

1989

# Kendall Q. Northern v. N. Eldon Barnes, Warden, Utah State Prison and the Separtment of Corrections Through The Board of Pardons : Reply Brief

Utah Court of Appeals

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**BRIEF**

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IN THE UTAH STATE COURT OF APPEALS

DOCKET NO. \_\_\_\_\_

KENDALL Q. NORTHERN,

Plaintiff & Appellant,

vs.

N. ELDON BARNES, WARDEN,  
UTAH STATE PRISON AND THE  
DEPARTMENT OF CORRECTIONS  
THROUGH THE BOARD OF PARDONS,

Defendants & Appellees.

Case No. 900566-CA

Oral Argument  
Priority No. 3

REPLY BRIEF OF APPELLANT

APPEAL FROM THE ORDER OF DISMISSAL OF THE  
THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY, UTAH,  
THE HONORABLE TIMOTHY R. HANSON

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**FILED**

SEP 9 1991

Marie T. Noonan  
Clerk of the Court  
Utah Court of Appeals

IN THE UTAH STATE COURT OF APPEALS

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IN THE UTAH STATE COURT OF APPEALS

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Case No. 900566-CA

Oral Argument  
Priority No. 3

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REPLY BRIEF OF APPELLANT

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Appellant Kendall Q. Northern (hereinafter "Northern"), by and through his counsel Haley & Stolebarger, hereby submits this Reply Brief in support of his appeal from the Order of Dismissal entered by the Honorable Timothy R. Hanson of the Third District Court of Salt Lake County.

**ARGUMENT**

**A. NORTHERN'S PAROLE DOES NOT RENDER MOOT THE ISSUES BEFORE THE COURT.**

The State argues that since Northern was paroled on July 9, 1991, Northern has received his requested relief and this appeal is now moot. This is simply not the case. By his appeal, Northern sought not only his immediate release on parole, but also an order that gives him credit toward his term of parole for all periods of

his incarceration since May 10, 1988, and such other relief as the Court may determine to be appropriate.

As a result of the rescission of his May 10, 1988, parole date, and his continued imprisonment, Northern was forced to suffer further deprivation of some of his most basic rights for another two years. Northern was not able to travel, associate with family and friends, or enjoy numerous other basic freedoms that would have come with parole, even with its restrictions. If the Court finds that the trial court erred in finding that the Board of Pardon's rescission of Northern's May 10, 1988, parole date was legal and proper, then Northern is surely entitled to some compensation for the losses he suffered while being improperly detained and deprived of his rights. While the Court cannot give back to Northern the years taken or truly compensate him for the deprivation he endured during those years, it can shorten the period of his parole, ordering that the terms of the May 10, 1988, parole be reinstated nunc pro tunc as of May 10, 1988. Clearly, a controversy still exists and Northern has the requisite standing to continue to seek redress in this Court.

Also, in November 1990 the Board of Pardons gave Northern a new parole date of July 9, 1991; yet it did not notify him until July 2, 1991, that restitution would be a condition of his parole. Restitution had not been ordered by the Board in 1981 at his initial hearing, in 1984 at his Reconsideration, or in 1988 at his April Special Attention hearing. Northern was then given the opportunity to contest the restitution at a hearing scheduled for

July 15, 1991, six days after his scheduled parole date -- or he could choose to waive his right to a hearing. In light of the events of May 1988, Northern made the only intelligent choice. A true and correct copy of the Waiver of Personal Appearance is attached as Addendum A. Addendum B is the Board's explanation of its order, which is replete with arbitrariness, speculation and illogic; ironically, some of the same qualities that infected the Board's 1988 decision to rescind Northern's parole.

Finally, this is an issue which affects the interests of all inmates who are or will become eligible for parole, is likely to recur in a similar manner to other inmates and yet because of the extended time periods involved in the habeas and appellate process, is prone to escaping judicial review. As such the Court should hear the case without regard to issues of mootness. Wickham v. Fisher, 629 P.2d 896, 899 (Utah 1981); Kehl v. Schwendiman, 735 P.2d 413, 415 (Utah App. 1987).

In Wickham, a pretrial detainee at the Weber County jail filed a habeas corpus petition attacking the conditions of confinement at the jail. The trial court granted partial relief in response to the petition. Unsatisfied with only partial relief, the petitioner appealed to the Utah Supreme Court. During the pendency of the appeal, the petitioner moved beyond the pretrial stage. The defendants then sought to have the appeal dismissed as moot since the petitioner was no longer a pretrial detainee. The Supreme Court found that petitioner did have standing, stating that:

"[t]he law provides no exemption from judicial scrutiny of unlawful acts which are likely to be repeated because



they do not fall within the usual principles of standing and justiciability.

. . .

The fact that present and future detainees will suffer conditions at the jail for a period of time insufficient for a case to receive appellate review during the imposition of such conditions reflects a continuing and recurring controversy sufficient to invoke the jurisdiction of this Court."

Id. at 899-900.

The actions of the Board of Pardons should not escape judicial scrutiny merely because the Board of Pardons has now seen fit to parole Northern. As evidenced by the Utah Supreme Court's opinion in Foote v. Utah Board of Pardons, 156 Utah Adv. Rep. 3 (Utah 1991), issues concerning the role of due process in Board of Pardons decisions are certainly issues which "affect the public interest." Further, the Board of Pardons' failure to provide the requisite due process continues to occur. As evidence of this continued failure the Court need look no further than the Board of Pardons' handling of Northern's July 9, 1991 parole.

**B. THE TRIAL COURT INCORRECTLY CONCLUDED THAT THE BOARD'S DECISION WAS REASONABLE.**

The State asserts that "[t]he issue before this Court is whether the trial court was correct in concluding that the record supported the Board of Pardons' decision to rescind petitioner's prospective parole release date." Brief of Appellees, p. 10. Based on this statement, the State devotes a considerable portion of its brief arguing the correctness of the Board of Pardons' decision. However, the correctness of the decision of the Board of

Pardons is not directly at issue in this case. What is at issue is whether the trial court correctly concluded that the Board of Pardons acted properly and within the constitutional limitations recognized by the Utah Supreme Court in Foote.<sup>1</sup>

Recognizing that the actions of the Board of Pardons were subject to some limitations, the trial court concluded that "once a parole date has been granted, it cannot be taken away by the Board of Pardons inappropriately or unreasonably or upon the whim of the Board members." Findings of Fact and Conclusions of Law and Order of Dismissal p. 7 (attached to Appellant's Brief as Addendum C). The trial court then reviewed the Board of Pardons' action under a "reasonable basis" standard (a standard which appears to be less stringent than the due process standard required by Foote) and concluded that as a matter of law there was a "reasonable basis" for the actions. Id. As discussed more thoroughly in Northern's Brief of Appellant and throughout this Reply Brief, the trial court's legal conclusions are erroneous.

Foote requires that the Board of Pardons have much more than a "reasonable basis" for their actions. The Board of Pardons must afford prospective parolees the same due process afforded by courts. Foote, 156 Utah Adv. Rep. at 4. By rescinding Northern's parole date without any new evidence of his danger to the community and without proper notice to Northern and a hearing, the Board of

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<sup>1</sup> This issue presents a question of law and is therefore subject to a strict correctness review, giving no deference to the trial court's decision. Ron Case Roofing & Asphalt Paving, Inc. v. Blomquist, 773 P.2d 1382, 1385 (Utah 1989); Brinkerhoff v. Schwendiman, 790 P.2d 587, 589 (Utah App. 1990).

Pardons violated not only its own rules, but also some of the most basic tenets of due process. However, even though this alone establishes that the trial court's Order of Dismissal was in error, the record in this case demonstrates that the Northern's parole date was rescinded not on a reasonable basis, but on the whim of the Board of Pardons.

On July 8, 1988, two months after the rescission of Northern's parole date, the Board of Pardons held what was purported to be the "rescission hearing" required by Rule 3.10. During this hearing, Victoria Palacios, a member of the Board of Pardons, questioned Northern and made statements which evidence the real basis for the rescission of Northern's parole date: this Board's view that the 1980 Board simply did not order Northern to serve enough years in prison for his crime. After expressing concern about Northern's possible dangerousness on the streets, Ms. Palacios stated "that to release you [Northern] after only eight years is to depreciate the value of his [the victim's] life and ignore the impact on the Hambys [the victim's family]." Transcript of July 8, 1988 hearing, p. 30 (attached to Appellees' Brief as Addendum D). In affirming the Board or Pardon's rescission, the unnamed "Chairperson" at the July 8 hearing also stated that the concerns expressed by Ms. Palacios were the basis for the rescission. Id. at p. 36.

From this hearing, it is clear that the real reason for the rescission of Northern's May 1988 parole date was that the 1988 Board of Pardons simply disagreed with the decision of the 1981 Board of Pardons. Its Notice of Decision, attached hereto as

Addendum C, in which the reasons for recision are noted as "appropriate punishment" and "risk to society," based on the nature of his crime, confirm the basis of the Board's decision: its desire for additional retribution. The Board then sought to justify its actions by claiming reliance on evidence that was neither new nor that demonstrated that Northern was a risk to society as required by Rule 3.10.

In his deposition, Paul Boyden, a Board member in 1988, described the impact of letters it had received regarding the victim and his family (Deposition of Paul Boyden, p. 37), new Board sentencing guidelines that set longer sentences for this kind of offense (Deposition of Paul Boyden, p. 87-88), and the power of the 1988 Board to set aside "improvident" action by the 1981 Board (Deposition of Paul Boyden, p. 75). This testimony, guarded though it was, confirms the real basis for the Board's action. Such whimsical, arbitrary decision are intolerable, have no reasonable basis and cannot pass the muster of due process as required by Foote.

**C. NORTHERN HAD A CONSTITUTIONAL RIGHT TO DUE PROCESS  
AT THE TIME THE BOARD OF PARDONS DETERMINED THE ACTUAL  
NUMBER OF YEARS HE WAS TO BE IMPRISONED.**

The State next contends that Northern has "no substantial constitutional right to be released on parole prior to the expiration of his sentence." Brief of Appellees, p. 13. Such a statement again demonstrates that the State misapprehends both the issues of this case and the decision of the Utah Supreme Court in

Foote. Simply put, this case is about the trial court's error in failing to recognize the illegality of the Board's conduct and its failure to afford Northern his constitutional right to due process.

In attempting to support its position, the State relies on the case of Kelly v. Oklahoma Pardon and Parole Board, 637 P.2d 858 (Okla.Cr. 1981), cert. denied, 455 U.S. 923 (1982). A review of Kelly shows such reliance to be disingenuous at best. The facts of the case suggest that under the sentencing scheme employed in Kelly the trial court imposed any prison sentence. After a certain fraction of that sentence had been served, a prisoner could, but was not required to, be considered for parole. Id. Thus, the "parole docket date" which respondents attempt to equate to the parole date given Northern is merely a date on which a prisoner could be considered for parole and not an actual parole date. Id. As such, the reasoning of the Oklahoma court is of no consequence to the instant case.

What does have significance in this case is the reasoning of the Utah Supreme Court which has expressly stated that in giving a prisoner a parole date, thereby determining the length of the prisoner's sentence, the Board of Pardons must afford the prisoner the same due process protections found in the courts. Foote, 156 Utah Adv. Rep. at 4. Additionally, in giving Northern a parole date, the Board of Pardons created an expectation of parole, thereby creating a due process liberty interest in parole release. See, Board of Pardons v. Allen, 482 U.S. 369 (1987). By failing to follow its own procedural rules and by failing to give Northern

notice of the evidence relied on and reasons for the rescission of his May 1988 parole date along with an appropriate hearing, the Board of Pardons has failed to give Northern that to which he has a constitutional right -- due process.

**D. NO "NEW EVIDENCE" EXISTED TO JUSTIFY RESCISSION OF NORTHERN'S PAROLE DATE.**

Board of Pardons' Rule 3.10 states that a parole date may be rescinded if "new evidence is presented which shows that the prisoner, if released, would present a serious risk or danger to the community." The State contends, and the trial court agreed, that such new evidence existed to support the rescission of Northern's May 1988 parole date.

Northern does not contend that there was absolutely no evidence to support the rescission of his parole date. Rather, Northern contends that there was no "new evidence" within Rule 3.10 to support the Board of Pardons' actions.

Given its plain and literal meaning<sup>2</sup>, the term "new evidence" must be defined as evidence which was previously unknown or of recent or fresh origin. See, Black's Law Dictionary 940 (5th ed. 1979)(Defining "new"). Further support for this definition of "new evidence" is found in Ready v. United States Parole Commission, 483 F.Supp. 1273 (M.D.Pa. 1980).

In Ready, a federal prisoner filed a petition for writ of

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<sup>2</sup> A statute or regulation should generally be construed according to its plain and literal language. See e.g., Brinkerhoff v. Forsyth, 779 P.2d 685, 686 (Utah 1989).

habeas corpus alleging that the Parole Commission had improperly rescinded his parole. Under the federal parole scheme at the time, a parole could be rescinded only "upon receipt of new information adverse to the prisoner regarding matters other than institutional misconduct" Id. at 1276 (quoting 28 C.F.R. § 2.34(b)(1978)). The Parole Commission contended that letters received, after the granting of a parole date, from the U.S. Attorney's office and the Internal Revenue Service concerning the petitioner's involvement in a tax fraud scheme at the federal prison constituted new information. The court rejected this claim, stating that the Parole Commission was or should have been aware of allegations concerning petitioner's involvement in the tax fraud scheme at the time it made its original parole determination. Thus, the later letters on the same subject could not be considered "new information" within the meaning of the regulation. Id. at 1276-77. Rather, "new information" could only be read to include that information which the Parole Commission previously did not know or could not have known of. Id. at 1277.

A review of the record in this case shows that the trial court found three pieces of evidence served as the basis for rescission of Northern's parole date. The first was that Northern had a drug problem and abused drugs during the first two years of his incarceration. The Board of Pardons learned of this evidence in the summer of 1984 yet reaffirmed Northern's May 1988 parole date in September 1984.

The second piece of evidence used by the Board of Pardons' was

that Northern admitted in February 1988 to using marijuana on February 25, 1988. Again this evidence, submitted by the Duchesne Jail in writing to the prison, was known by the Board of Pardons prior to May 1988 but was not raised as a problem in the April 19, 1988, hearing<sup>3</sup>. Instead, the Board of Pardons, through Paul Larsen, continued to work with Northern in an attempt to work out the details of Northern's parole supervision.

The third piece of evidence was a psychological evaluation of Northern dated May 5, 1988. This evaluation specifically noted that the Board of Pardons was to consider the report a favorable one. See, Addendum C to Brief of Appellant.

The term "new evidence" can only be read to encompass this third piece of evidence. Only this evidence was previously unknown to the Board of Pardons; all other evidence was known to the Board of Pardons but deliberately not acted upon.

Additionally, although "new evidence", this report is not a sufficient basis for rescission under Rule 3.10. Rule 3.10 required that the Board of Pardons have new evidence that Northern presented "a serious risk or danger to the community" before rescinding his parole date. A report which states that Northern has shown a great deal of growth and maturing, does not have the capacity for violent acting out, responds to authority when necessary and, most importantly, specifically states that it is to be regarded as a favorable one can hardly be considered evidence

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<sup>3</sup> A copy of the transcript of this hearing is included in the Appellees' Brief as Addendum B.



that Northern presented such a serious risk or danger. Thus, the Board of Pardons had no basis under its own Rule 3.10 to rescind Northern's parole and its actions of May 9, 1988, only served to deprive Northern of his constitutional right to due process.<sup>4</sup>

**E. UNDER ANY CIRCUMSTANCES, THE BOARD OF PARDONS WAS REQUIRED TO GIVE NORTHERN NOTICE AND A HEARING BEFORE RESCINDING HIS MAY 1988 PAROLE DATE.**

On May 9, 1988, one day before he was to be paroled, the Board of Pardons rescinded Northern's parole date. This action was taken without any notice to Northern and without benefit of a rescission hearing, both of which were required by Rule 3.10. The State contends that Board of Pardons' actions fell within the exception to Rule 3.10. Again, given its plain and literal meaning, the language of Rule 3.10 does not support this contention.

In May 1988, Rule 3.10-2 reads as follows:

Prior to the rescinding of a parole or rehearing date, information shall be provided to the Board establishing the basis for the rescission hearing. Upon receipt of such information, the offender will be scheduled for a rescission hearing. Except under extraordinary circumstances, the offender will be notified of all allegation and the date of the scheduled hearing at least seven days in advance.

The State argues that the Board of Pardon's failure to give notice and hold a hearing before rescinding Northern's parole date was justified under the extraordinary circumstance language of the

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<sup>4</sup> Fundamental notions of due process require that the Board of Pardons adhere to its own rules and any failure to do so is violative of constitutional due process protections. See, International House v. National Labor Relations Board, 676 F.2d 906, 912 (2d Cir. 1982); Government of Canal Zone v. Brooks, 427 F.2d 346, 347 (5th Cir. 1970).

third sentence. This position clearly misreads the Rule. The exceptional circumstance language only applies to the requirement that the prisoner be given seven days notice of the allegations against him and the hearing. It does not totally waive the notice and hearing requirements as the State would have this Court believe. Under any circumstances, Northern was entitled to some notice of the allegations against him and to a hearing before having his parole date rescinded. Northern has never been informed of the allegations against him<sup>5</sup>. Further, a hearing held some two months after rescission of the parole date can hardly be considered compliance with Rule 3.10<sup>6</sup>. Thus, by completely ignoring its own procedural rules, the Board of Pardons has denied Northern his

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<sup>5</sup> A failure to give notice creates a great risk that erroneous information may serve as a basis for decisions made by the Board of Pardons. As Justice Marshall noted in his dissenting opinion in Greenholtz v. Inmates of Nebraska Penal & Correctional Complex 442 U.S. 1 (1979), prison and parole files often contain errors. Justice Marshall cited the following as examples: Kohlman v. Norton, 380 F.Supp. 1073 (D.Conn. 1974)(parole denied because file erroneously indicated that applicant had used gun in committing robbery); Leonard v. Mississippi State Probation and Parole Board, 373 F.Supp. 699 (N.D.Miss. 1974)(prisoner denied parole on basis of illegal disciplinary action); In re Rodriguez, 537 P.2d 384 (Cal.App. 1975)(factually incorrect material in file led parole officers to believe that prisoner had violent tendencies and that his family rejected him); State v. Pohlabel, 160 A.2d 647 (N.J.Super. 1960)(files erroneously showed that prisoner was under a life sentence in another jurisdiction); Hearings on H.R. 13118 et al. before Subcommittee No. 3 of the House Judiciary Committee, 92d Cong., 2d Sess., pt. VII-A, p. 451 (1972)(testimony of Dr. Willard Gaylin: "I have seen black men listed as white and Harvard graduates listed with borderline IQ's"). Greenholtz, 442 U.S. at 33 n. 15.

<sup>6</sup> Paul Boyden, a member of the Board of Pardons which rescinded Northern's parole date, expressly recognized that rescinding a parole date without a hearing and then later holding a hearing was improper. Deposition of Paul Boyden, p. 49.

liberty without the requisite due process of law.<sup>7</sup>

**F. THE BOARD OF PARDONS' FAILURE TO COMPLY WITH EVEN THE MOST FUNDAMENTAL ASPECTS OF DUE PROCESS SERVED TO SUBJECT NORTHERN TO CRUEL AND UNUSUAL PUNISHMENT.**

The State suggests that the Board of Pardons' actions in this case were well within the standards of decency accepted by our society and that the punishment inflicted on Northern was not cruel and unusual. In support of this position, the State asserts that "the Board of Pardons could rescind a scheduled parole or termination date at any time prior to an inmates [sic] release without infringing upon any constitutional right of an inmate." Brief of Appellees, p. 21. By this statement, the State has again demonstrated its ignorance of the Foote decision and its continuing belief that Board of Pardons is all powerful, answering to no one, accountable to no court. Punishment by such tyrants is one of the very evils that both the United States and Utah Constitutions seek to prevent.

Punishments in our society are determined only after due process has been afforded. We no longer endorse the playing of cruel mind games on inmates, such as dangling a release date in front of a prisoner, only to take that date away at the last

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<sup>7</sup> Northern in no way concedes that any exceptional circumstances existed at the time his parole was rescinded. Northern had been incarcerated for nearly 8 years during which time the Board of Pardons could have requested a psychological evaluation. The Board of Pardons' failure to request such an evaluation until shortly before Northern's scheduled parole cannot be considered an exceptional circumstance as the term is used in Rule 3.10.

moment, solely on the whim of the Board of Pardons. This type of action shocks the moral conscience of our society and this Court must condemn and put an end to any such future actions by the Board of Pardons.

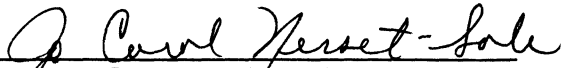
#### CONCLUSION

This Court is not asked to decide whether the Board of Pardons' decision concerning Northern was correct. Rather, the Court is asked to decide whether, based on the findings of fact and the record in the case below, the trial court was correct in concluding that the Board of Pardons afforded Northern the requisite due process in reaching its decision and acted on a lawful basis to rescind Northern's parole date. By violating its own policies and procedures and substituting its harsher judgment of Northern and his crime for that of an earlier Board, the Board of Pardons has exhibited complete disdain for even the most fundamental notions of due process and the Court cannot allow such actions to continue. Northern's recent parole does not render this action moot. Issues of great public concern remain before the Court and the Court may afford Northern relief beyond that which he has now been given.

DATED this 9th day of September, 1991.

Respectfully submitted,


HALEY & STOLEBARGER

  
Jo Carol Nesset-Sale  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that four true and correct copies of the foregoing were mailed to the following, postage prepaid, this 9th day of September, 1991:

R. Paul Van Dam  
UTAH ATTORNEY GENERAL  
Kirk M. Torgensen  
Assistant Attorney General  
6100 South 300 East, Suite 403  
Salt Lake City, Utah 84107

  
\_\_\_\_\_

**ADDENDUM A**

**Waiver of Personal Appearance**

*File*

Norman H. Bangerter  
Governor  
H. L. (Pete) Haun  
Chairman



Members

Donald E. Blanchard  
Michael R. Sibbett  
William L. Peters

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

WAIVER OF PERSONAL APPEARANCE

JUL 3 1991

I, KENDALL QUINN NORTHERN, USP # 15009

understand I have the right to appear before the Board of Pardons in regard to the addition of special conditions to my Parole Agreement. I hereby waive my personal appearance before the Utah State Board of Pardons and request that my Parole Agreement be amended to include the following condition(s):

PAY RESTITUTION IN THE AMOUNT OF \$26,350.00 on CASE #CR80-264

*Andrew E. Haun*  
Witness

*Kendall Q. Northern*  
Parolee

*July 2nd, 1991*  
Date

**ADDENDUM B**

**Letter from Paul Larsen to Jo Carol Nessel-Sale  
Dated July 25, 1991**





# State of Utah

## BOARD OF PARDONS

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Members

448 East 6400 South - Suite 300  
Murray, Utah 84107  
(801) 261-6464

JUL 28 1991

July 25, 1991

Ms. Jo Carol Nasset-Sale  
Attorney at Law  
Haley and Stolebarger  
Tenth Floor Walker Center  
175 South Main Street  
Salt Lake City, Utah 84111-1956

RE: Kendall Northern, USP # 15009

Dear Jo Carol,

In response to your inquiry of July 10, 1991, please find enclosed with this letter a copy of your client's Waiver of Personal Appearance and a copy of the Disposition Form relative to his restitution.

In your letter you expressed concern that it appeared to you the issue of your client's "restitution had been delayed until Kendall's parole date was imminent (permitting no choice but to sign or jeopardize his parole date)." That really was not the case at all. As is commonly done with inmates whose parole dates are approaching, a hearing had been set for Monday, July 15, 1991, for the purpose of determining the amount of Mr. Northern's restitution. Prior to the hearing, a tentative formula and restitution amount had been worked out for discussion at the hearing. In keeping with usual practice, that information was made available to the inmate - in this case, your client - for prior review so the administrative burden of holding the hearing could be avoided if the inmate had no dispute with the tentative figure. Mr. Northern was presented with the figure, he expressed no disagreement, and he then voluntarily waived his right to have a hearing on the matter. Had Mr. Northern opted to have the hearing instead, that decision would have in no way delayed his scheduled release on parole, even if the hearing had for some reason extended beyond his parole date. Mr. Northern appeared to understand that his parole date would not be jeopardized by his refusal to sign the waiver and to proceed with a restitution hearing instead (the hearing already being firmly scheduled on a date prior to his scheduled parole release) but signed the enclosed waiver, thus avoiding a formal hearing.

The restitution amount to which your client agreed was computed as follows:

(1) Lost Income Compensation:

Prior to his death, the victim, Mr. Hamby, earned approximately \$12,000 yearly driving a taxi cab. Using the workman's compensation approach which awards two-thirds of the deceased spouse's gross income to the surviving spouse, Mrs. Hamby should be entitled to \$8,000 per year of lost income from the time of her husband's death until the time she remarried, ten years later. Thus, restitution for lost income compensation equals \$80,000.

(2) Child Care Compensation:

Applying the standard figure of \$2,600 per year per child for professional child care, the cost to Mrs. Hamby of child care for each of her seven children until each reached the age of thirteen would amount to \$145,600, as illustrated below:

Child's age at father's death:	6 mo's	18 mo's	4 yrs	5 yrs	6 yrs	8 yrs	9 yrs
Years remaining before age 13:	12 yrs	11 yrs	9 yrs	8 yrs	7 yrs	5 yrs	4 yrs
Annual cost of child care:	2,600	2,600	2,600	2,600	2,600	2,600	2,600
Total per child:	31,200	28,600	23,400	20,800	18,200	13,000	10,400
Sum of seven figures above = \$145,600							

It might conservatively be assumed, however, that once the oldest two children reached the age of thirteen, they would be able to accept babysitting responsibilities for their younger siblings. Therefore the restitution amount expected for child care compensation is limited to the cost of child care for the two oldest children until each is thirteen, \$13,000 + \$10,400 = \$23,400.

(3) Funeral Expenses:

The actual figure submitted to the Board of Pardons was \$2,000.

(4) Degree of Mr. Northern's Responsibility:

\$80,000 lost income compensation, plus \$23,400 child care compensation, plus \$2,000 funeral expenses equals \$105,400. It was the decision of the Board that Mr. Northern should be held responsible for twenty-five percent of that total loss amount, thus yielding the final restitution figure of \$26,350.

If you have any other questions, feel free to contact me.

Sincerely yours,



PAUL LARSEN  
Senior Hearing Officer

**ADDENDUM C**

**Board of Pardons Decision Dated July 8, 1988**



Members

PAUL W. BOYDEN  
VICTORIA J. PALACIOS  
GARY L. WEBSTER

THE STATE OF UTAH

BOARD OF PARDONS  
6065 South 300 East  
Salt Lake City, Utah 84107

PAUL W. SHEFFIELD,  
Administrator

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

Consideration of the Status of Kendall Q. Northern, OBSCIS No. 00015009  
Utah State Prison No. 15009

The above-entitled matter came on for a hearing before the Utah State Board of Pardons on the 8th day of July, 1988 for consideration as:

1. ☐ ORIGINAL HEARING  
2. ☐ REHEARING  
3. ☐ REDETERMINATION  
4. ☐ TERMINATION OF SENTENCE AND PAROLE

5. ☒ SPECIAL ATTENTION OF THE BOARD  
6. ☐  
7. ☐

After the statement of Kendall Northern and the following witness(es)

1) \_\_\_\_\_ 2) \_\_\_\_\_  
and good cause appearing, the Board made the following decision:

☒ Rescind 5-10-, 19 88 parole date, \_\_\_\_\_

☐ Parole to become effective \_\_\_\_\_, 19\_\_\_\_, with the following special conditions:

☐ Amend parole agreement to add the following special conditions:

1. \_\_\_\_\_  
2. \_\_\_\_\_  
3. \_\_\_\_\_  
4. \_\_\_\_\_

☒ Rehearing for May, 19 90, for the following reasons: RISK TO  
Society. Appropriate Punishment.

☐ Termination of sentence and parole to become effective \_\_\_\_\_, 19\_\_\_\_.

☐ Expiration of sentence \_\_\_\_\_, 19\_\_\_\_.

REMARKS: Affirm Rescission of 5-10-88.

order Alienist Report

Crime	Sentence	Case No.	Judge	Expir. Date
Criminal Homicide	5-life	CR80-264	Baldwin	Life
Aggravated Robbery	5-Life	CR80-264	Baldwin	Life
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____
5. _____	_____	_____	_____	_____
6. _____	_____	_____	_____	_____
7. _____	_____	_____	_____	_____

It is further ordered that in the event the above named shall be found guilty of any infraction of rules and regulations of the Utah State Prison, any community corrections center or other residential facility, or shall fail or refuse to perform duties as assigned or is found in violation of any other law of the State of Utah prior to the effective date of this decision, the order may be made null and void.

By order of the Board of Pardons of the State of Utah, I have this date July 8, 1988 affixed my signature as Administrator for and on behalf of the State of Utah, Board of Pardons.

Paul W. Sheffield  
Paul W. Sheffield, Administrator

An application for redetermination may be  
previous action. Applications may be at \_\_\_\_\_

Northern v Barnes et. al.

900901905 HC

Defendant's Exhibit # 34