

1987

Low v. Bonacci : Petition for Rehearing

Utah Supreme Court

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DOCKET NO. **870043**
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P.O. Box 5002
FPC Sheridan OR. 97378

BRIEF

~~ORIGINAL~~

FILED

MAY 29 1990

Clerk, Supreme Court, Utah

IN THE SUPREME COURT
OF THE STATE OF UTAH

DAVID S. LOW, TRUSTEE FOR THE
CAMILE COLLET TRUST, THE
DAVID B. COLLETT TRUST, AND
THE SAMUEL COLLETT TRUST,

PLAINTIFF AND APPELLEE,

No. 870043

VS

JOSEPH A. BONACCI,

Defendant and Appellant.

MOTION FOR REHEARING - AFFIDAVIT IN SUPPORT

Appellant, Joseph A. Bonacci, moves this Court for rehearing reconsideration and/or stay.

Appellant is and has been incarcerated continuously, (in federal correctional institutions) since July 1, 1985, he has been forced to fight for "due process" of the law without access to Utah Law Books, library and/or Law tools. He has been denied access to witnesses in his behalf and a chance to appear in Court in person on his own behalf. See United States V Gravatt (3rd Cir. Dec. 29, 1989).

Because of Appellant's continuous incarceration he has been denied his Constitutional rights to:

1. Amendment I petition the government for redress of grivance.
2. Amendment IV the right...to be secure in persons, houses, papers and effects against...seizures.
3. Amendment V be deprived of ...property without due process of law; nor shall private property be taken...without just

compensation.

4. Amendment VII the right of trial by jury...and in accordance to the rules of the common law.

5. Amendment XIV no state shall make or enforce any law which shall abridge the privileges...of citizens of the United States nor shall any state deprive any person of ...property, without due process of law...or equal protection of the law.

Appellant did not fail to appear and/or file a trial transcript, but was unable to appear due to incarceration.

The State Court systems in Utah is under Constitutional obligation to assist inmate in preparation and filing of meaningful legal papers by providing adequate libraries or adequate assistance from persons trained in law. U.S.C.A. Const. Amend 14 See Straub v Monge 815 F2d 1467 (11th Cir. 1987)

STRAUB V MONGE SUPRA:

"Right to meaningful access to courts was applicable to civil forfeiture action against prison inmate."

Appellant has not had access to Utah Law Book/tools and or counsel. In Bounds v Smith 430 US 817, 52 L Ed 2d 72, 97 S Ct 1491 the Court stated:

...."the states must protect the right of prisoners to access to the courts by providing them with law libraries or in alternative sources of legal knowledge. In Younger v Gilmore 404 US 15, 30 L Ed 2d 142, 92 S Ct 250 (1971) we held percuriam that such services are Constitutionally Mandated.

Appellant meets all four of the "doctrine of boundry by acquiescence stated in Goodman v Wilkinson 629 P2d 447. 448 (Utah 1981) but because of his continuous incarceration has been unable to present his case and present witnesses in his behalf.

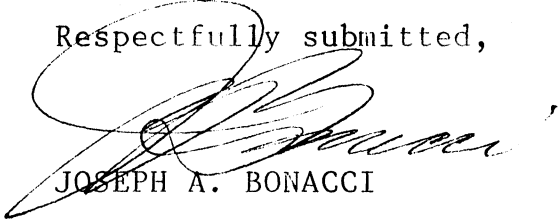
Appellant is being penalized in the above cause, not because of the merits in the case but because he has been denied his Constitutional rights of due process. Straub v Monge 815 F2d 1467.

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....."It cannot be presumed that any clause in the Constitution is intended to be without effect....."
Marbury v Madison 1 Cr AN ch 137, quoted in Griswold v Connecticut 381 U.S. 479 517 (1965)

BASED ON THE FOREGOING, appellant, moves this court to stay this Court's opinion until appellant can properly and Constitutionally present his cause.

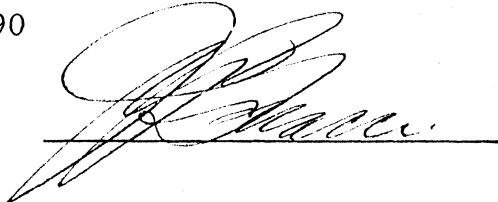
Respectfully submitted,



JOSEPH A. BONACCI

Copy sent to David
S. Low and Richard
L. Bird Jr. Salt Lake
City, Utah

May 23, 1990



AFFIDAVIT OF JOSEPH A. BONACCI

STATE OF OREGON)
COUNTY OF YAMHILL) ss
CITY OF SHERIDAN)

I, Joseph A. Bonacci, duly sworn upon oath state under the penalty of perjury that the following is true and correct in all respects, based upon my personal knowledge and that if called in to testify, I can and will testify to the same:

1. I am a federal prisoner, and have been continuously incarcerated since July 1985, and presently housed at FPC Sheridan Oregon.

2. That Mr. Collett purposely instigated Cause No. 870043 against appellant (eventhough they had been neighbors for over eight (8) years) when he found out appellant had been incarcerated.

3. Appellant has been and is without access to witnesses, Utah law books, law library and/or law tools to work with.

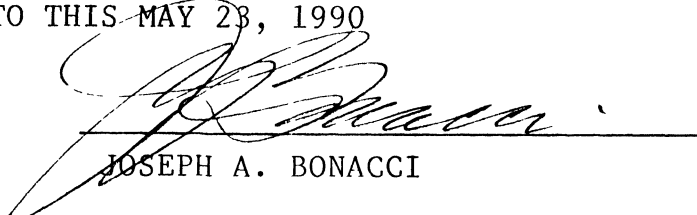
4. Appellant has been without effective aid and assistance of counsel.

5. Appellant is and has been denied "due process of law under the United States Constitution.

6. Appellant has been denied access to the Courts and his property taken without due process of law or equal protection thereof.

7. Appellant can meet all four "doctrine of boundry by acquiesence" criteria if given a chance.

SWORN TO THIS MAY 23, 1990


JOSEPH A. BONACCI