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The State of Utah, Respondent, vs. Dennis J Garcia, Petitioner

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,

Respondent,

vs.

DENNIS J. GARCIA,

Petitioner.

No. 20160932-SC

BRIEF OF RESPONDENT

On Petition for a Writ of Certiorari to the Utah Court of Appeals

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LIST OF ALL PARTIES

To the best of Respondent State of Utah's knowledge, all interested parties appear in the caption of this Brief. The Utah Board of Pardons and Parole and the Utah Office of Debt Collection are entities of the State of Utah.

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STATEMENT OF JURISDICTION

This Court has appellate jurisdiction over decisions of the Utah Court of Appeals. Utah Code § 78A-3-102(3)(a).

STATEMENT OF ISSUE ON CERTIORARI

The Court granted a writ of certiorari limited to the following issue: “Whether the Court of Appeals erred in affirming the district court’s determination that it lacked jurisdiction to adjudicate Petitioner’s motion to set aside the Board of Pardons and Parole’s restitution order.”

Preservation and Standard of Review: Garcia preserved this issue before the district court and the court of appeals. The district court’s final order was based on its holding that it was without jurisdiction to review the Utah Board of Pardons and Parole’s (Board) restitution order. *State v. Garcia*, 2016 UT App 96, ¶¶ 1, 7, 374 P.3d 1039. The court of appeals affirmed that decision. *Id.* ¶¶ 1, 19-20. On certiorari, this Court gives no deference to the court of appeals’ decision and reviews its decision under a correctness standard. *Nichols v. Jacobsen Constr. Co., Inc.*, 2016 UT 19, ¶ 13, 374 P.3d 3.

DETERMINATIVE STATUTES

The controlling provisions are:

Utah Code § 77-27-5(3):

Decisions of the board in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a civil judgment, including restitution as provided in Section 77-27-6.

Utah Code § 77-27-6(4):

If the defendant, upon termination or expiration of the sentence owes outstanding fines, restitution, or other assessed costs, or if the board makes an order of restitution within 60 days after the termination or expiration of the defendant's sentence, the matter shall be referred to the district court for civil collection remedies. The Board of Pardons and Parole shall forward a restitution order to the sentencing court to be entered on the judgment docket. The entry shall constitute a lien and is subject to the same rules as a judgment for money in a civil judgment.

STATEMENT OF THE CASE

Dennis Garcia was convicted of automobile homicide. *State v. Garcia*, 2016 UT App 96, ¶ 1, 374 P.3d 1039. His presentence investigation report stated that the Utah Office of Crime Victim Reparations reported paying \$7,000 toward the victim's funeral expenses. *Id.* ¶ 3. Garcia served a five-year sentence for his homicide

crime and was released from prison in April 2013. *Id.* ¶ 4. Months later, Utah’s Board of Pardons and Parole issued an order of restitution requiring Garcia to pay \$7,000 to the Office of Victims of Crime. *Id.* ¶ 5. The Board sent its order to the district court where it “was duly entered into the docket by the trial court.” *Id.* ¶ 5.

Garcia—contending that the Board’s order was untimely and should be vacated—challenged the Board’s order by filing with the sentencing court an original motion and a later three motions including one under Utah Rules of Civil Procedure 60(b). R. 120-22, 545; Pet. Br. 33-34. The sentencing court held that it lacked jurisdiction to consider Garcia’s attack upon the Board’s order. *Garcia*, 2016 UT App 96, ¶ 7. Garcia appealed.

The court of appeals affirmed. It agreed that the sentencing court lacked jurisdiction to hear Garcia’s motions. *Id.* ¶¶ 10-20. Interpreting Utah Code section 77-27-6(4), the court concluded that the Board had authority to make restitution orders, the sentencing court had to enter the Board’s restitution orders on the court’s judgment docket, and the district court had jurisdiction to “administer any collection processes stemming from such orders.” *Id.* ¶ 14. But the statute did not revive

jurisdiction in the sentencing court to address a challenge to the validity of the Board's restitution order. *Id.* ¶ 19. Lacking jurisdiction, the court did not address Garcia's arguments on the merits. *Id.* ¶ 20.

SUMMARY OF ARGUMENT

The question in this case is not *whether* Garcia may challenge the Board's restitution order, but *how* he may challenge it. The court of appeals correctly held that Garcia's attempt to challenge the restitution order in the sentencing court was improper because that court lacks jurisdiction to consider motions, including Rule 60(b) motions, attacking the Board's restitution orders. By statute, the Board's restitution decisions are not subject to judicial review. So Garcia could not attack the Board's restitution decision by using Rule 60(b) or any other ordinary appellate method.

But that does not mean that Garcia has no mechanism to challenge the Board's order. Nothing precludes him from filing a petition for extraordinary relief under Utah Rule of Civil Procedure 65B, which provides a way to seek equitable relief "where the Board of Pardons and Parole has exceeded its jurisdiction or failed to perform an

act required by constitutional or statutory law.” Utah R. Civ. P. 65B(d)(2)(D).

ARGUMENT

The Court of Appeals Correctly Held That Garcia Cannot Challenge The Board’s Restitution Order With Motions, Including A Rule 60(b) Motion.

The court of appeals held that Garcia’s sentencing court lacks jurisdiction over Garcia’s challenge to the Board’s restitution order. *State v. Garcia*, 2016 UT App 96, ¶ 20, 374 P.3d 1039. Based on a plain language reading of section 6(4), the court concluded that the district court had jurisdiction only to “order such civil remedies to assist the claimant in collecting on the judgment, [but] nothing in the statute confers jurisdiction on the district court to rule upon challenges to the fact, amount, or validity of the judgment itself.” *Id.* ¶ 17. Garcia does not appear to challenge the court of appeals’ construction of the statutory text. Instead, he focuses his jurisdictional arguments on certain cases that he believes contradict the court of appeals’ holding or do not support the court.¹ But none of Garcia’s arguments undermine the court of appeals’ holding.

¹ Garcia asserts some arguments that go to the merits of his claims

As a threshold matter, Utah law expressly states that the Board's restitution decisions are "final and are not subject to judicial review." Utah Code § 77-27-5(3). This Court held that this statute precludes all appeals and other remedies at law seeking to challenge the Board's decisions. *Foote v. Utah Bd. of Pardons*, 808 P.2d 734, 735 (Utah 1991) (no remedy at law exists from the Board's decisions but habeas corpus review is available). But the statute does not preclude the review of such orders by extraordinary writ. *See id.*; *see also Padilla v. Utah Bd. of Pardons*, 947 P.2d 664, 671 (Utah 1997) (the Board's orders cannot be appealed but can be reviewed by way of extraordinary writ); *Preece v. House*, 886 P.2d 508, 512 (Utah 1994) ("This statute does not preclude judicial review of such decisions by way of extraordinary writ.").

Garcia, however, did not file a petition for extraordinary relief under Rule 65B. Instead he filed motions, including a motion under Utah Rule of Civil Procedure 60(b), in his criminal action seeking judicial review of the Board's order. Pet. Br. 34. None of those motions

challenging the validity of the Board's restitution order. But those arguments are not encompassed within the issue upon which the Court

sought an equitable remedy under Rule 65B. Thus Garcia failed to avail himself of the equitable remedy that does exist and instead sought a remedy at law that this Court has repeatedly held does not exist against the Board's decisions. The court of appeals did not err when it affirmed the dismissal of Garcia's attempts to obtain a remedy at law based on his challenges to the Board's restitution decision.

Nor can a Rule 60(b) motion be used in challenging an administrative decision. While Utah courts have previously used court rules in reviewing administrative actions, this Court has since rejected that practice. Utah's court rules are no longer applied to proceedings before administrative agencies such as those before the Utah Board of Pardons and Parole.

This Court has held that the "scope of our rules is limited by the scope of the authority granted to this court by the Utah Constitution. Thus, we can apply these rules only to 'the courts of the state.' We are powerless to impose our court rules on proceedings outside of state and local courts." *Frito-Lay v. Utah Labor Comm'n*, 2009 UT 71, ¶ 17, 222

granted review and will not be addressed by the State.

P.3d 55 (holding that Rule 60 did not apply to administrative proceedings unless the governing statute or regulations so provided).

Rule 60(b) does not apply to the decisions of the Board. Rather, Rule 60(b) provides a trial court the opportunity to review its *own* decisions and correct any errors or flaws that it might find. That is not how Garcia tried to use Rule 60(b); he asked the sentencing court to review the Board's decision under Rule 60(b). That is not the purpose of the rule.

If the Board erred in making its restitution order, Garcia can seek judicial review of the Board's decision through Rule 65B. But Rule 60(b) does not authorize district courts to entertain challenges to administrative decisions. The court of appeals correctly followed *Frito-Lay* in reaching that conclusion. *Garcia*, 2016 UT App 96, ¶ 18 n.4 (“Rule 60(b) provides an avenue for a party to ask the court to review and reconsider its own decisions; it does not allow the court to review and modify decisions made by an administrative body such as the Board.”).

The case law cited by Garcia does not lead to a different result. He relies on *State v. Laycock*, but *Laycock* did not involve a legal appeal or a Rule 60(b) motion—it involved a petition for extraordinary relief under Rule 65B(d)(2). 2009 UT 53, ¶ 7, 214 P.3d 104 (State of Utah used a Rule 65B extraordinary writ to challenge a restitution order that the State could not appeal). Far from supporting Garcia’s arguments, *Laycock* shows how Garcia could have properly used an extraordinary writ here.

Nor does *State v. Schultz*, 2002 UT App 297, 56 P.3d 974, support Garcia. *Schultz* invalidated a Board restitution order because it was issued after parole was terminated. *See id.* ¶ 19. While the court of appeals reached the merits of a Board restitution order in *Schultz*, it did so in ruling on a challenge to the validity of a continuing writ of garnishment based on a restitution order. *Id.* ¶ 1.

More important, *Schultz* does not address the issue here: whether the sentencing court has jurisdiction to hear a challenge to a Board restitution order. Because that issue was not raised, let alone ruled upon, in *Schultz*, that decision does not resolve the issue here.

And the court of appeals properly relied upon *State v. Montoya*, 825 P.2d 676, 679 (Utah Ct. App. 1991) (criminal court loses subject matter jurisdiction once it imposes a valid sentence) in holding that the sentencing court lacked jurisdiction over a challenge to the Board's restitution order. *Garcia*, 2016 UT App 96 at ¶ 11. Contrary to Garcia's suggestion, *Montoya* has not been (even implicitly) overruled; the court of appeals continues to follow *Montoya* on this point of law. *See, e.g., State v. Vaughn*, 2011 UT App 411, ¶¶ 11-12, 266 P.3d 202 (following *Montoya* in holding that a criminal court loses subject matter jurisdiction upon imposition of a valid sentence); *State v. Thorkelson*, 2004 UT App 9, ¶¶ 10, 17, 84 P.3d 854 (same).

Laycock did not somehow overrule *Montoya*. *Laycock* does not discuss a criminal court's post-sentencing jurisdiction. It acknowledges only that a party may appropriately file a petition for an extraordinary writ to challenge a decision where the party does not have the right to appeal. *Laycock*, 2009 UT 53, ¶ 7.

CONCLUSION

For the reasons stated above, the Court should affirm the court of appeals' decision.

Respectfully submitted this 26th day of April, 2017.

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CERTIFICATE OF COMPLIANCE WITH RULE 24(f)(1)(C)

I hereby certify that the Brief of Respondent contains 2,066 words, including headings, footnotes, and quotations, but excluding the Table of Contents and Table of Authorities.

I have relied upon the word count of the word processing system, Word 2010, used to prepare this brief. The font used is Century Schoolbook, 14 point.

/s/ Brent A. Burnett

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CERTIFICATE OF SERVICE

I hereby certify that I emailed an exact copy of the foregoing Brief of Respondent to the following on this 26th day of April, 2017:

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