presented in support of in the motion to reconsider should have been entertained by the trial court if for no other reason but that it had taken extraordinary measures to allow the state to provide evidence then had every opportunity to present before then failed to oppose the appellants' summary judgment motion. That evidence would refute the arguments by the state in its Martinez report.

4). The appellees argue a chilling point that: "Even if Nurse Soper mistakenly read Jackson's prescribed dosage, it was at best, negligence, which does not rise to the level of a constitutional violation." First, this argument is without merit because defendant, Lisa Soper, as well as other prison medical department personnel had longer time frames between the deprivation and the injury, and hence, more time for reflection on what course of action to take. see: Lancaster v. Monroe County, Alabama, 116 F.3d [1419] at 1420-23 [(11th Cir. 1997)] at 1259-60. see also: Hill, 40 F.3d at 1187 n. 21. Also, the above argument is flawed because there was a court order. That court order did not allow the appellees to just give me what they wanted to. The order says the insulin is to be administered in accordance with all the [orders] of the treating physicians. The treating physician ordered 15 units regular insulin and 30 units NPH insulin A.M. see: Exhibit 3 herein; 3rd Dist. Ct. Ord. case #010904240, entered: 9-12-01. The Court order was to be "strictly complied with". Exhibit 2 herein; Jackson v. Friel, 3rd Dist. Ct. #010904240, Dock. Evt. statmt; pg. 4; entry date: 1-23-02

min. Hearing. The court order mandated Prison officials to provide the appellant with what is already constitutionally required: see: Estelle v. Gamble, 429 U.S. at 103. The appellees go even further in arguing that, "And if she intentionally gave him an inaccurate dosage, his refusal to take any insulin at all is an intervening causal event!" This argument only solidify the appearance of an Estelle violation. The Nurse would be then "interfering with a treatment once prescribed by a health care provider" see Estelle, Supra at 104-05, in relevant part: "by prison guards intentionally denying or delaying access to medical care, or intentionally interfering with treatment once [prescribed] (emphasis mine). The appellees cite no case that says the appellant is required to assist the state in the violation of the court order, or in the violations of the state and federal constitution. Conversely, in the Appellate Brief, pg. 41-43, cites Smith v. Rowe, 761 F.2d 360, 1985 U.S. LEXIS 31025 Fed. R. Serv. 3rd (colahan) 31 arguing that "the plaintiff had no duty to also invalidate the court order," and also that appellees were violating appellant's constitutional rights. Smith v. Rowe, Supra, supports appellant's assertion that appellant does not have to acquiesce in the face of fundamental constitutional rights violations.

5). The state's next argument that, "disagreements in appropriate treatment does not rise to the level of constitutional rights violations," is flawed in the face of a prescribed treatment and a court order mandating treatment administered in accordance with all the [orders] of the treating physician, and the treatment is for a serious medical need. The prescribed amount of insulin is therefore determinative as to the question of violation of the court order and hence the state and federal constitution.

Based upon the foregoing, the court of appeals should find that the trial court's grant of summary judgment to appellees should be reversed, and if not finding summary judgment for the appellant, then remand for further proceedings.

III. The Trial Courts' Interlocutory Rulings And Discretionary Decisions Respecting The Conduct of Litigation Should Not Be Affirmed Because The State Is Not Entitled To Summary Judgment.

The state's argument is divided into four parts: 1). GRAMA Review; Martinez Report; 3). Motion To Compel; 4) motion For Reconsideration. The appellant will

address the issues in the same order.

A). GRAMA Review : The State argues in the Appellee Brief that "a plaintiff who fails to raise an issue before the trial court is generally barred from asserting it for the first time on appeal. The plaintiff has argued that the appellant is a pre-se litigant and appellant's pleadings are to be construed liberally. McCormick v. City of Chicago, 230 F.3d 319 (7th Cir. 2000); Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct. 594 (1972). The appellant did raise a Constitutional violation issue in the memorandum in opposition to Defendant's Motion that the state be allowed to file a Martinez Report and for a stay of proceedings until the Martinez Report is filed. (R 1138-1172), pg. 13. The appellant cites to the Constitution of Utah Article I, section 9. When appellant was reviewing Bett v. DeLand, 922 P.2d at 737 (Utah 1996), the appellant discovered that even though the constitutional claims discussed in that case was the Governmental Immunities Act, the same rationale applies even with other statutes, rules, or regulations. In Bett, supra, there appeared a quote from 2 Thomas M. Cooley, Constitutional Limitations 756 (1927), states that: "[A]ny rule or regulation in regard to the remedy which does not under pretense of modifying or regulating it take away or impair the right itself, cannot be regarded as beyond proper province of legislation." Further, "However, legislature's 'fraud or malice' standard contained in subsections 63-30-4(3) and (4) impairs article I, section 9 rights because it does bar claims that would otherwise be allowed under standards we will subsequently discuss." Additionally, Ross v. Schackel, 920 P.2d 1159 (Utah 1996), citing Berry v. Beech Aircraft Corp., 717 P.2d 670, 680 (Utah 1985). The Ross Court, on subsection 63-30-4(4) "is unconstitutional if it abrogates an existing legal remedy for the violation of a basic right and fails either to provide an alternative remedy or justify the abrogation by citing the vindication of a social or economic evil." In this case, the court, in its 7-3-07 (R 1548-1569), pg. 5 makes reference to "legislative intent", in brief, to protect the employee from prisoners obtaining their private information and misusing it. The court found that the employee's interest in the protection of private information outweighed appellant's interest in a judicial remedy for violation of appellee's constitutional rights. The court did not raise any alternate means of obtaining the objectives of serving defendant, Lisa Soper while maintaining her privacy interests. In Bett, supra, citing Blue Shield v. State, 779 P.2d 634, 637 (Utah 1989), ("explaining that courts may evaluate statutes on basis of perceived objectives"), this court can examine the trial (pg. 22)

Court's findings as to legislative intent to determine if the way the statutes were used in my case violated article I, section 9. The appellant also showed how the use of other provisions could obtain the same objectives without giving the appellant the employees address. See: Appellate Brief, pg. 51-53. The error to which the appellees refer in their brief is harmful error because not only does the Court's ruling place defendant, Lisa Soper outside the Court's jurisdiction respecting the claims against her, it also places the defendant beyond the reach of discovery techniques such as depositions wherein the defendant may provide evidence that would support the case in the motion for summary judgment as well.

Also, the state made no argument at all as to why the trial court denied the GRAMA request for the prison records of plaintiff's incoming and outgoing legal mail to demonstrate allegations that the state was confiscating, destroying, and delaying plaintiff's pleadings to the court in order to deny plaintiff a fair trial. See: Petition for Judicial Review of Denial of GRAMA Records Request Appeal (R 1103-1137).

B. Martinez Report:

The state begins by arguing that: "Appellate Courts grant "[a] trial judge . . . broad discretion in determining how a [case] shall proceed in his or her courtroom." For the trial court to allow the state to seek and obtain a summary judgment while they were in default see: Russell v. Martell, 681 P.2d 1193 (Utah 1984); see also: Williams v. Barber, 765 P.2d 887 (Utah 1988), To do so, especially while denying the appellant an opportunity to rebut the appellee's arguments in the Martinez Report, see: 6th Dist. Ct. Memo. Decis.; case # 040600383 (R 1548-1569), pg. 1-2., "[T]he defendant asks the court to consider this report as a motion for summary judgment. The plaintiff did not respond to the Martinez Report, and time to do so has expired," is bias of the most egregious sort. The Attorney General's Office, in appointing Peggy E. Stone, Assistant Attorney General to take over where Toni J. Jones, Assistant Attorney General committed criminal acts and other misconduct, and the trial court showing bias in favor of the state, Peggy Stone's attempt to replace Ms. Jones and save the case for the state must fail because the case is already tainted. See: Clements v. Airport Authority of Washoe County, 69 F.3d 321 (9th Cir. 1995) ("Generally, an adjudication that is tainted by bias cannot be constitutionally redeemed by a review in an unbiased tribunal. Thus, subsequent state court procedures, even if they include de novo

review cannot "cure" bias in the initial adjudication").

The appellees also argued that "But the trial court had already ruled that the state could respond to all Jackson's claims at one time after Jackson filed his supplement to the pleadings and his second amended complaint." Appellee Brief, pg. 33, para. 2. This argument is without merit, see: Minutes to Telephone Conference (R786). First, the state's representations to the court were fraudulent. The state claimed to be interested in "judicial economy" in requiring the appellant to file a "renewed and supplemented motion for summary judgment pg. 2; para. 2, 3, and 4. Ms. Joni J. Jones's true purpose, however, is to be able to have a second opportunity to file an opposing memorandum to Plaintiff's motion for summary judgment. Also as evident in the transcript of the 12-20-06 Telephone Conference, Ms. Jones's opportunity to answer was not when appellant filed the supplement to the Pleadings and the filing of the second amended complaint, but "[i]f" appellant Supplement the motion for summary judgment. pg. 3, para. 4

Judge Lee: "Alright Ms. Jones, how long do you propose that we stay things to see [if] Mr. Jackson will supplement the motion for summary judgment?"

Also it is questionable if the trial court can order the appellant to file a supplemented, and renewed motion for summary judgment, including the allegations in the Supplemental Pleadings. It is my understanding that it is my discretion if I should file a motion for summary judgment, and the scope, see: Timmer v. Dewsnup, 251 P.2d 1178 (1993) ("the moving party decides what issues to present to the court for adjudication. The parties may move for summary judgment on all or less than all of the issues raised by the complaint and answer and may also move for determination of issues raised by any counter-claim or cross-claim if he or she deems it appropriate").

Appellant simply did not think it appropriate to give the appellees another opportunity to cheat me out of a remedy.

C). The Trial Court Did NOT Abuse Its Discretion when It Denied Jackson's Motion To Compel Should Also Be Rejected By The Court of Appeals.

The state argues that the trial court is "granted broad latitude in handling discovery matters". Here, the trial court denied Jackson's motion because he failed to specify what information or materials he wanted the trial court to order the state to give him." "Pro-se litigants bringing civil rights suit inform Pauper's is entitled to five procedural protections: 1). Process issued and served; 2). Notice of any motion thereafter made by defendant or the court to dismiss the complaint and grounds therefore; 3). The opportunity to at least submit a written memorandum in opposition to such motion; 4). In the event of dismissal, a statement of the grounds therefore; and 5). An opportunity to amend the complaint to overcome the deficiency unless it clearly appears from the complaint that the deficiency cannot be overcome by amendment." Noll v. Carlson, 809 F.2d 1446 (9th Cir. 1987). In this case, in the fifth procedural protection, the court did not give appellant an opportunity to amend and correct the deficiency of not listing the documents to the court's satisfaction. "Pro-se litigants' pleadings are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers". Mc Cormick v. City of Chicago, 230 F.2d 319 (7th Cir. 2000); Boag v. McDougall, 454 U.S. 364, 70 L.Ed. 2d 551, 102 S.Ct. 700 (1982); Haines v. Kerner, 404 U.S. 519, 30 L.Ed. 2d 652, 92 S.Ct. 594 (1972).

The appellant demonstrated, in the plaintiff's memorandum in opposition to defendant's motion that the state be allowed to file a Martinez Report and for a stay on proceedings until Martinez Report is filed, pg. 7-12 (R1138-1172), not only what documents were requested, but for what purpose in ample time before the court ruled against the motion to compel which was filed 4-27-07. The court's memorandum decision on the issue was entered on 7-3-07, (R1548-1569), 37 days. Also, because the above memorandum decision disposed of the motion, it had to have been preserved through the above referenced memorandum in opposition to the Martinez Report. The appellant was not given the opportunity to respond to the Martinez Report due to the state's tactics of delaying incoming and outgoing mail in plaintiff's motion for reconsideration of the court's decision on Martinez Report, pg. 48, para. 2 - pg. 50, para. 1, (R1608-1903), these acts are detailed. This court must therefore rule that the trial court abused its discretion in denying appellee's motion to compel.

D). This court has already dismissed Jackson's Appeal from The Denial

of His Motion For Reconsideration, But The Court Should Consider The Merits of The Motion.

The state asks the court to consider that the court of appeals has already ruled that the trial court did not abuse its discretion in denying the motion for reconsideration. The trial court as well as the court of appeals dismissed on procedural grounds, and not on the merits of the motion. Because of the misconduct of the state and its counsel, the motion for Reconsideration is the only place appellant had to bring the evidentiary materials out. The record shows that appellant did not receive a copy of the order granting the state's motion to be allowed to file a Martinez Report. Attached hereto are two Exhibits that were attached to the memorandum in support of motion for Reconsideration on Martinez Report. These two Exhibits, O and T(1) do not appear on the judgment Roll and Index. The record shows that even when the court was aware that my legal mail to the court was being confiscated, see: letter to Judge Lee, dated 1-25-07, entered 1-31-07 (R898-900), the court refused to entertain the memorandum in Reply to the Defendant's memorandum in Opposition to Plaintiff's motion to strike the "Joint Motion And Stipulation". The trial court in the interest of fair play and justice, because the court was allowing the state an exceptional procedure, (Martinez Report), even while the state was in default, should have entertained the above memorandum in Reply. Since it did not, and despite it may not have been properly raised in the appellate brief, the Court of Appeals has discretion in the interest of justice to entertain the memorandum. see: State v. Gamblin, 2000 UT 44, 1 P.2d 1103; see also: Romrell v. Zions Nat'l Bank, 611 P.2d 392 (Utah 1980).

Finally, attached hereto are addendums that are being enclosed to place the documentation before the court that correspond to the arguments in the state's Martinez Report, pg. 19; the state's recitation of the facts are brought into question to question that the state did not delay unnecessarily getting me to surgery. In the Motion For Reconsideration of Martinez Report I put a sheet of paper as a marker for a grievance I could not obtain more copies of. I since found a copy of that grievance. see attached hereto: Exhibit G; Level II Griev. Resp. Ref. # 99G-08-53397. On pg. 22, at [2] Supplemental snacks. The state claims the appellant did not exhaust administrative remedies. The prison, on countless

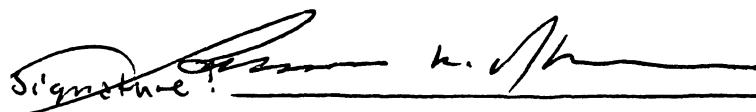
occasions denied receipt of level I grievances so they can refuse to exhaust the administrative remedies. Appellant attaches two Exhibits, 1). Exhibit G (2) Griev. Prob. form shows my level II grievance was rejected. Then, Exhibit H, Griev. Prob. form regarding the level III grievance filed on the same subject. Appellant failed to exhaust administrative remedies because the state refused to process the grievances. There is also a copy of the Court order, and a copy of a memorandum in response to a Petition For Extraordinary Relief. This document addresses a writ of mandamus, an attempt to have the trial court who issued the Court order to then enforce it. On pg. 3 it is highlighted that the judge expects that the Court order would be obeyed. This document is offered in the rebuttal to the state's argument in the Appellee Brief, pg. 25, "moreover, disagreements in appropriate treatment do not rise to the level of a constitutional violation".

CONCLUSION

The Court of appeals should entertain the issues it finds to be not properly raised in the appellate brief, not raised in the appellate brief, and those issues raised for the first time in the Reply Brief because exceptional circumstances exists for the Court of Appeals to exercise its discretion and in the interest of justice and to correct a prejudicial error, entertain the issues brought up in the memorandum in Reply To Defendants' Opposition to Plaintiffs' motion to strike the "Joint motion and stipulation", and the Court of appeals should entertain the evidence given in rebuttal to the state's Martinez Report as set forth in the motion for Reconsideration of Court's Decision on Martinez Report. The Court of Appeals must reverse the State's Summary Judgment Ruling for defendants and find for Plaintiff.

The above statements are true and accurate to the best of my knowledge and belief,

Signed this 25th day of March, 2008.

Signature: 

Lawrence M. Jackson, pro-se.

Lawrence M. Jackson #28829

Oquirrh III-210-B

Utah State Prison

P.O. Box 250

Draper, Utah 84020

5-27-07

Exhibit 0

The Sixth District Court

In the Office of Judge, Wallace A. Lee

Sandy Neill, Sanpete County Clerk

160 North Main, Room 202

P.O. Box 100

Manti, Utah 84642-0100

Triplicate

re: Jackson v. State of Utah, et al., 6th Dist. Ct.; No. 040600383

Dear Judge, Lee:

I am writing this letter to bring to the court's attention that the plaintiff has not received a copy of the court's ruling on Defendant's Motion Requesting That the State Be Allowed to File a Martinez Report And That All Proceedings Are Stayed until the Martinez Report is filed.

On 5-24-07 plaintiff received through U.S. mail a copy of defendant's Ex Parte motion for Over-length memorandum, together with an unsigned order granting the motion for Over-length memorandum. This motion is, according to the defendant, "seeks leave to file an Over-length memorandum in support of its motion for summary judgment, based upon the state's Martinez Report." Doubtless, this motion is based upon a ruling by the court allowing the state to file a Martinez Report. The plaintiff filed a memorandum in opposition to state's motion to be allowed to file a Martinez Report, and for a stay on all proceedings until Martinez Report is filed on or about April 5, 2007.

If in fact the court ruled in favor of the defendant in this motion (for Martinez Report), the plaintiff is entitled to a signed memorandum Decision And Order, from which an appeal can be taken.

Lawrence M. Jackson #28879

Oquirrh III-204-B

Utah State Prison

P.O. Box 250

Draper, Utah 84020

2-7-07

Exhibit T(1)

The Sixth District Court

In the Office of the Honorable, Wallace A. Lee

160 North Main Street

P.O. Box 100

Manti, Utah 84642-0100

re: Jackson v. The State of Utah, et al., 6th Dist. Ct., Case # 040600383

Dear Judge, Lee

I am enclosing this letter in an effort to determine how I should proceed at this juncture. I don't know if you received my last letter or not. It seems that all my mailings since December 20, 2006 teleconference my legal mail is coming up missing. In January, 07 I sent a letter to the Court regarding the Supplemental Pleadings. On January 12, 2007, I sent a second Request for Discovery primarily on the allegations in the Supplemental Pleadings. On Monday, February 12, 2007 it will be one month since the second Request for Discovery. I don't know if the Certificate of service reached your Court, because the last entry date on the recent Docket Event Statement is 1-16-07.

If your Court has not received the Certificate of Service for the Second Request for Discovery; or the Motion to Strike Defendants' Joint Motion And Stipulation; The Motion to Compel Discovery; The Original Affidavits by: Percy Wilder, Inmate, USP; James M. Stills, Inmate, USP; Paul Nelson, Inmate U.S.P., and other letters I have sent to this Court since December 20, 2006.

If the above mentioned documents, including a letter explaining that I was engaged in attempting to obtain discovery items for the Supplemental Pleadings. If your office did not receive these items, I would greatly appreciate it if you would construe this letter as a motion

GRIEVANCE PROBLEM FORM

Date: 6-27-06 DTO Coordinator M Anderson

Inmate Name and Number Lawrence Jackson # 28879

The attached grievance is returned to you because:

- ☐ Grievance not filed within policy time frames
- ☐ No attempt was made to resolve grievance informally
- ☐ The specific facts of the grievance are unclear
- ☐ As Per Fdr02/02.01(e) you may not grieve your Housing or Classification
- ☐ Grievance has already been opened on this matter. No new grievance will be opened on this same issue. If you disagree with the answer you may appeal it to a level II.

☒ Other:

No grievance has been received to be
processed by you so it cannot go to Level II

Exhibit G (2)

Exhibit H

GRIEVANCE PROBLEM FORM

DATE: July 20, 2006 GRIEVANCE COORDINATOR: BILLIE CASPER *Billie*

INMATE NAME & NUMBER: Inmate Lawrence Jackson #28879

The attached grievance(s) is being returned to because:

_____ Grievance not filed within policy time frames.

_____ No attempt to resolve grievance informally documented.

_____ The specific facts of the grievance are unclear.

_____ Classification and disciplinary issues are not grievable.

_____ Grievances have already been opened on this matter. A new grievance will not be opened on the same issue. If you disagree with the answer you may appeal to the next level.

XXX Other:

COMMENTS: There is no record of this issue being submitted to either Level 1. Neither Level 2 nor Level 3 can address an issue that has not been submitted to Level 1.

Your assertion this issue was mailed the same day as a transportation issue does not change the fact the supplemental food issue was not received by Level 1. A grievance on this issue will not be opened.

THIS IS NOT A GRIEVANCE RESPONSE

CC: Level 2 problem form file

Exhibit G

Reference Number: 99G-08-53397

Subject Code: 23

Location Code: 11

Month/Day/Year: 04/21/2004

LEVEL II RESPONSE

INMATE NAME: Lawrence Jackson

U.S.P. NUMBER: #28879

INMATE PREMISE:

I have reviewed your grievance. It is my understanding that you are grieving:

"In November, 2003, I went to the diabetic pill line to get insulin to treat my bloodsugar level. When I told the med. tech. How much insulin I required, she refused to allow me to take an amount I had been accustomed to taking for several years. For the next several days she, known only to me as Lisa denied me the insulin I had been taken. At that point, I refused to take any more insulin because inadequate amounts of insulin sets me up for frequent ups and downs. (the downs are hypoglycemia). I also refrained from eating, as eating without insulin would cause hyperglycemia, (excessively high bloodsugar). About 4 days of this, I fell in my cell and injured my eye. (facial fractures, to "orbital bone", (eye sockets)."

"I was treated initially for a swollen eye and two deep cuts around the eye socket. Several weeks later I was seen by the eye doctor at CUCF and after examination, I was told that the difficulty of seeing at certain positions of my eye was only temporary and would resolve 'its' self in 4 to 6 weeks. I went back to the medical unit with the same complaint of dizziness, blurred vision in my left eye and dull pain in the affected area. I was scheduled for an examination by an ophthalmologist who diagnosed the injury, and outlined what must be done to treat the injury to 100% recovery; that I would need a surgical procedure to reset the broken bone."

"Several weeks after that visit to the eye specialist, I was given an x-ray and ct scan, and the specialists' diagnosis was confirmed. I was scheduled for another visit in about February 12, 2004, and I was again told that surgery would be required and my consent was again given. This time, however, the eye specialist informed me that had I been brought to him sooner, that he could guarantee me 100% recovery; however, since this did not happen, the best he could offer is some improvement, but not very much."

"Having again given my consent to a surgical procedure to correct my vision, and on February 26, 2004 I was transported to draper site, Utah State Prison' medical unit, where I remained for 4 days, because the procedure was cancelled. There has been no reason given for the cancellation, nor was there any further treatment for my dizziness, headaches, blurred vision, and nausea. Because of the late, or otherwise untimely treatment, I believe there has been, "deliberate indifference to a serious medical need."

Exhibit G

REMEDY SOUGHT:

"I want my vision corrected. I want the persons who facilitated the at risk circumstances to be held responsible. Additionally, I want those responsible for the, "untimely medical care for a serious medical need "to also be liable for the, "deliberate indifference to a serious medical need to compensate me for my loss, and finally, that I not be retaliated against for this grievance."

FINDINGS:

I agree with the level one response. " When a provider puts a medication order in the computer it is the responsibility of the Nursing staff to follow those orders and the person taking the medication to do the same." It appears that the nursing staff was only following the orders of the Dr. The nurse you refer to in your grievance has since transferred to another facility. Therefore that issue is resolved.

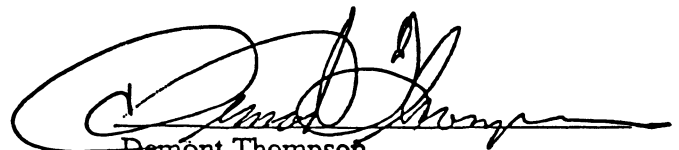
As stated in the level one response "There is a current date for facial surgery."

You state in your level II grievance "In order to prevent my self becoming unstable again, I opted not to take the insulin or to eat until I could see a medical provider." It is obvious that not eating and not taking the insulin would make you unstable. That was your choice.

DISPOSITION:

This grievance is resolved.

I suggest if you wish to appeal my disposition, you may do so by following appropriate policy and procedure FD 02/03.03 Appeals Process.



Demont Thompson
Grievance Captain

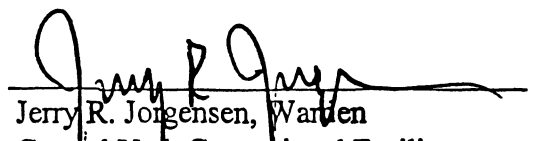

Jerry R. Jorgensen, Warden
Central Utah Correctional Facility

Exhibit 4

Brent M. Johnson (5494)
Attorney for Honorable Timothy R. Hanson
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241
Tel: (801) 578-3800

UTAH COURT OF APPEALS

LAWRENCE M. JACKSON)	RESPONSE TO PETITION FOR
)	EXTRAORDINARY RELIEF
Petitioner,)	
)	
vs.)	
)	
HON. TIMOTHY R. HANSON)	Case No. 20020261 CA
)	
Respondent.)	

Judge Timothy Hanson, by and through counsel Brent M. Johnson of the Administrative Office of the Courts, provides the following response to Lawrence M. Jackson's Petition for Extraordinary Relief

Facts

1 Petitioner filed a petition for post-conviction relief in the Third District Court on May 15, 2001. A copy of the case history in that matter is attached as Exhibit "A."

2 Petitioner requested and received a temporary injunction under Rule 65A of the Utah Rules of Civil Procedure. A copy of the court's order is attached as Exhibit "B."

Exhibit 4 (C)

3. In August, 2001, the state filed a motion to dismiss Petitioner's post-conviction petition.

4. In November and December of 2001, the Petitioner filed a motion and complaint for enforcement of the temporary injunction. A copy of the complaint for enforcement is attached as Exhibit "C."

5. On January 23, 2002, the court conducted a hearing to discuss the state's motion to dismiss. The motion to dismiss was granted, but the court continued the temporary injunction as a permanent injunction. See Exhibit "A," page 4 minute entry.

6. The case is currently on appeal to the Court of Appeals as case number 20020097.

Argument

The Petitioner has requested an extraordinary writ that would "require the judge in the trial court to take measures to enforce the court's order requiring the prison to administer adequate and timely medical treatment." The Petitioner has other remedies available and should be required to exhaust those before his Petition for Extraordinary Relief might be considered.

Rule 65B of the Utah Rules of Civil Procedure states that a petition for extraordinary relief may be filed when "no other plain, speedy and adequate remedy is available." In order to succeed on a petition for extraordinary relief, a petitioner must show that a lower court "has exceeded its jurisdiction or abused its discretion," "failed to perform an act required by law," or "refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled." The Petitioner

has other remedies available, and cannot show that the trial court failed to perform a required act or abused its discretion, because the Petitioner has not adequately presented his request for enforcement to the trial court.


When a court issues an order, such as an injunction, it is expected that the parties will obey the order without the need for additional action by the court. If one of the parties believes that the other party is not obeying the court's order, the party should file a motion, typically with an order to show cause, pointing out the other party's alleged deficiencies. After filing the motion, the non-offending party allows the alleged offending party an opportunity to respond to the allegations. The moving party may then request that the court take action, either by sending a follow-up pleading to the court requesting action on the motion, or by requesting that the court set a hearing. The Petitioner has not followed this course of action.

The Petitioner has filed documents with the court, but there is no evidence that the documents were served on the other side. Also, the Petitioner did not submit an order to show cause for the court to sign to bring the opposing party into court. The Petitioner has also has not submitted any suggestion to the court that the motion is ripe for decision by the court. This despite the fact that a hearing was held after the filing of the "motion" and the Petitioner had an opportunity to ask the court to address his grievances.

The Petitioner has remedies available with the trial court and should be required to seek those remedies. It should also be noted that the Petitioner has failed to comply with Rule 19 of the Utah

Rules of Appellate Procedure. This rule sets forth the requirements of a petition for extraordinary relief. Of critical importance in the petition are the recitation of facts necessary to understand the requested relief, and a copy of a court order from which the Petitioner is seeking review. Although the Petitioner has recited many facts, those facts relate to his underlying claim that the prison has disobeyed the court's order. The facts do not address actions, or a lack thereof, by the trial court. Also, the Petitioner has failed to attach any orders which would show the procedural history of this case. The Petitioner's failure to follow Rule 19 should also be sufficient to support the denial of the petition.

DATED this 18th day of April, 2002.


 Brent M. Johnson, Attorney for
 Honorable Timothy R. Hanson

FILED DISTRICT COURT
Third Judicial District

SEP 12 2001

SAULT LAKE COUNTY
Deputy Clerk

Exhibit 3

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

LAWRENCE M. JACKSON,

Petitioner,

vs.

UTAH STATE PRISON,
WARDEN CLINT FRIEL,

Respondent.

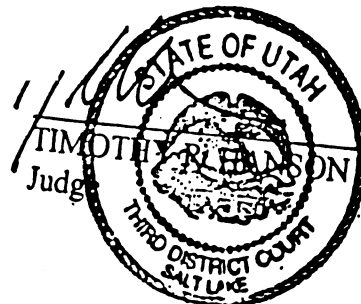
ORDER

Civil No. 010904240

Judge Timothy Hansen

COMES NOW the Third Judicial Court in and for Salt Lake County, State of Utah, and hereby directs Respondent Clint Friel, Warden of the Utah State Prison, to administer regular and timely medical treatment to Petitioner herein, LAWRENCE JACKSON, by means of providing him with regular doses of insulin, and to administer to Petitioner timely and regular foodstuffs in accordance with all orders of the treating physician or medical staff providing his care while incarcerated at the Utah State Prison. IT IS SO ORDERED.

DATED this 12 day of September, 2001.



3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

LAWRENCE M JACKSON vs. CLINT FRIEL

CASE NUMBER 010904240 Post Conv Rel NonCap

CURRENT ASSIGNED JUDGE

TIMOTHY R. HANSON

PARTIES

Plaintiff - LAWRENCE M JACKSON
Draper, UT 84020

Defendant - STATE OF UTAH
Represented by: SHAREL REBER

Defendant - UTAH STATE PRISON

Defendant - CLINT FRIEL

Exhibit 2

ACCOUNT SUMMARY

CASE NOTE

PROCEEDINGS

5-15-01	Case filed by candices	candices
5-15-01	Judge HANSON assigned.	candices
5-15-01	Filed: Affidavit of impecuniosity	candices
5-21-01	Filed: Letter to Court from Lawrence Jackson re inmate account	kathrygw
5-29-01	Filed: Letter to Court from Lawrence M. Jackson to amend his petition	kathrygw
5-29-01	Filed: Letter to Ut St Prison inmate acct dept, Chris Olsen	evelynt
5-06-01	Filed: Letter to Court from petitioner	kathrygw
5-14-01	Filed: Notice of Determination of Filing Fee (\$11.75)	kathrygw
5-25-01	Filed: Motion motion for enlargement of time in which to challenge the fee assessment	evelynt
5-26-01	Filed order: Motion for enlargement of time in which to challenge the fee assessment is granted.	kathrygw
	Judge thanson	
	Signed June 26, 2001	
5-02-01	Filed: Letter to Court from Lawrence M. Jackson	kathrygw
5-09-01	Filed: Letter to Court from petitioner with attached Memorandum Challenging Determination of Fee Assesment	kathrygw
5-09-01	Filed: Letter to Court from petitioner with attached documents	kathrygw
5-09-01	Filed: Letter to Court from petitioner with attached Affidavit	

Printed: 01/27/03 08:51:32

Exhibit 2

of Petitioner and Affidavit of Steven Shane Tingey kathrygw
07-09-01 Filed: Letter to Court from petitioner with attached documents kathrygw
07-09-01 Filed: Letter to Court from petitioner with attached documents kathrygw
07-11-01 Filed: Letter to Court dated 7/8/01 from petitioner with
attachments kathrygw
07-11-01 Filed: Letter to Court dated 7/8/01 from petitioner with
attachments kathrygw
07-12-01 Filed: Letter to Court dated 7/8/01 from petitioner kathrygw
08-02-01 Filed: Ct's M.E.: Petitioner may proceed without prepayment,
petitioner is still obligated to make monthly payments towards
the assessed filing fee until amt is paid in full, respondent
is to file an answer within 20 days from date of order, etc evelynt
08-10-01 Filed: Letter to Court from petitioner (see ME of 8/2/01, no
action required) kathrygw
08-16-01 Filed: Letter to Court from petitioner kathrygw
08-16-01 Filed: URCP Rule 65A Motion for a Preliminary Injunction and
Temporary Restraining Order kathrygw
08-16-01 Filed: Affidavit in Support of URCP Rule 65A Application for a
Temporary Restraining Order and Preliminary Injunction kathrygw
08-22-01 Filed: Respondent's Motion to Dismiss kathrygw
08-22-01 Filed: Memorandum in Support of Motion to Dismiss kathrygw
08-23-01 HABEAS CORPUS WRIT HEARING scheduled on September 11, 2001 at
10:00 AM in Fourth Floor - N45 with Judge HANSON. evelynt
08-23-01 Notice - NOTICE for Case 010904240 ID 905377 evelynt
HABEAS CORPUS WRIT HEARING is scheduled.
Date: 09/11/2001
Time: 10:00 a.m.
Location: Fourth Floor - N45
THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84111-1860
Before Judge: TIMOTHY R. HANSON

Extraordinary Writ hearing is set for a one hour setting.
08-30-01 Filed: **NOTE** copy of Notice of Habeas Corpus Writ Hearing
sent to James Beadles returned; re-sent to David K. Gardner kathrygw
09-10-01 Filed: Letter dated 9/6/01 to the Court from petitioner kathrygw
09-10-01 Filed: Letter dated 9/5/01 to the Court from petitioner kathrygw
09-11-01 Minute Entry - Minutes for MINUTE ENTRY evelynt
Judge: TIMOTHY R. HANSON
Clerk: evelynt
PRESENT

Plaintiff(s): LAWRENCE M JACKSON
Defendant's Attorney(s): DAVID K. GARDNER
Video
Tape Number: 9/11/01 Tape Count: 9:56/10:20

Exhibit 2

HEARING

This matter is before the Court for hearing petitioners claim that he has not been provided his prescription medication and diet. Mr. Jackson is present and representing himself pro se. State is represented as indicated herein.

Based upon representations to the Court, the Court will enter an order wherein the Utah State Prison is to provide petitioner his medications and food boxes on a regular and timely basis, in accordance with the doctor's instructions.

The State's motion to dismiss is not before the Court today. Petitioner's motion to allow 30 days in which to respond to the motion is granted. Petitioner is to submit his response by 10/11/01, and the State will have 10 days to file any reply.

The Court will diary this case to 10/29/01, and then consider the merits of the case.

Counsel for the State is to file an order regarding the hearing today.

09-11-01	Filed: level I grievance State response Ut State Prison	evelynt
09-11-01	Filed: Supplement of grievance page	evelynt
09-11-01	Filed: motion for supplemental pleadings	evelynt
09-11-01	Filed: Inmate grievance form	evelynt
09-11-01	Filed: inmate grievance form	evelynt
09-12-01	Filed order: Order	kathrygw
	Judge thanson	
	Signed September 12, 2001	
09-21-01	Filed: Letter to Court from the petitioner at Ut St Prison, date 9/17/01	evelynt
09-24-01	Filed: Letter to Court from the petitioner dated 9/18/01	kathrygw
10-01-01	Filed: Ct's M.E:Petitioner's motion for modification or Court's Order of 9/12/01 is denied, no order necessary, M.E. stands as order	evelynt
10-01-01	Filed: Ct's M.E: Ct copies petitioner's letters to counsel for respondent, as attached to this M.E.	evelynt
10-17-01	Filed: Letter to Court dated 10/15/01 from petitioner	kathrygw
10-19-01	Filed: Letter to Court dated 10/16/01 from petitioner	kathrygw
11-01-01	Filed: Letter to Court dated 10/8/01 from petitioner	kathrygw
11-01-01	Filed: Petitioner's Rebuttal to Respondent's Answer to URCP Rule 65B Writ for Extraordinary Relief	kathrygw
11-06-01	Filed: Letter to Court from petitioner	kathrygw
11-06-01	Filed: Petition for Supplimental Relief to Include Damages Jury Trial Demanded	kathrygw
11-14-01	Filed: Letter dated 11/7/01 from petitioner to the Court	kathrygw
11-16-01	Filed: Letter dated 11/13/01 from Petitioner to the Court	kathrygw
11-21-01	Filed: Letter dated 11/18/01 to Court from petitioner	kathrygw
11-21-01	Filed: Motion for Enforcment of a Court Order and Supporting Affidavit	kathrygw
11-27-01	Notice - NOTICE for Case 010904240 ID 966740	evelynt

STATE'S MOTION TO DISMISS is scheduled.

Date: 01/23/2002

Time: 09:00 a.m.

Location: Fourth Floor - N45
THIRD DISTRICT COURT
450 SOUTH STATE
SLC, UT 84111-1860

Before Judge: TIMOTHY R. HANSON

State's motion to dismiss petition (30 minute setting)

Judge Hanson's law clerk request curtesy copies be provided 10 days prior to hearing.

11-27-01	STATE'S MOTION TO DISMISS scheduled on January 23, 2002 at 09:00 AM in Fourth Floor - N45 with Judge HANSON.	evelynt
12-10-01	Filed: Letter to Court from Petitioner	kathrygw
12-31-01	Filed: Letter to Court dated 12/25/01 from petitioner	kathrygw
12-31-01	Filed: Complaint for Enforcment of a URCP Rule 65A Injunction and Request for an Order to Show Cause	kathrygw
12-31-01	Filed: Affidavit in Support of Complaint for Enforcment of a URCP Rule 65A Court Order	kathrygw
01-23-02	Filed: Rebuttal memorandum to respondant's answer to the URCP, 65(b) Petition	evelynt
01-23-02	Minute Entry - Minutes for MINUTE ENTRY Judge: TIMOTHY R. HANSON Clerk: evelynt PRESENT	evelynt

Plaintiff(s): LAWRENCE M JACKSON

Defendant's Attorney(s): SHAREL REBER

Video

Tape Number: 1/23/02 Tape Count: 9:21/10:01

HEARING

This matter is before the Court for oral argument on respondent, State of Utah's motion to dismiss. Appearances as shown above.

Oral argument is presented to the Court. The Court reviews petitioners memorandum submitted in court today.

Based upon the foregoing, and the Court's findings, the State's motion to dismiss petition is granted, with exception, that the Court's interim order remains in full force and effect.

This Order requires the doctors at the prison to strictly comply with the medical requirements of petitioner.

Counsel for the State is to prepare the appropriate findings of fact and conclusions of law, and order as directed by the Court.

01-25-02	Filed: Letter to the Court from Lawrence M. Jackson	kathys
----------	---	--------

Exhibit 2

	Petition	kathys
1-28-02	Note: Cert. copy of Notice of Appeal forwarded to Court of Appeals	kathys
1-31-02	Filed: Motion for Enlargement of Time to Submit Motion for New Trial or Amend Judgment	kathrygw
1-31-02	Filed: Letter dated 1/27/02 to the Court from Lawrence Jackson	kathrygw
2-04-02	Filed: Letter to the Court from petitioner	kathrygw
2-04-02	Filed: Motion for a New Trial and or Amendment of Judgment	kathrygw
2-04-02	Filed: Memorandum in Support of Motion for a New Trial or an Amendment of the Judgment	kathrygw
2-07-02	Filed: Letter from Court of Appeals - Noa received, Court of Appeals No. 20020097-ca	sophieo
02-21-02	Note: Record forwarded to Court of Appeals (unpaginated): 2 files	kathys
02-22-02	Filed order: Order Judge thanson Signed February 22, 2002	kathrygw
03-11-02	Filed: Letter dated 3/8/02 from Lawrence Jackson	kathrygw
06-13-02	Filed: Motion for Recusal Under U.R.C.P. Rule 63(b)	kathrygw
06-13-02	Filed: Motion for Enforcement of URCP Rule 65A Injunction and an Order to Show Cause	kathrygw
6-26-02	Filed: CT's M.E:Re: Petitioner 2 motions & proposed order, case on appeal, & this court is divested of juris, & cannot act on motion to recuse; the same goes for petitioner's motion for enforcement of Rule 65A; **cont'd**	evelynt
06-26-02	Filed order: **Cond'd** when the case is remanded, the Court will take the appropriate action; No response is required, & no formall orer, minute entry stands as Court's Order Judge thanson Signed June 26, 2002	evelynt
06-26-02	Filed: Letter dated 6/20/02 to the Court from petitioner	kathrygw
08-13-02	Filed: Letter dated 8/8/02 to the Court from Lawrence Jackson	kathrygw
08-13-02	Filed: Notice of Intent to Commence Legal Action (Officer Mike Ryan, USP)	kathrygw
1-13-02	Filed: Notice of Intent to Commence Legal Action (Lieutenant Kimber USP)	kathrygw
1-13-02	Filed: Notice of Intent to Commence Legal Action (Sergeant Zorns, USP)	kathrygw
1-13-02	Filed: Notice of Intent to Commence Legal Action (Captain Rasmussen, USP)	kathrygw
1-13-02	Filed: Notice of Intent to Commence Legal Action (Mr. Wolff, Caseworker, USP)	kathrygw
1-13-02	Filed: Notice of Intent to Commence Legal Action (Lieutenant Wilson, USP)	kathrygw
1-13-02	Filed: Notice of Intent to Commence Legal Action (Officer Strickland, USP)	kathrygw
1-13-02	Filed: Notice of Intent to Commence Legal Action (Captain Hughes, USP)	kathrygw

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CASE NUMBER 010904240 Post Conv Rel NonCap

1-13-02 Filed: Notice of Intent to Commence Legal Action (Officer Fickert, USP)

kathrygw

Exhibit 2

08-13-02 Filed: Notice of Intent to Commence Legal Action (Sergeant Higinson, USP) kathrygw
 08-13-02 Filed: Notice of Intent to Commence Legal Action (Sergeant Boweter, USP) kathrygw
 08-13-02 Filed: Notice of Intent to Commence Legal Action (Lieutenant Van Leeuwen, USP) kathrygw
 08-13-02 Filed: Notice of Intent to Commence Legal Action (unknown medical technician at USP med.unit) kathrygw
 08-13-02 Filed: Certificate of Service ("Notice of Intent to Commence Legal Action) kathrygw
 11-14-02 Filed: Letter to Mr. Jackson from the Court, dated 11/12/02 evelynt
 11-14-02 Filed: Ct's M.E: Court of Appeals found it appropriate to dismiss the appeal for lack of jurisdiction, this Court now having jurisdiction, its appropriate to address motion for court recusal, case referred to presiding judge for determination** evelynt
 11-14-02 Filed: **When recusal issue is resolved, then this court or another court can take up the defendant's motion for enforcement * motion for new trial evelynt
 11-14-02 Filed: Ct's M.E: Petitioner's motion for recusal seeking this court to recuse, on basis of bias & prejudice, matter referred to presiding judge for decision evelynt
 11-14-02 Filed: Memo to Craig From Judge Hanson, dated d11/12/02 evelynt
 11-21-02 Filed: Letter to the Court from Lawrence Jackson kathrygw
 12-20-02 Filed order: Minute Entry - Petitioners Motion for Recusal DENIED jills

Judge rnehrling

Signed December 20, 2002

01-06-03 MOTION FOR NEW TRIAL scheduled on February 10, 2003 at 11:00 AM in Fourth Floor - N45 with Judge HANSON. evelynt
 01-06-03 Filed: Ct's M.E: Judge Nehrling ruled that motion to recuse is denied, Motion for new trial is set for hearing, State needs to respond within 15 days of M.E., M.E. stands as Court's order evelynt
 01-13-03 Filed: Supreme Court letter to Lawrence M. Jackson (SC # 20021078/COA # 20020784) - Petition for Writ of Certiorari filed with SC on 12/27/02 kathys
 01-13-03 Filed: Supreme Court order: Court waives filing fee for filing of Writ of Certiorari. Waiver granted as to filing fee only; all other costs to process petition, including if any, transcript costs, must be paid by Petitioner kathys
 01-13-03 Notice - NOTICE for Case 010904240 ID 5482538 evelynt
 MOTION FOR NEW TRIAL.
 Date: 02/24/2003
 Time: 03:00 p.m.
 Location: Fourth Floor - N45
 THIRD DISTRICT COURT
 450 SOUTH STATE

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SLC, UT 84114-1860

Before Judge: TIMOTHY R. HANSON

The reason for the change is ATD requested continuance.

Exhibit 2

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01-13-03 MOTION FOR NEW TRIAL rescheduled on February 24, 2003 at 03:00
PM Reason: ATD requested continuance..
01-14-03 Filed: Motion for Enlargement of Time
01-22-03 Filed: Remittitur Received - Coa#20020097-ca - No record
received - Appeal dismissed

evelynt
kathrygw
sophieo

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