

1998

Paul Knoll v. State of Utah : Petition for Writ of Certiorari

Utah Court of Appeals

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UTAH DOCUMENT
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DOCKET NO. 980041

UTAH SUPREME COURT **FILED**

BRIEF

JAN 20 1998

CLERK SUPREME COURT
UTAH

IN THE SUPREME COURT OF UTAH

PAUL KNOLL
(PETITIONER)

v

PETITION FOR WRIT OF
CERTIORARI #1
AS PER U.R.C.P. 65B

STATE OF UTAH
(RESPONDENTS)

CASE # 980041

THIS CERTIORARI IS BROUGHT TO THE UTAH SUPREME COURT BY PETITIONER BECAUSE ON NOV 28 1997 THE UTAH APPEALS COURT DISSMISSED APPEAL # 970528 CA STATE OF UTAH - PLAINTIFF VS PAUL KNOLL - DEFENDANT BY WAY OF A MEMORANDUM DECISION (NOT FOR OFFICIAL PUBLICATION) ON THAT DAY.

QUESTIONS PRESENTED:

DID UTAH COURT OF APPEALS ABUSE ITS DISCRETION BY DISMISSING PETITIONER'S APPEAL? FOR UNDER UTAH'S INDETERMINATE SENTENCING IF A PRISONER IS IN THE MIDDLE OF SERVING A PRISON TERM AND IT IS ESTABLISHED FACT THE TERM MUST BE SERVED UNTILL EXPIRATION THEREOF MUST A JUDGE BE COGNISANT OF THAT FACT AS PER U.C.A 76-3-401 (3) BEFORE IMPOSING AN UNRELATED CONSECUTIVE SENTENCE? IF THE JUDGE IS ~~THE~~ THEN COGNISANT OF THIS FACT IS HE/SHE REQUIRED BY U.R.C.P. 22(d) TO SET FORTH SUCH CONSECUTIVE TERM WITH EXACTITUDE VIZ: COMMITMENT SHALL ISSUE WHEN CURRENT SENTENCE ENDS ON (DAY) (MONTH)(YEAR); OR WILL A COMMITMENT SHALL ISSUE 'FORTHWITH' PHRASING SUFFICE?

IF A PRISONER IN THE MIDDLE OF SERVING A SENTENCE IS THEN SENTENCED TO SERVE A CONSECUTIVE SENTENCE UNRELATED TO THE FIRST, IS THE UTAH BOARD OF PARDONS REQUIRED BY U.C.C.P. 77-27-7.1 AND 77-27-9.1 AND B.O.P. ADMINISTRATIVE LAW R655 201.2 (ALL 91-92 CIRCA

VERSIONS) TO GIVE THE PRISONER AN ORIGINAL PAROLE GRANT HEARING ON THE CONSECUTIVE SENTENCE, APART FROM THE FIRST TERM, OR IS IT O.K. IF THE U.B.O.P. HOLDS A DISCIPLINARY TYPE "RESCISSION HEARING ON THE CONSECUTIVE TERM.

LIST OF PARTIES :

THE PETITIONER IS PAUL KNOLL A STATE PRISONER
THE RESPONDENTS ARE 1. THE STATE OF UTAH 2. THE 3RD DISTRICT COURT OF SALT LAKE CO. IN THE PERSON OF JUDGE LESLIE A. LEWIS. 3. THE UTAH BOARD OF PARDONS .

JURISDICTION :

A MEMORANDUM DECISION WAS RENDERED BY UTAH'S COURT OF APPEALS ON NOV 28 1997 DISMISSING APPEAL CASE # 970528 CA STATE - PLAINTIFF VS. KNOLL DEFENDANT CONCERNING THIS VERY MATTER NOW BROUGHT ON THIS PETITION FOR CERTIORARI, SO THE UTAH SUPREME COURT HAS JURISDICTION. FURTHERMORE U.R.C.P. 65B PLUS UTAH CONST. ART 1 SEC 5 AND ART. 1 SEC. 11 (COURTS OPEN)

CONSTITUTIONAL PROVISIONS STATUTES ORDINANCES AND REGULATIONS RELIED ON.

THE FOLLOWING ARE BEING VIOLATED BY RESPONDENTS TOWARDS PETITIONER.

U.S. CONST. AMEND. 14 SEC 1 DUE PROCESS OF LAW "NOR SHALL ANY STATE DEPRIVE ANY PERSON LIBERTY WITHOUT DUE PROCESS OF LAW"

UTAH CONST. ART. 1 SEC. 7 "NO PERSON SHALL BE DEPRIVED LIBERTY WITHOUT DUE PROCESS OF LAW"

UTAH CRIMINAL CODE TITLE 76 CHAPTER 3 SECT. 401(3) A COURT SHALL CONSIDER THE GRAVITY AND CIRCUMSTANCES OF THE OFFENCES AND THE HISTORY CHARACTER AND REHABILITATIVE NEEDS OF DEFENDANT IN DETERMINING WHETHER TO IMPOSE CONSECUTIVE SENTENCES

U.R.C.P. RULE 22(d) WHEN A PRISON SENTENCE IS IMPOSED THE COURT SHALL ISSUE ITS COMMITMENT SETTING FORTH THE SENTENCE.

U.C.C.P 77-27-7.1 THE B.O.P. SHALL DETERMINE WITHIN 6 MONTHS AFTER THE DATE OF AN OFFENDERS COMMITMENT - - - - - A DATE UPON WHICH THE OFFENDER SHALL BE AFFORDED A HEARING TO ESTABLISH A DATE OF RELEASE OR A DATE OF REHEARING.

U.C.C.P. 77-27-9.1 - - - - BOARD - - - SHALL CONSIDER EACH CASE AS OFFENDER BECOMES ELIGIBLE.

B.O.P. ADMINISTRATIVE LAW R655. CALENDARING R655 201.1 POLICY: IT IS POLICY OF THE BOARD CONSISTANT WITH UTAH LAW TO ESTABLISH A DATE UPON WHICH AN OFFENDER SHALL BE RELEASED OR

UPON WHICH HIS CASE SHALL BE CONSIDERED WITHIN 6 MONTHS OF HIS COMMITMENT.

R.655 201.2. AN INMATE WHO IS SERVING A SENTENCE OF UP TO 5 YEARS WILL BE ELEGIBLE FOR A HEARING AFTER THE SERVICE OF 90 DAYS OF HIS SENTENCE

STATEMENT OF CASE

IN 1992 PETITIONER WAS IN PRISON, SERVING A 1-15 YEAR TERM UNTILL IT EXPIRED. THIS WAS AN ESTABLISHED KNOWN FACT THAT RELEASE WAS ON 12/14/96 NOT BEFOREHAND. ON 3/20/92 PETITIONER WAS SENTENCED TO A CONSECUTIVE 0-5 YEAR TERM, BY ~~THE~~ THIRD DISTRICT COURT S.L.Co. JUDGEMENT, SENTENCE (COMMITMENT) ORDER READS; SUCH SENTENCE IS TO RUN CONSECUTIVELY WITH THE SENTENCE HE IS SERVING. COMMITMENT SHALL ISSUE FORTHWITH. CASE # 911901389

THE SENTENCING ENITY UTAH BOARD OF PARDONS THEN HELD A RESCISSION HEARING ON THE (WHAT!?) 15 YEAR TERM OR 5 YEAR CONSECUTIVE TERM OR BOTH ON OCT 30 1992 - NOV 3 1992. OUTCOME OF HEARING IMMATERIAL TO THIS CASE. BUT FULL 5 YEAR TERM WAS IMPOSED AFTER A 15 YEAR STRETCH, TOTALING 20 STRAIGHT.

PETITIONER CLAIMED THE COMMITMENT ORDER PAPER WAS WORDED AMBIGUOUSLY, HENCE THE SENTENCE IS ILLEGAL AND THE BOARD OF PARDONS PART IN SENTENCING PROCEEDURE WAS LACKING DUE PROCESS OF LAW, THEREFORE PETITIONER FILED A CIVIL HABEAS CORPUS ON MAY 1 1996 WHICH WAS DISMISSED BY 3RD DISTRICT COURT JUDGE BRIAN ON NOV 7 1996. APPEAL DENIED ALSO.

PETITIONER THEN REVERTED THE CASE BACK TO A CRIMINAL CASE 91190 1389 AND FILED IT AS A CRIMINAL MOTION TO CORRECT ILLEGAL SENTENCE IN SENTENCING COURT, RESULT: DENIED DISMISSED. APPEALED TO UTAH COURT OF APPEALS CASE 970528CA WHICH WAS JUST DISMISSED. NOV 28 1997.
* ARGUMENT IN SUPPORT OF GRANTING CERTIORARI.

THIS CASE IS IMPORTANT FOR THERE IS A LAXITY AND AMBIGUITY THAT IS NOT YET RULED UPON BY UTAHS COURTS CONCERNING THE IMPOSITION OF A CONSECUTIVE SENTENCE WHICH IS ALL THE MORE VITAL BECAUSE OF UTAHS INDETERMINATE SENTENCING SCHEME. AND ALSO IT HAS IMPORTANCE BECAUSE THE SENTENCING ENITY U.B.O.P. ROLE IN SUCH CASE'S IS LEFT UNDEFINED. THE UTAH COURT OF APPEALS WAS WRONG TO DISMISS. THE UTAH SUPREME COURT SHOULD REVERSE THE DISMISSAL. GRANTING CERTIORARI.

DID SENTENCING COURT VIOLATE PETITIONERS DUE PROCESS RIGHTS ON 3/20/92 BY CONSECUTIVELY COMMITTING HIM TO A 0-5 YEAR TERM WITHOUT BENIFIT OR APPLICATION OF UTAH CODE 76-3-401(3) REQUIRING

JUDGE TO KNOW ASPECTS OF A PERSON TO BE CONSECUTIVELY SENTENCED? WOULD PART OF THE REQUIREMENT OF 76-3-401(3) BE TO KNOW THAT THE PERSON TO BE CONSECUTIVELY SENTENCED HAD AN IMMUTABLE EXPIRATION RELEASE DATE ON THE CURRENT OR FIRST TERM BEFORE IMPOSING A SECOND? IF, THEN, KNOWING THE FIRST TERM HAD A DEFINATE CONCRETE ENDING TO IT WASN'T THE COURT REQUIRED TO SET FORTH WITH PRECISION WHEN A CONSECUTIVE TERM IS TO BEGIN DAY ~~MONTH~~ MONTH YEAR. THE JUDGE WAS OBVIOUSLY IGNORANT OF THE FACT THAT THE FIRST TERM ENDED ON A CERTAIN DATE AND NOT BEFORE. FOR THE COMMITMENT ORDER READS: SUCH SENTENCE IS TO RUN CONSECUTIVELY WITH THE SENTENCE HE IS SERVING / COMMITMENT SHALL ISSUE "FORTHWITH": FORTHWITH EQUALING IMMEDIATELY, MAKES ORDER AMBIGUOUS.

DON'T A CONSECUTIVELY SENTENCED PERSON HAVE A RIGHT UNDER U.R.C.P. 22 (d) TO BE SENTENCED WITH PARTICULAR SPECIFICATION WHERE (AS IN THIS CASE) APPLICABLE, RATHER THAN VAGUELY WITH "FORTHWITH". THIS IS UNCLEAR IN UTAHS LAW, IN SUCH A PECULIAR CASE. U.S. V DAUGHERTY 269 US 360 (1925) IN RE SWINK N.C. 89 SE 2d 792 (1955) (REQUIRING EXACTITUDE IN JUDGEMENTS IMPOSING PENAL SERVITUDE) STATE V DENNY UT. APP. 776 P 2d 91 (1989) AT 93 (IT IS NECESSARY THAT SENTENCES BE RENDERED WITH CLARITY AND ACCURACY)

DOES THE U.B.O.P. HAVE A FULL DUE PROCESS ROLE IN SENTENCING OR CAN THEY BASICALLY DO WHATEVER THEY WANT TO DO.? IF A PRISONER IS SERVING A TERM WHICH THE BOARD HAS ALREADY PREVIOUSLY DETERMINED HE MUST CONTINUE TO SERVE UNTILL IT EXPIRES, AND PRISONER IS AGAIN COMMITTED TO SERVE A SECOND UNRELATED TERM CONSECUTIVELY IS IT ALRIGHT IF THE U.B.O.P. HOLDS A DISCIPLINARY TYPE RESCISSION HEARING ON BOTH TERMS SIMULTANEOUSLY? OR ARE THEY ENJOINED BY UCCP 77 27 7.1 AND 77-27-9.1 TO HOLD AN ORIGINAL PAROLE GRANT HEARING ON THE NEWLY IMPOSED CONSECUTIVE TERM? MUST THEY ACT ACCORDING TO B.O.P. AMINISTRATIVE LAW R 655 201 IF SO.

WILL THE UTAH SUPREME COURT PLEASE FINALLY DEFINE EFFECTIVE RESPONSIBLE DUE PROCESS REQUIREMENTS FOR THE U.B.O.P.

THIS CASE PROVIDES THE PERFECT VEHICLE FOR DETERMINING THE RESPECTIVE ROLES OF SENTENCING COURTS AND SENTENCING ENITY B.O.P. IN THESE UNUSUAL CASES. SINCE PRISON TERMS ARE CONTINUIGUSLY LENGTHENING AND MANY INMATES MUST THEREFORE EXPIRATE THEIR TERMS MORE OF THESE CASES ARE BOUND TO ARISE.

12-11-97

Paul Knoll

PETITIONER

PAUL KNOLL

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UTAH SUPREME COURT
BRIEF

FILED

JAN 20 1998

CLERK SUPREME COURT
UTAH

DOCKET NO. 980041

IN THE SUPREME COURT OF UTAH

PAUL KNOLL (PETITIONER)	PETITION FOR WRIT OF CERTIORARI #2 AS PER U.R.C.P. 65B
v STATE OF UTAH (RESPONDENTS)	CASE # 981041

THIS CERTIORARI IS BROUGHT TO THE UTAH SUPREME COURT BY PETITIONER BECAUSE ON NOV 28 1997 THE UTAH COURT OF APPEALS DISMISSED APPEAL # 970528 CA STATE OF UTAH - PLAINTIFF VS PAUL KNOLL - DEFENDANT BY WAY OF A MEMORANDUM DECISION (NOT FOR OFFICIAL PUBLICATION) ON THAT DAY.

QUESTIONS PRESENTED :

DOES A DEFENDANT HAVE A RIGHT TO BE CHARGED WITH AN ESSENTIAL ELEMENT OF OFFENCE ON INFORMATION ?

CAN SAME DEFENDANT BRING A MOTION TO DISMISS DEFECTIVE INFORMATION TO TRIAL COURT, WHICH IS BASED ON A FATAL FLAW OF NOT HAVING AN ESSENTIAL ELEMENT ON INFORMATION, IF THE MOTION IS LATE BY 6 MONTHS AFTER CONSECUTIVE SENTENCE FOR CONVICTION BEGAN.

DOES TRIAL COURT HAVE PREREQUISITE JURISDICTION IF ESSENTIAL ELEMENT IS LACKING ON INFORMATION.

IS A JURY VERDICT OF "GUILTY AS CHARGED ON INFORMATION" VALID IF INFORMATION LACKED AN ESSENTIAL ELEMENT OF OFFENCE.

LIST OF PARTIES : PETITIONER, PAUL KNOLL STATE PRISONER
RESPONDENT, STATE OF UTAH

JURISDICTION : A MEMORANDUM DECISION WAS RENDERED BY UTAH'S COURT OF APPEALS ON NOV 28 1997 DISMISSING APPEAL CASE # 970528 CA STATE OF UTAH PLAINTIFF V KNOLL DEFENDANT CONCERNING THIS

VERY MATTER NOW BROUGHT ON THIS PETITION FOR CERTIORARI, SO THE UTAH SUPREME COURT HAS JURISDICTION. FURTHERMORE U.R.C.P. 65B PLUS UTAH CONST. ART 1 SEC.5 AND ART 1 SEC 11 (COURTS OPEN) CONSTITUTIONAL PROVISIONS, STATUTES ORDINANCES AND REGULATIONS RELIED ON.

THE FOLLOWING ARE BEING VIOLATED BY RESPONDENT TOWARDS PETITIONER.

U.S. CONST. AMEND. 14 SEC 1 DUE PROCESS OF LAW - EQUAL PROTECTION
 "NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIBERTY WITHOUT DUE PROCESS OF LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

UTAH CONST. ART. 1 SEC 7 NO PERSON SHALL BE DEPRIVED OF LIBERTY WITHOUT DUE PROCESS OF LAW.

U.R.C.P. 12 (b) - - - - THE FOLLOWING SHALL BE RAISED AT LEAST 5 DAYS PRIOR TO THE TRIAL.

(1) DEFENCES AND OBJECTIONS BASED ON DEFECTS IN THE INFORMATION OTHER THAN IT FAILS TO SHOW JURISDICTION IN THE COURT OR TO CHARGE AN OFFENCE WHICH OBJECTION SHALL BE NOTICED BY THE COURT AT ANY TIME DURING THE PENDENCY OF THE PROCEEDINGS.

U.R.C.P 25 (2) IN ITS DISCRETION FOR SUBSTANTIAL CAUSE AND IN FURTHERANCE OF JUSTICE THE COURT MAY EITHER ON ITS OWN INITIATIVE OR UPON APPLICATION OF EITHER PARTY ORDER AN INFORMATION DISMISSED.

25 (b) THE COURT SHALL DISMISS THE INFORMATION WHEN:
 (2) THE ALLEGATIONS OF THE INFORMATION - - - - DO NOT CONSTITUTE THE OFFENCE INTENDED TO BE CHARGED IN THE PLEADING SO FILED.

STATEMENT OF CASE

ON AUGUST 30 1991 AN INFORMATION WAS AUTHORIZED FOR PRESENTMENT BY SALT LAKE COUNTY ATTORNEY DEPUTY RICHARD SHEPHERD TO WIT: STATE OF UTAH V PAUL LEO KNOLL CRIMINAL # 911010503 FS FOR ASSAULT BY A PRISONER. THIS CHARGE WENT TO JURY TRIAL IN THE 3RD DISTRICT COURT OF SALT LAKE COUNTY AS CASE # 911901389. TRIAL MARCH 10-11 1992, DEFENDANT KNOLL WAS CONVICTED, SENTENCED ON 3/20/92 TO A CONSECUTIVE 0-5 YEAR TERM. THE 5 YEAR CONSECUTIVE TERM BEGAN ON 12/14/96, APPROXIMATELY 6 MONTHS LATER JUNE 1997 PETITIONER HEREIN NOTICED THAT THE SAID INFORMATION LACKED AN ESSENTIAL ELEMENT OF THE OFFENCE OF ASSAULT BY A PRISONER - INTENT - AND SO FILED A MOTION TO DISMISS DEFECTIVE INFORMATION WITH TRIAL COURT UNDER U.R.C.P. 12 (b) (1) AND 25 (2) + (b) (2). TRIAL COURT DENIED MOTION, IT WAS APPEALED TO THE UTAH COURT OF APPEALS WHO ALSO DENIED THE

APPEAL 970528CA STATE OF UTAH V KNOLL ON NOV 28 1997.
 (A DIRECT APPEAL OF CRIMINAL CONVICTION WAS ATTEMPTED PRO SE BY KNOLL WHO WAS VICTIMIZED BY PITFALLS IN 1992, BUT APPEALS COURT REFUSED TO ALLOW DIRECT APPEAL.)

_____ ARGUMENT IN SUPPORT OF GRANTING CERTIORARI _____

TRIAL COURT ABUSED ITS DISCRETION BY DENYING PETITIONERS MOTION TO DISMISS DEFECTIVE INFORMATION EVENTHOUGH SUCH MOTION WAS DREADFULLY LATE AND APPEALS COURT WAS IN ERROR TO UPHOLD TRIAL COURT THEREFORE THE SUPREME COURT OF UTAH SHOULD GRANT THIS CERTIORARI, AND HEAR PETITIONERS CASE ON ITS MERITS.

PETITIONER IS DENIED DUE PROCESS OF LAW. BECAUSE U.R.C.V.P. 12 (b) _____ THE FOLLOWING SHALL BE RAISED AT LEAST 5 DAYS PRIOR TO TRIAL: (1) DEFENCES AND OBJECTIONS BASED ON DEFECTS (MERE DEFECTS - OPPOSED TO FATAL FLAWS) IN INFORMATION OTHER THAN (HERE IS THE EXCEPTION) IT FAILS TO SHOW JURISDICTION IN THE COURT (INFORMATION 911010503 FS FAILS TO SHOW THE COURTS NECESSARY PREREQUISITE JURISDICTION FOR IT DOESN'T CITE ON IT AN ESSENTIAL ELEMENT OF THE OFFENCE) OR, TO CHARGE AN OFFENCE (SAID INFORMATION DON'T CHARGE AN OFFENCE) (AND) WHICH OBJECTION SHALL BE NOTICED BY THE COURT AT ANY TIME DURING PENDENCY OF THE PROCEEDINGS. PETITIONER CLAIMS THAT SINCE HE IS SERVING A PRISON TERM FOR THIS ASSAULT OFFENCE THE PROCEEDINGS ARE INDEED STILL PENDING. IN U.S. V VREEKEN 803 F 2d 1085 1088 (10TH CIR 1986) (DEFENDANT MAY RAISE OBJECTION AT ANY TIME TO SUBJECT MATTER JURISDICTION) SEE FED. R. CRIM. P. 12(b)(2) JOHNSON V PUKETT 930 F 2d 445 447 (5TH CIR) (DEFENDANT MAY CHALLENGE SUFFICIENCY OF INDICTMENT IN HABEAS CORPUS PROCEEDINGS ONLY IF SHE CAN SHOW INDICTMENT SO DEFECTIVE THAT CONVICTING COURT HAD NO JURISDICTION). SUCH IS PETITIONERS CLAIM HERE, THE FATAL DEFECT ON INFORMATION FAILING TO CITE ESSENTIAL ELEMENT RENDERS THE TRIAL COURT FUNDAMENTALLY JURISDICTIONALESS TO HOLD A TRIAL CONVICT AND SENTENCE TO BEGIN WITH, ESPECIALLY SINCE THE JURY'S VERDICT OF CASE 911901389 READS "GUILTY AS CHARGED ON INFORMATION (911010503 FS)

SEE G.L.J. 1997 ED PAGE 1027 (WHEN AN INDICTMENT IS CHALLENGED LATE. COURT MUST CONSTRUE THE INDICTMENTS ALLEGED FAILURE TO STATE AN OFFENCE LIBERALLY IN FAVOR OF VALIDITY) RENDERS THE STATE OF UTAHS U.R.C.V.P. 12 - 5 DAY PRIOR TO TRIAL PROCEEDUAL BAR CLAIM A BUNCH OF HOGWASH DON'T IT.?

SEE G.L.J. PAGE 1025 1027 (1997 ED) RULE 12 TIME LIMITS DOES NOT APPLY TO CHALLENGES TO COURT JURISDICTION OR TO FAILURE TO

CHARGE AN OFFENCE. FED. R. CRIM. P. RULE 12 SAME AS UTAHS R. CRIM. P. RULE 12. YES? NO?

THE FAILURE OF PETITIONER TO QUESTION THE INFORMATION AT ANY TIME PRIOR OR DURING HIS TRIAL DOES NOT PRECLUDE THIS COURTS CONSIDERATION OF THE QUESTION - U.S. V EDMONSON 962 F 2d 1535 1542 1543 (10TH CIR 1992) U.S. V VANDERBURG 358 F 2d 6, 10, (7TH CIR 1975)

UNITED STATES V WABAUNSEE 528 F 2d (1975) (WE HAVE HELD THAT THE INDICTMENT IS IMMUNE FROM ATTACK UNLESS IT IS SO OBVIOUSLY DEFECTIVE AS NOT TO CHARGE THE OFFENCE BY ANY REASONABLE CONSTRUCTION). UNITED STATES V SMITH 553 F 2d 1239 1240 (1977) (THE COURT RULED ABSENCE OF PREJUDICE TO DEFENDANT DOES NOT CURE WHAT IS NECESSARILY A SUBSTANTIVE JURISDICTIONAL DEFECT IN INDICTMENT)

PETITIONER ALSO BROUGHT HIS MOTION TO DISMISS DEFECTIVE INFORMATION AND APPEAL THEREOF UNDER U.R.C.P. 25(a) AND 25(b)(2). U.R.C.P. 25 IN ITS DISCRETION FOR SUBSTANTIAL CAUSE AND FURTHERANCE OF JUSTICE THE COURT MAY ---- UPON APPLICATION ---- OF PARTY ORDER AN INFORMATION DISMISSED.

25 (b) THE COURT SHALL DISMISS THE INFORMATION WHEN:

(2) THE ALLEGATIONS OF THE INFORMATION ----- DO NOT CONSTITUTE THE OFFENCE INTENDED TO BE CHARGED.

SEE G.L.J. 1997 Ed. PAGE 1037 (TOP) COURTS WILL NORMALLY FIND AN INDICTMENT SUFFICIENT UNLESS IT FAILS TO STATE A MATERIAL ELEMENT OF THE OFFENCE. U.S V COVINO 837 F 2d 65 71 (2ND CIR 1988) COURTS GENERALLY CONSIDER ONLY THE INDICTMENT ITSELF TO DETERMINE WHETHER THE INDICTMENT IS SUFFICIENT U.S. V CRITZER 951 F 2d 306 307 -08 (11TH CIR 1992) (PER CURIAM) (COURT SHOULD LOOK ONLY AT FACE OF INDICTMENT) U.S. V OPSTA 659 F 2d 848 850 (8TH CIR 1981) (INDICTMENT TRACKING LANGUAGE OF INVOLUNTARY MANSLAUGHTER STATUTE INSUFFICIENT WHEN STATUTE DID NOT CONTAIN INTENT ELEMENT AS REQUIRED BY CASE LAW), IN UNITED STATES V CALHOUN 257 F 2d 673 680 (7TH CIR. 1958) (THE COURT HELD THAT THE OMISSION OF AN ESSENTIAL ELEMENT OF THE OFFENCE CHARGED WAS MORE THAN AN OBVIOUS TECHNICALITY AND WAS FATAL TO THE INDICTMENT, REQUIRING REVERSAL OF CONVICTION BASED ON INDICTMENT. THE INDICTMENT INVOLVED IN CALHOUN MADE REFERENCE TO THE STATUTE CONTAINING THE OFFENCE BUT THE COURT REFUSED TO CONSIDER SUCH A REFERENCE AS CURING THE DEFECT.)

CONCLUSION

THE MOTION TO DISMISS DEFECTIVE INFORMATION (APPLICATION BY PARTY AS PER U.R.C.P. 25(2)) POINTED OUT TO THE TRIAL COURT ALBEIT LATE THAT

THE INFORMATION LACKED AN ESSENTIAL ELEMENT AND CONSEQUENTLY DID NOT CONSTITUTE THE OFFENCE INTENDED TO BE CHARGED (AS PER U.R.C.P. 25 (b) (2)) i.e. WAS FATALLY DEFECTIVE, THUS BRINGING INTO SHARP QUESTION TRIAL COURTS ORIGINAL PREREQUISITE JURISDICTION TO HOLD TRIAL, CONVICT AND SENTENCE, REQUIRING REDRESS. TRIAL COURT THEN ABUSED ITS DISCRETION AND DODGED ITS OBLIGATIONS ACCORDING TO U.R.C.P. 12 AND 25 BY DENYING SAID MOTION BY USEING ~~THE~~ RULE 12 - 5 DAY PRIOR TO TRIAL TIMELYNES PRETEXT OUT OF CONTEXT TO PROCEEDUALLY BAR ~~THE~~ MOTION AND CLAIM OF ALL THINGS LACK OF JURISDICTION !! BECAUSE I WAS LATE, WHAT OF THE LACK OF JURISDICTION - PRIOR TO - BY THE FATALLY DEFECTIVE INFORMATION.? CAN I GET JUSTICE.?

INFORMATION 911010503FS READS AS FOLLOWS

COUNT I

ASSAULT BY A PRISONER A THIRD DEGREE FELONY AT UTAH STATE PRISON IN SALT LAKE COUNTY STATE OF UTAH ON OR ABOUT MAY 2 1991 IN ~~THE~~ VIOLATION OF TITLE 76 CHAPTER 5 SECTION 102.5 UTAH CODE ANNOTATED 1953, AS AMENDED, IN THAT THE DEFENDANT PAUL LEO KNOLL, A PARTY, TO THE OFFENCE, WAS A PRISONER CONFINED IN UTAH STATE PRISON, A PENAL INSTITUTION, AND ASSAULTED DR. VAN AUSTON, BY ATTEMPTING TO DO BODILY INJURY TO DR. VAN AUSTON WITH UNLAWFUL FORCE OR VIOLENCE.

NOTE: THERE IS NO ESSENTIAL ELEMENT OF INTENT ON THE INFORMATION NOR ON PROBABLE CAUSE STATEMENT.

12-11-97

Paul Knoll

PAUL KNOLL
PO. BOX 250
DRAPER UTAH 84020

NOTE: TO THE UTAH SUPREME COURT

I DON'T GO OUT OF MY WAY TO PERFECT THIS/THESE CERT. [S] NOTICE THE LACK OF EXHIBITS. (I'V GOT NO COPIER - MY ACCESS TO A COPIER IS ARDUOUS AND UNDEPENDABLE REQUIRING RELINQUISHMENT OF DOCUMENTS TO BE COPIED I.E. COPS MAY NEVER RESULT NOR ORIGINALS EVEN RETURNED). SO I SAVE MY ORIGINALS FOR FEDERAL COURT. FOR I'M SURE THE UTAH SUPREME COURT WILL BACK THEIR MORMON FRIENDS IN THE UTAH COURT OF APPEALS WHO BACKED THEIR MORMON FRIENDS ~~#~~ OF THE 3RD DISTRICT COURT. AND DENY THIS CERTIORARI OF A NON-MORMON NON-CHILDMOLESTER.

I UNDERSTAND THAT THESE CERT. PETITIONS ARE DISCRETIONARY YOUR SUPREME COURT CAN ~~CHOOSE~~ CHOOSE NOT TO HEAR IT. GOOD!! PLEASE CHOOSE NOT TO HEAR IT THEN PROMPTLY!, SO I CAN GET ON TO THE FEDERAL COURTS QUICKLY BEFORE MY 5 YEAR TERM RUNS OUT.

IF YOU THINK MY ATTITUDE PECULIAR, REFLECT, I'V HAD EXPERIENCE WITH UTAHS COURTS ~~AT~~ BEFORE AT ALL LEVELS AND KNOW YOUR PROPENSITY'S. AND OF COURSE I MUST EXHAUST STATE REMEDYS AFOR FILING IN FEDERAL COURT. SO MY PETITION IS ACTUALLY MORE OF A ~~FORLORN~~ FORELORN COMPLAINT. I'D GLADLY SKIP ~~YOUR~~ YOU UTAH STATE MORMONS ALTOGETHER AND GO TO FEDERAL COURT, BUT CAN'T.

12/11/97

Paul Knoll
PETITIONER.

MAILING CERTIFICATE

I PAUL KNOLL CERTIFY THAT A COPY WAS MAILED TO THE
UTAH ATTORNEY GENERAL 160 E 300 S P.O. BOX 140856 S.L.C. UT 84114
0856 ~~AND~~ OF THE PETITION FOR WRIT OF CERTIORARI #1 AND #2.
ON DEC 11 1997

12/11/97

Paul Knoll