

1992

Jeffrey L. Abbott v. State of Utah : Brief of Appellee

Utah Court of Appeals

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BRIEF

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DOCKET NO.

920495

IN THE UTAH COURT OF APPEALS

JEFFREY L. ABBOTT	:	
Petitioner-Appellant,	:	Case No. 920495-CA
v.	:	
STATE OF UTAH,	:	Priority No. 3
Respondent-Appellee.	:	

BRIEF OF APPELLEE

APPEAL FROM DENIAL OF PETITION FOR WRIT OF
HABEAS CORPUS IN THE THIRD JUDICIAL DISTRICT
COURT IN AND FOR SALT LAKE COUNTY, STATE OF
UTAH, THE HONORABLE DAVID S. YOUNG, PRESIDING

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FILED
Utah Court of Appeals

MAY 13 1993

Mary T. Noonan
Mary T. Noonan
Clerk of the Court

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BRIEF OF APPELLEE

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JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from the denial of a petition for writ of habeas corpus after an evidentiary hearing in the Third Judicial District Court. This court has jurisdiction to hear this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(h) (Supp. 1992).

STATEMENT OF ISSUES PRESENTED UPON APPEAL

1. Whether the trial court properly applied the statute of limitations as a bar to appellant's habeas corpus petition.

2. Whether the trial court erred in finding that the appellant was not denied due process in his parole rescission hearings.

3. Whether the court erred in finding no material fact in dispute and in denying the petition without further hearing.

STANDARD OF APPELLATE REVIEW

The court examines the record on appeal from dismissal of a habeas corpus petition "in the light most favorable to the findings and judgment . . . and will not reverse if there is a reasonable basis in the record to support the trial court's denial of the writ." Hall v. Utah Board of Pardons, 806 P.2d 217 (Utah App. 1991) (citations omitted). The trial court's "conclusions of law are accorded no deference but are reviewed for correctness." Termunde v. Cook, 786 P.2d 1341, 1342 (Utah 1990).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

All relevant texts of constitutional provisions, statutes, or rules pertinent to the resolution of the issues before the court is contained in the body of this brief.

STATEMENT OF THE CASE

Abbott, an inmate at the Utah State Prison, filed a petition for writ of habeas corpus in district court on January 30, 1992. (R.2-6.) The petition challenged the decision of the Board of Pardons to rescind his parole date. The court ordered the State to respond.

The State filed an answer and a motion to dismiss on February 24, 1992. (R.15-22.) A status hearing was held on that same date. The court set another hearing for March 9, 1992, to provide Abbott with time to respond. (R.46.)

Abbott asked for additional time to respond to the State's Motion to Dismiss. (R.51-53.) At the hearing on March 9, the

court granted Abbott's request for an enlargement of time. It set the next hearing for April 13, 1992. (R.64.)

The State filed an Amended Answer on March 11, 1992. (R.65-67.) Abbott filed his opposition to the State's Motion to Dismiss on April 6, 1992. (R.68-84.) The State replied to Abbott's opposition on April 10, 1992. (R.85-101.)

At the April 13, 1992, hearing, the court denied the State's Motion to Dismiss. The court set an evidentiary hearing for May 7, 1992. (R.105.) The State filed its affirmative defenses supplementing its Amended Answer, on April 21, 1992, within ten days of the Order denying its Motion to Dismiss. (R.109-110.)

Abbott moved to strike the State's reply to his response to the motion to dismiss. (R.111.) He also moved to strike the State's affirmative defenses. (R.119.) The State filed oppositions to both Abbott's motions. (R.123-126.)

On April 27, 1992, the State requested a continuance of the evidentiary hearing, because a witness was on medical leave. (R.113.) Abbott agreed to a continuance.

At the May 7, 1992 evidentiary hearing, the court took evidence. It heard sworn testimony from Abbott and received documentary evidence from the State's record custodian, including complete transcripts from Abbott's original parole grant hearing and from his three rescission hearings. The court denied Abbott's motions to strike the State's affirmative defenses and the State's reply memorandum. It continued the evidentiary hearing until June 22, 1992, and ordered the State to file any

further motions by May 13, 1992. (R.128.)

The State filed a Motion for Summary Judgment on May 11, 1992. The State asserted that no material facts were disputed by Abbott, and set forth the facts on which the court should deny the petition. (R.131-145.) Abbott filed an opposition to the summary judgment motion on June 5, 1992. (R.155-163.) In his opposition, Abbott agreed that the facts were substantially undisputed. (R.131.) However, he argued the legal issues that the statute of limitations should not be applied and that his due process rights were violated.

At the continued hearing on June 22, 1992, the court considered the State's summary judgment motion. It ruled that the State's Motion for Summary Judgment should be granted. (R.169.) Findings of Fact and Conclusions of Law, and a Judgment of Dismissal were signed on June 30, 1992. The court found that the action was untimely and barred by the statute of limitations. It further held that, on the merits of Abbott's claims, that he had no right to appointed counsel at his parole rescission hearings, and that he had waived any right to a different parole date by telling the Board of Pardons to release him on his expiration date, rather than parole him early. (R.170-175.) Abbott filed a Notice of Appeal on July 22, 1992. (R.178.) He filed a Docketing Statement with the Court of Appeals, setting forth the following grounds for appeal:

1. The State failed to plead the affirmative defense that the statute of limitations was tolled in the proper manner;

2. The State should not have been permitted to file a Motion for Summary Judgment;

3. The court prevented Appellant from presenting his case fully by not allowing witnesses to testify;

4. The Conclusions of Law are incorrect.

STATEMENT OF FACTS

The facts in the record on appeal are from the documents submitted in evidence and the findings of the court. No transcript of the evidentiary hearing was requested by appellant or prepared.

The court incorporated the facts set forth in the State's Memorandum in Support of Motion for Summary Judgment. (R.171.) These are set forth below.

Jeffrey Lynn Abbott entered a building in Salt Lake City, took a set of keys, stole a vehicle and drove to Colorado, where he was caught. On March 7, 1989, he was convicted of attempted theft on a plea bargain and sentenced to an indeterminate term of zero to five years in prison. (R.132.)

The Utah Board of Pardons held a parole grant hearing on June 30, 1989. At the hearing, the Board reviewed Abbott's history. His adult record included: a burglary reduced to trespassing in June, 1983; forgery in September, 1983; stealing in November, 1983; stealing reduced to larceny because it was under \$50 (fifty dollars) in October, 1984; a 1985 charge of stealing, reduced to larceny where Abbott served six months. In addition, Abbott's record includes crimes in Los Angeles of:

burglary, which may have been reduced to disorderly conduct in July, 1985 with time served; receiving stolen property in January, 1986; burglary in February, 1986, with time served; petty theft in July 1986 with time served; a 1987 arrest for attempting to sell cocaine, which was later dismissed because the cocaine was for Abbott's own use; and several other charges in his record that were dismissed. In Salt Lake City, Abbott was arrested in August 1988 for soliciting sex, and had numerous problems in December 1988 while being held in jail. (R.132-133.)

Abbott had a history of the use of illicit drugs, including, marijuana, cocaine, heroin, speed, and crack, which he began in his mid teens and used on a daily basis. Abbott began using a needle at age 13 or 14 and was in a drug program in California, but it did not help his problem. (R.133.)

Abbott had two major disciplinary actions in the Utah State Prison in 1989, before his June parole grant hearing. A Board member observed that Abbott projected a poor attitude and was not willing to change. (R.133.)

Abbott was given a March 12, 1991, parole date.. The conditions of Abbott's parole were: intensive supervision of electronic monitoring if paroled in Utah, random urinalysis, no alcohol, and restitution of \$918. (R.134.)

The Board directed that, as part of its review of Abbott's parole release, the Utah State Prison was to provide a 60-day progress report before Abbott's parole summarizing his adjustment, attitude and behavior in the institution. (R.134.)

The Board explained to Abbott that if the expectations and standards were not met, "your parole will be denied and you will be granted another hearing at another time. Your release will depend on how you do between now and March, 1991. If you don't do well, you won't get out." (R.134.)

The Board placed no limitation on the time frame of disciplinary violations it would consider. Abbott testified that he doesn't remember this, but does not deny it could have been a condition of his parole date. Notice of the 60-day review was included in the written parole grant order. (R.134.)

The 60-day review before Abbott's parole release date uncovered more than a dozen new disciplinary violations. Abbott received 15 disciplinary actions in 1989. All but two of those 15 were received after the June 30, 1989, parole grant hearing. Abbott had three more disciplinaries in 1990. These were on January 3, April 25, and September 18. (R.134-135.)

The Board issued an order on January 29, 1991, rescinding Abbott's March 12, 1991 parole date and scheduling a rescission hearing. The order was not a final one, but "subject to review and modification by the Board of Pardons at any time until actual release from custody." The Board gave Abbott notice of a rescission hearing set before the parole date, and advised him it was based on his numerous violations. (R.135.)

Abbott appeared before the Board's hearing officer, Paul Larsen, on February 28, 1991, for the purpose of a rescission hearing. (R.135.)

Abbott believed the hearing officer had already made up his mind, but he agrees he was given a chance to be heard. He did not deny that he had a dozen disciplinary violations. (R.135.)

The hearing officer told Abbott that he had "racked up a score" although he knew he would have 60-day review. Abbott claimed he was not aware of the 60-day review. (R.135.)

The hearing officer told Abbott that the only reason he would not receive "considerably more time than two additional months is that [he had] improved considerably since the 1989 spree." (R.135.)

The hearing officer entered an interim decision that Abbott serve an additional two months, subject to the conditions set by the Board at the June 30, 1989, hearing. The decision, subject to review by the remaining members of the Board, was approved in an order dated March 12, 1991. (R.136.)

After the rescission hearing and before his second parole release date, Abbott committed new disciplinary violations. Notice was prepared on May 9, 1991. Abbott testified that it was not delivered until May 15, but that he understood the reason that the short time frame resulted in a rescission hearing after his parole date. (R.136.)

Abbott appeared before the hearing officer, on June 13, 1991, for his second rescission hearing. Abbott had four new offenses including: assault with a weapon, disorderly conduct, damaging property. He admitted to the officer that he even had more writeups. The hearing officer advised him he could only

review the write-ups referred to him to date. (R.136.)

At the hearing, Abbott stated, "I'm going to end up getting out and just coming back . . . so just go ahead and expire me." He added, "I'm not going to put up with their attitudes just to get out of here. I'm not going to kiss nobody's ass. . . . I don't want to spend no time on parole in the State of Utah." (R.136.)

Abbott disagreed that his conduct was self-destructive, saying, "It's just that I'm 25 years old, I'm tired of playing games. . . . I played it for two years; it got me in trouble, it got me damn near killed one time and you know what I'm talking about. I'm not going to play it anymore. I laid down after that for a whole ten months . . . and you guys still took my date." "I'd rather just expire. It doesn't matter to me; because I cannot live like this." Then showing mixed feelings, Abbott said, "I'd like a parole date." "I will not refuse a parole. I'll do it to the best, but I cannot guarantee that . . . the parole date will still stand after you see the write-ups that I have." (R.137.)

The Board issued its decision on June 25, 1991. (R.39.) Abbott was given a new parole date of October 8, 1991, by the Board of Pardons on the hearing officer's recommendation. (R.137.)

Abbott appeared before the Board again on August 22, 1991 for the purpose of a third rescission hearing after receiving numerous additional disciplinaries. Abbott has agreed that he

received proper notice and an opportunity to be heard at this hearing. (R.137.)

At the August 22 hearing, the Board rescinded the October parole date and set Abbott's sentence termination date for November 23, 1993. The written decision summarized the reasons for rescission, including a history of similar offenses, multiple rescission hearings and the continued defiance of authority. (R.42-43, 137-138.)

Abbott filed a petition for habeas corpus challenging the rescission of his parole date on January 30, 1992, five months after the last of these hearings.

SUMMARY OF ARGUMENT

The trial court correctly determined that Abbott's petition for extraordinary relief was barred by the statute of limitations in Utah Code Ann. § 78-12-31.1 (1992) because it was not filed until more than three months after the last parole rescission decision by the Board of Pardons. This affirmative defense was timely raised by the State in its pleadings.

Abbott has waived any claims that his due process rights were violated at the parole rescission hearing because he failed to assert these alleged rights before the Board and in the trial court. In addition, he has failed to provide any legal analysis or supporting authority for his purported right to counsel at a parole rescission hearing. Finally, Abbott has failed to supply a transcript of the trial court proceedings in this matter to support his claim that Judge Young refused to consider relevant

evidence.

ARGUMENT

I. THE APPELLANT'S PETITION FOR WRIT OF HABEAS CORPUS WAS BARRED BY THE STATUTE OF LIMITATIONS.

Petitioner/Appellant Abbott raises two arguments in support of his position that his petition should not have been barred by the statute of limitations. The first is that the time had not run. The second is that the State waived this defense.

A. The Habeas Corpus Petition is Barred By the Statute of Limitations Because It Was Untimely Filed.

Utah Code Ann. § 78-12-1 provides:

Civil actions may be commenced only within the periods prescribed in this chapter, after the cause of action has accrued. . . .

With respect to habeas corpus, Utah Code Ann. § 78-12-31.1 states that actions must be commenced:

Within three months: For relief pursuant to a writ of habeas corpus. This limitation shall apply not only as to grounds known to petitioner but also to grounds which in the exercise of reasonable diligence should have been known by petitioner or counsel for petitioner.

Abbott's petition challenged the decisions of the Board of Pardons rescinding his parole dates for repeated disciplinary violations in prison. The dates of those decisions were March 12, 1991, June 25, 1991, and August 22, 1991. Abbott was aware of those decisions. He did not file his petition until January 30, 1992, more than five months after the last of these decisions, and nearly a year after the first decision.

The record is not in dispute as to the timing of the parole decisions of the Board of Pardons, or the date on which Abbott filed his petition. Abbott now asserts that he did not receive written notice of the last decision of the Board of Pardons until October 24, 1991. That assertion is not a fact or offer of proof in the trial court record, and cannot be considered on appeal. Chapman v. Chapman, 728 P.2d 121, 123 (Utah 1986).

Even if the time commenced on October 24, 1991, for the third decision of the board, the petition was not filed within three months of that date. Abbott does not make any argument how his petition could be timely, even if that date were the date on which time began to run.

The statute of limitations clearly had run for a challenge to the first two parole rescission decisions of the Board, on March 12, 1991 and June 25, 1991. Abbott has not argued otherwise.

B. The State Timely Raised the Statute of Limitations Defense.

Habeas corpus procedures are defined by Utah R. Civ. P. 65B. Rule 65B(a) provides that, to the extent the rule does not provide special procedures, proceedings on petitions for extraordinary relief are governed by other parts of the Rules of Civil Procedure.

Utah R. Civ. P. 12(a) provides twenty days in which a civil defendant must file an answer to a complaint. Rule 12(h) states that a party waives all defenses which are not presented by motion or as provided in Rule 12. Rule 12(a)(1) specifically

permits a responsive pleading to be filed within ten days after notice of the court's action denying a motion. Utah R. Civ. P. 8(c) requires the statute of limitations to be pled as an affirmative defense.

The State filed its affirmative defenses within ten days of the court's denial of its motion to dismiss, with the court's approval. This is within the time frame allowed by the rules. To the extent that this supplemental pleading could be considered a second amendment to the State's Answer, the court was well within its discretion in allowing it. Utah R. Civ. P. 15(a).

There was no prejudice to Abbott. The State would have been within its rights under the rules to withhold its answer in its entirety until after the trial court ruled on its motion to dismiss. The fact that the State filed affirmative defenses separately from its answer, all within the time allowed by the rule, could not reasonably have caused prejudice to Abbott. He has asserted no prejudice in fact.

Staker v. Huntington Cleveland Irrigation Co., 664 P.2d 1188 (Utah 1983), cited in the appellant's brief, recognizes that a court does have the authority to allow the statute of limitations to be raised in a supplemental pleading under Rule 15(a). There was no error in the court considering this defense.

II. THERE WAS NO DUE PROCESS VIOLATION.

A. The Appellant Failed to Preserve Due Process Issues in his Appeal.

The issues noticed for appeal do not include any claim of a

due process violation by the Board of Pardons. In his argument, Abbott makes reference to several aspects of the rescission hearings and describes things he asserts happened, which are not part of the record.

Abbott asserts that he was not notified of his "right to have counsel present." However, he does not provide a legal argument supporting his claim that he is entitled to counsel, nor a legal argument that any party is required to give him notification. Further, the record does not provide a factual basis on which the court, or counsel, can meaningfully review the circumstances of which Abbott is complaining.

An appellant's failure to give notice of an issue on appeal and to argue the legal analysis for his claim is a waiver of the issue on appeal. Middlestadt v. Industrial Comm'n, 210 Utah Av. Rep. 47, 48-49 n.4.

B. The Board of Pardons Provided Appellant with Adequate Notice, Opportunity to Be Heard and an Impartial Tribunal.

Abbott's appeal raises several complaints he has about his parole rescission hearings, claiming that he was denied due process.

In Foote v. Utah Board of Pardons, 808 P.2d 734 (Utah 1991), the Utah Supreme Court recognized that some due process protections apply when the Board of Pardons determines the number of years a defendant will serve. That decision was published March 14, 1991, after Abbott's first rescission hearing but before the second two hearings. Foote does not set forth the specific due process rights guaranteed.

Abbott first asserts he was not informed of his right to have counsel present. However, he does not explain or argue the basis for claiming right to counsel. A criminal defendant has a right to counsel during his criminal trial, but not in civil actions. Caveness v. Cox, 598 P.2d 349, 351 (Utah 1979). There is no state constitutional right to counsel in a parole revocation hearing. Beal v. Turner, 22 Utah 2d 418, 454 P.2d 624 (1969); Hatch v. DeLand, 790 P.2d 49, 51 (Utah App. 1990) (parole not part of the criminal proceeding, double jeopardy guarantees do not apply). Abbott provides no support for the proposition that he is entitled to counsel at a parole rescission hearing.

Abbott also complains that he was not notified of hearings on four separate dates. The State disputed that parole rescission hearings occurred on two of the four dates described. The record on appeal shows that on January 29, 1991, and May 9, 1991, the Board simply decided to hold rescission hearings. Abbott provides no legal argument to explain why he would be entitled to a hearing on whether the Board will hold a rescission hearing.

Rescission hearings were conducted on February 28, 1991 and on June 13, 1991. The record also shows that Abbott received notice of the hearing on February 20, 1991, and of the second hearing on June 13, 1991. (R.27; 136, para. 16) The actual reasons for the decisions made would appear in the transcripts of those hearings. It was incumbent on Abbott to include these in

the record on appeal. However, the record shows that Abbott was aware that his parole dates were rescinded because of his continued disciplinary violations (R. 135-137.)

Abbott also asserts that hearing officer, Paul Larsen, was not impartial in hearings on February 28, 1991 and June 13, 1991. However, he has apparently not included in the record on appeal the necessary transcripts of those hearings, considered by the trial court. In addition, he did not argue alleged bias of the hearing officer in his opposition to summary judgment. An argument not made in the trial court is waived on appeal. State v. Carter, 707 P.2d 656 (Utah 1985).

There is no evidence or basis in the record for concluding that the hearing officer showed any bias toward Abbott. Abbott asserts only that the hearing officer considered numerous disciplinary violations from nearly a year beforehand in his February 28, 1991 hearing and that he "defended" the actions of a staff member in the June 13, 1991 hearing. Neither of those assertions rises to the level of a showing of bias or predisposition.

III. THE COURT DID NOT IMPROPERLY DENY APPELLANT THE OPPORTUNITY TO PRESENT EVIDENCE.

Abbott has agreed that there are no disputed facts in this matter. The record shows no offer of proof of the substance of any testimony of any witness who was not called, or any evidence that the court refused to consider any evidence or information which Abbott asserted was relevant to his case. He has not provided a transcript showing the trial court's failure or

refusal to consider relevant evidence. In his appeal, Abbott has not specifically described the substance of any information that might make any difference in the outcome of his case.

Abbott also asserts that he did not have access to case law on which the State relied to adequately respond. This issue was not raised in the trial court. There is no record on this issue to address on appeal. This issue was not preserved as an issue on appeal. It therefore cannot be considered on appeal. State v. Carter, 707 P.2d 656, 660 (Utah 1985).


Abbott also claims that the court denied his motions to strike pleadings of the State. This issue was discussed earlier in this brief. The decision to allow the documents which were filed is within the sound discretion of the trial court.

There is simply no factual basis, either in the record on appeal, or otherwise, to support Abbott's claim that he was denied an opportunity to present relevant evidence or to fully present his case.

CONCLUSION

The State has addressed the arguments preserved and argued by Abbott in his appeal. The trial court conducted an evidentiary hearing and heard the various complaints of the appellant. Because the statute of limitations had run, and based also on the merits of the petition, the court denied relief. With no material, disputed facts, the trial court properly granted summary judgment in favor of the State, which this court should affirm.

Respectfully submitted this 13th day of May,
1993.



JAMES H. BEADLES
Assistant Attorney General
Attorney for Respondent/Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May,
1993, a true and accurate copy of the foregoing BRIEF OF APPELLEE
was mailed, postage paid to the following:

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ADDENDUM

JEFFREY LYNN ABBOTT - APPELLANT VS. STATE OF UTAH - APPELLEE

JANUARY 15, 1993

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COURT OF APPEALS NO. 920495-CA

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JEFFREY LYNN ABBOTT - APPELLANT VS. STATE OF UTAH - APPELLEE

JANUARY 15, 1993

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COURT OF APPEALS NO. 920495-CA

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JEFFREY LYNN ABBOTT

PLAINTIFF - APPELLANT

CLERK'S CERTIFICATE

VS.

DISTRICT COURT NO. 920900544
COURT OF APPEALS NO. 920495-CA

STATE OF UTAH

DEFENDANT - APPELLEE

I, clerk of the above entitled court, do hereby certify that the hereto attached file contains all the original papers as requested by the designation on file herein, filed in the court in the above entitled case, including the Notice of Appeal which was filed on the 27TH day of JULY 1992. I further certify that the above described documents constitute the Judgment Roll and that the same is a true and correct transcript of the record as it appears in my office.

I further certify that said Judgment Roll is this date transmitted to the Appellate Court of the State of Utah, pursuant to such appeal.

Witness my hand and the seal of said court at Salt Lake City, Utah, this 15TH day of JANUARY 1993.

CRAIG E. LUDWIG
CLERK OF THE COURT

BY

Craig E. Ludwig

000001

FILED
DISTRICT COURT

JAN 30 11 34 AM '92

FILED
BY [Signature] CLERK

9202/005
JEFFREY LYNN ABBOTT (name)
Attorney Pro Se
Utah State Prison
P.O. Box 250 (address)
DRAPER, UTAH 84020 (address)

IN THE 3RD DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH

JEFFREY LYNN ABBOTT (name), *
Petitioner, *
vs. *
STATE OF UTAH, *
Respondent. *

PETITION FOR WRIT OF
HABEAS CORPUS AND POST
CONVICTION RELIEF

Case No. 92090544 HC
Judge

JUDGE DAVID S. YOUNG

COMES NOW the Petitioner, JEFFREY LYNN ABBOTT (name),
pursuant to the following Rule of Civil Procedure (check only one):

- ☐ Rule 65B(b) since claim is based on original commitment, or
☐ Rule 65B(b) since claim is based on parole violation, or
☐ Rule 65B(b) since claim is based on probation violation, or
☒ Rule 65B(c) since claim is based on parole grant hearing,

and for cause of action alleges as follows:

1. Petitioner is being illegally restrained at the following
location (list your address): UTAH STATE PRISON / P.O. Box 250 DRAPER, UTAH 84020

2. Petitioner was convicted and sentenced at the following
Court: (list the district and county of the court or indicate that
it is a Board of Pardons hearing that you are challenging):

PETITIONER IS CHALLENGING PAST BOARD OF PARDONS HEARINGS

The dates of the proceedings in which the conviction (or Board of
Pardons decision) was entered are as follows: JANUARY 29, 1991,

000002

PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF

FEBRUARY 28, 1991; JUNE 13, 1991 & AUGUST 22, 1991.

The case number for these proceedings is: ___ not known; ☒ known
and is case number 00051043 & 19288.

3. In plain and concise terms, all of the facts on the basis of which the Petitioner claims a substantial violation of rights as the result of the commitment (or terms of parole) are as follows:
ON JANUARY 29, 1991, RESPONDENTS FAILED TO ALLOW PETITIONER NOTICE THAT PAROLE DATE WAS BEING CONSIDERED FOR RESCISSION. - ON OR NEAR THE DATES MENTIONED IN SECTION TWO(2) OF THIS PETITION, RESPONDENTS FAILED TO GIVE THE PETITIONER ADEQUATE WRITTEN NOTICE OF CHARGES & EVIDENCE TO BE USED AGAINST PETITIONER. - ON OR NEAR THE DATES MENTIONED IN SECTION TWO(2) OF THIS PETITION, RESPONDENTS FAILED TO PROVIDE PETITIONER WITH NOTICE OF THE FINDINGS & REASONS FOR THOSE FINDINGS. - PETITIONER HAD NO ATTORNEY PRESENT IN ANY OF THE HEARINGS & WAS DENIED CHANCE TO ADEQUATELY REBUT EVIDENCE.

4. The judgment of conviction or the commitment for violation of probation or parole has been reviewed on appeal.

 Yes The number and caption or title of the appellate proceeding and the results of the review are as follows:

 No It was not appealed because _____

☒ Question not applicable since this claim concerns a parole grant

PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF
hearing for which there is no appeal or administrative remedy.

5. The legality of the commitment for violation of probation or parole or the legality of the parole grant hearing has been reviewed on appeal. ☒ Yes ☐ No If so, the reasons for the denial of relief in the prior proceeding are as follows:

PETITIONER DOES NOT KNOW THE EXACT REASONS FOR DENIAL ONLY THAT
RESPONDENTS SOMEHOW FOUND SANCTIONS IMPOSED TO BE JUST.

6. Petitioner requests that he be appointed legal counsel based on the attached motion and affidavit of impecuniosity.

7. The following documents are attached hereto and incorporated herein by reference (check all that apply):

- ☐ Affidavits that support Petitioner's allegations
- ☐ Copies of records that support Petitioner's allegations,
- ☐ Other evidence that supports Petitioner's allegations
- ☐ Copies of pleadings, orders and memoranda of the Court in any other post-conviction or civil proceeding that adjudicated the legality of Petitioner's commitment

8. Petitioner was unable to obtain and attach the following documents because (list the efforts you made to obtain the documents and the results of your efforts): PRISON'S CONTRACT ATTORNEYS
FORWARDED LETTER TO UTAH BOARD OF PARDONS REQUESTING INFORMATION ON THE ISSUES
RAISED HEREIN, BUT HAVE RECEIVED NO RESPONSE; LETTER WAS MAILED MAY 23, 1991.

9. That pursuant to URCP Rules 65B(b)(12) and 54(d), Petitioner requests that this Court order the Respondent to obtain such transcripts of proceedings or court records which are relevant

PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF

and material to this case and requests that the county in which he was originally charged be directed to pay the costs of the proceeding. (See attached motion and affidavit of impecuniosity).

10. Due to the continuing nature of the illegal restraint, the statute of limitations set forth in Utah Code Ann. §78-12-31.1 does not bar this action.

WHEREFORE, Petitioner prays that this Court:

1. Schedule an evidentiary hearing at which time Petitioner may be present and represented by counsel.

2. Permit Petitioner, who remains indigent, to proceed without prepayment of costs, fees or other assessments.

3. Grant Petitioner the authority to obtain subpoenas in Forma Pauperis, for witnesses and documents necessary to assist in the proof of the facts alleged in the petition as stated above.

4. Issue an Order for Post Conviction Relief to have the Petitioner brought before it, to the end that he may be discharged from the illegal and unconstitutional confinement and restraint.

5. (other relief) GRANT PETITIONER OTHER RELIEF AS THE COURT DEEMS NECESSARY & JUST IN THIS MATTER.

Dated this 24TH day of February, 1992.

Jeffrey Lynn Abbott (sign name)

JEFFREY LYNN ABBOTT (print name)
Attorney Pro Se

I. (a) PLAINTIFFS

DEFENDANTS

(b) ATTORNEYS (Attorney name, Bar #,
Address & Telephone #)

ATTORNEY (If known)

II. NATURE OF SUIT (Place an X in appropriate category)

DOMESTIC

☐ DA Divorce/Annulment
☐ SM Separate Maintenance
☐ PA Paternity
☐ SA Spouse Abuse
☐ UR URESA Action

PROBATE

☐ ES Estate
☐ GC Guardian/Conservator
☐ NC Name Change
☐ OT Other Probate

ABSTRACTS

☐ AJ Abstract of Judgment
☐ TL Tax Lien

ADOPTIONS

☐ AD Adoption

III. JURY DEMAND:

() YES () NO

CIVIL

☐ AA Administrative Agency
☐ AP Appeal
☐ CV Other Civil
☐ CN Contract
☐ CS Custody and Support
☐ HC Writ-Habeas Corpus
☐ PD Property Damage
☐ PI Personal Injury
☐ PR Property Rights (Real)

MISCELLANEOUS

☐ MI Miscellaneous

MENTAL HEALTH

☐ MH Mental Health

JEFFREY L. ABBOTT (name)
Attorney Pro Se
Utah State Prison
P.O. Box 250 (address)
DRAPER, UTAH 84020 (address)

FILED
DISTRICT COURT

JAN 30 11 33 AM '92

BY [Signature] CLERK

IN THE 3RD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH

JEFFREY LYNN ABBOTT (name), *
Petitioner, * AFFIDAVIT OF IMPECUNIORITY
*
VS. *
*
STATE OF UTAH, * CASE No. _____
*
Respondent. * Judge _____

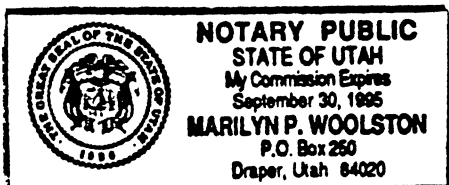
STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

JEFFREY LYNN ABBOTT (name), being first duly sworn upon his oath deposes and says that he is the Petitioner in the above-entitled action, that he has a good cause of action against the Respondents, and he verily believes that he is entitled to the relief sought in his Complaint, but that he is an inmate at the Utah State Prison and has neither money or property with which to pay his costs of Court or for the services of papers herein.

DATED this 24TH day of January, 1992.

[Signature] (sign name)
JEFFREY LYNN ABBOTT (print name)

SUBSCRIBED AND SWORN TO before me this 24 day of Jan, 1992.



My Commission Expires:

[Signature]
NOTARY PUBLIC
Residing at:

000007

JEFFREY LYNN ABBOTT (name)
Attorney Pro Se
Utah State Prison
P.O. Box 250 (address)
DRAPER, UTAH 84020 (address)

FILED
DISTRICT COURT

JAN 30 11 34 AM '92

BY [Signature]
CERK

IN THE 3RD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH

JEFFREY LYNN ABBOTT (name), *
Petitioner, *
vs. *
STATE OF UTAH, *
Respondent. *
AFFIDAVIT IN SUPPORT OF
PETITION FOR WRIT OF HABEAS
CORPUS AND POST CONVICTION
RELIEF
Case No. _____
Judge _____

STATE OF UTAH)
COUNTY OF SALT LAKE) :ss

COMES NOW JEFFREY LYNN ABBOTT (Affiant's name), being
first duly sworn upon his oath, deposes and says the following upon
personal knowledge:

1. THAT RESPONDENTS ADMINISTERED IMPROPER OR INADEQUATE
PAROLE GRANT/RESCISSION HEARINGS WITH NO ATTORNEY PRESENT ON PETITIONER'S BEHALF.
2. THAT SUCH HEARINGS WERE HELD WITH PROPER NOTICE OF CHARGES
PENDING OR REASONS FOR EVIDENCE RELIED UPON FOR DECISIONS.
3. THAT THE ALLEGATIONS HEREIN THIS PETITION ARE TRUE
& CORRECT TO THE BEST OF PETITIONER'S INFORMATION & BELIEF.

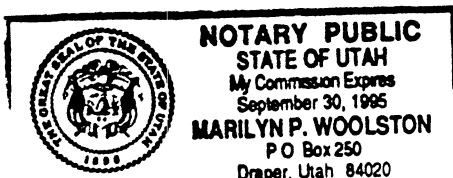
DATED this 24TH day of January, 1992.

[Signature] (affiant signs)
JEFFREY LYNN ABBOTT (print affiant's name)

SUBSCRIBED AND SWORN TO before me this 24 day of Jan, 1992.

My Commission Expires:

[Signature]
NOTARY PUBLIC
Residing at:



000003

Utah State Prison #19288

Utah Housing Facility #2809

Attn: Clerk of the Court
3rd Judicial District Court
In & for Salt Lake County
240 East 400 South
Salt Lake City, Utah
84111

Friday, January 24, 1992

Clerk of the Court,

Enclosed please find the original plus four (4) copies of a "Bill of Habeas Corpus" to be filed in your Courts.

Please be so kind as to send to me two of the copies after they've been filed so that I may keep one for my records & forward one to my mother of whom is in Kansas City, Missouri.

It is my understanding that the Courts require three (3) copies (the original & two (2) copies), so please forward two back to me after you've assigned a case number & judge to them.

With the above mentioned issues raised, I thank you for any time &/or concern you may spend on this matter.

P.S. Please do not forget to forward me two copies.

Thank You
J.L.A.

My Sincere Respect,

Warmly & Cordially,

Jeffrey Lynn Abbott

JEFFREY LYNN ABBOTT

000009

JEFFREY LYNN ABBOTT (name)
Attorney Pro Se
Utah State Prison
P.O. Box 250 (address)
DRAPER, UTAH 84020 (address)

FILED
DISTRICT COURT

JAN 30 11 34 AM '92

FILED DISTRICT COURT
Third Judicial District

THU
DISTRICT
COURT

FEB 6 1992

BY _____
CLERK

SALT LAKE COUNTY

By _____ Deputy Clerk

IN THE 3RD DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH

JEFFREY LYNN ABBOTT (name), *
*
Petitioner, * MOTION FOR PREPARATION OF
* TRANSCRIPTS AND COURT RECORDS
vs. * AND ORDER
*
STATE OF UTAH, * Case No. _____
*
Respondent. * Judge _____

Petitioner, JEFFREY LYNN ABBOTT (name), attorney pro se,
does hereby move the Court, pursuant to Rule 65(B)(b)(12) and Rule
54(d) of the Utah Rules of Civil Procedure, and based on the
accompanying Affidavit of Impecuniosity, to order Respondent to
obtain the transcript of the following proceedings or court records
which are relevant and material to this case (here list the records
you need): ALL INFORMATION REGARDING RESCINSON OF MARCH 12, 1991; MAY 14,
1991 & OCTOBER 08, 1991 PAROLE DATES, BY THE STATE OF UTAH BOARD OF PARDONS ;
and to direct the costs of the proceedings to the county in which
Petitioner was originally charged.

The transcripts/court records are relevant and material
to this case because (here give the reason that you need them):
THEY ARE ESSENTIAL TO PETITIONER'S CLAIM OF VIOLATION OF DUE PROCESS

000010

MOTION FOR PREPARATION OF TRANSCRIPTS AND COURT RECORDS AND ORDER
(continue explanation) RIGHTS PURSUANT TO THE RECENT "FOOTE V. UTAH
BOARD OF PARDONS, 156 UTAH ADV. REP. 3 (S.Ct. 1992) DECISION. PETITIONER
WILL FAIL TO STATE A CLAIM WITHOUT THESE DOCUMENTS.

DATED this 24TH day of February, 1992.

Jeffrey Lynn Abbott (sign name)
JEFFREY LYNN ABBOTT (print name)
Attorney Pro Se

ORDER

Petitioner having filed herein his motion for preparation
of transcripts and court records, and good cause appearing:

IT IS HEREBY ORDERED that Respondent shall obtain such
transcript of proceedings or court records which are relevant and
material to the case.

IT IS FURTHER ORDERED that the county in which Petitioner
was charged shall pay the costs of the proceedings.

DATED this _____ day of _____, 1992.

BY THE COURT:

DISTRICT COURT JUDGE

2/6/92
file unsigned
Berg

FILED DISTRICT COURT
Third Judicial District

FEB 6 1992

SALT LAKE COUNTY

By [Signature]
Deputy Clerk

JEFFREY LYNN ABBOTT (name)
Attorney Pro Se
Utah State Prison
Post Office Box 250 (address)
DRAPER UTAH 84020 (address)

IN THE 3RD DISTRICT COURT, SALT LAKE COUNTY
STATE OF UTAH

<u>JEFFREY LYNN ABBOTT (name),</u>	*	
	*	
Petitioner,	*	MOTION FOR APPOINTMENT OF
vs.	*	COUNSEL AND ORDER
	*	
STATE OF UTAH,	*	Case No. _____
	*	
Respondent.	*	Judge _____

Petitioner, JEFFREY LYNN ABBOTT (name), attorney pro se,
does hereby move the court for an order appointing legal counsel
for petitioner in the above-entitled matter.

This motion is based upon the accompanying Affidavit of
Impecuniosity, supporting documentation and order.

DATED this 24TH day of January, 1992.

[Signature] (sign name)
JEFFREY LYNN ABBOTT (print name)
Attorney Pro Se

000012

MOTION FOR APPOINTMENT OF COUNSEL AND ORDER

ORDER

Petitioner having filed herein his motion for appointment of counsel, and good cause appearing:

IT IS HEREBY ORDERED that legal counsel be appointed for Petitioner in the above-entitled matter.

DATED this _____ day of _____, 1992.

BY THE COURT:

DISTRICT COURT JUDGE

*2/6/92
file unsigned
K. S. [signature]*

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

ABBOTT, JEFFREY LYNN	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 920900544 HC
	:	DATE 02/06/92
VS	:	HONORABLE DAVID S. YOUNG
	:	COURT REPORTER
STATE OF UTAH	:	COURT CLERK NP
	:	
DEFENDANT	:	

TYPE OF HEARING:
PRESENT:

P. ATTY. ABBOTT, JEFFREY PRO SE
D. ATTY.

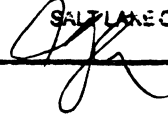
THE PETITIONERS "PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF" WAS FILED ON JANUARY 30, 1992. THE COURT DENIES WITHOUT PREJUDICE THE REQUEST TO APPOINT COUNSEL AND TO ORDER THE PREPARATION OF TRANSCRIPTS AND RECORDS. THE MATTER IS SET FOR A PRE-HEARING CONFERENCE FEBRUARY 24, 1992 AT 1:00 P.M. COUNSEL FOR THE STATE IS REQUESTED TO REVIEW THE PETITION AND FILE AN APPROPRIATE RESPONSIVE PLEADING.
C.C. TO COUNSEL AND MR. ABBOTT, PRO SE

000014

FILED DISTRICT COURT
Third Judicial District

FEB 24 1992

R. PAUL VAN DAM (3312)
UTAH ATTORNEY GENERAL
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Defendants
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

By  SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNT, STATE OF UTAH

ABBOTT, JEFFREY LYNN,

Plaintiff,

v.

STATE OF UTAH,

Defendant.

ANSWER AND
MOTION TO DISMISS


JUDGE DAVID S. YOUNG

Civil No. 920900544 HC

DEFENDANT, through Steven Morrissett, Assistant Attorney General, responds to this Petition for WRIT OF HABEAS CORPUS as follows:

ANSWER

The state answers the numbered paragraphs of the petition as follows:

1. Admitted. *deny as to the legality of it* 
2. Admitted, except the June, 1991 hearing occurred on June

25, 1991.

000015

3. Denied.
4. No allegation requiring a response.
5. Insufficient allegation to permit a response.
6. Admitted.
7. No allegation requiring a response.
8. Admitted that letter was sent. The letter was processed on January 9, 1992, and responded to on February 14, 1992.
9. No allegation requiring response.
10. Denied.

MOTION TO DISMISS

Jeffrey Lynn Abbott has filed a Petition for Writ of Habeas Corpus and Post Conviction Relief pursuant to Civil Rule 65B(c), challenging decisions of the Board of Pardons during 1991, delaying his release on parole. He alleges as reasons for his petition: (1) that the Board's hearings were "improper or inadequate", (2) that there was no attorney present on his behalf, and (3) that the hearings were held (without?) proper notice or reasons.

FACTS

Jeffrey Lynn Abbott was on his plea to the reduced charge of attempted theft of a motor vehicle, a third degree felony. He was sentenced on March 7, 1989 to an indeterminate term of zero to five years in prison. He had several prior convictions from

California and Kansas, including burglary, forgery and theft. The Board of Pardons set his parole date for March 12, 1991.

In January, 1991, the Board became aware of numerous administrative violations committed by Abbott while incarcerated. On January 29, 1991, it gave notice of intent to rescind the March 12, 1991 parole date and set a rescission hearing. Notice was sent to Abbott in a letter dated February 20, 1991, advising him of the reasons.

A rescission hearing was held on February 28, 1991, with Abbott present. It was tape recorded. An interim decision was made to set Abbott's parole date for May 14, 1991. A final decision was made March 12, 1991. Additional parole conditions were set.

Abbott signed conditions of parole. He was then moved to a half-way house by his agreement, dated March 27, 1991, since he had no stable residence or release plans.

On May 9, 1991, a case worker gave notice of need to again rescind Abbott's parole release date, because of continuing disciplinary violations and major disruptive behavior. This was ratified by a decision of the Board on May 14, 1991, setting a new rescission hearing.

This rescission hearing was held on June 25, 1991. Abbott was present and the hearing was tape recorded. The Board's

decision was to set Abbott's parole release date to October 8, 1991.

Because of continuing disciplinary violations, a new rescission hearing was set for August 22, 1991. Abbott was sent notice on August 16. He attended the hearing, which was tape recorded. Based on continued disciplinary violations, the Board rescinded Abbott's release date and set it for November 23, 1993. The rationale for the Board's decision was attached.

DISCUSSION

1. The petition does not describe the constitutional violation.

A sentenced prisoner may challenge his imprisonment under Rule 65B(i)(1) of the Utah Rules of Civil Procedure, if he claims the proceedings resulting in his commitment involved a substantial denial of his state or federal constitutional rights. However, to make such a claim, the prisoner must meet the requirements of Rule 65B(i)(2). That rule states, in part:

(2) The complaint [petition] ... shall set forth in plain and concise terms the factual data constituting each and every manner in which the complainant claims that any constitutional rights were violated. The complaint shall have attached thereto affidavits, copies of the records, or other evidence supporting such allegations, or shall state why the same are not attached.

The Utah Supreme Court has held that failure to follow the procedural requirements of Rule 65B(i), by providing plain and concise factual data, should result in dismissal of the case, without an evidentiary hearing. Andrews v. Morris, 607 P.2d 816 (Utah 1980).

In Andrews, the Supreme Court held that a habeas petitioner had the burden of showing why the relief sought should be granted. Where the "petition for relief is drawn in conclusional language and is lacking in factual data to support its allegations, contrary to the mandate of said Rule 65B(i)", the petition is deficient. Where it raises legal questions only, an evidentiary hearing to fully develop the underlying facts is not required. Andrews, supra, 607 P.2d at 821.

2. There is no constitutional right to an attorney at a parole hearing.

Abbott has stated that "petitioner had no attorney present in any of the hearings." His allegations do not make clear whether he claims that he requested and was denied counsel, that his attorney was prevented from attending the hearings, or that he did not seek counsel and now wishes he had done so.

Even if Abbott's claim is that he was denied free counsel, that contention does not state a valid basis to attack the

authority of the Board of Pardons to deny or delay parole. Neither the state nor federal constitutions provide for a guaranteed right to counsel in a post-conviction parole hearing.

In Pennsylvania v. Finley, 107 S.Ct. 1990 (1987), the United States Supreme Court reiterated that prisoners do not have a federal constitutional right to counsel when collaterally attacking their convictions. The court stated:

the right to appointed counsel extends to the first appeal of right, and no further. Thus, we have rejected suggestions that we establish a right to counsel on discretionary appeals. [Citations omitted.] We think that since a defendant has no federal constitutional right to counsel when pursuing a discretionary appeal on direct review of his conviction, a fortiori, he has no such right when attacking a conviction that has long since become final upon exhaustion of the appellate process.

Finley, 107 S.Ct. at 1993.

The Utah Constitution, Article I, Section 12, gives the accused in criminal prosecutions "the right to appeal and defend in person and by counsel". The Utah Supreme Court has found this language to create a right to counsel only in criminal prosecutions and not in civil actions. Cavaness v. Cox, 598 P.2d 349, 351 (Utah 1979). Rule 65B postconviction proceedings are civil in nature. State v. Mitchell. There is no constitutional right to free counsel. Other state courts have reached a similar conclusion.

See, e.g., Tuzon v. MacDougall, 671 P.2d 923, 928 (Ariz.App. 1983); Stephens v. Balkcom, 265 S.E.2e 596, 597 (Ga. 1980).

3. There was no due process violation.

The state is at a disadvantage in arguing against Abbott's claim that the hearings were held without proper notice or reasons. Although he refers to Footte v. Utah Board of Pardons, 808 P.2d 734 (Utah 1991), he fails to explain how his notice or the Board's reasons are constitutionally inadequate. Without such clarification, his petition does not state a constitutional claim justifying extraordinary relief. Andrews, supra.

The Board of Pardons is granted exclusive executive power to regulate punishments, as authorized by the legislature and imposed by the courts. Art.VII, Sec.12, Utah Constitution. Abbott is can review the tapes of the hearings of the Board and to assert any constitutional violation he sees. But unless and until he articulates and proves a constitutional violation, he is not entitled to habeas relief from the courts.

If Abbott wishes to review the documents and request the tapes of the hearings, the court may wish to give him additional time to amend his petition to more particularly describe any perceived constitutional violations. However, Abbott's real remedy is to improve his disciplinary record, then apply to the

Board of Pardons and demonstrate that he has earned an earlier release date.

Dated this 24 day of February, 1992.


Steven Morrisett

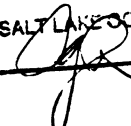
CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing motion to dismiss was mailed, postage prepaid, to Jeffrey Lynn Abbott, Pro Se, P.O. Box 250, Draper, Utah 84020

Mailed this 24th day of February, 1992.


Maugh Peterson

FEB 24 1992

SALT LAKE COUNTY
By  Deputy Clerk

R. PAUL VAN DAM (3312)
UTAH ATTORNEY GENERAL
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Defendants
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

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

ABBOTT, JEFFREY LYNN,

Plaintiff,

v.

STATE OF UTAH,

Defendant.

AFFIDAVIT OF COUNSEL

JUDGE DAVID S. YOUNG

Civil No. 920900544 HC

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

1. I am an Assistant Attorney General for the State of Utah. In that capacity, I reviewed the Jeffrey Abbott file of the Board of Pardons and obtained copies of the public documents from the file. I also talked to Paul Larsen, a hearing officer for the Board of Pardons who is familiar with the Abbott case.

2. The statement of facts appearing in the state's opposition to Abbott's petition for a writ of habeas corpus is

000023

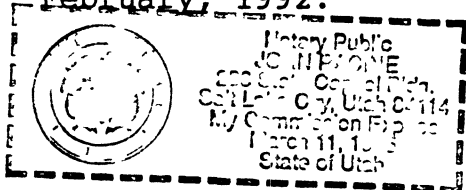
based on information provided to me from Paul Larsen and from the Board's file.

3. The attached documents are substantially accurate copies of the public records in the Board of Pardons file and letters to and from Abbott.

4. Also included is a letter from contract attorneys requesting documents for Abbott, dated May 23, 1991, but not stamped "received" by the Board until January 9, 1992. This letter was answered on February 14, 1992, and copies of public documents from the Board's file were sent to Abbott on that date.


Steven Morrissett

SUBSCRIBED AND SWORN to before me this ____ day of
February, 1992.




Notary Public

Residing in _____

My Commission Expires _____

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing motion to dismiss was mailed, postage prepaid, to Jeffrey Lynn Abbott, Pro Se, P.O. Box 250, Draper, Utah 84020

Mailed this 24th day of February, 1992.

Maureen L. Lister



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 00051043

Consideration of the Status of ABBOTT, JEFF L SR PRISON NO. 19288

The above-entitled matter came on for a hearing before the Utah State Board of Pardons on the 29th day of January, 1991, for consideration as:

SPECIAL ATTENTION HEARING

After the statement of _____ and the following witnesses:

1) _____ 2) _____
and good cause appearing, the Board made the following decision and order:

ORDER

☒ Rescind 03/12/1991 parole date, _____

☐ Parole to become effective _____ with following special conditions:

☐ Amend parole agreement to add the following special conditions:

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |

☐ Rehearing for _____

☐ Termination of sentence and parole to become effective _____

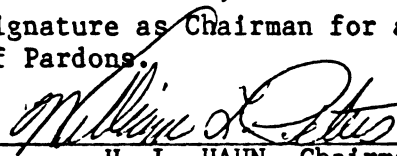
☐ Expiration of sentence effective _____

☒ Other SCHEDULE FOR RESCISSION HEARING

CRIME	SENT CASE#	JUDGE	EXPIRATION
<input checked="" type="checkbox"/> THEFT	5 6244	PAGE	12/06/1993

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

In order of the Board of Pardons of the State of Utah, I have this date _____
_____th day of January, 1991, affixed my signature as Chairman for and
on behalf of the State of Utah, Board of Pardons.



H. L. HAUN, Chairman

000026



State of Utah

BOARD OF PARDONS

Jorman H. Bangerter
Governor
H.L. (Pete) Haun
Chairman
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke
Members

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

February 20, 1991

Jeffrey Abbott, USP# 19288
P.O. Box 250
Draper, Utah 84020

Dear Mr. Abbott:

This is to notify you that you are scheduled for a Rescission Hearing before the Utah State Board of Pardons on February 28, 1991, at 9:00 a.m. at the Utah State Prison. Our records note numerous violations. That subject will be the topic of your hearing.

Sincerely,

H.L. HAUN, CHAIRMAN/ADMINISTRATOR
UTAH STATE BOARD OF PARDONS

Enid O. Pino
Hearing Officer

cc: Utah State Prison
File

4136c

000027



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

INTERIM DECISION

Consideration of the Status of ABBOTT, JEFFREY USP No.19288

The above-entitled matter came before the Board of Pardons on the 28th day of February, 1991 for consideration as:

1. _____ SPECIAL CONDITIONS
2. _____ CLASS A
3. XXX RESCISSION
4. _____ OTHER RESTITUTION

After hearing the statement of Abbott, Jeffrey and the following witness(es) 1) _____ 2) _____ the following decision was rendered:

 Revoke parole date,

✓ Rescind 3/12/91 parole date, _____

✓ Parole to become effective ^{May} ~~April~~ 14, 1991, with the following special conditions:

✓ Amend parole agreement to add/delete the following special conditions:

A. Rest 9/800 H 6244 D. No Alcohol

B. 1 SP program if in Utah E. Complete E/N if in Utah

C. Drug test F. _____

Rehearing for

Termination of Sentence to become effective

Expiration of Sentence

Other

NOTE: This Interim Decision is binding and in full force and effect until reviewed by the Board of Pardons members, who will make the final determination in this matter. In the event the above named shall be found guilty of any infraction of the Rules and Regulations of the Utah State Prison, of any Community Correction Center or of any residential facility or is found in violation of any law of the State of Utah or other good cause, this order may be made null and void.

February 28, 1991

Date _____

Paul Russo

H.L. HAUN, Chairman

000023



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 00051043

Consideration of the Status of ABBOTT, JEFF L SR PRISON NO. 19288

The above-entitled matter came on for a hearing before the Utah State Board of Pardons on the 12th day of March, 1991, for consideration as:

RESCISSION HEARING

After the statement of _____ and the following witnesses:

1) _____ 2) _____
and good cause appearing, the Board made the following decision and order:

ORDER

XXX Rescind 03/12/1991 parole date, _____

XXX Parole to become effective 05/14/1991 with following special conditions:

Amend parole agreement to add the following special conditions:

1. Pay restit. of \$918.00 case#6244
2. Succ. compl. ISP prog. if residing in UT
3. Submit to RDT
4. Not cons. or poss. any alcohol
5. Succ. comp. EM if residing in UT

Rehearing for _____

Termination of sentence and parole to become effective _____

Expiration of sentence effective _____

Other _____

#	CRIME	SENT CASE#	JUDGE	EXPIRATION
1	THEFT	5 6244	PAGE	12/06/1993

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

By order of the Board of Pardons of the State of Utah, I have this date 12th day of March, 1991, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.

H. L. Haun
H. L. HAUN, Chairman

000029

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



Members
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH



ORDER OF PAROLE
UTAH STATE OBSCIS NO. 00051043
UTAH STATE PRISON NO. 19288
IN THE MATTER OF THE APPLICATION OF ABBOTT, JEFF L SR

This matter of application for parole, termination of sentence, or expiration of sentence having come before the Utah State Board of Pardons in a regularly scheduled hearing on the 12th day of March, 1991, and the applicant appearing in person or having waived in writing the right to appearance and the Board having heard the case, issues the following order:

It is hereby ordered that ABBOTT, JEFF L SR be paroled from the punishment and sentence heretofore imposed upon him/her by a judge of the Second District Court in and for the County of Davis for the crime(s) of THEFT, 3rd degree felony, Expiration 12/06/93.

The parole shall not become effective until 14th day of May, 1991. The applicant agrees to the conditions of parole and evidences his agreement by signing the parole agreement. The parole agreement or contract shall be administered by duly authorized agents of the Utah State Department of Corrections for the Utah State Board of Pardons.

It is further ordered that if and in the event the above named applicant shall be guilty of any infractions of the rules and regulations of the Utah State Prison or shall fail or refuse to perform duties as assigned by the Utah State Prison or is found to be in violation of any other law of the State of Utah prior to the effective date of said parole, then this Order of Parole is revoked and becomes null and void.

Dated this 12th day of March, 1991.

By Order of the Board of Pardons of the State of Utah, I have this 14th day of March, 1991, reduced its decision in this matter to writing and hereby affix my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.


H.L. HAUN, Chairman

MAR 19 1991

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



Members
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

PAROLE AGREEMENT

I, ABBOTT, JEFF L SR agree to be directed and supervised by Agents of the Utah State Department of Corrections and be accountable for my actions and conduct to Utah State Corrections, according to this Agreement. I further agree to abide by all conditions of parole as set forth in this Agreement and any additional conditions as set forth by the Utah State Board of Pardons, consistent with the laws of the State of Utah. I fully understand that the violation of this Agreement and/or any conditions thereof or any new conviction for a crime may result in action by the Board causing my parole to be revoked or my parole period to start over.

CONDITIONS OF PAROLE

1. RELEASE: On the day of my release from the institution or confinement, I will report to my assigned Parole Agent, unless otherwise approved in writing.
2. RESIDENCE: I shall establish a residence of record and shall reside at such residence in fact and on record and shall not change my place of residence without knowledge of my Parole Agent; and I shall not leave the State of Utah without prior written authorization from my Parole Agent. It is hereby acknowledged that should I leave the State of Utah without written authorization from my Parole Agent that I hereby waive extradition, from any state in which I may be found, to the State of Utah.
3. CONDUCT: I shall obey all State and Federal laws and municipal ordinances at all times.
4. REPORT: I shall make written or in person reports to my Parole Agent by the fifth of each and every month or as directed and I shall permit visits to my place of residence as required by my Parole Agent for the purpose of insuring compliance with the conditions of parole.
5. EMPLOYMENT: I will seek and maintain full-time employment unless I am participating in an educational or therapy program approved by my Parole Agent.
6. SEARCH: I agree to allow a Parole Agent to search my person, residence, vehicle, or any other property under my control, without a warrant, any time day or night, upon reasonable suspicion as ascertained by a Parole Agent, to insure compliance with the conditions of my parole.
7. WEAPONS: I shall not own, possess, or have under my control or in my custody any explosives, firearms, or any dangerous weapons as defined in Utah Code Annotated, Section 76-10-501, as amended.
8. ASSOCIATION: I shall not associate with any known criminal in any manner which can reasonably be expected to result in, or which has resulted in criminal or illegal activity.
9. SPECIAL CONDITIONS: I shall:
 - 1 Pay restitution of \$918.00 CASE#6244.
 - 2 Successfully complete ISP Program if residing in Utah.
 - 3 Submit to random drug testing.
 - 4 Not consume or possess any alcohol.
 - 5 Successfully complete Elec. Monit. if residing in Utah.

I have read, understand and agree to the above conditions and I hereby acknowledge receipt of a copy of this Agreement.

WITNESSED BY: [Signature]

TITLE: IPD - Officer

[Signature]
Chairman, Board of Pardons

this 27 day of March, 19 91.

SIGNED: [Signature], Sr.
Parolee

ADDRESS: 2509 Klondike

Garland City, Missouri

816-734-2125

64127

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



Members
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

PAROLE AGREEMENT

, ABBOTT, JEFF L. SR, agree to be directed and supervised by Agents of the Utah State Department of Corrections and be accountable for my actions and conduct to Utah State Corrections, according to this Agreement.

I further agree to abide by all conditions of parole as set forth in this Agreement and any additional conditions as set forth by the Utah State Board of Pardons, consistent with the laws of the State of Utah. I fully understand that the violation of this Agreement and/or any conditions thereof or any new conviction for a crime may result in action by the Board causing my parole to be revoked or my parole period to start over.

CONDITIONS OF PAROLE

- . **RELEASE:** On the day of my release from the institution or confinement, I will report to my assigned Parole Agent, unless otherwise approved in writing.
- . **RESIDENCE:** I shall establish and reside at a residence of record and shall report such residence or any change thereof to my Parole Agent. I shall not leave the State of Utah without prior written authorization from my Parole Agent. It is hereby acknowledged that should I leave the State of Utah without written authorization from my Parole Agent, that I hereby waive extradition from any state in which I may be found, to the State of Utah.
- . **CONDUCT:** I shall obey all State and Federal laws and municipal ordinances at all times.
- . **REPORT:** I shall make written or in person reports to my Parole Agent by the fifth of each and every month or as directed and I shall permit visits to my place of residence as required by my Parole Agent for the purpose of insuring compliance with the conditions of parole.
- . **EMPLOYMENT:** I will seek and maintain full-time employment unless I am participating in an educational or therapy program approved by my Parole Agent.
- . **SEARCH:** I agree to allow a Parole Agent to search my person, residence, vehicle, or any other property under my control, without a warrant, any time day or night, upon reasonable suspicion as ascertained by a Parole Agent, to insure compliance with the conditions of my parole.
- . **WEAPONS:** I shall not own, possess, or have under my control any explosives, firearms, or any dangerous weapons as defined in Utah Code Annotated, Section 76-10-501, as amended.
- . **ASSOCIATION:** I shall not associate with any known criminal in any manner which can reasonably be expected to result in, or which has resulted in criminal or illegal activity.
- . **SPECIAL CONDITIONS:** I shall:
 1. Pay restitution of \$918.00 - CASE#6244.
 2. Successfully complete ISP program if residing in Utah.
 3. Submit to random drug testing.
 4. Not consume or possess any alcohol.
 5. Successfully complete Electronic Monitoring if residing in Utah.
 6. Enter Halfway House until stabilized or accepted for compact supervision.

I have read, understand and agree to the above conditions and I hereby acknowledge receipt of copy of this Agreement.

WITNESSED BY: [Signature]

this 30 day of April, 1991.

TITLE: IPD Officer

SIGNED: [Signature]
Parolee

ADDRESS: _____

[Signature]
Chairman, Board of Pardons

AMENDED 4/23/1991

000032

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



RECEIVED

APR 26 1991

Members
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

ORDER OF PAROLE

INST. PAROLE OFFICE-REG III

IN THE MATTER OF THE APPLICATION OF ABBOTT, JEFF L. SR
UTAH STATE PRISON NO. 19288

his matter of application for parole, termination of sentence, or expiration of sentence
g come before the Utah State Board of Pardons in a regularly scheduled hearing on the
day of April, 1991, and the applicant appearing in person or having waived in writing the
to appearance and the Board having heard the case, issues the following order:

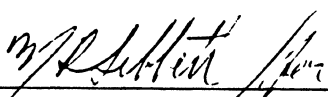
t is hereby ordered that ABBOTT, JEFF L. SR be paroled from the punishment and sentence
ofore imposed upon him/her by a judge of the Second Judicial District Court in and for
ounty of Davis for the crime(s) of THEFT, 3rd degree felony, Expiration 12/06/1993.

he parole shall not become effective until the 14th day of May, 1991. The applicant
s to the conditions of parole and evidences his agreement by signing the parole
ment. The parole agreement or contract shall be administered by duly authorized agents
e Utah State Department of Corrections for the Utah State Board of Pardons.

t is further ordered that if and in the event the above named applicant shall be guilty
y infractions of the rules and regulations of the Utah State Prison or shall fail or
e to perform duties as assigned by the Utah State Prison or is found to be in violation
y other law of the State of Utah prior to the effective date of said parole, then this
of Parole is revoked and becomes null and void.

ated this 23rd day of April, 1991.

y Order of the Board of Pardons of the State of Utah, I have this 25th day of April,
reduced its decision in this matter to writing and hereby affix my signature as Chairman
and on behalf of the State of Utah, Board of Pardons.



H.L. HAUN, Chairman

000033



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 51043

Consideration of the Status of ABBOTT, JEFF L SR PRISON NO. 19288

The above-entitled matter came on for consideration before the Utah State Board of Pardons on the 23rd day of April, 1991, for:

SPECIAL ATTENTION HEARING

After a review of the submitted information and good cause appearing, the Board makes the following decision and order:

RESULTS

Amend parole agreement to add:

- 1 Enter halfway House until stabilized
or accepted for compact supervision.

No Crime	Sent Case No.	Judge	Expiration
1 THEFT	5 6244	PAGE	12/06/1993

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

By order of the Board of Pardons of the State of Utah, I have this date 23rd day of April, 1991, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.


H. L. HAUN, Chairman

000034



Norman H. Bangerter
Governor
Gary W. DeLand
Executive Director

State of Utah
DEPARTMENT OF CORRECTIONS

6100 South Fashion Boulevard
Murray, Utah 84107
(801) 265-5500

WAIVER OF PERSONAL APPEARANCE

Jeffery L. Abbott

USP NO.: 19288

I 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):

Half way way house until stabilized with employment &
residence if not accepted by Interstate Compact Missouri.

[Signature]

WITNESS

Jeffery L. Abbott, Jr.

PAROLEE

3-27-91

DATE

000035

Consideration of the Status of Jeff Albett Utah State Prison No. 19288
The above-entitled matter came before Bl of Pds on the 9th day of May, 1988 199,
for consideration as:

1. SPECIAL CONDITIONS
2. CLASS A

3. X RESCISSION
4. OTHER

After hearing the statement of Social Worker and the following witness(es)

1) 2) , the following decision was rendered:

 Parole to become effective , with the following special conditions:

 Amend parole agreement to add/delete the following special conditions:

A. C.

B. D.

 Rehearing for

 Termination of Sentence to become effective

Expiration of Sentence

X Rescind May 14, 91 date a schedule rescission heard
NOTE: This Interim Decision is binding and in full force and effect until reviewed by
the Board of Pardons members, who will make the final determination in this matter.
In the event the above named shall be found guilty of any infraction of the Rules and
Regulations of the Utah State Prison, of any Community Correction Center or of any
residential facility or is found in violation of any law of the State of Utah or other
good cause, this order may be made null and void.

Date May 9, 91

Ernie O'Pano
Board of Pardons Staff Member

5/88

000030



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 51043

consideration of the Status of ABBOTT, JEFF L SR PRISON NO. 19288

above-entitled matter came on for consideration before the Utah State Board of Pardons on the 14th day of May, 1991, for:

RESCISSION HEARING

After a review of the submitted information and good cause appearing, the Board has made the following decision and order:

RESULTS

Rescind 05/14/1991 parole. Schedule for Rescission hearing.

Crime	Sent Case No.	Judge	Expiration
THEFT	5 6244	PAGE	12/06/1993

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

In order of the Board of Pardons of the State of Utah, I have this date 14th day of May, 1991, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.


H. L. HAUN, Chairman

000037

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



Members
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

PAROLE AGREEMENT

I, ABBOTT, JEFF L SR agree to be directed and supervised by Agents of the Utah State Department of Corrections and be accountable for my actions and conduct to Utah State Corrections, according to this Agreement. I further agree to abide by all conditions of parole as set forth in this Agreement and any additional conditions as set forth by the Utah State Board of Pardons, consistent with the laws of the State of Utah. I fully understand that the violation of this Agreement and/or any conditions thereof or any new conviction for a crime may result in action by the Board causing my parole to be revoked or my parole period to start over.

CONDITIONS OF PAROLE

1. RELEASE: On the day of my release from the institution or confinement, I will report to my assigned Parole Agent, unless otherwise approved in writing.
2. RESIDENCE: I shall establish a residence of record and shall reside at such residence in fact and on record and shall not change my place of residence without knowledge of my Parole Agent; and I shall not leave the State of Utah without prior written authorization from my Parole Agent. It is hereby acknowledged that should I leave the State of Utah without written authorization from my Parole Agent that I hereby waive extradition, from any state in which I may be found, to the State of Utah.
3. CONDUCT: I shall obey all State and Federal laws and municipal ordinances at all times.
4. REPORT: I shall make written or in person reports to my Parole Agent by the fifth of each and every month or as directed and I shall permit visits to my place of residence as required by my Parole Agent for the purpose of insuring compliance with the conditions of parole.
5. EMPLOYMENT: I will seek and maintain full-time employment unless I am participating in an educational or therapy program approved by my Parole Agent.
6. SEARCH: I agree to allow a Parole Agent to search my person, residence, vehicle, or any other property under my control, without a warrant, any time day or night, upon reasonable suspicion as ascertained by a Parole Agent, to insure compliance with the conditions of my parole.
7. WEAPONS: I shall not own, possess, or have under my control or in my custody any explosives, firearms, or any dangerous weapons as defined in Utah Code Annotated, Section 76-10-501, as amended.
8. ASSOCIATION: I shall not associate with any known criminal in any manner which can reasonably be expected to result in, or which has resulted in criminal or illegal activity.
9. SPECIAL CONDITIONS: I shall:
 - 1 Pay restitution of \$918.00 CASE#6244.
 - 2 Successfully complete ISP Program if residing in Utah.
 - 3 Submit to random drug testing.
 - 4 Not consume or possess any alcohol.
 - 5 Successfully complete Elec. Monit. if residing in Utah.

I have read, understand and agree to the above conditions and I hereby acknowledge receipt of a copy of this Agreement.

WITNESSED BY: _____ this _____ day of _____, 19 _____.

TITLE: _____ SIGNED: _____

Parolee

ADDRESS: _____

H. L. Haun, Chairman

000033

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



Members
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

ORDER OF PAROLE
UTAH STATE OBSCIS NO. 00051043
UTAH STATE PRISON NO. 19288
IN THE MATTER OF THE APPLICATION OF ABBOTT, JEFF L SR

This matter of application for parole, termination of sentence, or expiration of sentence having come before the Utah State Board of Pardons in a regularly scheduled hearing on the 25th day of June, 1991, and the applicant appearing in person or having waived in writing the right to appearance and the Board having heard the case, issues the following order:


It is hereby ordered that ABBOTT, JEFF L SR be paroled from the punishment and sentence heretofore imposed upon him/her by a judge of the Second District Court in and for the County of Davis for the crime(s) of THEFT, 3rd degree felony, Expiration 12/06/93.

The parole shall not become effective until 8th day of October, 1991. The applicant agrees to the conditions of parole and evidences his agreement by signing the parole agreement. The parole agreement or contract shall be administered by duly authorized agents of the Utah State Department of Corrections for the Utah State Board of Pardons.

It is further ordered that if and in the event the above named applicant shall be guilty of any infractions of the rules and regulations of the Utah State Prison or shall fail or refuse to perform duties as assigned by the Utah State Prison or is found to be in violation of any other law of the State of Utah prior to the effective date of said parole, then this Order of Parole is revoked and becomes null and void.

Dated this 25th day of June, 1991.

By Order of the Board of Pardons of the State of Utah, I have this 27th day of June, 1991, reduced its decision in this matter to writing and hereby affix my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.


H.L. HAUN, Chairman

000033



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 51043

Consideration of the Status of ABBOTT, JEFF L SR PRISON NO. 19288

The above-entitled matter came on for consideration before the Utah State Board of Pardons on the 25th day of June, 1991, for:

RESCISSION HEARING

After a review of the submitted information and good cause appearing, the Board makes the following decision and order:

RESULTS

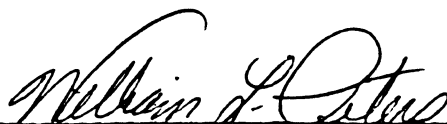
Rescind 05/14/1991 parole. Parole
effective 10/08/1991.

- 1 Pay restitution of \$918.00 - CASE#6244.
- 2 Successfully complete ISP Program if residing in Utah.
- 3 Submit to random drug testing.
- 4 Not consume or possess any alcohol.
- 5 Successfully complete Elec. Monit. if residing in Utah.

No Crime	Sent Case No.	Judge	Expiration
1 THEFT	5 6244	PAGE	12/06/1993

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

By order of the Board of Pardons of the State of Utah, I have this date 25th day of June, 1991, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.


H. L. HAUN, Chairman

000040



State of Utah

BOARD OF PARDONS

man H. Bangerter
Governor
H.L. (Pete) Haun
Chairman
nald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke
Members

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

August 16, 1991

Jeff Abbott, USP# 19288
P.O. Box 250
Draper, Utah 84020

ms
Dear Ms. Abbott:

This is to notify you that a Rescission Request has been received at the Board that indicates that you have disciplinaries. This may effect your current status. Therefore, please be prepared to appear before a Board of Pardons Staff Member on August 22, 1991 at 11:00 am in a Rescission Hearing to discuss this matter.

In connection with your upcoming hearing, everything in your Board file may be considered. Like other offenders' files, your file contains its own variation of the following categories of information:

- (1) Public information, including judgment and commitment orders, prior Board dispositions, parole agreements, and the like;
- (2) Information generated from Adult Probation and Parole, including presentence and postsentence reports, probation violation reports, parole progress and violation reports, diagnostic reports, and so forth;
- (3) Prison information, including board reports, disciplinaries, progress and rescission reports, psychologicals, etc.;
- (4) Information generated internally for the Board, including worksheets, routings, guideline matrices, alienist reports, warrant requests;
- (5) Other criminal justice information, including police and prosecutorial reports, recommendations from sentencing judges, criminal record data, other court documents;
- (6) Other correspondence sent to the Board concerning you.

Any other specific items of information to be considered by the Board will be identified for you at the hearing and you will have an opportunity to respond at that time.

If you have further questions, please ask your caseworker.

Sincerely,

H.L. HAUN, CHAIRMAN
UTAH STATE BOARD OF PARDONS

Enid O. Pino, Hearing Officer
Utah State Board of Pardons

cc: USP Records
File

000041



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

The status of ABBOTT, JEFF L SR, USP No. 19288, OBSCIS No. 51043 came before the Utah State Board of Pardons on the 22nd day of August, 1991, for the following consideration:

RESCISSION HEARING

CRIME OF COMMITMENT	COURT CASE #	JUDGE	EXPIRATION
1 THEFT	5 6244	PAGE	12/06/1993

ORDER

After the statement of Mr. Jeff Abbott and the following witnesses, 1) 2/11 and for good cause appearing, the Board of Pardons made the following decision:

☒ Rescind 10/8/91 parole date,

☐ Begin parole on _____ with the following special conditions:

- | | |
|----------|----------|
| 1. _____ | 4. _____ |
| 2. _____ | 5. _____ |
| 3. _____ | 6. _____ |

☐ Amend parole agreement to add/delete/modify the conditions described above

☒ Terminate sentence (including parole supervision) on 11/23/93

☐ Expiration of sentence to be effective on _____

☐ Schedule rehearing for _____

☐ Other: _____

The reasons for this decision are identified on the attached page.

At the discretion of the Board of Pardons, this decision is subject to review and modification at any time prior to actual release from custody.

By order of the Board of Pardons of the State of Utah, I affix my signature on behalf of the Chairman of the Board this 22nd day of August, 1991.

H. L. HAUN, Chairman

000042

Jeff. Wilson
Name



11000
USP #

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH
RATIONALE

The Board of Pardons' decision in this matter is based primarily, but not exclusively, on the following reasons:

AGGRAVATING

MITIGATING

OFFENDER'S BACKGROUND

☐ Criminal history significantly underrepresented by guidelines
(i.e., many more than 4 felony convictions and/or 8 misdemeanors)
☒ History of similar offenses
☐ Pattern of increasingly or decreasingly serious offenses
☒ History of unsuccessful or successful supervisions
Multiple Rescissions

CHARACTERISTICS OF THE OFFENSE

☐ Use of weapons or dangerous instrumentalities
☐ Demonstration of extreme cruelty or depravity
☐ Abuse of position of trust, special skill, or responsibility
☐ Multiple incidents and/or victims
☐ Actual gain reaped from the offense ☒

OFFENDER'S TRAITS DURING THE OFFENSE

☐ Motive (intentional, premeditated vs. impulsive, reactionary) .
☐ Role (organizer, leader vs. follower, minimal participant) . .
☒ Obstruction of justice vs. early withdrawal or self-surrender .

VICTIM CHARACTERISTICS

☐ Extent of injury (physical, emotional, financial, social)
☐ Relatively vulnerable victim vs. aggressive or provoking victim
☐ Victim in position of authority over offender

OFFENDER'S PRESENT CHARACTERISTICS

☐ Denial or mitigation vs. Complete acceptance of responsibility
☒ Extent of remorse and apparent motivation to rehabilitate . . .
☐ Timeliness and extent of efforts to pay restitution
☒ Prison or Parole programming (effort to enroll, etc.)
☒ Prison disciplinary problems or other defiance of authority . .
☐ Employment possibilities (history, skills, current job, future)
☐ Extent of community support or community fear, condemnation . .
☐ Nature and stability of release plans
☐ Overall rehabilitative progress and promise
☐ Unusual institutional vulnerability (due to age, health, other)
☐ Exceptional risk to self or others

OTHER

8/22/91
Date

M. R. Liffert
Board Member

000043

WAYNE A. FREESTONE
DAVID J. ANGERHOFER
CONTRACT ATTORNEYS
50 West 300 South, Suite 900
Salt Lake City, Utah 84101
(801) 322-1503
(801) 363-0844

2001
6

Not:
check for
disclosure letter

AK

May 23, 1991

Mr. Pete Haun
Utah State Board of Pardons
448 East 6400 South, Suite 300
Murray, Utah 84107

10-15-91 special att/no change 11-23-93
8-22-91 regl hear/term of sent 11-23-93
4-25-91 PV/parole granted 10-8-91

RE: Inmate Jeffery Abbott USP #19288

Dear Mr. Haun:

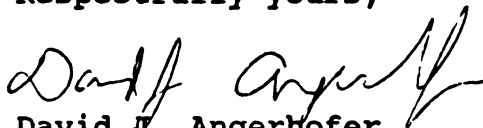
Please be advised that I am a Contract Attorney for the Utah State Prison and I have recently met with inmate Jeffery Abbott USP #19288, whom we are assisting with respect to the preparation of a Habeas Corpus Petition, pursuant to Foot v. Utah Board of Pardons, 156 Utah Adv. Rep. 3 (S.Ct. 1991).

We are in need of any and all information that the Board of Pardons relied upon in determining Mr. Abbott's parole or rehearing date, as set forth in the Constitution of Utah, Article VII, Section 12, including, the proceedings and decision of the Board, with the reasons therefor and any dissent, as it has been reduced to writing and filed.

Please provide this information within ten (10) days of the date of this letter.

Your cooperation in this matter is appreciated.

Respectfully yours,


David J. Angerhofer
Contract Attorney

DJA\las

cc: Inmate Jeffery Abbott

000044



State of Utah

BOARD OF PARDONS

Norman H. Bangerter
Governor
H.L. (Pete) Haun
Chairman
Donald E. Blanchard
Michael R. Sibbett
William L. Peters
Heather N. Cooke
Members

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

February 14, 1992

Wayne A. Freestone, David J. Angerhofer
Contract Attorneys
50 West 300 South, Suite 900
Salt Lake City, UT 84101

RE: Your Request for File Information on Jeffery Abbott, USP#19288

Dear Sirs:

This office has received your letter requesting information from your client's Board of Pardons file. Like other offenders' files, your client's file contains its own variation of the following categories of information:

- (1) Public information, including judgment and commitment orders, prior Board dispositions, parole agreements, and the like;
- (2) Information generated from Adult Probation and Parole, including presentence and postsentence reports, diagnostic reports, and so forth;
- (3) Prison information, including board reports, disciplinaries, progress and rescission reports, psychologicals, etc.;
- (4) Information generated internally for the Board, including worksheets, routings, guideline matrices, alienist reports, warrant requests;
- (5) Other criminal justice information, including police and prosecutorial reports, recommendations from sentencing judges, criminal record data, other court documents;
- (6) Other correspondence sent to the Board concerning you.

As you are aware, Board of Pardons Rule 655-303 only makes copies of public documents accessible to your client. As such, we have enclosed copies of all public documents from your client's file with this response. These documents include disposition forms reflecting the Board's prior decisions concerning your client. The proceedings, information relied upon, and reasons behind these decisions are electronically recorded and available by ordering a copy of the tape in question. This can be done by sending \$5.00 with a written request for each hearing desired.

At any hearing held after August 9, 1991, the Board will provide a verbal summary of information it intends to rely upon and, before any decision is reached, your client will be given the opportunity at that hearing to respond to the information listed.

Furthermore, decisions resulting from hearings held after August 9, 1991, will be recorded and transmitted through disposition forms that include written rationale for the decisions and dissents, if any.

If we can be of further assistance, please contact the Board of Pardons office listed on this letterhead.

Sincerely,

Paul Larsen
PAUL LARSEN

HEARING OFFICER

000015

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

ABBOTT, JEFFREY LYNN	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 920900544 HC
	:	DATE 02/24/92
VS	:	HONORABLE DAVID S. YOUNG
	:	COURT REPORTER AMBROSE, EILEEN
STATE OF UTAH	:	COURT CLERK CGH
DEFENDANT	:	

TYPE OF HEARING: HABEAS CORPUS WRIT
PRESENT: PLAINTIFF

P. ATTY. ABBOTT, JEFFREY PRO SE
D. ATTY. MORRISSETT, STEVEN

PLAINTIFF'S PETITION FOR WRIT OF HABEAS CORPUS COMES NOW
BEFORE THE COURT FOR HEARING, WITH APPEARANCES AS SHOWN ABOVE.
BASED ON DISCUSSION WITH MR. ABBOT AND DEFENDANT'S COUNSEL
THE COURT ORDERS THIS MATTER CONTINUED TO MARCH 9, 1992 AT 1:00
P.M. MR. ABBOT IS TO RESPOND TO THE STATE'S ANSWER AND THE
STATE IS TO REPLY SHORTLY THEREAFTER. THE COURT FURTHER ORDERS
PLAINTIFF MAY PROCEED AS IMPECUNIOUS AND DENIES HIS MOTION TO
HAVE AN ATTORNEY APPOINTED TO REPRESENT HIM.

000046



THE GREATER KANSAS CITY MENTAL HEALTH FOUNDATION

2055 HOLMES KANSAS CITY, MO 64108 (816) 221-5000

920900544

August 16, 1990

Mr. Jeffrey Abbott, #19288
Utah State Prison
P. O. Box #250
Draper, Utah 84020

FILED DISTRICT COURT
Third Judicial District
NOV 26 1992
By SA [Signature] DEPUTY CLERK

RE: Request For Information

Dear Mr. Abbott:

Reference your letter requesting additional information concerning the NARA Outpatient Treatment Program, our program is approximately nine (9) months in length, during which time a client has one (1) individual therapy session, one (1) group per week and submits urine samples a minimum of once per week, on a random basis. Cost of the program are based on the client's income.

Should you desire to be considered for entry into the NARA Program, please contact the program approximately two (2) months prior to your release from prison.

Respectfully,

Robert A. Wheeler
Coordinator, Outpatient Services

RW: smp

International Headquarters

Marriott Drive
Washington, D.C. 20051

Richard C. Bell-Irving
Vice President
Human Resources
301-380-6912

August 23, 1990

Mr. Jeffrey L. Abbott #19288
Uintah #2304
Utah State Prison Facility
14000 South Pony Express Road
Draper, Utah 84020

Dear Mr. Abbott:

Your letter to Mr. J. Williard Marriott of August 14th has been forwarded to my office for reply.

Since you will be seeking employment in the Kansas City, Missouri area, I have taken the liberty of forwarding your letter and resume to our Regional Office for that locality.

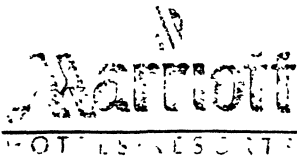
Thank you for your interest in Marriott Corporation.

Sincerely,



Richard C. Bell-Irving
Vice President Human Resources

sl



Regional Office

Suite 515
100 Executive Parkway
San Ramon, California 94583
1-800-830-1031

September 14, 1990

NOV 28

Mr. Jeffrey L. Abbott
Uintah #2304
Utah State Prison Facility
14000 South Pony Express Road
Draper, UT 84020

Dear Mr. Abbott:

Your letter to Mr. J.W. Marriott, dated August 14th, has been forwarded to my office for a reply.

Our regional office is responsible for the hotel at the Kansas City Airport. That hotel would be happy to consider you for possible employment, upon your release in March. After that time, you need to apply in person at the Human Resource office at that hotel. This opportunity, to apply for a position, is no guarantee that you will be hired. The decision as to whether or not you're hired will be based on your interview and references.

Please let me know 30 days prior to your arrival date in Kansas City and I'll be happy to set up an interview appointment. Thank you for considering Marriott.

Sincerely,

George J. Palladino
Regional Director of Human Resources

GJP:pmb

March 28, 1991

Mr. Jeffrey L. Abbott, Sr.
Uintah Housing Facility #2205
14000 South Pony Express Road
Draper, Utah 84020

Dear Mr. Abbott:

I was delighted to hear from you. You strike me as a person who is very hard-working and determined to succeed in life. I really appreciate your letters. We will definitely look forward to hearing from you again and seeing you in person when you return home. You can bring your brother along for the screening process.

Our job openings vary from week to week. When you come home, you can come in to our office anytime. We are open from 8:30AM til 4:30PM for applications/screening. On Wednesdays, we are open until 6:30PM. You and your brother may come in at anytime. You need no appointment. Our door is open.

Please take care of yourself. Thank you again for your interest in our company.

Sincerely,



Jeanette Evans
Human Resources Assistant

JEFFREY LYNN ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
Post Office Box 250
DRAPER, UTAH 84020-0250

FILED DISTRICT COURT
Third Judicial District

MAR 04 1992

By SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY, UTAH

JEFFREY LYNN ABBOTT,
PLAINTIFF,

-V-

STATE OF UTAH,
DEFENDANT.

) MOTION FOR EXTENSION OF
) TIME FOR REPLY TO DEFEN-
) DANT'S MOTION TO DISMISS

) HONORABLE JUDGE DAVID S. YOUNG
) CIVIL No. 920900544-HC

COMES NOW, THE PLAINTIFF, JEFFREY LYNN ABBOTT, PROCEEDS "PRO-SE", AND FILES THIS MOTION FOR EXTENSION OF TIME FOR REPLY TO DEFENDANT'S MOTION TO DISMISS FOR THE FOLLOWING REASONS:

1) THAT PLAINTIFF IS BEING DENIED ACCESS TO ADEQUATE LEGAL MATERIALS NEEDED TO REPLY TO DEFENDANT'S MOTION TO DISMISS.

2) THAT PLAINTIFF HAS INFORMED PRISON OFFICIALS OF THE NEED TO OBTAIN CERTAIN ITEMS NEEDED, BUT HAS RECEIVED NO RESPONSE.

3) THAT PLAINTIFF CAN NOT RESPOND TO DEFENDANT'S MOTION TO DISMISS PROPERLY WITHOUT FIRST VIEWING THE CURRENT UTAH RULES OF CIVIL PROCEDURE.

4) THAT PLAINTIFF NEEDS TIME TO OBTAIN & REVIEW THE DOCUMENTED TRANSCRIPTS OF PLAINTIFF'S PAROLE RESCISSION HEARINGS THAT THE DEFENDANTS POSSESS.

5) THAT PLAINTIFF FEELS THAT IF THE COURT WOULD GRANT A TIME EXTENSION UNTIL APRIL 13, 1992, PLAINTIFF WILL BE ABLE TO PROPERLY RESPOND TO DEFENDANT'S MOTION TO DISMISS.

WHEREFORE, PLAINTIFF PRAYS THAT THE COURT WILL GRANT THIS MOTION & EXTEND TIME FOR PLAINTIFF TO FILE HIS REPLY TO DEFENDANT'S MOTION TO DISMISS.

DATED THIS 1ST DAY OF MARCH , 1992.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script, appearing to read "Jeffrey Lynn Abbott".

JEFFREY LYNN ABBOTT

COUNSEL PRO-SE


* CERTIFICATE OF MAILING *

I, JEFFREY LYNN ABBOTT, HEREBY CERTIFY UNDER OATH
THAT ON THE BELOW-LISTED DATE, I CAUSED TO BE MAILED A
TRUE & EXACT COPY OF THE PLAINTIFF'S MOTION FOR EXTENSION
OF TIME FOR REPLY TO DEFENDANT'S MOTION TO DISMISS, TO THE
FOLLOWING, POSTAGE PRE-PAID:

STEVEN MORRISSETT (6007)
ATTORNEY FOR DEFENDANTS
6100 SOUTH 300 EAST SUITE 204
SALT LAKE CITY, UTAH 84107

THIRD JUDICIAL DISTRICT COURT
CLERK OF THE COURT - SALT LAKE COUNTY
240 EAST 400 SOUTH
SALT LAKE CITY, UTAH 84111

DATED THIS 1ST DAY OF MARCH, 1992.


JEFFREY LYNN ABBOTT

R. PAUL VAN DAM (3312)
Attorney General
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Defendants
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, UTAH

JEFFREY LYNN ABBOTT
Plaintiff,

v.

STATE OF UTAH

Defendants.

RESPONSE TO MOTION FOR
EXTENSION OF TIME

JUDGE DAVID S. YOUNG

NO. 920900544-HC

The State of Utah, by and through Assistant Attorney General, Steven Morrissett, has no objection to a second, short extension of time for the Plaintiff to respond, in the court's discretion.

The State has requested a written transcript of the August 22, 1991, hearing before the Board of Pardons, for the benefit of the court and the parties. Completion of that transcript is expected this week.


The previous decisions of the Board of Pardons are moot. The parole dates set by the previous decisions have already passed, and the August 22, 1991, decision supersedes the previous decisions. Therefore, no transcripts have been requested for those hearings.

Plaintiff can request the tapes of all of his hearings, if he chooses.

A copy of amended Utah R. Civ. P. 65B is attached hereto and to the Plaintiff's copy of this response, to make sure he has a copy of correct habeas corpus procedures.

The State has no objection to a second, short extension of time, in the courts discretion.

Dated this 6 day of March, 1992.


Steven Morrisett
Assistant Attorney General
Attorney for Defendants

000055

CERTIFICATE OF MAILING

I certify that an exact copy of the Answer to Plaintiff's Civil Rights Complaint was mailed, postage prepaid to the following:

Jeffrey Lynn Abbott, Plaintiff
Utah State Prison
P.O. Box 250
Draper, Utah 84020

This 6th day of March, 1992.

Mary Beth

UTAH RULES OF CIVIL PROCEDURE

require security if it appears that none of the parties will suffer expense or damages from a wrongful temporary restraining order or preliminary injunction, or if, in the particular case, there is some other substantial reason for dispensing with the requirement of security. See *Corporation of President of Church of Jesus Christ of Latter-Day Saints v. Wallace*, 573 P.2d 1285, 1286-87 (Utah 1978). Otherwise, the court should require security in an appropriate amount. Subparagraph (2), which is new, makes it clear that the amount of the security required by the court does not limit the recovery that may be awarded to a wrongfully restrained party. This provision represents a change in Utah law. Compare with *Mountain States Tel. & Tel. Co. v. Atkin, Wright & Mills*, 681 P.2d 1258 (Utah 1984). In the committee's view, the prior rule was unfair to the wrongfully enjoined party whose damages from the injunction may far exceed the amount of security estimated at the outset of the case. Subparagraph (2) also explicitly allows a wrongfully enjoined party to recover attorney fees. Subparagraph (3) is closely similar to language in a portion of the former rule's paragraph (c).

Paragraph (d). This paragraph is similar to the corresponding paragraph in the former rule. Borrowing a concept from paragraph (b) of the former rule, it requires the court to state its reasons for granting a temporary restraining order without notice.

Paragraph (e). This paragraph completely revises the corresponding paragraph of the for-

mer rule. The committee sought to modernize the grounds for the issuance of injunctive orders by incorporating standards consistent with national trends. There is little case law in Utah interpreting the grounds for injunctive orders, and the committee was divided as to whether the development of grounds should be left entirely to the courts. A majority of the committee believed, however, that courts and litigants would benefit from explicit standards drawn from sound authority. The standards set forth in paragraph (e) are derived from *Tri-State Generation & Transmission Ass'n. v. Shoshone River Power, Inc.*, 805 F.2d 351, 355 (10th Cir. 1986), and *Otero Savings & Loan Ass'n. v. Federal Reserve Bank*, 665 F.2d 275, 278 (10th Cir. 1981). Federal courts require proof of compliance with each of the four standards, but the weight given to each standard may vary. The substantial body of federal case authority in this area should assist the Utah courts in developing the law under paragraph (e).

Paragraph (f). This paragraph is new. It acknowledges that in domestic relations cases courts must occasionally enter prohibitory or mandatory orders under circumstances that do not permit compliance with the procedures in Rule 65A. The committee believed that this rule should not be construed to limit the authority of the court in domestic relations cases.

Amendment Notes. — The 1991 amendment, effective September 1, 1991, rewrote the rule to such an extent that a detailed description is impracticable.

Rule 65B. Extraordinary relief.

(a) **Availability of remedy.** Where no other plain, speedy and adequate remedy is available, a person may petition the court for extraordinary relief on any of the grounds set forth in paragraph (b) (involving wrongful imprisonment), paragraph (c) (involving other types of wrongful restraint on personal liberty), paragraph (d) (involving the wrongful use of public or corporate authority) or paragraph (e) (involving the wrongful use of judicial authority and the failure to exercise such authority). There shall be no special form of writ. The procedures in this rule shall govern proceedings on all petitions for extraordinary relief. To the extent that this rule does not provide special procedures, proceedings on petitions for extraordinary relief shall be governed by the procedures set forth elsewhere in these rules.

(b) Wrongful imprisonment.

(1) **Scope.** Any person committed by a court to imprisonment in a state prison, other correctional facility or county jail who asserts that the commitment resulted from a substantial denial of rights may petition the court for relief under this paragraph. This paragraph (b) shall govern proceedings based on claims relating to original commitments and commitments for violation of probation or parole. This paragraph (b) shall not govern proceedings based on claims relating to the terms or conditions of confinement.

(2) **Commencement.** The proceeding shall be commenced by filing a petition, together with a copy thereof, with the clerk of the court in which the commitment leading to confinement was issued, except that the court may order a change of venue on motion of a party for the convenience of the parties or witnesses.

(3) **Contents of the petition.** The petition shall set forth all claims that the petitioner has in relation to the legality of the commitment. Additional claims relating to the legality of the commitment may not be raised in subsequent proceedings except for good cause shown. The petition shall state:

(i) the place where the petitioner is restrained;

(ii) the name of the court by which the petitioner was convicted and sentenced and the dates of proceedings in which the conviction was entered, together with the court's case number for those proceedings, if known by the petitioner;

(iii) in plain and concise terms, all of the facts on the basis of which the petitioner claims a substantial violation of rights as the result of the commitment;

(iv) whether or not the judgment of conviction or the commitment for violation of probation or parole has been reviewed on appeal, and, if so, the number and caption or title of the appellate proceeding and the results of the review;

(v) whether the legality of the commitment has already been adjudicated in any prior post-conviction or other civil proceeding, and if so the reasons for the denial of relief in the prior proceeding.

(4) **Attachments to the petition.** The petitioner shall attach to the petition affidavits, copies of records or other evidence available to the petitioner in support of the allegations. The petitioner shall also attach to the petition a copy of the pleadings filed by the petitioner in any prior post-conviction or other civil proceeding that adjudicated the legality of the commitment, and a copy of all orders and memoranda of the court. If copies of pertinent pleadings, orders, and memoranda are not attached, the petition shall state why they are not attached.

(5) **Memorandum of authorities.** The petitioner shall not set forth argument or citations or discuss authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition.

(6) **Assignment by the presiding judge.** On the filing of the petition, the clerk shall promptly deliver it to the presiding judge of the court in which it is filed. The presiding judge shall if possible assign the proceeding to the judge who issued the commitment.

(7) **Dismissal of frivolous claims.** On review of the petition, if it is apparent to the court that the issues presented in the petition have already been adjudicated in a prior proceeding, or if for any other reason any claim in the petition shall appear frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating that the claim is frivolous on its face. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal. The order of dismissal need not recite findings of fact or conclusions of law.

(8) **Service of petitions.** If, on review of the petition, the court concludes that all or part of the petition is not frivolous on its face, the court shall designate the portions of the petition that are not frivolous and direct the clerk to serve a copy of the petition and a copy of any memorandum by mail upon the attorney general and the county attorney.

(9) **Responsive pleading.** Within twenty days (plus time allowed under these rules for service by mail) after service of a copy of the petition upon the attorney general and county attorney, or within such other period of time as the court may allow, the attorney general or county attorney shall answer or otherwise respond to the portions of the petition that have not been dismissed and shall serve the answer or other response upon the petitioner in accordance with Rule 5(b). Within twenty days (plus time allowed for service by mail) after service of any motion to dismiss or for summary judgment, the petitioner may respond by memorandum to the motion. No further pleadings or amendments will be permitted unless ordered by the court.

(10) **Hearings.** After pleadings are closed, the court shall promptly set the proceeding for a hearing or otherwise dispose of the case. Upon motion for good cause, the court may grant leave to either party to take discovery or to extend the date for the hearing. Prior to the hearing, the court may order either the petitioner or the state or county to obtain any relevant transcript or court records. The court may also order a prehearing conference, but the conference shall not be set so as to delay unreasonably the hearing on the merits of the petition. The petitioner shall be present before the court at hearings on dispositive issues but need not otherwise be present in court during the proceeding.

(11) **Orders.** If the court rules in favor of the petitioner, it shall enter an appropriate order with respect to the validity of the challenged commitment and with respect to rearraignment, retrial, resentencing, custody, bail or discharge. The court shall enter findings of fact and conclusions of law, as appropriate, following any evidentiary hearing or any hearing on a dispositive motion. Upon application of the attorney general or the county attorney, or upon its own motion, the court may stay release of the petitioner pending appeal of its order.

(12) **Costs.** The court may assign the costs of the proceeding, as allowed under Rule 54(d), to any party as it deems appropriate. If the petitioner is unable to pay the costs of the proceeding, the petitioner may proceed upon an affidavit of impecuniosity, in which event the court may direct that the costs be paid by the county in which the complainant was originally charged.

(13) **Appeal.** Any final judgment or order entered upon the petition may be appealed to and reviewed by the Court of Appeals or the Supreme Court of Utah in accord with the statutes governing appeals to those courts.

(c) Other wrongful restraints on personal liberty.

(1) **Scope.** Except for instances governed by paragraph (b) of this rule, this paragraph (c) shall govern all petitions claiming that a person has been wrongfully restrained of personal liberty, and the court may grant relief appropriate under this paragraph.

(2) **Commencement.** The proceeding shall be commenced by filing a petition with the clerk of the court in the district in which the petitioner

is restrained or the respondent resides or in which the alleged restraint is occurring.

(3) **Contents of the petition and attachments.** The petition shall contain a short, plain statement of the facts on the basis of which the petitioner seeks relief. It shall identify the respondent and the place where the person is restrained. It shall state the cause or pretense of the restraint, if known by the petitioner. It shall state whether the legality of the restraint has already been adjudicated in a prior proceeding and, if so, the reasons for the denial of relief in the prior proceeding. The petitioner shall attach to the petition any legal process available to the petitioner that resulted in restraint. The petitioner shall also attach to the petition a copy of the pleadings filed by the petitioner in any prior proceeding that adjudicated the legality of the restraint.

(4) **Dismissal of frivolous claims.** On review of the petition, if it is apparent to the court that the legality of the restraint has already been adjudicated in a prior proceeding, or if for any other reason any claim in the petition shall appear frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating that the claim is frivolous on its face and the reasons for this conclusion. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal.

(5) **Issuance and contents of the hearing order.** If the petition is not dismissed as being frivolous on its face, the court shall issue a hearing order directing the respondent to appear before the court at a specified time for a hearing on the legality of the restraint. The court shall direct the clerk to serve a copy of the petition and the hearing order by mail upon the respondent. In the hearing order, the court may direct the respondent to bring before it the person alleged to be restrained. The court may direct the respondent to file an answer to the petition within a period of time specified in the hearing order. If the petitioner waives the right to be present at the hearing, the hearing order shall be modified accordingly.

(6) **Temporary relief.** If it appears that the person alleged to be restrained will be removed from the court's jurisdiction or will suffer irreparable injury before compliance with the hearing order can be enforced, the court shall issue a warrant directing the sheriff to bring the respondent before the court to be dealt with according to law. Pending a determination of the petition, the court may place the person alleged to have been restrained in the custody of such other persons as may be appropriate.

(7) **Alternative service of the hearing order.** If the respondent cannot be found, or if it appears that a person other than the respondent has custody of the person alleged to be restrained, the hearing order and any other process issued by the court may be served on the person having custody in the manner and with the same effect as if that person had been named as respondent in the action.

(8) **Avoidance of service by respondent.** If anyone having custody of the person alleged to be restrained avoids service of the hearing order or attempts wrongfully to remove the person from the court's jurisdiction, the sheriff shall immediately arrest the responsible person. The sheriff shall forthwith bring the person arrested before the court to be dealt with according to law.

(9) **Hearing and subsequent proceedings.** At the time specified in the hearing order for the hearing, the court shall hear the matter in a summary fashion and shall render judgment accordingly. The respondent or other person having custody shall appear with the person alleged to be restrained or shall state the reasons for failing to do so. If the hearing order requires an answer to the petition, the respondent shall file an answer within the time prescribed in the hearing order. The answer shall state plainly whether the respondent has restrained the person alleged to have been restrained, whether the person so restrained has been transferred to any other person, and if so the identity of the transferee, the date of the transfer, and the reason or authority for the transfer. The hearing order shall not be disobeyed for any defect of form or any misdescription in the order or the petition, if enough is stated to impart the meaning and intent of the proceeding to the respondent.

(d) **Wrongful use of or failure to exercise public authority.**

(1) **Who may petition the court; security.** The attorney general may, and when directed to do so by the governor shall, petition the court for relief on the grounds enumerated in this paragraph (d). Any person who is not required to be represented by the attorney general and who is aggrieved or threatened by one of the acts enumerated in subparagraph (2) of this paragraph (d) may petition the court under this paragraph (d) if (A) the person claims to be entitled to an office unlawfully held by another or (B) if the attorney general fails to file a petition under this paragraph after receiving notice of the person's claim. A petition filed by a person other than the attorney general under this paragraph shall be brought in the name of the petitioner, and the petition shall be accompanied by an undertaking with sufficient sureties to pay any judgment for costs and damages that may be recovered against the petitioner in the proceeding. The sureties shall be in the form for bonds on appeal provided for in Rule 73.

(2) **Grounds for relief.** Appropriate relief may be granted: (A) where a person usurps, intrudes into, or unlawfully holds or exercises a public office, whether civil or military, a franchise, or an office in a corporation created by the authority of the state of Utah; (B) where a public officer does or permits any act that results in a forfeiture of the office; (C) where persons act as a corporation in the state of Utah without being legally incorporated; (D) where any corporation has violated the laws of the state of Utah relating to the creation, alteration or renewal of corporations; or (E) where any corporation has forfeited or misused its corporate rights, privileges or franchises.

(3) **Proceedings on the petition.** On the filing of a petition, the court may require that notice be given to adverse parties before issuing a hearing order, or may issue a hearing order requiring the adverse party to appear at the hearing on the merits. The court may also grant temporary relief in accordance with the terms of Rule 65A.

(e) **Wrongful use of judicial authority or failure to comply with duty.**

(1) **Who may petition.** A person aggrieved or whose interests are threatened by any of the acts enumerated in this paragraph (e) may petition the court for relief.

(2) **Grounds for relief.** Appropriate relief may be granted: (A) where an inferior court, administrative agency, or officer exercising judicial

functions has exceeded its jurisdiction or abused its discretion; (B) where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; or (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled.

(3) **Proceedings on the petition.** On the filing of a petition, the court may require that notice be given to adverse parties before issuing a hearing order, or may issue a hearing order requiring the adverse party to appear at the hearing on the merits. The court may direct the inferior court, administrative agency, officer, corporation or other person named as respondent to deliver to the court a transcript or other record of the proceedings. The court may also grant temporary relief in accordance with the terms of Rule 65A.

(4) **Scope of review.** Where the challenged proceedings are judicial in nature, the court's review shall not extend further than to determine whether the respondent has regularly pursued its authority.

(Amended effective September 1, 1991.)

Advisory Committee Note. — This rule represents a complete reorganization of the former rule. This rule also revises parts of the former rule dealing with habeas corpus and post-conviction remedies. The rule applies generally to proceedings that are necessitated by the absence of another plain, speedy and adequate remedy in the court. After the rule's introductory paragraph, each subsequent paragraph is intended to deal with a separate type of proceeding. Thus, subparagraph (b) deals with proceedings involving wrongful imprisonment; subparagraph (c) deals with proceedings involving other types of wrongful restraint on personal liberty; paragraph (d) deals with proceedings involving the wrongful use of public or corporate authority; and paragraph (e) deals with proceedings involving the wrongful use of judicial authority or the failure to exercise such authority. To the extent that the special procedures set forth in these paragraphs do not cover specific procedural issues that arise during a proceeding, the normal rules of civil procedure will apply.

This rule effectively eliminates the concept of the "writ" from extraordinary relief procedure. In the view of the advisory committee, the concept was used inconsistently and confusingly in the former rule, and there was disagreement among judges and lawyers as to what it meant in actual practice. The concept has been replaced with terms such as "hearing order" and "relief" that are more descriptive of the procedural reality.

Paragraph (b). This paragraph replaces subparagraph (i) of the former rule. It governs proceedings based on claims of wrongful imprisonment, regardless whether the claim relates to an original commitment or a commitment for

violation of probation or parole, but this paragraph does not govern proceedings based upon claims relating to the terms or conditions of confinement. Claims relating to the terms or conditions of confinement are governed by subparagraph (c) of the rule. Paragraph (b), as a general matter, simplifies the pleading requirements in wrongful imprisonment cases and contains three significant changes from procedure under the former rule. First, the paragraph requires the presiding judge to assign wrongful imprisonment cases "if possible" to the judge who issued the commitment order. Second, the rule allows the court to dismiss frivolous claims before any answer or other responsive pleading is required. This provision is patterned after the federal practice pursuant to 18 U.S.C. § 2254. Third, the attorney general or county attorney must file a responsive pleading only after the court has concluded that all or part of the petition is not frivolous on its face and has directed the clerk to serve a copy of the petition. The advisory committee adopted the summary procedures set forth in paragraph (b) as a means of balancing the requirements of fairness and due process on the one hand against the public's interest in the efficient adjudication of the enormous volume of wrongful imprisonment cases pending in the courts.

Paragraph (c). This paragraph governs all petitions claiming that a person has been wrongfully restrained of personal liberty other than those specifically governed by paragraph (b). It replaces paragraph (f) of the former rule. Like paragraph (b) of the present rule, paragraph (c) endeavors to simplify the procedure in habeas corpus cases and provides for a means of summary dismissal of frivolous

claims. Thus, if it is apparent to the court that the claim is "frivolous on its face", the court may issue an order dismissing the claim, which terminates the proceeding. Apart from this significant change from former practice, paragraph (c) is patterned after the former rule.

Paragraphs (d) and (e) replace paragraph (b) of the former rule. The committee's general purpose in drafting these paragraphs was to simplify and clarify the requirements of the preexisting paragraph.

Paragraph (d). Paragraph (d) replaces paragraph (b)(1) of the former rule. This paragraph deals generally with proceedings for the unlawful use of public office or corporate franchises. As a general matter, the attorney general may seek relief on grounds enumerated in the paragraph. Any other person, including a governmental officer or entity not required to be represented by the attorney general, may also seek relief under paragraph (d) if the person claims to be entitled to an office unlawfully held by another or if the attorney general fails to file a petition under paragraph (d) after receiving notice of the person's claim. In allowing appropriate governmental entities and officers to proceed under this paragraph, the rule eliminates a procedural barrier that previously prevented anyone other than the attorney general and "private" persons to seek relief. Although the rule removes the procedural barrier, it was not intended to modify the substantive rules

that limit the authority or standing of any governmental entity or officer. Nor was the rule intended to modify the constitutional or statutory authority of the attorney general. Since paragraph (d) provides only a general outline of procedures to be used in such proceedings, litigants should look to the other rules of civil procedure for guidance on specific questions not covered by paragraph (d). In proceedings under this paragraph and paragraph (e), parties seeking temporary relief in advance of a hearing on the merits should comply with the requirements of Rule 65A.

Paragraph (e). This paragraph governs relatively unusual proceedings in which the normal rules of appellate procedure are inadequate to provide redress for an abuse by a court, administrative agency, or officer exercising judicial or administrative functions. This paragraph replaces subparagraph (2), (3) and (4) of paragraph (b) of the former rule. Like paragraph (d), this paragraph allows the court wide discretion in the manner in which such proceedings are handled. Like the former rule, the scope of review under this paragraph is limited to determining whether the respondent has regularly pursued its authority.

Amendment Notes. — The 1991 amendment, effective September 1, 1991, rewrote the rule to such an extent that a detailed description is impracticable.

NOTES TO DECISIONS

Postconviction hearings.

—Prior adjudication.

Former Subdivision (i)(2) (see now Subdivision (b)(3)(v)) barred only successive proceedings involving identical issues. A conviction or sentence that has not yet been fully and fairly

adjudicated on appeal or in a prior habeas corpus proceeding should not be denied reexamination because of a procedural default. *Earle v. Warden of Utah State Prison*, 159 Utah Adv. Rep. 17 (1991).

PART X.

DISTRICT COURTS AND CLERKS.

Rules 78 to 80. [Repealed.]

Repeals. — Rule 78, relating to motion day, Rule 79, relating to books and records kept by the clerk, and Rule 80, relating to reporters

and record transcripts, were repealed by order of the Supreme Court, effective May 1, 1991.

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

ABBOTT, JEFFREY LYNN	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 920900544 HC
	:	DATE 03/09/92
VS	:	HONORABLE DAVID S. YOUNG
	:	COURT REPORTER EILEEN AMBROSE
STATE OF UTAH	:	COURT CLERK CGH
	:	
DEFENDANT	:	
USP	:	

TYPE OF HEARING: HABEAS CORPUS WRIT
PRESENT: PLAINTIFF

P. ATTY. ABBOTT, JEFFREY PRO SE
D. ATTY. MORRISSETT, STEVEN

THIS CASE COMES NOW BEFORE THE COURT FOR A WRIT OF HABEAS
CORPUS FOR HEARING, WITH APPEARANCES AS SHOWN ABOVE.

PETITIONER'S MOTION FOR CONTINUANCE IS GRANTED BY THE COURT.
THE COURT ORDERS THIS MATTER CONTINUED TO APRIL 13, 1992 AT 1:00
PM.

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R. PAUL VAN DAM (3312)
UTAH ATTORNEY GENERAL
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Defendants
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNT, STATE OF UTAH

ABBOTT, JEFFREY LYNN,

Petitioner

v.

STATE OF UTAH,

Respondent.

AMENDED ANSWER

Civil No. 920900544 HC

JUDGE DAVID S. YOUNG

RESPONDENT, through Steven Morrissett, Assistant Attorney General, files this amended answer, pursuant to Utah R. Civ. P. 65B(a) and 15(a), to the PETITION FOR WRIT OF HABEAS CORPUS.

The State answers the numbered paragraphs of the petition as follows:

1. Paragraph 1 is admitted to the extent that petitioner is incarcerated by the State of Utah, at the Utah State Prison in Draper, Utah, pursuant to his conviction of attempted theft, a third degree felony, in Case No. 6244, before District Court

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Judge Rodney S. Page, Second Judicial District, Davis County, Utah; all other allegations in paragraph 1 of the petition are denied.

2. Paragraph 2 of the petition is admitted, except the June, 1991 hearing occurred on June 25, 1991.

3. Paragraph 3 is denied.

4. Paragraph 4 contains no allegation requiring a response.

5. Paragraph 5 contains insufficient formulation of its allegation to permit a response and is therefore denied.

6. Paragraph 6 is admitted to the extent that the assertion itself appears to be a request for appointment of counsel, and is otherwise denied.


7. Paragraph 7 contains no allegation requiring a response.

8. With respect to paragraph 8, respondent admits that a letter was sent. The letter was date stamped by the Board of Pardons on January 9, 1992, and responded to on February 14, 1992. Any other allegation is denied.

9. Paragraph 9 contains no allegation requiring a response.

10. Paragraph 10 is denied.

Dated this 10th day of March, 1992.


Steven Morrisett
Assistant Attorney General
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing motion to dismiss was mailed, postage prepaid, to Jeffrey Lynn Abbott, Pro Se, P.O. Box 250, Draper, Utah 84020

Mailed this 10th day of March, 1992.

Mary Beth

JEFFREY LYNN ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
P.O. Box 250
DRAPER, UTAH 84020-0250

FILED IN COURT
THIRD JUDICIAL DISTRICT

APR 06 1992

SALT LAKE COUNTY
Deputy Clerk

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

JEFFREY LYNN ABBOTT,
PLAINTIFF,

-V-

STATE OF UTAH,
DEFENDANTS.

RESPONSE TO DEFENDANT'S
MOTION TO DISMISS

CIVIL # 920900544-HC
JUDGE DAVID S. YOUNG

COMES NOW, THE PLAINTIFF, JEFFREY LYNN ABBOTT, PROCEED-
ING "PRO-SE", FILES THE FOLLOWING RESPONSE TO THE DEFENDANT'S MOTION
TO DISMISS:

1) TO DISMISS PLAINTIFF'S CLAIM WOULD BE A TOTAL DIS-
REGARD TO THE RECENT FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734,
(1991) DECISION.

2) DEFENDANTS HAVE ADMITTED THAT PLAINTIFF IS BEING "IL-
LEGALLY RESTRAINED" AT THE UTAH STATE PRISON'S DRAPER SITE. THUS,
WE MUST FIND OUT WHY.

3) THE VIOLATIONS THAT HAVE COMPOUNDED INTO A FLAGRANT
DISREGARD TO PLAINTIFF'S RIGHTS, BEGINNING WITH THE JANUARY 29, 1991
PAROLE RECISSION, HAVE CAUSED PLAINTIFF'S FAMILY, & SOON-TO-BE EMPLOYER
(THE MARRIOTT CORPORATION) AS WELL AS THE PLAINTIFF, AN UNFORGETTABLE
AMOUNT OF STRESS.

4) DEFENDANT'S CLAIMS THAT THE ONLY DATE THAT MATTERS
IS THAT OF AUGUST 22, 1991, ARE UNFOUNDED, AS THIS DATE NOR, THE
OTHERS WOULD HAVE EXISTED IF GUIDELINES & RULES WERE PROPERLY
FOLLOWED.

5) FURTHER BASIS ARE THE FOLLOWING STATEMENTS OF FACT
FILED UNDER OATH:

STATEMENT OF THE FACTS

1) ON DECEMBER 13, 1990, SOCIAL SERVICES WORKER ANDREW HUNT SUBMITTED A 60 DAY REVIEW REPORT TO THE STATE OF UTAH BOARD OF PARDONS IN REGARDS TO PLAINTIFF.

2) ON DECEMBER 20, 1990, THIS SAME SOCIAL SERVICES WORKER FILED FOR RECOMMENDATION THAT PLAINTIFF'S INSTITUTIONAL CUSTODY LEVEL BE ADVANCED SO AS TO ALLOW PLAINTIFF TO BE HOUSED IN A LESS-RESTRICTIVE SECTION OF THE PRISON.

3) ON JANUARY 29, 1991, THE STATE OF UTAH BOARD OF PARDONS RESCINDED PLAINTIFF'S MARCH 12, 1991 PAROLE & NEVER GAVE THIS PLAINTIFF NOTICE OF ANY PENDING CHARGES, REASONS FOR RESCISSION OR A CHANCE TO DEFEND SAID PAROLE DATE.

4) ON FEBRUARY 06, 1991, SOCIAL SERVICES WORKER ANDREW HUNT INFORMED PLAINTIFF THAT THE STATE OF UTAH BOARD OF PARDONS HAD MET JANUARY 29, 1991 & DECIDED TO RESCIND PLAINTIFF'S MARCH 12, 1991 PAROLE DATE & THAT A HEARING WAS SET TO DISCUSS ANOTHER POSSIBLE PAROLE DATE.

5) ON FEBRUARY 13, 1991, ETHNIC MINORITY RESOURCE SPECIALIST (E.M.R.S.) VICKI BRIDWELL MET WITH PLAINTIFF TO CONFIRM PLAINTIFF NO LONGER POSSESSED A PAROLE DATE OF MARCH 12, 1991 & TO DISCUSS OTHER TOPICS REGARDING A FUTURE PAROLE DATE BEING POSSIBLE.

6) ON FEBRUARY 25, 1991, OR THEREABOUTS, PLAINTIFF DID RECEIVED NOTICE OF A HEARING TO BE HELD ON FEBRUARY 28, 1991 FOR "NUMEROUS VIOLATIONS" WHEN PLAINTIFF HAD NOT EXPERIENCED ANY RULE INFRACTIONS FOR NEARLY A PERIOD OF ONE (1) YEAR.

7) ON FEBRUARY 28, 1991, PLAINTIFF APPEARED BEFORE THE STATE OF UTAH BOARD OF PARDON'S HEARING OFFICER PAUL LARSEN TO DISCUSS THE POSSIBILITY OF A NEW PAROLE DATE & WHEN PLAINTIFF ATTEMPTED TO DEFEND THE MARCH 12, 1991 PAROLE DATE, PAUL LARSEN INFORMED PLAINTIFF THAT SAID DATE HAD ALREADY BEEN DECIDED NOT TO BE PLAINTIFF'S PAROLE DATE & THAT ANY FURTHER ATTEMPTS WOULD BE A WASTELESS CONSUMPTION OF TIME, IN SO MANY WORDS.

- CONTINUED ON PAGE THREE -
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STATEMENT OF THE FACTS

8) PLAINTIFF INFORMED PAUL LARSEN THAT PLAINTIFF HAD PLANS FOR POSSIBLE EMPLOYMENT & DEFINITE ENROLLMENT INTO A DRUG REHABILITATION PROGRAM, BUT PAUL LARSEN RESPONDED, "OH, WELL, I CAN'T HELP THAT.", OR WORDS TO THAT EFFECT.

9) PAUL LARSEN SET PLAINTIFF'S PAROLE DATE FOR MAY 14, 1991 & CLOSED THIS HEARING DATED FEBRUARY 28, 1991. PLAINTIFF WAS NEVER ADVISED THAT HE HAD A RIGHT TO COUNSEL BEING PRESENT.

10) DEFENDANTS STATED THAT PLAINTIFF WAS MOVED TO A HALF-WAY HOUSE ON MARCH 27, 1991, BUT, IN FACT, PLAINTIFF HAS NEVER LEFT THE PRISON PREMISES FOR ANYTHING OTHER THAN COURT PROCEEDINGS. HOWEVER, PLAINTIFF DID, ON APRIL 30, 1991, SIGN AN AGREEMENT TO PAROLE INTO A HALF-WAY HOUSE.

11) ON MAY 09, 1991, AFTER HEARING THE STATEMENT OF SOCIAL SERVICES WORKER ANDREW HUNT, AND WITHOUT NOTIFYING THE PLAINTIFF, THE STATE OF UTAH BOARD OF PARDONS STAFF MEMBER ENID O. PINO RESCINDED PLAINTIFF'S MAY 14, 1991 PAROLE DATE.

12) ON MAY 14, 1991, PLAINTIFF SAT WAITING TO BE RELEASED ONLY TO BE INFORMED BY PRISON GUARD ROBERT POWELL, VIA THE CELL INTERCOM SYSTEM, THAT PLAINTIFF'S PAROLE DATE HAD BEEN RESCINDED. PLAINTIFF RECEIVED NOTICE IN WRITING CONFIRMING THIS ON THE MAY 15, 1991 "MAIL CALL" AT 1630 HRS, SIGNED BY SOCIAL SERVICES WORKER ANDREW HUNT.

13) ON JUNE 13, 1991, PLAINTIFF APPEARED BEFORE THE STATE OF UTAH BOARD OF PARDONS HEARING OFFICER PAUL LARSEN FOR A RESCISSION HEARING OF WHICH WAS FOR THE PURPOSE OF DISCUSSING ANOTHER POSSIBLE PAROLE DATE. PLAINTIFF EXPRESSED DESIRE TO TERMINATE RATHER THAN TO TAKE THE CHANCE OF LOSING ANOTHER PAROLE DATE.

14) AGAINST PLAINTIFF'S WISHES, PAUL LARSEN SET A DATE FOR PLAINTIFF'S PAROLE TO BECOME EFFECTIVE ON OCTOBER 08, 1991. PLAINTIFF RECEIVED NO NOTICE OF A HEARING TO BE HELD ON 06-13-91, NOR WAS PLAINTIFF INFORMED THAT HE HAD A RIGHT TO HAVE COUNSEL PRESENT. PLAINTIFF DID NOT RECEIVE ANY REASONS FOR THE BOARD'S DECISIONS.

- CONTINUED ON PAGE FOUR -

STATEMENT OF THE FACTS

15) ON AUGUST 22, 1991, PLAINTIFF APPEARED BEFORE THE STATE OF UTAH BOARD OF PARDONS' HEARING OFFICER MICHAEL R. SIBBETT & PLAINTIFF WAS GIVEN A TERMINATION DATE OF NOVEMBER 23, 1993.

16) DURING THE LATTER PART OF SEPTEMBER, 1991, PLAINTIFF SUBMITTED A REQUEST FOR THIS DECISION TO BE REVIEWED & AMENDED, TO BOARD CHAIRMAN H. L. (PETE) HAUN. THE RESPONSE WAS A DENIAL OF PLAINTIFF'S REQUEST WITH NO REASONS FOR THIS DECISION, WHICH WAS DATED OCTOBER 15, 1991 & SIGNED BY CHAIRMAN HAUN.

17) PLAINTIFF STATED IN HIS REQUEST THAT A YEAR TO A TERMINATION DATE WOULD HAVE BEEN SUFFICIENT.

18) PLAINTIFF RECENTLY OBTAINED A COPY OF THE "CHRONOLOGICAL NOTES" (C-NOTES) WHICH VERIFY THE VAST MAJORITY OF THESE FACTS LISTED HEREIN. A COPY OF THESE C-NOTES IS ATTACHED TO THIS RESPONSE. (C-NOTES ARE MINIMIZED TO AVOID UNNECESSARY PAPERS FROM CLUTTERING THIS RESPONSE.

19) PLAINTIFF ALSO FOUND FALSE INFO IN THE C-NOTES WHICH COULD HAVE INFLUENCED THE BOARD'S DECISIONS. PLAINTIFF HAS NOT HAD TO BE, "REFERRED TO SEVERAL LAW ENFORCEMENT AGENCIES AT LEAST 20 TIMES," AS ONE STATEMENT PHRASES.

20) NOR DID PLAINTIFF STATE THAT "HE LEFT THE STATE OF MISSOURI TO MOVE AWAY FROM NEGATIVE INFLUENCES OF HIS OLDER SIBLINGS WHO ARE IN THE PRISON SYSTEM THERE," OR MAKE ANY SUCH REFERENCES TO THAT ISSUE.

21) PLAINTIFF STATES THAT THE BOARD OF PARDONS USES AN OFFENDERS' FILE CONTENTS (I.E., C-NOTES) RELIGIOUSLY IN DECIDING WHETHER OR NOT TO ALLOW PAROLE TO BECOME EFFECTIVE.

22) PLAINTIFF STATES THAT THE PRESENCE OF THE C-NOTE DATED APRIL 20, 1991 "IN ITS ENTIRETY IS FALSE" & COULD HAVE PLAYED A MAJOR ROLE IN THE BOARD'S DECISION TO RESCIND PLAINTIFF'S MAY 14, 1991 PAROLE DATE.

* NOTE * NO COUNSEL WAS PRESENT ON AUGUST 22, 1991.

— CONTINUED ON PAGE FIVE —

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STATEMENT OF THE FACTS

23) ON MAY 23, 1991, THE PRISON'S CONTRACT ATTORNEY'S FIRM FORWARDED A REQUEST FOR INFORMATION RELIED UPON, IN DECIDING TO RESCIND PLAINTIFF'S 03-12-91 & 05-14-91 PAROLE DATES, TO BOARD OF PARDONS' CHAIRMAN H. L. (PETE) HAUN. THIS REQUEST WAS NOT RESPONDED TO.

24) PLAINTIFF STATES THAT PRISON CONTRACT ATTORNEY DAVID J. ANGERHOFER PROVIDED PLAINTIFF WITH A COURTESY COPY OF THIS REQUEST OF WHICH PLAINTIFF RECEIVED ON MAY 27, 1991.

25) PLAINTIFF STATES THAT AFTER MONTHS OF NO RESPONSE PLAINTIFF AGAIN SPOKE TO THE PRISONER'S CONTRACT ATTORNEY VIA WRITTEN CORRESPONDENCE. A REQUEST WAS SENT FOR INFO TO BOARD CHAIRMAN HAUN DATED JANUARY 08, 1992. PLAINTIFF RECEIVED A COURTESY COPY.

26) PLAINTIFF HAS ATTACHED THE DOCUMENTS TO THIS RESPONSE.

- END OF FACTS -

-CONTINUED ON PAGE SIX-

DISCUSSION

1) PLAINTIFF'S RIGHT TO BE INFORMED HAS BEEN VIOLATED.

WHEN THE BOARD OF PARDONS FAILED TO NOTIFY PLAINTIFF THAT RESCISSION HEARINGS WOULD BE HELD ON THE DATES OF JANUARY 29, 1991, MAY 09, 1991 & JUNE 13, 1991, THEY VIOLATED PLAINTIFF'S RIGHT TO PROCEDURAL DUE PROCESS.

THE BOARD OF PARDONS POLICY & PROCEDURES ARE PUBLISHED IN THE UTAH ADMINISTRATIVE CODE BOOK & IS IN "MANDATORY LANGUAGE" WHICH GIVES WAY TO "STATE-CREATED LIBERTY INTERESTS." RULE 655-202-1 OF THE BOARD OF PARDONS RULES SPECIFICALLY STATES AS FOLLOWS:

R655-202-1. Policy.

AN OFFENDER SHALL BE NOTIFIED AT LEAST SEVEN CALENDAR DAYS IN ADVANCE OF A HEARING, EXCEPT IN EXTRAORDINARY CIRCUMSTANCES, AND SHALL BE SPECIFICALLY ADVISED AS TO THE PURPOSE OF THE HEARING.

THE ISSUE OF "MANDATORY LANGUAGE" WAS DISCUSSED BEFORE BY THE UNITED STATES SUPREME COURT IN WHICH THE HIGH COURT HELD THAT,

"THE REPEATED USE OF EXPLICITLY MANDATORY LANGUAGE IN CONNECTION WITH REQUIRING SPECIFIC SUBSTANTIVE PREDICATES DEMANDS A CONCLUSION THAT THE STATE HAS CREATED A PROTECTED LIBERTY INTEREST." HEWITT V. HELMS, 459 U.S. 460 AT 472 (1983).

THE BOARD OF PARDONS ALSO FAILED IN IT'S DUTIES TO NOTIFY PLAINTIFF OF THE JANUARY 29, 1991 & MAY 09, 1991 DECISIONS TO RESCIND PLAINTIFF'S MARCH 12, 1991 & MAY 14, 1991 PAROLE DATES.

- CONTINUED ON PAGE SEVEN -

DISCUSSION

THE ATTACHED C-NOTES VERIFY THAT THE BOARD OF PARDONS NOT ONLY RESCINDED PLAINTIFF'S PAROLE DATES WITHOUT NOTIFYING THE PLAINTIFF, BUT NEVER GAVE NOTICE TO PLAINTIFF EVEN AFTER THE FACT.

PLAINTIFF FOUND OUT ABOUT THESE BOARD DECISIONS FROM THE E.M.R.S. & THE SOCIAL SERVICES WORKER WHO ARE NOT AUTHORIZED AS BOARD MEMBERS, BUT NOT FROM ANY FACTFINDERS OR DECISIONMAKERS.

2) PLAINTIFF'S RIGHT TO COUNSEL & TO BE INFORMED OF SAID RIGHT HAS BEEN VIOLATED.

DEFENDANTS STATED THAT "THERE IS NO CONSTITUTIONAL RIGHT TO AN ATTORNEY AT A PAROLE HEARING." HOWEVER, RECENT & PAST COURT DECISIONS IMPLY DIFFERENTLY. FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991), STATES;

"THERE IS NO QUESTION THAT DUE PROCESS PROTECTIONS APPLY AT THE TIME OF SENTENCING BY THE TRIAL JUDGE. "THE UTAH CONSTITUTION CERTAINLY REQUIRES THAT EQUIVALENT DUE PROCESS PROTECTIONS BE AFFORDED WHEN THE BOARD OF PARDONS DETERMINES THE ACTUAL NUMBER OF YEARS A DEFENDANT IS TO SERVE." (FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d AT 735 (UTAH 1991)).

HEARINGS BEFORE THE BOARD OF PARDONS CLOSELY RESEMBLE THE SENTENCING PHASE OF A TRIAL. THEREFORE, PRISONERS MUST BE AFFORDED ALL OF THE PROCEDURES AND DUE PROCESS RIGHTS AT THE HEARINGS BEFORE THE BOARD OF PARDONS THAT WOULD BE AFFORDED TO THEM IF THEY WERE BEING SENTENCED.

DISCUSSION

FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734, ALSO COMPARES HEARINGS IN FRONT OF THE BOARD OF PARDONS TO THE SENTENCING PROCEDURES OF TRIAL COURTS. THERE THE UTAH SUPREME COURT STATES,

"IF THE TRIAL JUDGE SENDS THE DEFENDANT TO PRISON, THE JUDGE DOES NOT DETERMINE THE NUMBER OF YEARS THE DEFENDANT WILL SPEND THERE. THAT IS LEFT TO THE UNFETTERED DISCRETION OF THE BOARD OF PARDONS, WHICH PERFORMS A FUNCTION ANALOGOUS TO THAT OF THE TRIAL JUDGE IN JURISDICTIONS THAT HAVE A DETERMINATE SENTENCING SCHEME." (FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d at 735.)

THEREFORE, HEARINGS BEFORE THE BOARD OF PARDONS MUST ALLOW PRISONERS ALL THE PROCEDURES AND DUE PROCESS RIGHTS AT THEIR HEARINGS THAT THE PRISONERS WOULD BE ALLOWED IN THE SENTENCING PHASE OF A CRIMINAL TRIAL. THESE RIGHTS INCLUDE TIMELY NOTICE OF THE HEARING, THE RIGHT TO COUNSEL, THE RIGHT TO CONFRONT & PRESENT WITNESSES, NOTICE OF PAROLE CRITERIA, ACCESS TO THEIR PRISON FILE (JACKET), THE OPPORTUNITY TO PRESENT EVIDENCE & REFUTE ADVERSE EVIDENCE, AND A WRITTEN DECISION DETAILING REASONS FOR THE DENIAL OF PAROLE.

COMPLYING WITH THE ABOVE PROCEDURES & DUE PROCESS REQUIREMENTS IS POSSIBLE FOR THE BOARD OF PARDONS SINCE IT IS STATUTORILY ENABLED TO PERFORM ALL THE FUNCTIONS LISTED ABOVE. FOR EXAMPLE, U.C.A. SECTION 77-27-9 (3) (1953) AS AMENDED STATES,

"THE BOARD MAY ISSUE SUBPOENAS TO COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF EVIDENCE, TO ADMINISTER OATHS, AND TO TAKE TESTIMONY FOR THE PURPOSES OF ANY INVESTIGATION BY THE BOARD OR ANY OF ITS MEMBERS OR BY A DESIGNATED HEARING EXAMINER IN THE PERFORMANCE OF ITS DUTIES."

- CONTINUED ON PAGE NINE -

DISCUSSION

THE RIGHT TO COUNSEL IS SECURED AT THE TIME OF THE SENTENCING & THROUGHOUT THE REST OF THE PROCEEDINGS IN CRIMINAL PROSECUTIONS BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION WHICH PROVIDES THAT,

"IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO HAVE THE ASSISTANCE OF COUNSEL."
(U.S. CONST. AMEND. VI.)

THE SIXTH AMENDMENT RIGHT TO COUNSEL ENCOMPASSES ALL FEDERAL AND STATE CRIMINAL PROSECUTIONS THAT RESULT IN IMPRISONMENT. THE RIGHT TO COUNSEL ATTACHES AT THE INITIATION OF ADVERSARY JUDICIAL PROCEEDINGS "WHETHER BY WAY OF FORMAL CHARGE, PRELIMINARY HEARING, INDICTMENT, INFORMATION OR ARRAIGNMENT," AND NO REQUEST FOR COUNSEL NEED BE MADE BY THE ACCUSED. . GIDEON V. WAINWRIGHT, 372 U.S. 335, 342 (1963) (SIXTH AMENDMENT RIGHT TO COUNSEL IN FELONY PROCEEDINGS APPLIES TO STATES THROUGH FOURTEENTH AMENDMENT). SEE ALSO ARGERINGER V. HAMLIN, 407 U.S. 25, 37-38 (1972) (DEFENDANT MAY NOT BE IMPRISONED UNLESS AFFORDED RIGHT TO COUNSEL.); BREWER V. WILLIAMS, 430 U.S. 387, 401 (1977) (RIGHT TO COUNSEL ATTACHED TO INTERROGATION AFTER ARRAIGNMENT.); KIRBY V. ILLINOIS, 406 U.S. 682, 689 (1972) (PLURALITY OPINION); U.S. V. TURNBULL, 888 F.2d 636, 638 (9TH CIR. 1989) ("IF DEFENDANT DOES NOT KNOWINGLY AND INTELLIGENTLY WAIVE COUNSEL AND DOES NOT RETAIN ACCEPTABLE COUNSEL THE COURT MUST APPOINT COUNSEL"), CERT. DENIED, 111 S.Ct. 78 (1990).

IN SOME CIRCUMSTANCES, THE ABSENCE OF COUNSEL AFTER THE INITIATION OF ADVERSARIAL PROCEEDINGS MAY BE A HARMLESS ERROR. IF THE SIXTH AMENDMENT VIOLATION "PERVADE [S] THE ENTIRE PROCEEDING," HOWEVER, HARMLESS ERROR ANALYSIS IS INAPPLICABLE. SATTERWHITE V. TEXAS, 486 U.S. 249, 256 (1988); SEE ALSO U.S. V. ALLEN, 895 F.2d 1577, 1580 (11TH CIR. 1990) (QUOTING PENSON V. OHIO, 488 U.S. 75, 88 (1988)).

-CONTINUED ON PAGE TEN-

DISCUSSION

ARTICLE I, SECTION 12, OF THE UTAH CONSTITUTION PROVIDES THE ACCUSED IN CRIMINAL PROSECUTIONS "THE RIGHT TO APPEAL AND DEFEND IN PERSON AND BY COUNSEL." THE UTAH SUPREME COURT HAS HELD THIS LANGUAGE TO GIVE THE ACCUSED A "RIGHT" TO COUNSEL WHEN BEING CRIMINALLY PROSECUTED. BECAUSE THE ACCUSED ENJOYS THE "RIGHT" TO COUNSEL IN CRIMINAL PROSECUTIONS, THE ACCUSED SHOULD ALSO ENJOY THE "RIGHT" TO FREE COUNSEL WHEN FINANCIALLY UNABLE TO RETAIN COUNSEL. GIDEON V. WAINWRIGHT, 372 U.S. 335, 342 (1963) (SIXTH AND FOURTEENTH AMENDMENTS REQUIRE APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN STATE COURT.)

"EVERY DEFENDANT WHO IS UNABLE TO OBTAIN COUNSEL SHALL BE ENTITLED TO HAVE COUNSEL ASSIGNED TO REPRESENT THAT DEFENDANT AT EVERY STAGE OF THE PROCEEDINGS FROM INITIAL APPEARANCE BEFORE THE FEDERAL MAGISTRATE OR THE COURT THROUGH APPEAL, UNLESS THAT DEFENDANT WAIVES SUCH APPOINTMENT."
(FED. R. CRIM. P. 44 (A).)

CONCLUSION

BECAUSE COUNSEL IS REQUIRED AT THE TIME OF SENTENCING IN UTAH & GUARANTEED BY BOTH THE UNITED STATES & UTAH CONSTITUTIONS, COUNSEL IS ALSO REQUIRED AT HEARINGS BEFORE THE BOARD OF PARDONS, "WHICH PERFORMS A FUNCTION ANALOGOUS TO THAT OF THE TRIAL JUDGE IN JURISDICTIONS THAT HAVE A DETERMINATE SENTENCING SCHEME," AS DETERMINED BY FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991). THUS, IT IS THE RESPONSIBILITY OF THE BOARD OF PARDONS TO INFORM PRISONERS THAT THEY MAY EXERCISE THIS RIGHT & THEY CAN BE APPOINTED COUNSEL IF THE PRISONER CAN NOT AFFORD ONE, WHICH THE BOARD OF PARDONS FAILED TO DO IN THE HEARINGS INVOLVING THIS PLAINTIFF. PLAINTIFF NEVER WAIVED RIGHT TO HAVE COUNSEL PRESENT AT ANY OF THE HEARINGS. THIS CAUSED A VIOLATION OF PLAINTIFF'S DUE PROCESS RIGHTS.

- CONTINUED ON PAGE ELEVEN -

CONCLUSION

THE BOARD OF PARDONS VIOLATED PLAINTIFF'S DUE PROCESS AGAIN WHEN THEY FAILED TO NOTIFY PLAINTIFF OF HEARINGS TO BE HELD, DECISIONS HEREAFTER & REASONS FOR THOSE DECISIONS.

DEFENDANTS FEEL THAT PLAINTIFF'S REAL REMEDY LIES IN THE MAKE OF A CLEANER "DISCIPLINARY RECORD", & THEN APPLYING TO THE BOARD OF PARDONS FOR A RECONSIDERATION HEARING. HOWEVER, PLAINTIFF WENT NEARLY 1 FULL YEAR WITH A CLEAN, IMPROVED "DISCIPLINARY RECORD", WHICH THE END RESULT WAS A RESCINSON OF ONE OF PLAINTIFF'S PAROLE DATES. AT THE TIME, PLAINTIFF WAS DOING WELL & SCHEDULED TO BE ADVANCED IN THE SYSTEM. THUS, NEGATING ANY GOOD REASON TO RESCIND THIS PLAINTIFF'S PAROLE DATE.

THEREFORE, PLAINTIFF COMES TO THE CONCLUSION THAT THERE EXISTS NO OTHER REMEDY SHORT OF HABEAS RELIEF & URGES THIS COURT TO DENY DEFENDANTS MOTION TO DISMISS & SET THIS MATTER FOR AN "EVIDENTIARY HEARING" AT WHICH TIME HABEAS RELIEF CAN BE GRANTED.

DATED THIS 22ND DAY OF APRIL, 1992.

RESPECTFULLY SUBMITTED,


JEFFREY LYNN ABBOTT

COUNSEL PRO-SE

Oct 10, 1990
C-Note: PG #7
He continues to program therapeutically with substance abuse. Inmate Jeff Abbott has recently begun employment in Cell Study. Inmate Abbott is involved in Bible Study. /Hunt/jmw

Dec. 13, 1990
C-Note: PG #7
A meeting was held with Jeffrey to discuss his institutional record for the past 18 months for a 60-day review for the Board. Jeffrey is presently scheduled to parole in March of 1991. The report was completed and submitted for his signature. This is a review and does not necessarily require the appearance of Jeffrey before the Board in January. /Hunt/vls

Dec. 20, 1990
C-Note: PG #7
A reassessment has been filed on behalf of Jeff for the month of December. It is the recommendation, dictated by his score, for a level advancement. Procedure is being followed to remove the safety override. /Hunt/wd

Feb. 6, 1991
C-Note: PG #7
~~A 60 Day Review for the Board of Pardons~~ was submitted on behalf of Jeff. The report was requested for early December and the eventual response was a rescission of his parole date of March 12, 1991 with a hearing date of mid February. Jeff was informed of the Board's decision by this caseworker. /Hunt/wd

Feb. 13, 1991
C-Note: PG #7
On this date, I met with Mr. Abbott to do a Pre Release and discuss how to handle himself in a more appropriate way when he is released. I am aware that Mr. Abbott's date has been rescinded and that he is due to go before the Board on a Rescission Hearing. I thought it a good time to do some counseling with inmate regarding ways to make the system work for him rather than against him and to take responsibility for his own actions. /Bridwell/wd

Feb. 25, 1991
Transfer: From U-IIB 808 to U-IIA 205 /wd

Feb. 28, 1991
BOARD OF
PARDONS: PG #7
Rescind 3/12/91 parole date. Parole to become effective 5/14/91 with the following special conditions: 1. Restitution of \$918.00 case # 6244. 2. ISP Program if in Utah. 3. Random Drug Testing. 4. No Alcohol. 5. Complete Electronic Monitoring if in Utah. sj

May 15, 1991
C-Note: PG #11
On this date I met with Mr. Abbott to discuss the behavior which resulted in his parole date being rescinded. Mr. Abbott had many reasons to "justify" his acting out. I tried to explain to inmate that this kind of attitude would not result in positive consequences and that the Board would not look kindly at numerous disciplinarys. I discussed ways in which he can improve his chances of succeeding and advancing in the system. /Birdwell/jjw

June 13, 1991
BOARD OF
PARDONS: PG #11
Rescind parole date. Parole to become effective 10/8/91 with the following special conditions: 1. Restitution of \$918.00 in case #6244. 2. ISP. 3. Random Drug Testing. 4. No Alcohol. 5. Electronic Monitoring if in Utah. /sj

Mar. 29, 1989
Unit Class Comm: Jeffrey L. Abbott Sr. is a 23 year old Black male admitted into custody of the Utah State Prison for the offense of Attempted Theft, a Third degree Felony. Inmate Abbott was raised in Missouri and it appears that he doesn't possess a juvenile criminal history. However, as an adult and since 19 years of age, he has been referred to several law enforcement agencies at least 20 times. Inmate Abbott has served jail time in the cities of L.A., California and Kansas City, Missouri. He also was placed under the care of Adult Probation and Parole on 2/87, his probation supervision was revoked because of his failure to complete with same. Appearances from PSI Report dated 3/3/89 indicates that he may have a serious drug abuse problem. On this date, inmate Abbott was interviewed to discuss his initials. He states he doesn't have any family or community support in this State. He added that he left the State of Missouri to move away from negative influences of his older siblings who are in the Prison System there. Today's classification places inmate Abbott in the C3K category with a total security score of 23 points. /E.A. Akimseu/dc

April 20, 1991
C-Note: I met with him to counsel and discuss his after Release plans. Inmate still wants to go to Missouri. He has asked me to call his agent, Don Wilson, to see if he will be allowed to go. One of Jeff's problems is, he doesn't have enough money to buy a bus ticket. He states he's burnt his family over bus tickets so often they won't sent him any more money for "bus tickets". He gets the money and gets high with it. Jeff is concerned about how he will earn a living, he tells me he's been stealing for so long he would have to "cut off his hands" to stop. Perhaps the best thing for this inmate would be a half way house I

PG. #7

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PG. #7

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WAYNE A. FREESTONE
DAVID J. ANGERHOFER
CONTRACT ATTORNEYS
50 West 300 South, Suite 900
Salt Lake City, Utah 84101
(801) 322-1503
(801) 363-0844

May 23, 1991

Mr. Pete Haun
Utah State Board of Pardons
448 East 6400 South, Suite 300
Murray, Utah 84107

RE: Inmate Jeffery Abbott USP #19288

Dear Mr. Haun:

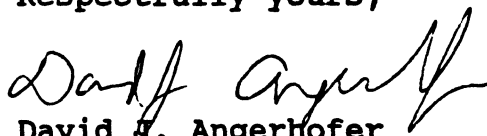
Please be advised that I am a Contract Attorney for the Utah State Prison and I have recently met with inmate Jeffery Abbott USP #19288, whom we are assisting with respect to the preparation of a Habeas Corpus Petition, pursuant to Foot v. Utah Board of Pardons, 156 Utah Adv. Rep. 3 (S.Ct. 1991).

We are in need of any and all information that the Board of Pardons relied upon in determining Mr. Abbott's parole or rehearing date, as set forth in the Constitution of Utah, Article VII, Section 12, including, the proceedings and decision of the Board, with the reasons therefor and any dissent, as it has been reduced to writing and filed.

Please provide this information within ten (10) days of the date of this letter.

Your cooperation in this matter is appreciated.

Respectfully yours,


David J. Angerhofer
Contract Attorney

DJA\las

cc: Inmate Jeffery Abbott

WAYNE A. FREESTONE
DAVID J. ANGERHOFER
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50 West 300 South, Suite 900
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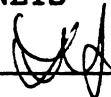
M E M O R A N D U M

TO: Jeffery Abbott USP #19288
DATE: January 8, 1992
RE: REQUESTED LEGAL SERVICES

Enclosed please find a copy of the letter that was sent on May 23, 1991 to the Board of Pardons regarding the information relied upon. We did not receive any information from the Board of Pardons regarding this letter. When we first started sending the letters the Board of Pardons was not responding to us or sending any information. Since that time we have been recieving information after requesting with this letter.

Please be advised that we will submit another letter to the Board of Pardons today and will forward any information that we receive from them. Thank You for bringing this to our attention.

CONTRACT ATTORNEYS

A handwritten signature in dark ink, appearing to be 'W.A. Freestone', is written over a horizontal line.

000081

WAYNE A. FREESTONE
DAVID J. ANGERHOFER
CONTRACT ATTORNEYS
50 West 300 South, Suite 900
Salt Lake City, Utah 84101
(801) 322-1503
(801) 363-0844

M E M O R A N D U M

TO: Jeffery Abbott USP #19288

DATE: May 23, 1991

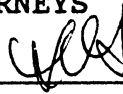
RE: REQUESTED LEGAL SERVICES

Please find enclosed a copy of the letter that was sent to the Board of Pardons concerning the information they relied upon in determining your parole.

As soon as we hear something from the Board of Pardons we will let you know.

Thank You.

CONTRACT ATTORNEYS



000002

WAYNE A. FREESTONE
DAVID J. ANGERHOFER
CONTRACT ATTORNEYS
50 West 300 South, Suite 900
Salt Lake City, Utah 84101
(801) 322-1503
(801) 363-0844

May 23, 1991

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Utah State Board of Pardons
448 East 6400 South, Suite 300
Murray, Utah 84107

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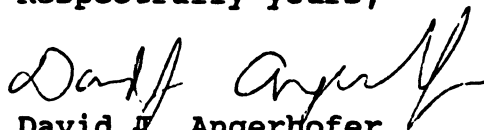
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Please provide this information within ten (10) days of the date of this letter.

Your cooperation in this matter is appreciated.

Respectfully yours,


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Contract Attorney

DJA\las

cc: Inmate Jeffery Abbott

COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE Box 250
DRAPER, UTAH
84020-0250

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

JEFFREY LYNN ABBOTT,
PLAINTIFF,

-V-

STATE OF UTAH,
DEFENDANTS.

* CERTIFICATE *
* OF MAILING *

CIVIL # 920900544-HC
JUDGE DAVID S. YOUNG

I, JEFFREY LYNN ABBOTT, THE PLAINTIFF, IN THE ABOVE-CAPTIONED MATTER, PROCEEDING "PRO-SE", HEREBY CERTIFY THAT I HAVE MAILED A COPY OF THE FOREGOING RESPONSE TO DEFENDANTS MOTION TO DISMISS TO THE BELOW-LISTED PARTY, POSTAGE PRE-PAID;

STEVEN MORRISSETT (6007)
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE DEFENDANTS
6100 SOUTH 300 EAST, SUITE 204
MURRAY, UTAH
84107

DATED THIS 02ND DAY OF APRIL, 1992.



JEFFREY LYNN ABBOTT
COUNSEL PRO-SE

R. PAUL VAN DAM (3312)
UTAH ATTORNEY GENERAL
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondents
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNT, STATE OF UTAH

ABBOTT, JEFFREY LYNN, Petitioner, v. STATE OF UTAH, Respondent.	REPLY TO PETITIONER'S RESPONSE TO MOTION TO DISMISS Civil No. 920900544 HC JUDGE DAVID S. YOUNG
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RESPONDENT State of Utah, by and through Steven Morrissett, Assistant Attorney General, files this Reply to petitioner's "Response to Defendant's Motion to Dismiss." Respondent assumes that the court will liberally construe the petitioner's pro se pleading to supplement the allegations in the original petition. For purposes of this motion to dismiss only, the new allegations are assumed to be true.

DISCUSSION

1. The petition does not state a claim, even with the new facts.

The original petition asserted as grounds for extraordinary relief: (1) "improper or inadequate" parole rescission hearings on January 29, February 28, June 13 and August 22, 1991; (2) "no attorney present" for petitioner at any hearing; (3) the hearings were held with[out] proper notice of charges or reasons given for the decisions of the Board of Pardons on the above dates.

In Abbott's Response, his claims, as clarified, seem to be: (1) Lack of prior notice of hearings on January 29, May 9 and June 13, 1991; (2) Lack of notice of the Board's decisions and the reasons for those decisions on January 29 and May 9, 1991; (3) Denial of right to counsel at the parole rescission hearings and lack of notice of a right to counsel.

A petition for writ of habeas corpus must meet the requirements of Utah R. Civil P. 65B. Sections 65B(b)(3)(iii) requires the petition to state¹:

in plain and concise terms, all of the facts on the basis of which the petitioner claims a substantial violation of rights as the result of the commitment;

¹The respondent's original motion to dismiss incorrectly cited former Rule 65B(i), which was amended effective September 1, 1991. The content requirements of a petition filed under amended Rule 65B are substantially the same as under the former rule.

65B(b)(4) requires that the petitioner:

attach to the petition affidavits, copies of records or other evidence available to the petitioner in support of the allegations.

Petitioner's "Statement of the Facts" is not supported by affidavit. Documents he has submitted with his Response do not appear to support his allegations.

The documents attached to petitioner's Response include chronological notes ("C-notes") from the prison and letters related to requests for records from the Board of Pardons. Neither the C-notes nor the letters provide support for the matters challenged by the petition.

The petitioner, on the other hand, has not provided either an affidavit in support of his allegations, or records of the contested hearings to support his claims. The state requested a transcript of the August 22, 1991, hearing and sent a copy to the petitioner. The petitioner also has access to recordings of the other hearings.

The Response fails to mention the August 22, 1991 hearing. It is not clear whether he has abandoned his assertion that the August hearing also was somehow "improper or inadequate," other than the lack of legal counsel.

2. The decisions of the Board of Pardons prior to August 22, 1991, are moot.

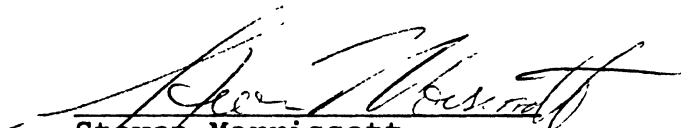
Petitioner has made no assertion or argument that the parole rescission decisions prior to August 22, 1991, have any impact on his present incarceration or legal status. Without some connection between those hearings and his present incarceration or legal status, a challenge to the prior actions of the board is moot. Northern v. Barnes, 178 Utah Adv. R. 15 (Utah App. 1992).

Northern affirmed the authority of the Board of Pardons to rescind an inmate's parole date, pending further review, where the inmate was afforded full due process in a subsequent hearing. The court stated:

Since [the inmate] was afforded full procedural due process by the [later] hearing, any of the alleged procedural deficiencies in rescinding his original parole date were remedied before the petition was filed."

Unless petitioner asserts a procedural error in the August 22, 1991 hearing before the board, the challenge to the previous decisions of the Board is moot.

Dated this 10th day of April, 1992.


Steven Morrisett
Assistant Attorney General
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Motion to Dismiss was mailed, postage prepaid, to Jeffrey Lynn Abbott, Pro Se, P.O. Box 250, Draper, Utah 84020

Mailed this 10th day of April, 1992.



UTAH BOARD OF PARDONS
IN AND FOR THE STATE OF UTAH

IN RE:

JEFF ABBOTT
USP NO. 19288

)
)
)
)
)
)
)

HEARING HELD: AUGUST 22, 1991

5980 South 300 East • Murray, Utah 84107

OUR FILE NO. 301292



Certified Shorthand Reporters •

COPY

REPORTED BY

INTERMOUNTAIN COURT REPORTERS

LINDA J. SMURTHWAITE, CSR, RPR ²⁸³⁻¹³⁸⁶

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APPEARANCES:

CHAIRMAN: MIKE SIBBETT

1 BOARD OF PARDONS, SALT LAKE CITY, UT AUGUST 22, 1991

2 CHAIRMAN: Morning Mr. Abbott.

3 MR. ABBOTT: How ya doing?

4 CHAIRMAN: Good. This is the time that's been set
5 aside for a decision hearing for Mr. Jim Abbott, USP
6 number 19288. Is that you, sir?

7 MR. ABBOTT: Yes, but only one problem here. When
8 you guys sent me this letter --

9 CHAIRMAN: Wait a minute. Before we get into that,
10 we'll get into it because I've got your letter and your
11 response. Let me swear you in first because I'll be
12 taking testimony. If you'll raise your right hand.

13 JIM ABBOTT

14 was duly sworn, was examined and
15 testified as follows:

16

17 MR. ABBOTT: Yes, I do.

18 CHAIRMAN: Thank you. This board member's aware,
19 Mr. Abbott, in correspondence that was hand delivered to
20 me a little while ago, that you did not receive the
21 notification of this hearing until yesterday.

22 MR. ABBOTT: I didn't receive it until 4:30.

23 CHAIRMAN: Is that correct?

24 MR. ABBOTT: Until about 4:15 yesterday evening.

25 CHAIRMAN: Now we can either continue this hearing,

1 sir, on your oral motion or you can waive that three day
2 notice and we can proceed and take care of it today.
3 What do you decide?

4 MR. ABBOTT: I'll go ahead and waive it.

5 CHAIRMAN: Okay, thank you. Now, is there something
6 else besides this letter that you wanted to bring up?

7 MR. ABBOTT: Yes, you addressed me here as Mrs.
8 Abbott.

9 CHAIRMAN: Oh. I see that. Obviously you're not.
10 The record will be corrected.

11 MR. ABBOTT: Thank you.

12 CHAIRMAN: Now, sir, you sit before the board on
13 this rescission hearing today after receiving numerous
14 disciplinary problems.

15 MR. ABBOTT: Well --

16 CHAIRMAN: In fact, the last time you appeared
17 before the board was in a rescission hearing; is that
18 correct?

19 MR. ABBOTT: Yes. On the 13th, I believe.

20 CHAIRMAN: You currently now have a parole date in
21 October; is that correct?

22 MR. ABBOTT: October 8th, yes.

23 CHAIRMAN: October 8th. Is it that you just don't
24 understand that by not abiding by the rules in here and
25 continually getting these write-ups, that that date will

1 keep getting rescinded? You understand the process? I
2 mean you've been here long enough. You've had
3 rescission hearings in the past. Let's begin by just
4 seeing if you understand the process.

5 MR. ABBOTT: Well, this officer right here was
6 present at my last meeting here, and I think he'll tell
7 you that I asked for an expiration determination date.

8 CHAIRMAN: Yes. That was --

9 MR. ABBOTT: The reason why -- I've asked at that
10 hearing and I also asked prior to the first hearing in
11 writing, first rescission hearing in writing with regard
12 to after you guys took my date the first time, because
13 you guys took it after I had not had a write-up for
14 approximately 11 months, I think it was. The reason why
15 I asked is because I don't want to parole in the State
16 of Utah because I don't have any family here, and
17 because -- in fact Missouri hasn't approved me for
18 parole there yet, so they want me to parole into a
19 halfway house here in Salt Lake and I don't want to do
20 that. I don't want to parole basically because I know
21 that here they are unnecessarily going to put me on
22 electronic monitoring and ISP which I feel is an
23 unnecessary move, you know. And also because of the
24 fact that I don't have any family here in Utah. All my
25 family is in Kansas City Missouri, as you can see.

1 And I feel that I'd have a better chance of paroling
2 out there. So if I parole here I'd be back within a
3 month, probably not even that.

4 CHAIRMAN: Well, for the record today you're telling
5 me that if you do keep your parole date that's given
6 without getting it rescinded once you get out, you think
7 you're going to violate it and be back?

8 MR. ABBOTT: No.

9 CHAIRMAN: So why go through the exercise?

10 MR. ABBOTT: Well, I'm not saying --

11 CHAIRMAN: If there's something wrong with that, if
12 that's your honest feeling, but is that what I just
13 heard you say?

14 MR. ABBOTT: Well, I'm not saying that I intend to.
15 I'm saying that because of the fact that I have no
16 family here, you guys -- just a second, please. I only
17 have \$100 gate money, okay, to be released with and the
18 fact I don't have any job here. I have a job, as you
19 can see if you looked in there, with the Marriott
20 Corporation in Kansas city waiting on me.

21 CHAIRMAN: Mr. Abbott, that's the reason why we put
22 you in the halfway house until you're stabilized so you
23 wouldn't be out on the street in the cold with \$100 in
24 your pocket.

25 MR. ABBOTT: Yeah. Well, it was my understanding

1 that the halfway house would be basically until I could
2 find a place to stay here and parole in.

3 CHAIRMAN: Well, that's why it was called until
4 stabilized or until you're accepted on compact. You're
5 not going to be accepted on compact if you don't have a
6 parole date if it keeps getting rescinded.

7 MR. ABBOTT: Okay, I misunderstood the way he told
8 me about it. Excuse me. It was my understanding that I
9 wouldn't be, if I was not accepted by the time my parole
10 came up, that I would not be paroled at all to Missouri
11 even after that.

12 CHAIRMAN: Well, that's up to Missouri, you have to
13 be accepted. We can't send you to Missouri unless they
14 accept you. Do you understand that?

15 MR. ABBOTT: Yes, I understand that.

16 CHAIRMAN: And the special attention hearing that
17 the board took care of in April, we amended your parole
18 agreement to very specifically say in a halfway house
19 until stabilized or accepted for compact supervision.

20 MR. ABBOTT: April? I did not appear before the
21 board in April.

22 CHAIRMAN: Well, it was a special route that we took
23 care of that, to make sure that that was clarified.

24 MR. ABBOTT: Oh, okay.

25 CHAIRMAN: But to the disciplinary problems that

1 you've had since you last appeared, it's almost non
2 stop.

3 MR. ABBOTT: Well --

4 CHAIRMAN: What do you have to say about those
5 disciplinary problems?

6 MR. ABBOTT: Well basically, you know, yeah, I admit
7 to, you know, the problem with authority and the fact
8 that I don't like being directed with write-ups. I only
9 got a zero to five and, you know, I was under the
10 impression I might serve the whole thing. So it really
11 didn't phase me, you know, to the fact that, you know, a
12 parole date or not. I'm not saying that I don't care
13 about a parole date, but I don't like, you know, the
14 officers threatening me, saying okay, you'll get a
15 write-up if you don't do this. If they want me to do
16 something, all they got to do is ask me. See what I'm
17 saying?

18 CHAIRMAN: You understand that you're not in a place
19 that doesn't have authority, you're in a prison.

20 MR. ABBOTT: I know that I'm in a prison but the
21 officers are grown men and I'm a grown man.

22 CHAIRMAN: But there's a big difference, you're an
23 inmate. Did you forget that fact?

24 MR. ABBOTT: Well, no, I did not.

25 CHAIRMAN: Well, you have to abide by the rules and

1 the authority within a prison system. Every single
2 inmate is expected to do that. And as a board we look
3 to see if you're going to be able to abide by this
4 structure in here. If you can't abide by the structure
5 in here, how do you expect us to believe you're gonna
6 abide by the structures of society when somebody's not
7 looking over your shoulder?

8 MR. ABBOTT: Because I know out there I'm not gonna
9 have a police officer telling me hey, you ain't gonna do
10 this here, I mean little things, petty little things.
11 These people with their petty little things in here.
12 Okay? And I mean petty.

13 CHAIRMAN: Well, verbal threats, what's petty about
14 a verbal threat?

15 MR. ABBOTT: When they make a verbal threat to me
16 about giving me a write-up, I make a verbal threat to
17 them.

18 CHAIRMAN: What type of threat do you say?

19 MR. ABBOTT: They're on the write-ups.

20 CHAIRMAN: I know, I've got them. But tell me, what
21 do you tell them?

22 MR. ABBOTT: Well, you know sometimes I tell them to
23 fuck themselves, and I'll, you know, out of anger
24 because I don't like it. You know, I don't like
25 basically being talked to like I'm a child. And, you

1 know, like I said I was under the impression that I
2 might expire this sentence here and really, you know,
3 I've already informed my family yeah, you know, that I
4 may do that. And so they're prepared for it, and really
5 it doesn't bother me to do the whole time, but I'd like
6 to parole but I'm not gonna parole with somebody telling
7 me, you know, and directing me to do things. Basically
8 I'm saying I'm not gonna kiss their ass. And that's the
9 same thing I told Paul Larson when I asked him to
10 expire me last time or give me a termination date. It
11 doesn't matter to me.

12 CHAIRMAN: Do you have anything else you'd like to
13 tell me before I make a decision?

14 MR. ABBOTT: Well, no.

15 CHAIRMAN: Okay. Let's go off the record, while I
16 make a decision.

17 (Whereupon a recess was taken.)

18 CHAIRMAN: Yes, Mr. Abbott?

19 MR. ABBOTT: The only other thing I'd like to say is
20 you said that interstate compact can't be approved if I
21 don't have a parole date, well, Nanette Vance, when she
22 initiated that back in April of '89, said that it would
23 probably be approved within 18 months, and she didn't
24 say anything about a parole, me having to have a parole
25 date to be approved.

1 CHAIRMAN: Well, Mr. Abbott, you're really not gonna
2 have to worry about that because I see no reason that we
3 should continue this parole rescission, parole
4 rescission process that we've gotten ourselves into.

5 MR. ABBOTT: Thank you.

6 CHAIRMAN: And recognizing that your expiration date
7 is in December of 1993, I am going to give some
8 consideration and grant a termination date today so that
9 you're not going to have to worry about parole or where
10 you're going to go or how you're gonna get there. That
11 termination date will come November 23rd, 1993. Good
12 luck, sir.

13 MR. ABBOTT: I can get copies of that --
14 (Whereupon the hearing was concluded.)
15
16
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21
22
23
24
25

1 STATE OF UTAH)

2

3 COUNTY OF SALT LAKE)

4

5

6 I, Linda J. Smurthwaite, Certified Shorthand
7 Reporter, Registered Professional Reporter, and notary
8 public within and for the county of Salt Lake, State of
9 Utah do hereby certify:

10 That the foregoing proceedings were taken by me from
11 an electronic recording at the time and place set forth
12 herein, and was taken down by me in shorthand and
13 thereafter transcribed into typewriting under my
14 direction and supervision.

15 That the foregoing pages contain a true and correct
16 transcription of my said shorthand notes so taken.

17 In Witness Whereof, I have subscribed my name this
18 15th day of March, 1992.

19

20

21

22

23

24

25


LINDA J. SMURTHWAITE
CERTIFIED SHORTHAND REPORTER

R. PAUL VAN DAM (3312)
UTAH ATTORNEY GENERAL
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondents
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNT, STATE OF UTAH

ABBOTT, JEFFREY LYNN,

Petitioner,

v.

STATE OF UTAH,

Respondent.

AFFIDAVIT OF COUNSEL

JUDGE DAVID S. YOUNG

Civil No. 920900544 HC


STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

1. I am an Assistant Attorney General for the State of Utah and represent the respondent in the above-captioned case.

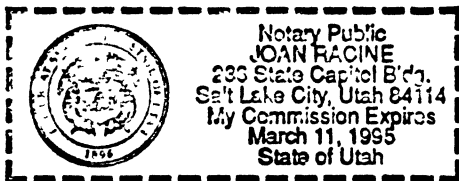
2. The attached transcript is a true and accurate copy of the transcript prepared at the state's request of the August 22, 1991 hearing of Jeffrey Abbott, the petitioner in this case. At my request, a copy of this transcript was sent to the petitioner. I also advised Mr. Abbott, in court, of the availability of

000102

copies of tape recordings of his Board of Pardons hearings which are in dispute.


Steven Morrisett

SUBSCRIBED AND SWORN to before me this 10th day of April, 1992.




Notary Public

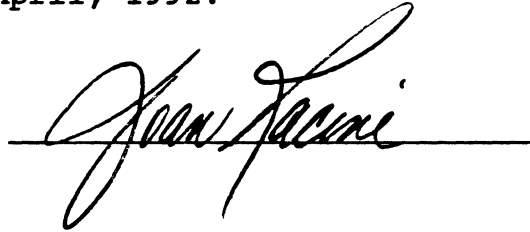
Residing in _____

My Commission Expires _____

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Affidavit of Counsel was mailed, postage prepaid, to Jeffrey Lynn Abbott, Pro Se, P.O. Box 250, Draper, Utah 84020

Mailed this 10th day of April, 1992.

A handwritten signature in cursive script, reading "Joan Fiacini", is written over a horizontal line.

000104

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

ABBOTT, JEFFREY LYNN	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 920900544 HC
	:	DATE 04/13/92
VS	:	HONORABLE DAVID S. YOUNG
	:	COURT REPORTER EILEEN AMBROSE
STATE OF UTAH	:	COURT CLERK CGH
	:	
DEFENDANT	:	
USP	:	

TYPE OF HEARING: HABEAS CORPUS WRIT
PRESENT: PLAINTIFF

P. ATTY. ABBOTT, JEFFREY PRO SE
D. ATTY. MORRISSETT, STEVEN

THIS CASE COMES NOW BEFORE THE COURT FOR HABEAS CORPUS
HEARING, WITH APPEARANCES AS SHOWN ABOVE.

BASED ON DISCUSSION WITH RESPECTIVE COUNSEL AND MR. ABBOTT
THE COURT ORDERS STATE'S MOTION TO DISMISSED DENIED. THE COURT
FURTHER ORDERS A HEARING SET FOR MAY 7, 1992 AT 8:15 AM.

JEFFREY LYNN HBBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

original

THIRD JUDICIAL DISTRICT COURT
Third Judicial District

APR 20 1992

SALT LAKE COUNTY

By [Signature] Deputy Clerk

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

JEFFREY LYNN ABBOTT,
PETITIONER,

-V-

STATE OF UTAH,
RESPONDENT.

AFFIDAVIT IN SUPPORT OF THE
RESPONSE TO MOTION TO DISMISS

CASE: 920900544 HC

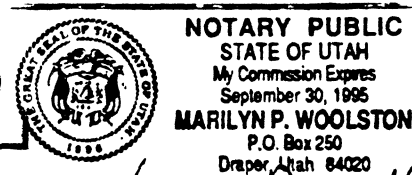
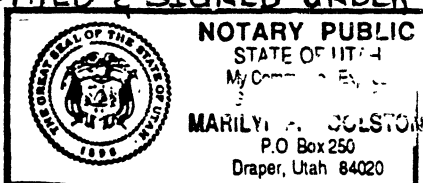
JUDGE: HONORABLE DAVID S. YOUNG

I, THE UNDERSIGNED, HEREBY AFFIRM UNDER PENALTY OF PERJURY, THAT I AM JEFFREY LYNN ABBOTT, THE PETITIONER, IN THE ABOVE-CAPTIONED MATTER & THAT ON APRIL 06, 1992, I FILED A "RESPONSE TO DEFENDANT'S MOTION TO DISMISS" IN THE ABOVE-CAPTIONED MATTER.

I, THE UNDERSIGNED, FURTHER AFFIRM UNDER PENALTY OF PERJURY THAT ALL "STATEMENTS" CONTAINED WITHIN SAID "RESPONSE" IS TRUE & CORRECT.

I, THE UNDERSIGNED, FINALLY AFFIRM UNDER PENALTY OF PERJURY THAT, WITH THE EXCEPTION OF TWO "C-NOTES", THE "RESPONSE" ARE TRUE & CORRECT.

DATED & SIGNED UNDER PENALTY OF PERJURY ON THIS 15TH DAY OF APRIL, 1992.



SUBSCRIBED & SWORN TO THIS 15TH DAY OF APRIL, 1992.

COMMISSION EXPIRES: Sept. 30, 1995

Marilyn P. Woolston

MARILYN P. WOOLSTON
NOTARY PUBLIC

Jeffrey Lynn Abbott

JEFFREY LYNN ABBOTT, PETITIONER
COUNSEL PRO-SE

JEFFREY LYNN HBBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

Original

FILED DISTRICT COURT
Third Judicial District

APR 20 1992

By [Signature]
SALT LAKE COUNTY
Deputy Clerk

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

JEFFREY LYNN ABBOTT,
PETITIONER,

-V-

STATE OF UTAH,
RESPONDENT.

MOTION FOR THE COURT TO
ISSUE SUBPOENAS

CASE# 920900544 HC

JUDGE: HONORABLE DAVID S. YOUNG

COMES NOW, THE PETITIONER, JEFFREY LYNN ABBOTT, PROCEEDING "PRO-SE," HEREBY MOTIONS THIS COURT TO ISSUE SUBPOENAS FOR APPEARANCES TO BE MADE AT THE PETITIONER'S "EVIDENTIARY HEARING" ON MAY 02, 1992 AT 0815 HRS. & STATES AS FOLLOWS IN SUPPORT;

PETITIONER STATES THE APPEARANCE OF ANDREW HUNT, P.O. Box 250, DRAPER, UTAH, 84020-0250, WHO IS A SOCIAL SERVICES WORKER AT THE UTAH STATE PRISON, IS NECESSARY FOR THE PETITIONER'S CASE IN THE ABOVE-CAPTIONED MATTER.

PETITIONER STATES THE APPEARANCE OF PAUL LARSEN, 448 EAST 6400 SOUTH, SUITE 300, MURRAY, UTAH, 84107, WHO IS A HEARING OFFICER AT STATE OF UTAH'S BOARD OF PARDONS, IS NECESSARY FOR THE PETITIONER'S CASE IN THE ABOVE-CAPTIONED MATTER.

WHEREFORE, PETITIONER PRAYS THAT THIS MOTION BE GRANTED & SUBPOENAS BE ISSUED TO REQUIRE THE APPEARANCES OF THE ABOVE-NAMED INDIVIDUALS ON MAY 02, 1992 AT 0815 HRS. IN THE ABOVE-CAPTIONED MATTER.

DATED THIS 15th DAY OF APRIL, 1992.

RESPECTFULLY SUBMITTED,

[Signature]

JEFFREY LYNN ABBOTT, PETITIONER
COUNSEL PRO-SE

JEFFREY LYNN ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

original

APR 20 1992

SALT LAKE COUNTY
By [Signature] County Clerk

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

JEFFREY LYNN ABBOTT,
PETITIONER,

-V-

STATE OF UTAH,
RESPONDENT.

* CERTIFICATE OF MAILING *

* * * *

CASE: 920900544 HC

JUDGE: HONORABLE DAVID S. YOUNG

I, THE UNDERSIGNED, HEREBY CERTIFY THAT I MAILED, POSTAGE PRE-PAID, ORIGINAL DRAFTS OF PETITIONER'S "AFFIDAVIT IN SUPPORT OF THE RESPONSE TO MOTION TO DISMISS" & "MOTION FOR THE COURT TO ISSUE SUBPOENAS" TO THE FOLLOWING:

A) HONORABLE JUDGE DAVID S. YOUNG
THIRD JUDICIAL DISTRICT COURT
240 EAST 400 SOUTH
SALT LAKE CITY, UTAH

84111

B) STEVEN MORRISSETT, ASST. ATTY. GEN.
6100 SOUTH 300 EAST, SUITE #204
MURRAY, UTAH

84107

READY:
RECEIVED
COPY 6-1-92

DATED THIS 15th DAY OF APRIL, 1992.

[Signature]

JEFFREY LYNN ABBOTT, PETITIONER
COUNSEL PRO-SE

FILED
DISTRICT COURT

APR 21 4 01 PM '92

Th. SA. DISTRICT
BY *GLW* CLERK

R. PAUL VAN DAM (3312)
UTAH ATTORNEY GENERAL
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondent
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

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

ABBOTT, JEFFREY LYNN,

Plaintiff,

v.

STATE OF UTAH,

Respondent.

AFFIRMATIVE DEFENSES

Civil No. 920900544 HC

JUDGE DAVID S. YOUNG

RESPONDENT, through Steven Morrissett, Assistant Attorney General, hereby files its affirmative defenses in supplement to its amended answer previously filed with the court, the court having denied Respondent's motion to dismiss on April 13, 1992, without prejudice, and having given the Respondent an opportunity to make further response:

FIRST DEFENSE

The Petitioner has failed to state a claim for relief under Civil Rule 65B, in that he has failed to clearly articulate a constitutional or other violation justifying extraordinary relief.

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SECOND DEFENSE

The allegations of the petition are barred as untimely by the statute of limitations applicable to habeas corpus petitions, U.C.A. Sections 78-12-1 and 78-12-31.1.

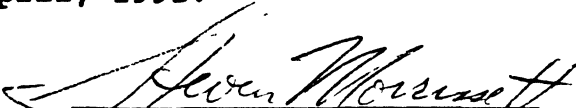
THIRD DEFENSE

The Board of Pardons has exclusive constitutional jurisdiction to reduce or terminate sentences. The petitioner's remedy, at most, is a new hearing before the Board of Pardons.

FOURTH DEFENSE

The petitioner has failed to join the Board of Pardons, an indispensable party.

Dated this 21st day of April, 1992.


Steven Morrisett
Assistant Attorney General
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Affirmative Defenses was mailed, postage prepaid, to Jeffrey Lynn Abbott, P.O. Box 250, Draper, Utah 84020.

Mailed this 21st day of April, 1992.



COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

Lex Corp
original

Third Judicial District

APR 22 1992

SALT LAKE COUNTY

By *[Signature]* Deputy Clerk

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

JEFFREY LYNN ABBOTT,
PETITIONER,

-V-

STATE OF UTAH,
RESPONDENT.

MOTION TO STRIKE RESPONDENT'S "REPLY
TO PETITIONER'S RESPONSE TO MOTION TO
DISMISS" & IMPOSE SANCTIONS

CASE: 920900544 HC

JUDGE: HONORABLE DAVID S. YOUNG

COMES NOW, THE PETITIONER, JEFFREY LYNN ABBOTT, PROCEEDING "PRO-SE"
& PURSUANT TO RULES 11 & 12 (F) OF THE UTAH RULES OF CIVIL PROCEDURE, HEREBY FILES
THIS MOTION TO STRIKE RESPONDENT'S "REPLY TO PETITIONER'S RESPONSE TO MOTION TO
DISMISS" & IN SUPPORT OF SAID "MOTION TO STRIKE & IMPOSE SANCTIONS," STATES AS FOLLOWS;

1) RESPONDENT'S "REPLY" WAS NOT PROPERLY "MOTIONED" ORALLY OR IN
WRITING BY THE RESPONDENTS, NOR WAS IT ORDERED BY THE COURT & IS THEREFORE IN VIO-
LATION OF RULE 65B(b)(4) OF THE UTAH RULES OF CIVIL PROCEDURE, OF WHICH STATES, IN PART;

"WITHIN TWENTY DAYS (PLUS TIME ALLOWED FOR SERVICE BY MAIL)
AFTER SERVICE OF ANY MOTION TO DISMISS OR FOR SUMMARY JUDGE-
MENT, THE PETITIONER MAY RESPOND. NO FURTHER PLEADINGS OR
AMENDMENTS WILL BE PERMITTED UNLESS ORDERED BY THE COURT."
(AS AMENDED, SEPTEMBER 01, 1991).

2) RESPONDENT'S "REPLY" SERVES ONLY AS "DILATORIOUS CONDUCT" & TO
BURDEN THE COURT & PETITIONER WITH "UNTIMELY ISSUES" THAT SHOULD HAVE BEEN BROUGHT
OUT WHEN RESPONDENTS FILED THEIR "AMENDED ANSWER" WHICH THE COURT ALLOWED. THE COURT
HASN'T ORDERED & PETITIONER HAS NOT CONSENTED, TO ANY FURTHER PLEADINGS OR AMEND-
MENTS, TO COME FROM THE RESPONDENTS.

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3) THE RESPONDENT'S "REPLY" REITERATES ISSUES ALREADY DISCUSSED IN THEIR "RESPONSE TO MOTION FOR EXTENSION OF TIME" & THEIR ORIGINAL "ANSWER & MOTION TO DISMISS."

4) PETITIONER'S FAILURE TO FILE AN AFFIDAVIT IN SUPPORT OF "RESPONSE TO MOTION TO DISMISS" COULD HAVE & SHOULD HAVE BEEN ORALLY ADDRESSED, IN COURT.

5) RESPONDENTS HAD ALREADY PROVIDED PETITIONER WITH A COPY OF THE AUGUST 22, 1991, HEARING BEFORE THE BOARD OF PARDONS, WHICH HAD BEEN TRANSCRIBED IN WRITING, VIA U.S. MAIL, WITH AN ACCOMPANYING LETTER TO THAT EFFECT, DATED MARCH 24, 1992. THUS, NEGATING THE NEED TO PROVIDE PETITIONER WITH TWO MORE COPIES, ESPECIALLY SINCE IT HAS BEEN STRESSED SEVERAL TIMES HE IS NOT CONTESTING SAID HEARING.

6) RESPONDENT'S COUNSEL IS FAMILIAR WITH THE UTAH RULES OF CIVIL PROCEDURE & KNEW WHAT THE REQUIREMENTS WERE & SHOULD BE CITED & SANCTIONED FOR MISCONDUCT. DANIELS V. BRENNAN, 887 F.2d 783 (7TH CIR. 1989) (DILATORY CONDUCT BY PLAINTIFF'S ATTORNEY - DISMISSAL ORDERED); GOUSGOUNIS V. BRAYOR PLUMBING & HEATING CO. INC., 547 NYS.2d 31 (AD 1989) (BURDENSOME MOTION PRACTICE - MONETARY SANCTIONS); MARTIN-TRIGONA V. CAPITAL CITIES/ABC, INC., 546 NYS.2d 910 (SUP 1989) (ACTION LACKING LEGAL BASIS - MONETARY SANCTIONS).

WHEREFORE, PETITIONER PRAYS THAT THIS HONORABLE COURT WILL GRANT THIS "MOTION TO STRIKE" & CAUSE FOR SANCTIONS TO BE IMPOSED UPON COUNSEL OR THE RESPONDENTS.

DATED THIS 19th DAY OF APRIL, 1992.

RESPECTFULLY SUBMITTED,



JEFFREY LYNN ABBOTT
PETITIONER & COUNSEL PRO-SE

JEFFREY LYNN FIBBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

FILED DISTRICT COURT
Third Judicial District

APR 22 1992

SALT LAKE COUNTY

Deputy Clerk

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

JEFFREY LYNN ABBOTT,
PETITIONER,

-V-

STATE OF UTAH,
RESPONDENT.

* CERTIFICATE OF MAILING *

* * * *

CASE: 920900544 HC

JUDGE: HONORABLE DAVID S. YOUNG

I, THE UNDERSIGNED, HEREBY CERTIFY I MAILED AN ORIGINAL DRAFT, POSTAGE PRE-PAID, OF THE PETITIONER'S "MOTION TO STRIKE RESPONDENTS REPLY TO PETITIONER'S RESPONSE TO MOTION TO DISMISS" & IMPOSE SANCTIONS TO;

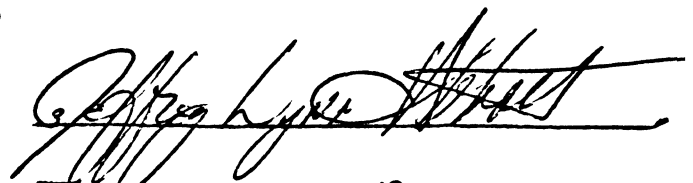
A) HONORABLE DAVID S. YOUNG
3RD DISTRICT COURT
240 EAST 400 SOUTH
SALT LAKE CITY, UTAH

84111

B) STEVEN MORRISSETT
ASST. ATTY GEN.
6100 SOUTH 300 EAST, Ste. 204
SALT LAKE CITY, UTAH

84107

DATED THIS 19TH DAY OF APRIL, 1992.


JEFFREY LYNN ABBOTT
PETITIONER & COUNSEL PRO-SE

APR 27 1992

SALT LAKE COUNTY
By Charters
Deputy Clerk

PAUL VAN DAM (3312)
Attorney General
STEVEN H. MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondent
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: 265-5638


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

JEFFREY L. ABBOTT,	:	
Petitioner,	:	MOTION FOR
	:	CONTINUANCE
v.	:	
STATE OF UTAH,	:	Case No. 920900544
	:	Judge David S. Young
Respondent.	:	

Respondent, by and through Steven H. Morrissett,
Assistant Attorney General, hereby moves the Court for an order
continuing the hearing in the above case presently set for May 7,
1992, at 8:15 a.m. This motion is made as a vital witness for
Respondent is out of the office on medical leave for an
indefinite period of time, expected to be one month. (See
attached affidavit.)

DATED this 22 day of April, 1992.

PAUL VAN DAM
Attorney General


STEVEN H. MORRISSETT
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing motion for continuance was mailed, postage prepaid, to Jeffrey L. Abbott, pro se, P.O. Box 250, Draper, Utah 84020, this 22nd day of April, 1992.

Maile Peterson

ATTACHMENT

000115

APR 27 1992

SALT LAKE COUNTY
By Chute
Deputy Clerk

PAUL VAN DAM (3312)
Attorney General
STEVEN H. MORRISSETT (6007)
Assistant Attorney General
Attorney for Respondent
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

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

JEFFREY L. ABBOTT,	:	
Petitioner,	:	AFFIDAVIT OF
	:	PAULA GLASSETT
v.	:	
STATE OF UTAH,	:	Case No. 920900544
Respondent.	:	Judge David S. Young

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Paula Glassett, under oath state the following to be true and correct to the best of my knowledge.

1. I am over eighteen years of age and am a citizen of the United States.

2. I am currently and have been since July 1991, a paralegal for the Attorney General's Office in the Corrections Section.

3. I spoke with Paul S. Larsen, a hearing officer for the Utah Board of Pardons, by telephone on April 21, 1992,

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regarding his ability to testify in the above matter presently scheduled for May 7, 1992.

4. Mr. Larsen is currently out of the office on medical leave, and will be undergoing surgery shortly.

5. Mr. Larsen is presently in an extreme amount of pain and is taking medication which significantly affects his ability to think and respond to questions. I am in the process of preparing an affidavit in support of the State's motion for summary judgment. Mr. Larsen is unable to assist me in preparing the affidavit at this time.

6. Mr. Larsen feels he is not competent, at this time, to review the file and prepare to testify for the hearing in the above case.

7. Mr. Larsen is a vital witness in the above case in that he was the hearing officer who presided over two of Mr. Abbott's rescission hearings. Mr. Abbott has also requested Mr. Larsen be present at the hearing.

7. I spoke with John Greene, the Administrative Coordinator for the Utah Board of Pardons, by telephone on April 21, 1992. He informed me that it was his understanding that Mr. Larsen would be out on medical leave for approximately one month.

DATED this 22 day of April, 1992.



PAULA GLASSETT
Paralegal

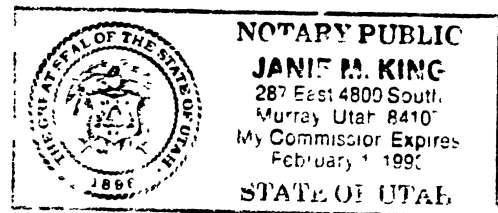
SUBSCRIBED AND SWORN before me this 22nd day of
April, 1992.

Janie M. King
NOTARY PUBLIC

Residing in: Salt Lake

My Commission Expires:

February 1, 1993



COUNSEL PRO-DE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

Third Judicial District

MAY 04 1992

SALT LAKE COUNTY

By CP Deputy Clerk

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

JEFFREY LYNN ABBOTT,
PETITIONER,

-V-

STATE OF UTAH,
RESPONDENT.

MOTION TO STRIKE RESPONDENT'S
AFFIRMATIVE DEFENSES

CASE: 920900544 HC
JUDGE: HONORABLE DAVID S. YOUNG

COMES NOW, THE PETITIONER, JEFFREY LYNN ABBOTT, PROCEEDING PRO-SE, & PURSUANT TO RULE 12(F) OF THE UTAH RULES OF CIVIL PROCEDURE, HEREBY REQUEST PERMISSION, BY WAY OF MOTION, TO HAVE RESPONDENT'S AFFIRMATIVE DEFENSES STRICKEN FROM THE RECORD & IN SUPPORT OF SAID MOTION, STATES AS FOLLOWS:

1) THE RESPONDENT HAS FAILED TO PROPERLY MOTION THE COURT FOR PERMISSION TO FILE THESE DEFENSES AS REQUIRED BY RULE 12(B) OF THE UTAH RULES OF CIVIL PROCEDURE.

2) PETITIONER HAS NOT FAILED TO CONFORM WITH THE REQUIREMENTS RULE 65B(8)(3)(III) OF THE UTAH RULES OF CIVIL PROCEDURE.

3) PETITIONER HAS FAILED TO MEET THE REQUIREMENTS OF RULE 65(C)(3) OF THE UTAH RULES OF CIVIL PROCEDURE ONLY DUE TO THE FACT THAT THE PETITIONER WAS UNABLE TO SECURE DOCUMENTS FROM THE BOARD OF PARONS TO ATTACH TO THE PETITION. OTHERWISE, THE PETITION IS IN ORDER.

4) RESPONDENT KNEW OF ALL THE AFFIRMATIVE DEFENSES WHEN THE RESPONDENT FILED AN "AMENDED ANSWER" AS WELL AS THE ORIGINAL "ANSWER & MOTION TO DISMISS" FAILED TO MENTION PETITIONER'S "FAILURE TO JOIN," THEREBY, WAIVING THAT RIGHT. VALLEY BANK & TRUST CO. V. WILKEN, 668 P.2d 493 (UTAH 1983).

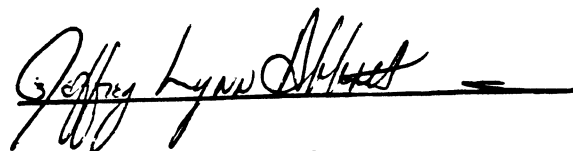
5) SINCE THE POWER OF THE STATE OF UTAH IS VESTED IN THE GOVERNOR OF THE STATE OF UTAH, AS PROVIDED BY ARTICLE 7 SECTION 5 OF THE UTAH CONSTITUTION & SINCE THE GOVERNOR OF THE STATE OF UTAH REPRESENTS THE LEADING AUTHORITY OF THE STATE OF UTAH BOARD OF PARONS, IT WOULD BE SAFE TO CONCLUDE THE PETITIONER HAS CORRECTLY JOINED THE BOARD OF PARONS AS RESPONDENTS.

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WHEREFORE, PETITIONER PRAYS THAT THIS COURT WILL GRANT THIS MOTION TO STRIKE RESPONDENT'S AFFIRMATIVE DEFENSES.

DATED THIS 27TH DAY OF APRIL, 1992.

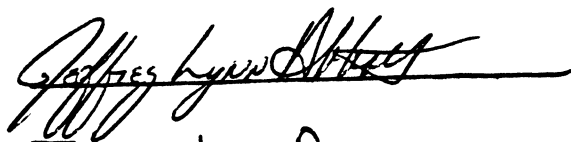
RESPECTFULLY SUBMITTED,



JEFFREY LYNN ABBOTT
PETITIONER & COUNSEL PRO-SE

* CERTIFICATE OF MAILING *

I, HEREBY CERTIFY THAT A TRUE & ACCURATE COPY OF THE FOREGOING MOTION TO STRIKE RESPONDENT'S AFFIRMATIVE DEFENSES WAS MAILED, POSTAGE PRE-PAID, TO STEVEN H. MORRISSETT, ASSISTANT ATTORNEY GENERAL & COUNSEL FOR RESPONDENT, AT 6100 SOUTH 300 EAST, SUITE 204, SALT LAKE CITY, UTAH. 84107, ON THIS 27TH DAY OF APRIL, 1992.



JEFFREY LYNN ABBOTT
PETITIONER & COUNSEL PRO-SE

JEFFREY LYNN ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

FILED DISTRICT COURT
Third Judicial District

MAY 04 1992

SALT LAKE COUNTY

By _____ Deputy Clerk

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

JEFFREY LYNN ABBOTT,
-V- PETITIONER,

STATE OF UTAH,
RESPONDENT.

PETITIONER'S CONSENT TO CONTINUANCE &
OPPOSITION TO RESPONDENT FILING ANY
MOTIONS FOR SUMMARY JUDGEMENT

CASE: 920900544 HC
JUDGE: HONORABLE DAVID S. YOUNG

COMES NOW, THE PETITIONER, JEFFREY LYNN ABBOTT, PROCEEDING PRO-SE, HEREBY FILES THE FOLLOWING CONSENT TO CONTINUANCE & OPPOSITION TO RESPONDENT FILING ANY MOTIONS FOR SUMMARY JUDGEMENT & IN SUPPORT, STATES AS FOLLOWS;

1) PETITIONER HAS NO OBJECTION TO A CONTINUANCE TO A DATE AS THE COURT DEEMS APPROPRIATE IN LIGHT OF THE PRESENT ALLEGED HINDRANCE TO THE "VITAL WITNESS." HOWEVER, PURSUANT TO RULE 40(B) OF THE UTAH RULES OF CIVIL PROCEDURE, PETITIONER ASKS THE COURT TO REQUIRE RESPONDENT TO STATE, UPON AFFIDAVIT, THE EVIDENCE THAT THE RESPONDENT SEEKS TO OBTAIN FROM SAID "VITAL WITNESS."

2) PURSUANT TO RULE 3.2 OF THE UTAH RULES OF PROFESSIONAL CONDUCT, PETITIONER REQUESTS THE COURT TO REQUIRE RESPONDENT TO SHOW DOCUMENTATION OF PROOF THAT THIS IS NOT A "DILATORY TACTIC."

3) PETITIONER ALSO HAS NO OBJECTION TO A CONTINUANCE IF THE COURT REQUIRES AN AFFIDAVIT FROM ONE "JOHN GREENE" & THE DOCTOR WHOM IS PERFORMING THE SURGERY ALLEGED, STATING WHEN PAUL LARSEN WILL BE ABLE TO TESTIFY IN A COMPETENT MANNER.

4) SINCE THIS MATTER HAS ALREADY BEEN SET FOR "EVIDENTIARY" IT WOULD BE AN UNNECESSARY BURDEN TO THE COURT & PETITIONER TO BE PUTTING UP WITH ANY MOTIONS FOR SUMMARY JUDGEMENT, FROM EITHER PARTIES.

5) SINCE THE PETITIONER'S ALLEGATIONS STAND IN OPPOSITION OF THE RESPONDENT'S ASSERTIONS, THERE ARE CONTRAVERSED ISSUES OF FACT & SUMMARY JUDGEMENT CAN NOT PROPERLY BE GRANTED AT THIS TIME, WITHOUT FIRST SETT-


LING THE RIGHTS OF THE PARTIES INVOLVED, WHICH IS DEFINITELY NECESSARY.
CHRISTENSEN EX REL. CHRISTENSEN V. FINANCIAL SERV. Co., 14 UTAH 2d 101, 377 P.2d 1010 (1963); BILL BROWN REALTY, INC. V. ABBOTT, 562 P.2d 238 (UTAH 1977); HOLBROOK Co. V. ADAMS, 542 P.2d 191 (UTAH 1975).

6) RESPONDENT SHOULD HAVE FILED A MOTION FOR SUMMARY JUDGEMENT WHEN THE "AMENDED ANSWER" WAS FILED, AT THE LATEST. HEIN'S TURKEY HATCHERIES, INC. V. NEPHI PROCESSING PLANT, INC., 24 UTAH 2d 271, 470 P.2d 257 (1970).

7) THE GRANTING OF A MOTION FOR SUMMARY JUDGEMENT BY THE COURT WOULD PREVENT BOTH PETITIONER & RESPONDENT FROM FULLY PRESENTING THEIR CASE TO THE COURT. THEREFORE, THE COURT SHOULD BE RELUCTANT TO EVEN CONSIDER SUCH A MOTION. BRANDT V. SPRINGVILLE BANKING Co., 10 UTAH 2d 350, 353 P.2d 460 (1960); SALT LAKE CITY CORP. V. JAMES CONSTRUCTORS, INC., 761 P.2d 42 (UTAH Ct. App. 1988).

DATED THIS 27TH DAY OF APRIL, 1992.

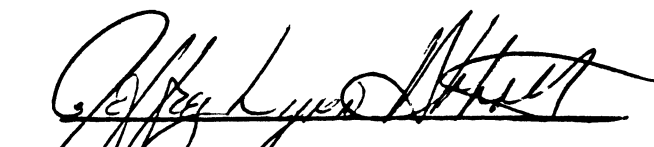
RESPECTFULLY SUBMITTED,


JEFFREY LYNN ABBOTT
PETITIONER & COUNSEL PRO-SE

* CERTIFICATE OF MAILING *

I, HEREBY CERTIFY THAT A TRUE & ACCURATE COPY OF THE FOREGOING CONSENT OF CONTINUANCE & OPPOSITION TO RESPONDENT FILING ANY MOTIONS FOR SUMMARY JUDGEMENT WAS MAILED, POSTAGE PRE-PAID, STEVEN H. MORRISSETT, ASSISTANT ATTORNEY GENERAL & COUNSEL FOR RESPONDENT, AT 6100 SOUTH 300 EAST, SUITE 204, SALT LAKE CITY, UTAH 84107.

DATED THIS 27TH DAY OF April, 1992.


JEFFREY LYNN ABBOTT
PETITIONER & COUNSEL PRO-SE

PAUL VAN DAM (3312)
UTAH ATTORNEY GENERAL
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondent
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

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

ABBOTT, JEFFREY LYNN,

Petitioner,

v.

STATE OF UTAH,

Respondent.


OPPOSITION TO PETITIONER'S
MOTION TO STRIKE REPLY TO
PETITIONER'S RESPONSE TO
MOTION TO DISMISS

Civil No. 920900544 HC

JUDGE DAVID S. YOUNG

RESPONDENT State of Utah, by and through Steven Morrissett, Assistant Attorney General, opposes petitioner's Motion to Strike Respondent's "Reply to Petitioner's Response to Motion to Dismiss" and Impose Sanctions. A reply is a proper pleading in motion practice, under Utah R. Judicial Admin. 4-501(1)(c). This motion is also untimely, since the court has ruled. Sanctions are not appropriate.

Dated this 4th day of May, 1992.


Steven Morrissett
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Opposition to Motion to Strike Affirmative Defenses was mailed, postage prepaid, to Jeffrey Lynn Abbott, Pro Se, P.O. Box 250, Draper, Utah 84020.

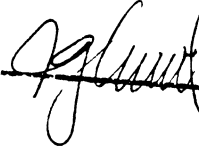
Mailed this 4 day of May, 1992.

Maureen E. Peterson

FILED DISTRICT COURT
7
st

MAY 04 1992

PAUL VAN DAM (3312)
UTAH ATTORNEY GENERAL
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondent
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

 COUNTY
Deputy Clerk

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

ABBOTT, JEFFREY LYNN,
Petitioner,

v.

STATE OF UTAH,
Respondent.

OPPOSITION TO PETITIONER'S
MOTION TO STRIKE RESPONDENT'S
AFFIRMATIVE DEFENSES


Civil No. 920900544 HC

JUDGE DAVID S. YOUNG

RESPONDENT State of Utah, by and through Steven Morrissett, Assistant Attorney General, opposes petitioner's Motion to Strike Respondent's Affirmative Defenses.

The court denied the state's Motion to Dismiss on April 13, 1992. The state filed affirmative defenses on April 21, 1992. The affirmative defenses are timely filed under Utah R. Civ. P. 12(a)(1). Regardless, the court should permit them, since they give prompt notice and there is no prejudice to petitioner.

Dated this 4 day of May, 1992.


Steven Morrissett
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Opposition to Motion to Strike Reply was mailed, postage prepaid, to Jeffrey Lynn Abbott, Pro Se, P.O. Box 250, Draper, Utah 84020.

Mailed this 4th day of May, 1992.

Monte D. Belton

Date 5/7/92

Jeffrey Lynn Abbott vs. State of Utah

No. 920900544

Pro Se
Attorney for Plaintiff

Steve Marshall
Attorneys for Defendant

DESCRIPTION OF EXHIBITS		REMARKS		DESCRIPTION OF EXHIBITS	REMARKS
1 -D	Notice 1-21-91 of Revision	recd	18	FILED DISTRICT COURT Third Judicial District	
2 -D	Letter 2-20-91 Board of Pardons	recd	19	MAY 07 1992	
3 -D	Interim Decision	recd	20	SALT LAKE COUNTY By <u>[Signature]</u> Deputy Clerk	
4 -D	—	withdrawn	21		
5 -D	5-4-91 Notice of Revision	recd	22		
6 -D	Copy of Transcript of Hearing 6-30-89	recd	23		
7 -D	Copy of Transcript of Hearing 2-28-91	recd	24		
8 -D	Copy of Transcript of Hearing 6-13-91	recd	25		
9 -D	Copy of Transcript of Hearing 8-22-91	recd	26		
10			27		
11			28		
12			29		
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6			33		
7			34		

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

ABBOTT, JEFFREY LYNN	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 920900544 HC
	:	DATE 05/07/92
VS	:	HONORABLE DAVID S. YOUNG
	:	COURT REPORTER AMBROSE, EILEEN
STATE OF UTAH	:	COURT CLERK CLP
DEFENDANT	:	

TYPE OF HEARING: HABEAS CORPUS WRIT
PRESENT: PLAINTIFF

P. ATTY. ABBOTT, JEFFREY PRO SE
D. ATTY. MORRISSETT, STEVEN

SWORN AND EXAMINED
PLAINTIFF

PLAINTIFF'S PETITION FOR WRIT OF HABEAS CORPUS COMES NOW
BEFORE THE COURT FOR HEARING, WITH APPEARANCES AS SHOWN ABOVE.

JEFFREY ABBOTT IS SWORN AND EXAMINED ON HIS OWN BEHALF.
DOCUMENTARY EVIDENCE IS MARKED, OFFERED AND RECEIVED.

COMES NOW COUNSEL FOR THE DEFENDANT AND PROFFERS REGARDING
THE TESTMONY OF WENDY WEBB, THE RECORDS CUSTODIAN, IF SHE WERE
CALLED TO TESTIFY.

BASED ON DISCUSSION WITH PLAINTIFF AND DEFENDANT'S COUNSEL,
THE COURT ORDERS PLAINTIFF'S MOTION TO STRIKE RESPONDENT'S
REPLY TO PETITIONER'S RESPONSE TO MOTION TO DISMISS AND IMPOSE
SANCTIONS AND PLAINTIFF'S MOTION TO STRIKE RESPONDENT'S
AFFIRMATIVE DEFENSES ARE DENIED WITH PREJUDICE.

THE COURT FURTHER ORDERS THE DEFENDANT TO FILE A MOTION TO
DISMISS BY MAY 11, 1992 AND THE PETITIONER IS TO RESPOND BY JUNE
2, 1992 AND THE DEFENDANT IS TO REPLY BY JUNE 12, 1992. THE
MOTION TO DISMISS IS SET FOR HEARING ON JUNE 22, 1992 AT 1:00 PM
MR. MORRISSETT IS TO PREPARE THE ORDER.

MAY 07 1992

SALT LAKE COUNTY

By
Deputy Clerk

PAUL VAN DAM (3312)
Attorney General
STEVEN H. MORRISSETT (6007)
Assistant Attorney General
Attorney for Defendants
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

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

JEFFREY L. ABBOTT,	:	
Petitioner,	:	AFFIDAVIT OF
	:	WENDY MICHELE WEBB
v.	:	
	:	Case No. 920900544
STATE OF UTAH,	:	
	:	Judge David S. Young
Respondent.	:	

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, Wendy Michele Webb, under oath state the following to
be true and correct to the best of my knowledge:

1. I am a citizen and resident of the United States of
America and the State of Utah, and I am over the age of eighteen
(18) years.

2. I am employed by the State of Utah as the Record
Technician for the Utah Board of Pardons and Parole, and I have
custody of the Board's business records.

000129

3. The original tapes are used in and maintained as part of the Board's ordinary course of business activity and were compiled at or near the time and place of the events contained therein.

4. The original tapes were provided to Associated Professional Reporters for transcription. The attached transcripts are true and correct copies of the tapes from hearings before the Board and kept in the Board's file on Jeffrey L. Abbott.

Dated this 5th day of May, 1992.

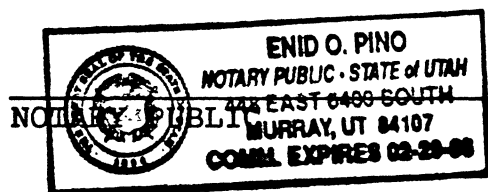

WENDY MICHELE WEBB

SUBSCRIBED AND SWORN to me this 6th day of May, 1992.

Residing at Salt Lake Co.

My Commission Expires:

February 29, 1996



PAUL VAN DAM (3312)
Attorney General
STEVEN H. MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondent,
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638


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

JEFFREY L. ABBOTT,	:	
	:	
Petitioner,	:	MOTION FOR SUMMARY JUDGMENT
	:	
v.	:	
	:	
STATE OF UTAH.	:	CASE NO. 920900544
	:	
Respondent.	:	Judge David S. Young

Respondent, by and through Steven Morrissett, Assistant Attorney General, moves for summary judgment dismissing the above-captioned case, pursuant to Utah R. Civ. P. 56(b).

This motion is based on the pleading and legal memoranda previously filed in this matter, including affidavits and supporting documents, on the supplemental evidence heard by the court at the evidentiary hearing of May 7, 1992, and on the memorandum of law filed in support of this motion.

DATED this 11th day of May, 1992.


Steven Morrissett
Attorney for Respondent

PAUL VAN DAM (3312)
Attorney General
STEVEN H. MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondent,
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

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

JEFFREY L. ABBOTT,	:	
	:	
Petitioner,	:	MEMORANDUM IN SUPPORT OF
	:	MOTION FOR SUMMARY JUDGMENT
v.	:	
	:	
STATE OF UTAH.	:	CASE NO. 920900544
	:	
Respondent.	:	Judge David S. Young

FACTS

The following facts are substantially undisputed in the record before the court:

1. Abbott entered a building in Salt Lake City, took a set of keys, stole a vehicle and drove to Colorado, where he was caught. On March 7, 1989, he was convicted of attempted theft on a plea bargain and sentenced to an indeterminate term of zero to five years in prison. (Exhibit 6-D.)

2. The Utah Board of Pardons held a parole grant hearing on June 30, 1989. At the hearing, the Board reviewed Abbott's history. His adult record included: a burglary reduced to trespassing in June, 1983; forgery in September, 1983; stealing

in November, 1983; stealing reduced to larceny because it was under \$50 in October, 1984; a 1985 charge of stealing, reduced to larceny where Abbott served six months. In addition, Abbott's record includes crimes in Los Angeles of: burglary, which may have been reduced to disorderly conduct in July, 1985 with time served; receiving stolen property in January, 1986; burglary in February, 1986 with time served; petty theft in July 1986 with time served; a 1987 arrest for attempting to sell cocaine which was later dismissed because the cocaine was for Abbott's own use; and several other charges in his record that were dismissed. In Salt Lake City, Abbott was arrested in August, 1988, for soliciting sex, and had numerous problems in December, 1988 while being held in jail. (Exhibit 6-D.)

3. Abbott had a history of the use of illicit drugs, including, marijuana, cocaine, heroin, speed, crack, which he began in his mid teens and used on a daily basis. Abbott began using a needle at age 13 or 14 and was in a drug program in California, but it did not help his problem. (Exhibit 6-D.)

4. Abbott had two major disciplinary actions in prison in 1989, before his June parole grant hearing. A Board member observed that Abbott projected a poor attitude and one not willing to change. (Exhibit 6-D.)

5. Abbott was given a March 12, 1991, parole date. The conditions of Abbott's parole were: intensive supervision of electronic monitoring if paroled in Utah, random urinalysis, no alcohol, restitution of \$918. (Exhibit 6-D.)

6. The Board directed that, as part of its review of Abbott's parole release, the Utah State Prison was to provide a 60-day progress report before Abbott's parole summarizing his adjustment, attitude and behavior in the institution. (Exh. 6-D.)

7. The Board explained to Abbott that if the expectations and standards were not met, "your parole will be denied and you will be granted another hearing at another time. Your release will depend on how you do between now and March, 1991. If you don't do well, you won't get out." (Exhibit 6-D.)

8. The board placed no limitation on the time frame of disciplinary violations which would consider. Abbott testified that he doesn't remember this, but does not deny it could have been a condition of his parole date. Notice of the 60-day review was included in the written parole grant order.

9. The 60-day review before Abbott's parole release date uncovered more than a dozen new disciplinary violations. Abbott received 15 disciplinary actions in 1989. All but two of those 15 were received after the June 30, 1989 parole grant hearing.

Abbott had three more disciplinaries in 1990. (January 3, April 25, and September 18.) (Exhibit 7-D.)

10. The Board issued an order on January 29, 1991, rescinding Abbott's March 12, 1991 parole date and scheduling a rescission hearing. The order was not a final one, but "subject to review and modification by the Board of Pardons at any time until actual release from custody." (Exhibit 1-D.) The Board gave Abbott notice of a rescission hearing set before the parole date, and advised him it was based on his numerous violations. (Exhibit 2-D.)

11. Abbott appeared before the Board's hearing officer, Paul Larsen, on February 28, 1991, for the purpose of a rescission hearing. (Exhibit 7-D.)

12. Abbott has testified he believed the hearing officer had already made up his mind, but he agrees he was given a chance to be heard. He did not deny that he had a dozen disciplinaries.

13. The hearing officer told Abbott that he had "racked up a score" although he knew he would have 60-day review. Abbott claimed he was not aware of the 60-day review. (Exhibit 7-D.)

14. The hearing officer told Abbott that the only reason he would not receive "considerably more time than two additional months is that [he had] improved considerably since 1989 spree."

15. The interim decision was that Abbott serve an additional two months, subject to the conditions set by the Board at the June 30, 1989, hearing. The decision, subject to review by the remaining members of the Board, was approved in an order dated March 12, 1991. (Exhibit 4-D.)

16. After the rescission hearing and before his second parole release date, Abbott committed new disciplinary violations. Notice was prepared on May 9, 1991. Abbott testified that it was not delivered until May 15, but that he understood the reason that the short time frame resulted in a rescission hearing after his parole date.

17. Abbott appeared before the hearing officer, on June 13, 1991, for his second rescission hearing. Abbott had four new offenses including: assault with a weapon, disorderly conduct, damaging property. He mentioned that he even had more write-ups. The hearing officer advised him he could only review the write-ups referred to him to date. (Exhibit 7-D.)

18. At the hearing, Abbott stated, "I'm going to end up getting out and just coming back . . . so just go ahead and expire me. I'm not going to put up with their attitudes just to get out of here. I'm not going to kiss nobody's ass. . . . I don't want to spend no time on parole in the State of Utah." (Exhibit 7-D.)

19. Abbott disagreed that his conduct was self-destructive, saying, "It's just that I'm 25 years old. I'm tired of playing games. . . . I played it for two years; it got me in trouble, it got me damn near killed one time and you know what I'm talking about. I'm not going to play it anymore. I laid down after that for a whole ten months . . . and you guys still took my date." "I'd rather just expire." It doesn't matter to me; because I cannot live like this." Then showing mixed feelings, Abbott said, "I'd like a parole date." "I will not refuse a parole. I'll do it to the best, but I cannot guarantee that . . . the parole date will still stand after you see the write-ups that I have." (Exhibit 7-D.)

20. Abbott was given a new parole date of October 8, 1991, by the Board of Pardons on the hearing officer's recommendation.

21. Abbott appeared before the Board again on August 22, 1991 for the purpose of a third rescission hearing after receiving numerous additional disciplinaries. Abbott has agreed that he received proper notice and an opportunity to be heard at this hearing. (See notice and decision attached to February 24, 1991 affidavit of counsel, filed with respondent's original answer.)

22. At the August 22 hearing, the Board rescinded the October parole date and set Abbott's sentence termination date

for November 23, 1993. Reasons given included a history of similar offenses, multiple rescission hearings and defiance of authority.

23. Abbott filed the present action five months later, on January 30, 1992.

ARGUMENT

1. The petition does not describe a constitutional claim.

Abbott has claimed that the procedures followed at his first and second parole rescissions violated his rights under Foote v. Board of Pardons, 808 P.2d 734 (Utah 1991). He argues that he did not receive adequate notice and an opportunity to be heard before his March 12, 1991 parole date was rescinded. To make this argument, he characterized the January 29, 1991 notice of intent to rescind as the final rescission decision. Although Abbott agreed that he had a chance to tell his side at the scheduled February 28 hearing, he felt that the hearing officer (and members of the Board) had already made up their minds.

Foote holds that the Board of Pardons is subject to habeas corpus review of procedural due process rights of a prisoner in the board's jurisdiction, and whether those rights were violated. However, Foote does not establish what rights, if any, a prisoner may have in a parole rescission hearing.

Where a liberty interest exists, a prisoner may well be entitled to notice and an opportunity to be heard. However, due process is flexible and calls for such procedural protection as the particular situation demands. Morrissey v. Brewer, 408 U.S. 471 (1972). Thus, it may be proper to arrest a person for a parole violation before a hearing to determine whether the violation in fact occurred, if there is a hearing within a short time of the arrest. Similarly, it may be proper to give notice of a parole rescission and then to schedule a rescission hearing to determine whether the facts exist to support the rescission.

As in Morrissey, a rescission hearing is not a criminal proceeding and there is no requirement for a hearing with all of the rights due a criminal defendant. There are limited due process rights in a prisoner's parole date. Homer v. Morris, 684 P.2d 64 (Utah 1984).

In Temple v. Smith, 548 P.2d 1274 (Utah 1976), an inmate who escaped from a half-way house had his parole revoked without a hearing. When he was caught and complained of a violation of his due process rights, the court held that he was not entitled to a full-scale hearing in connection with rescission of the parole date.

In Abbott's case, he was given a parole date expressly conditioned on not having further disciplinary problems in

prison, and subject to a 60-day review before his release. It is not contested that the review showed numerous disciplinary violations by Abbott, which were also violations of the conditions under which the Board of Pardons agreed to the parole release date.

Due process does not prevent the board from acting on the substantial evidence of the violations, so long as there is notice to Abbott and a hearing in which he can participate meaningfully, prior to a final rescission hearing. That is exactly what occurred in this case.

Abbott did not dispute his numerous disciplinaries, but only argues now that he was told by a corrections employee that the board would not look back more than a year in searching for prison violations. This is contrary to the specific statement the board made to Abbott at his parole grant hearing:

That means that 60 days before your parole, some time in the latter part of 1990, we will receive a progress report that will summarize your adjustment, your attitude and your behavior while in the institution, and if that--those matters don't meet expectations and acceptable standards, then your parole will be denied, and you will be granted another hearing at another time.

(Exhibit 6-D, p. 14, emphasis added.) Even if the statement were made, it would not be binding on the Board of Pardons. Further, the statement, if made, occurred after Abbott had already

committed disciplinary violations and could not have prejudiced him in any way.

2. There is no constitutional right to appointed counsel at a parole rescission hearing.

Abbott also asserts a violation of his rights because no attorney was appointed at state expense to assist him at the parole rescission hearings. However, there is no constitutional right to an attorney in the administrative review of whether a parole date should be rescinded. Utah Constitution, Article I, Section 12, gives the accused in criminal prosecutions "the right to appeal and defend in person and by counsel." This language gives a right to counsel only during a criminal prosecution and not in civil actions. Caveness v. Cox, 598 P.2d 349, 351 (Utah 1979). It only requires representation, in postconviction proceedings, for matters affecting guilt or innocence and the fairness of the criminal trial. Beale v. Turner, 454 P.2d 624 (Utah 1969) (holding no right to appointed counsel in parole revocation hearing.) See also Hatch v. Deland, 131 Utah Adv. Rep. 26 (Utah App. 1990).

3. The petition is barred by the statute of limitations.

Civil actions may be commenced only within the statute of limitations set by statute. Utah Code § 78-12-1. Relief pursuant to a writ of habeas corpus, based on grounds known to the petitioner or which in the exercise of reasonable diligence should have been known by the petitioner or his counsel must be brought within three months. Utah Code § 78-12-31.1.

Abbott's claim is based on alleged procedural errors at hearings of the Board of Pardons in February, June and August, 1991. Abbott was present at those proceedings and was aware of procedures used by the Board at the time.

Abbott cites Foote, which was not decided until March 14, 1991. However, a favorable change in the law does not preserve a claim for which the statute of limitations has expired, nor does it toll the statute of limitations.

In Lord v. Shaw, 665 P.2d 1288 (Utah 1983), the court held that an unfavorable state of the law regarding spousal immunity neither foreclosed earlier filing of a spousal tort suit, nor established a "disability" which would toll the time allowed by a one year tort statute of limitations. Where the spouse had access to the courts, she was not entitled to a tolling of the statute to wait for others to seek a change in the law

Abbott was no more under a disability than was Foote, who did bring suit and effected a change in the law. Lord, 665 P.2d at 1290. It was incumbent upon Abbott to file his action within the statutory period and if necessary, to seek a change in the law. He had access to the courts at all times and was aware of the facts giving rise to his causes of action from the moment they occurred. Lord, 665 P.2d at 1291.

He should not now be permitted to resurrect such a claim.

4. The claims are moot.


With the exception of the lack of appointed counsel to assist him, Abbott has not shown any facts to contest the procedures used at the last rescission hearing of the Board of Pardons, at which his parole date was set for 1993. Even if the earlier hearings somehow violated his due process rights, only the Board has the authority to set Abbott's parole release date. Foote. The remedy for a due process violation would be to give Abbott a new hearing before the Board of Pardons. But Abbott had such a hearing on August 22, 1991. At that hearing, the board considered all of Abbott's violations, gave him a chance to be heard, and set Abbot's final parole date.

5. Abbott waived his right to a different parole date.

Abbott never objected to the hearings held by the board prior to January, 1992, when he filed this action in court. In fact, Abbott, frustrated with the rescission of his parole, specifically asked the board to "expire" him, that is, to give him the rest of his term, then release him without any strings or conditions at all. The board did not do that at the June, 1991 rescission hearing, but did so at the August hearing. Abbott should not be able to object to the board's action, where he never objected to the board's actions before, but instead requested the very action taken by the board.

The petition should be dismissed. The court should enter judgment in favor of the respondent.

DATED this 11th day of May, 1991.


Steven Morrisett
Attorney for Respondent

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment were mailed, postage prepaid, to Jeffrey L. Abbott, P.O. Box 250, Draper, Ut 84020, this 11 day of May, 1992.

A handwritten signature in cursive script, appearing to read "John M. Smith", is written over a horizontal line.

JEFFREY LYNN ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

FEDERAL DISTRICT COURT
Third Judicial District

MAY 21 1992

SALT LAKE COUNTY

By [Signature] Deputy Clerk

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

JEFFREY LYNN ABBOTT,
-V- PETITIONER,

STATE OF UTAH,
RESPONDENT.

MOTION FOR ADJUSTMENT OF COURT
DATE TO AVOID CONFLICTING WITH
PETITIONER'S FEDERAL CASE

CASE: 920900544 HC
JUDGE: HONORABLE DAVID S. YOUNG

COMES NOW, THE PETITIONER, JEFFREY LYNN ABBOTT, PROCEEDING PRO-SE,
HEREBY FILES THIS "MOTION FOR ADJUSTMENT OF COURT DATE" & IN SUPPORT, STATES AS
FOLLOWS:

- 1) THAT ON MAY 08, 1992 @ APPROXIMATELY 1600 HRS. PETITIONER WAS
GIVEN NOTICE, BY MAIL, OF A PRE-TRIAL CONFERENCE IN FEDERAL COURT (SEE ATTACHED
NOTICE).
- 2) THAT PETITIONER IS PROCEEDING PRO-SE IN THE FEDERAL & HIS PRE-
SENCE IS ESSENTIAL @ THE PRE-TRIAL CONFERENCE.
- 3) THAT THE PETITIONER IS ONLY REQUESTING AN ADJUSTMENT FOR ONE (1)
DAY.

DATED THIS 14TH DAY OF MAY, 1992.

RESPECTFULLY SUBMITTED,

[Signature]

JEFFREY LYNN ABBOTT
COUNSEL PRO-SE

JEFFREY LYNN ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

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

JEFFREY LYNN ABBOTT,
PETITIONER,
-V-

STATE OF UTAH,
RESPONDENT.

* ORDER OF ADJUSTMENT *

CASE: 920900544 HC
JUDGE: HONORABLE DAVID S. YOUNG

THIS MATTER HAVING BEEN BROUGHT BEFORE THE COURT ON THE MOTION OF THE PETITIONER & BECAUSE IT APPEARS TO THE COURT THERE IS GOOD CAUSE TO BELIEVE THE PETITIONER IS ENTITLED TO THE RELIEF SOUGHT BY THIS MOTION, IT IS HEREBY

ORDERED, THAT THE JUNE 22, 1992, HEARING IN THE ABOVE-ENTITLED MATTER IS SET FOR _____ M., ON _____, 1992.

DATED THIS DAY OF _____, 1992.

BY THE COURT:

HONORABLE DAVID S. YOUNG

THIRD DISTRICT COURT JUDGE

5/21/92
denied
- our hearing was
set in open Ct. & will
remain. The Federal Court should
- intended to admit of the
that. copy

JEFFREY LYNN ABBOTT
COUNSEL PRO- SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

FILED IN COURT NO. 1
Third Judicial District

MAY 21 1992

By JK SALT LAKE COUNTY
Deputy Clerk

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

JEFFREY LYNN ABBOTT,
-V- PETITIONER,

STATE OF UTAH,
RESPONDENT.

AFFIDAVIT OF PETITIONER

CASE: 920900544 HC
JUDGE: HONORABLE DAVID S. YOUNG

I, THE UNDERSIGNED, HEREBY STATE UNDER PENALTY OF PERJURY:

- 1) THAT I AM THE PETITIONER, IN THE ABOVE-ENTITLED MATTER.
- 2) THAT THE ATTACHED NOTICE IS AN ACTUAL COURT DOCUMENT.
- 3) THAT IT WAS DELIVERED TO ME ON FRIDAY, MAY 08, 1992, DURING MAIL CALL @ APPROXIMATELY 1600 HRS. BY PRISON GUARD KEN WHITE.
- 4) THAT PETITIONER HAD NO KNOWLEDGE OF THE COURT DATE PRIOR TO RECEIPT OF THIS DOCUMENT.
- 5) THAT THE FEDERAL COURT SCHEDULE IS MORE CROWDED THAN THE STATE COURTS, SO IT IS MUCH EASIER TO ADJUST A STATE COURT HEARING THAN A FEDERAL ONE.
- 6) THAT PETITIONER FEELS THIS NECESSARY TO RELIEVE THE TRANSPORTATION STAFF OF THE BURDEN OF HAVING TO POSSIBLY BE LATE TO JUDGE YOUNG'S COURT.

DATED THIS 14th DAY OF May, 1992 & SIGNED UNDER THE PENALTY OF PERJURY.

Jeffrey Lynn Abbott
JEFFREY LYNN ABBOTT
PETITIONER & COUNSEL PRO- SE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

NOTICE OF INITIAL PRETRIAL CONFERENCE

ABBOTT,	Plaintiff(s)	Case No. <u>92-C-116A</u>
		Initial Pretrial Conf. set
		for:
vs.		Date: <u>Mon., June 22, 1992</u>
		Time: <u>10:00 A.M.</u>
		Place: <u>350 South Main, #248</u>
		<u>U.S. Courthouse</u>
LESLIE,	Defendants	<u>S.L.C., Utah 84101</u>

Issue having been joined, it has been determined that an initial pretrial conference be held with the court in the above-entitled matter at the above time and place. This conference shall be attended by an attorney who is a member or associate of the firm representing the party or parties to the litigation. At the initial pretrial conference the attorneys appearing shall be prepared to advise the court with respect to the following:

1. The name of the principal attorney who will participate in the trial and attend the final pretrial conference.
2. The time necessary to complete discovery procedures provided for by the rules.
3. Questions of jurisdiction, if any.
4. Motions which will be filed before trial and the time necessary for the filing of such motions.
5. A date for trial of the matter.
6. A date for the final pretrial conference.
7. A definite time and place for an attorney's conference preliminary to the final pretrial conference.
8. If a demand for a jury trial has been made pursuant to Rule 38, whether a six-man jury is acceptable.

Following the initial pretrial conference it is the court's intention to enter an order embodying the agreement of counsel on the above matters, including the dates for discovery cutoff, motion filing and trial.

DATED: May 5, 1992

U.S. Magistrate

By: K. Shauklas

To: see attached

JEFFREY LYNN ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

Third Judicial District

MAY 21 1992

SALT LAKE COUNTY

By [Signature] Deputy Clerk

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

JEFFREY LYNN ABBOTT,
PETITIONER,

-V-

STATE OF UTAH,
RESPONDENT.

* CERTIFICATE OF MAILING *

CASE: 920900544 HC
JUDGE: HONORABLE DAVID S. YOUNG

I, HEREBY CERTIFY THAT I CAUSED TO BE MAILED, POSTAGE PRE-PAID, TRUE & CORRECT COPIES OF THE BELOW-LISTED DOCUMENTS TO STEVEN MORRISSETT, ASSISTANT ATTORNEY GENERAL & COUNSEL FOR RESPONDENT, SUITE 204, 6100 SOUTH 300 EAST, SALT LAKE CITY, UTAH, 84107;

- A) MOTION FOR ADJUSTMENT OF COURT DATE TO AVOID CONFLICTING WITH PETITIONER'S FEDERAL CASE.
- B) ORDER OF ADJUSTMENT.
- C) AFFIDAVIT OF PETITIONER.
- D) NOTICE OF INITIAL PRE-TRIAL CONFERENCE.

DATED THIS 16th DAY OF May 1992.

[Signature]
JEFFREY LYNN ABBOTT
PETITIONER, & COUNSEL PRO-SE

000150

PAUL VAN DAM (3312)
Attorney General
STEVEN H. MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondent,
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

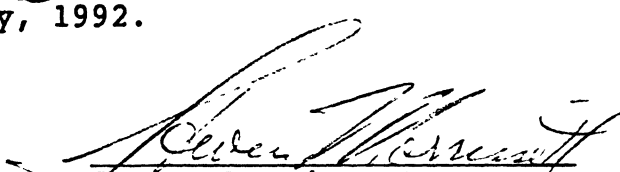
IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

JEFFREY L. ABBOTT,	:	
	:	
Petitioner,	:	OPPOSITION TO MOTION FOR
	:	ADJUSTMENT OF COURT DATE
v.	:	
	:	
STATE OF UTAH.	:	CASE NO. 920900544
	:	
Respondent.	:	Judge David S. Young

Respondent, by and through Steven Morrissett, Assistant Attorney General, objects to a change of the court date now set for June 22, 1992, unless the court determines that Mr. Abbott cannot be transported for his state court hearing at 1:00 p.m.

Mr. Abbott has a brief pretrial conference on June 22, 1992, at 10:00 a.m., in the U. S. District Court, Case No. 92-C-116A. There should be no reason Mr. Abbott cannot make both hearings.

DATED this 1 day of ^{June}~~May~~, 1992.


Steven Morrissett
Attorney for Respondent

000151

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Motion for Summary Judgment and Memorandum in Support of Motion for Summary Judgment were mailed, postage prepaid, to Jeffrey L. Abbott, P.O. Box 250, Draper, Ut 84020, this 1st day of June, 1992.

Maui O'Brien

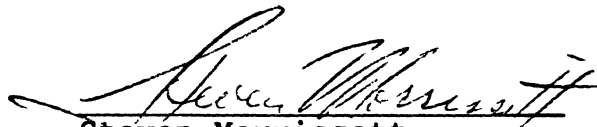
PAUL VAN DAM (3312)
Attorney General
STEVEN H. MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondent,
6100 South 300 East, Suite 204
Salt Lake City, Utah 84107
Telephone: (801) 265-5638

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

JEFFREY L. ABBOTT,	:	
	:	
Petitioner,	:	RESPONSE TO MOTION FOR
	:	EXTENSION OF TIME
v.	:	
	:	
STATE OF UTAH.	:	CASE NO. 920900544
	:	
Respondent.	:	Judge David S. Young

Respondent, by and through Steven Morrissett, Assistant Attorney General, does not oppose petitioner's motion for one additional week to file his opposition to respondent's Motion for Summary Judgment. This should not require a change in the June 22, 1992 hearing date.

DATED this 3rd day of June, 1992.


Steven Morrissett
Attorney for Respondent

000153

CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing Response to Motion for Extension of Time were mailed, postage prepaid, to Jeffrey L. Abbott, P.O. Box 250, Draper, Ut 84020, this 3rd day of June, 1992.

Marilyn D. Peterson

JEFFREY LYNN ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

FILED DISTRICT COURT
Third Judicial District

JUN 5 1992

By [Signature] SALT LAKE COUNTY
Deputy Clerk

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

JEFFREY LYNN ABBOTT,)	PETITIONER'S MEMORANDUM IN OPPOSITION
PETITIONER,)	TO RESPONDENT'S MOTION FOR SUMMARY
)	JUDGEMENT
-V-)	
STATE OF UTAH,)	CASE: 920900544 HC
RESPONDENT.)	JUDGE: HONORABLE DAVID S. YOUNG

COMES NOW, THE PETITIONER, JEFFREY LYNN ABBOTT, PROCEEDING PRO-SE, HEREBY FILES THE FOLLOWING MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT & IN SUPPORT OF SAID MEMORANDUM THE PETITIONER STATES AS FOLLOWS:

ALTHOUGH RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT IS PREPARED IN AN ORDERLY FASHION, IT FAILS TO ASSERT ANY PROPER GROUNDS AS TO WHY THIS MOTION FOR SUMMARY JUDGEMENT SHOULD BE GRANTED.

RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT DOES RECOGNIZE THE "SUBSTANTIALLY UNDISPUTED" FACTS, HOWEVER, TO BASE DECISIONS ON CHARGES THAT WERE CLEARLY DISMISSED BY A COURT OF LAW IS AN ERRONEOUS MOVEMENT THAT UNQUESTIONABLY CHALLENGES THE AUTHORITY & JUDGEMENT OF THE COURT TO THE EXTENT WHERE IT MUST BE PONDERED WHETHER A COURT'S DECISION IS SUBJECT TO REVIEW & MODIFICATION BY THE BOARD OF PARDONS. IT IS NOT.

IN RETROSPECT, THE COURT WILL NOTICE THE RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT IS SUPPORTED BY A FAULTY MEMORANDUM IN WHICH ATTEMPTS ARE MADE TO PRODUCE A CONVINCABLE GROUND FOR THE COURT GRANT A SUMMARY JUDGEMENT IN FAVOR OF THE RESPONDENT. THERE ARE, HOWEVER, MULTIPLE REASONS WHY SUMMARY JUDGEMENT SHOULD BE DENIED.

1. THE STATUTE OF LIMITATIONS SHOULD NOT APPLY IN THE INSTANT CASE.

WHEN THE PETITIONER INITIALLY FOUND THERE WAS JUST CAUSE TO BELIEVE THE STATE OF UTAH BOARD OF PARDONS HAD VIOLATED PETITIONER'S RIGHTS, THE STATE OF UTAH COURT OF APPEALS HAD PREVIOUSLY HANDED DOWN A DECISION DENYING A PETITIONER'S WRIT OF WHICH WAS CHALLENGING BOARD OF PARDONS' DECISIONS IN A PAROLE ORDER.

IN THAT CASE, CITED AS WHITE V. UTAH STATE BOARD OF PARDONS & JOHN DOES 1-7, MEMBERS, 778 P.2d 20 (UTAH 1989), IT WAS HELD THAT THE COURTS WERE PRECLUDED FROM GRANTING DESIRED RELIEF TO THE PETITIONER, BECAUSE IT DID NOT HAVE THE AUTHORITY TO COMPEL THE BOARD OF PARDONS TO CORRECT OR AMEND A PAROLE ORDER, AS THE STATUTE (U.C.A. 1953, 77-27-5(3)) HAD PROVIDED, IN PART, THAT,

"THE DETERMINATIONS & DECISIONS OF THE BOARD OF PARDONS IN CASES INVOLVING APPROVAL OR DENIAL OF ANY ACTION, OF PAROLES, PARDONS OR TERMINATIONS OF SENTENCE ARE FINAL & ARE NOT SUBJECT TO JUDICIAL REVIEW."

THEREFORE, PETITIONER DID NOT FEEL THERE WERE ANY OUTLETS TO WHICH GRIEVANCES COULD SUCCESSFULLY BE REDRESSED, BUT RATHER ANY ATTEMPTS MIGHT BE DISMISSED, PURSUANT TO THE ABOVE-LISTED STATUTE, AS WAS THE ABOVE CASE IN WHICH THE PETITIONER (WHITE) SOUGHT JUDICIAL RELIEF.

WHEN THE PETITIONER FOUND THAT THE UTAH SUPREME COURT HAD DISAGREED WITH THE DETERMINATION THAT THE STATE OF UTAH BOARD OF PARDONS WAS NOT SUBJECT TO JUDICIAL REVIEW, THE PETITIONER NOTIFIED THE PRISON'S CONTRACT ATTORNEYS THAT PETITIONER WISHED TO FILE FOR RELIEF PURSUANT TO FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991). IN TURN, THE PRISON'S CONTRACT ATTORNEYS SUBSEQUENTLY FORWARDED A REQUEST FOR THE BASIS OF THE BOARD OF PARDONS' DECISIONS TO BOARD CHAIRMAN H.L. (PETE) HAIN OF WHICH WAS DATED MAY 23, 1991, EXACTLY FOURTEEN DAYS AFTER THE DECISION WAS MADE TO RESCIND PETITIONER'S MAY 14, 1991, PAROLE DATE.

PURSUANT TO RULE 655-303 OF THE BOARD OF PARDONS' POLICY IN THE UTAH ADMINISTRATIVE CODE BOOK, PETITIONER WAS ENTITLED TO SOME FORM OF INFORMATION AS TO THE DECISIONS OF THE BOARD OF PARDONS, HOWEVER, NOT ONLY WAS THIS REQUEST FOR INFORMATION NOT HONORED, BUT NEITHER DID IT EVER RECEIVE A RESPONSE. LIKEWISE, A SECOND LETTER OF REQUEST FOR INFORMATION NEVER RECEIVED A RESPONSE FROM CHAIRMAN HAUN. IN FACT, IT IS EVIDENT THAT THE BOARD OF PARDONS DID NOT RESPOND UNTIL AFTER THE ATTORNEY GENERAL'S OFFICE WAS SERVED, BY MAIL, WITH A COPY OF THE PETITION IN THIS MATTER & ORDERED TO RESPOND ACCORDINGLY.

THAT CHAIRMAN HAUN BE PROMPT IN RESPONDING TO THE PETITIONER'S REQUEST FOR INFORMATION, WAS AN ESSENTIAL FACTOR, SINCE THE PETITIONER HAD NO OTHER MEANS OF AFFIXING OR EXPLORING POTENTIAL LIABILITY WITHIN THE STATUTORY PERIOD. IT WAS ALSO IMPERATIVE FOR CHAIRMAN HAUN TO RESPOND PROMPTLY SINCE THE STATUTE OF LIMITATIONS BEGAN TO RUN FROM THE FIRST MOMENT PETITIONER "KNEW" A VIOLATION HAD DEFINITELY OCCURRED, WHICH IN THIS CASE WAS NOT DETERMINED UNTIL AFTER THE UTAH SUPREME COURT HAD DECIDED FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991), & NOT FROM THE ACTUAL DATE OF THE PAROLE GRANT HEARING.

THIS CONCEPT IS KNOWN AS THE "DISCOVERY RULE" & WAS RECENTLY ADDRESSED & ACKNOWLEDGED IN THE CASE OF MC HENRY V. UTAH VALLEY HOSPITAL, 724 F. Supp. 835 (DIST. OF UTAH 1989) & IN THE CASE OF BECTON DICKINSON & COMPANY V. REESE, 668 P.2d 1254 (UTAH 1983).

"ALTHOUGH MERE IGNORANCE OF THE STATUTE OF LIMITATIONS IS INSUFFICIENT TO PREVENT THE RUNNING OF THE STATUTE, CERTAIN EXCEPTIONAL CIRCUMSTANCES "JUSTIFY APPLICATION OF THE DISCOVERY RULE, BECAUSE PLAINTIFFS HAD NO ALTERNATIVE OTHER THAN TO BRING THEIR ACTION AFTER THE STATUTORY LIMITATION PERIOD HAD EXPIRED." MC HENRY, 724 F. Supp. AT 838.

MANY COURTS HAVE RECOGNIZED SITUATIONS WHERE THEY APPLY THE DISCOVERY RULE EVEN THOUGH IT IS BEYOND THE STATUTE OF LIMITATIONS. SEE MAUGHN V. S.O.W. SERVICING, 758 F.2d 1381 (10TH CIR. 1985) (RADIATION VICTIMS WHOSE SYMPTOMS BECAME KNOWN YEARS LATER); ALSO MYERS V. McDONALD, 635 P.2d 84 (UTAH 1981); & CHRISTENSEN V. REESE, 436 P.2d 435 (UTAH 1968).

FURTHERMORE, IT SHOULD BE ARGUABLE WHETHER PETITIONER, IN FACT HAD "ADEQUATE, EFFECTIVE & MEANINGFUL" ACCESS TO THE COURTS, SINCE THERE WAS LITIGATION, AT THE TIME WHEN PETITIONER FOUND A VIOLATION HAD DEFINITELY OCCURRED, IN WHICH THE KEY ISSUE WAS WHETHER OR NOT THE PRISON'S CONTRACT ATTORNEYS PROVIDE "ADEQUATE, EFFECTIVE & MEANINGFUL" ACCESS TO THE COURTS FOR PRISONERS OF THE UTAH STATE PRISON. SEE CARDER, ET AL., V. DELAND, ET AL., 90-CV-842 G, IN THE U.S. DIST. COURT OF UTAH, CENTRAL DIVISION.

* * *

2. THERE IS A CONSTITUTIONAL RIGHT TO APPOINTED COUNSEL AT ALL PAROLE GRANT, RESCISSION & REVOCATION HEARINGS WHERE THE PAROLEE OR PAROLEE-TO-BE IS INDIGENT.

RESPONDENT CLAIMS THAT "ABBOTT ALSO ASSERTS A VIOLATION OF HIS RIGHTS BECAUSE NO ATTORNEY WAS APPOINTED AT STATE EXPENSE TO ASSIST HIM AT THE PAROLE RESCISSION HEARINGS," HOWEVER, NOWHERE IN PETITIONER'S PLEADINGS CAN THIS CLAIM BE FOUND. IN FACT, IN PETITIONER'S "RESPONSE TO DEFENDANTS' MOTION TO DISMISS", FILED IN THIS MATTER ON APRIL 06, 1992, PETITIONER EXPRESSLY STATED,

"BECAUSE COUNSEL IS REQUIRED AT THE TIME OF SENTENCING IN UTAH & GUARANTEED BY BOTH THE UNITED STATES & UTAH CONSTITUTIONS, COUNSEL IS ALSO REQUIRED AT HEARINGS BEFORE THE BOARD OF PARDONS, "WHICH PERFORMS A FUNCTION ANALOGOUS TO THAT OF THE TRIAL JUDGE IN JURISDICTIONS THAT HAVE A DETERMINATE SENTENCING SCHEME," AS DETERMINED BY FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991). THUS, IT IS THE RESPONSIBILITY OF THE BOARD OF PARDONS TO INFORM PRISONERS THAT THEY MAY EXERCISE THIS RIGHT & THEY CAN BE APPOINTED COUNSEL IF THE PRISONER CAN NOT AFFORD ONE, WHICH THE BOARD OF PARDONS FAILED TO DO IN THE HEARINGS INVOLVING THIS PLAINTIFF.

THIS IS AN INTERPRETATION OF JUST WHAT FOOTE V. UTAH BOARD OF PARDONS MEANS WHEN IT HOLDS, IN PART, THAT,

"THERE IS NO QUESTION THAT DUE PROCESS PROTECTIONS APPLY AT THE TIME OF SENTENCING BY THE TRIAL JUDGE. THE UTAH CONSTITUTION CERTAINLY REQUIRES THAT EQUIVALENT DUE PROCESS PROTECTION BE AFFORDED WHEN THE BOARD OF PARDONS DETERMINES THE ACTUAL NUMBER OF YEARS A DEFENDANT IS TO SERVE." FOOTE V. UTAH Bd. OF PARDONS, 808 P.2d 734, at 735 (UTAH 1991). (EMPHASIS ADDED)

WHETHER A PRISONER APPEARS BEFORE THE BOARD OF PARDONS FOR THE PURPOSE OF AN EVIDENTIARY HEARING, PAROLE GRANT, PAROLE RESCISSION OR PAROLE REVOCATION HEARING, THERE ARE ALWAYS TWO MAJOR ISSUES TO BE DISCUSSED, AS WELL AS OTHER ISSUES. THOSE TWO MAJOR ISSUES ARE; 1) IS THE PRISONER DUE, OR WARRANTING BEHAVIOR-WISE, FOR A PAROLE DATE?; & 2) IF NOT, HOW LONG IS AN APPROPRIATE SPAN OF TIME FOR THE PRISONER TO BE INCARCERATED WHILE THAT PRISONER EARNS THE RIGHT TO A PAROLE DATE?

IN SO ADDRESSING THESE ISSUES, THE BOARD OF PARDONS IS DETERMINING "THE ACTUAL NUMBER OF YEARS" A PRISONER MUST SERVE & THEREFORE, "EQUIVALENT DUE PROCESS PROTECTION" MUST BE AFFORDED DURING THESE HEARINGS, AS PROVIDED BY FOOTE V. UTAH Bd. OF PARDONS, 808 P.2d 734 (UTAH 1991).

IT IS OBVIOUS THAT THOSE RIGHTS SHOULD INCLUDE WRITTEN NOTICE OF ANY & ALL CLAIMED VIOLATIONS, DISCLOSURE EVIDENCE AGAINST THE PRISONER, THE OPPORTUNITY TO BE HEARD IN PERSON & TO PRESENT WITNESSES & DOCUMENTARY EVIDENCE, THE RIGHT TO CONFRONT & CROSS-EXAMINE ADVERSE WITNESSES (UNLESS GOOD CAUSE IS FOUND FOR NOT ALLOWING CONFRONTATION), THE RIGHT TO AN IMPARTIAL HEARING, A WRITTEN STATEMENT BY THE FACT-FINDERS AS TO THE EVIDENCE RELIED UPON & REASONS FOR THE DECISIONS THAT ARE MADE & THE RIGHT TO COUNSEL. TO REACH THIS INTERPRETATION REQUIRES ONE TO THOROUGHLY EXAMINE THE DIFFERENCE BETWEEN WHAT IS TERMED A "PRESUMPTIVE" PAROLE DATE & AN ACTUAL PAROLE RELEASE DATE.

TO MAKE THESE DISTINCTIONS PETITIONER WILL USE THE PAROLE DATES MENTIONED IN THESE PLEADINGS.

PETITIONER WILL ASSUME THAT THERE WAS A SIXTY (60) DAY REVIEW ORDERED PRIOR TO PETITIONER'S MARCH 12, 1991, PAROLE RELEASE DATE. THAT BEING THE CASE, THE MARCH 12, 1991 PAROLE RELEASE DATE WOULD NOT HAVE BEEN TERMED "ACTUAL" BECAUSE IT WAS ORDERED TO BE REVIEWED, & MODIFIED PRIOR TO IT'S IMPLEMENTATION. THEREFORE, IT WAS ONLY A "PRESUMPTIVE" DATE.

HOWEVER, AS EXHIBITS EIGHT (8) "D" & NINE (9) "D" SHOW, BOTH THE MAY 14, 1991 & OCTOBER 08, 1991 PAROLE RELEASE DATES WERE "ACTUAL" RELEASE DATES THAT HAD ALREADY BEEN GIVEN WITH NO REVIEW OR MODIFICATION ORDERS ATTACHED & IN ORDER FOR THE BOARD OF PARDONS TO CONSIDER ANY RESCISSIONS OF THOSE "ACTUAL" PAROLE RELEASE DATES, PETITIONER HAD TO BE FOUND GUILTY OF SPECIFIC WRONGDOINGS OR CONFRONTED WITH SPECIFIC ADVERSE INFORMATION.

AT LEAST ONE COURT HAS ADDRESSED & ACKNOWLEDGED THIS ISSUE OF DISTINCTION & HAS ACCORDINGLY ORDERED FOR REPRESENTATION OF COUNSEL AT PAROLE "RESCISSION" HEARINGS. GREEN V. McCALL, 822 F.2d 284 (2ND CIR. 1987).

THE RESPONDENT HAS STATED "THERE IS NO CONSTITUTIONAL RIGHT TO APPOINTED COUNSEL AT A PAROLE RESCISSION HEARING." (EMPHASIS ADDED).

RESPONDENT'S FIRST CLAIM WAS THERE IS NO RIGHT TO COUNSEL AT ALL & NOW THE RESPONDENT ONLY CLAIMS THERE IS NO RIGHT TO "APPOINTED COUNSEL." HOWEVER, THIS ISSUE HAS ALREADY BEEN DISCUSSED BEFORE & IT WAS HELD THAT IT IS NOT RIGHT TO DISCRIMINATE AGAINST A PERSON BECAUSE THE PERSON IS POOR. SEE DOUGLAS V. CALIFORNIA, 372 U.S. 353 (1963) (ALTHOUGH APPELLATE REVIEW NOT REQUIRED BY CONSTITUTION, STATE CANNOT DISCRIMINATE AGAINST INDIGENT DEFENDANT WHEN LAW PROVIDES FOR FIRST APPEAL AS OF RIGHT; "THERE CAN BE NO EQUAL JUSTICE WHERE THE KIND OF APPEAL A MAN ENJOYS DEPENDS ON THE AMOUNT OF MONEY HE HAS.") QUOTING GRIFFIN V. ILLINOIS, 351 U.S. 12 (1956); SEE ALSO PENSON V. OHIO, 488 U.S. 75 (1988); GIDEON V. WAINWRIGHT, 372 U.S. 335 (1963); & JOHNSON V. ZEBBST, 304 U.S. 458 (1938). ACCORDINGLY, COUNSEL IS REQUIRED & IS THEREFORE REQUIRED TO BE APPOINTED FOR INDIGENT PRISONERS.

*

*

*

CONCLUSION

THE PETITION & SUCCEEDING PLEADINGS THEREAFTER, ALL DESCRIBE CONSTITUTIONAL VIOLATIONS. PETITIONER, WHILE CLEARLY UNDER STRESS & AFTER BECOMING FRUSTRATED WITH THE PREVIOUS RESCISSIONS OF HIS PAROLE DATES ASKED FOR A TERMINATION OR EXPIRATION DATE. SINCE PETITIONER WAS QUITE FRUSTRATED, IT IS OBVIOUS THE PETITIONER WAS NOT ABLE TO PRESENT HIS CASE TO THE BOARD OF PARDONS IN AN ORDERLY MANNER, NOR WAS PETITIONER ABLE TO DELINEATE THE ISSUES BEFORE THE BOARD OF PARDONS. THESE ISSUES COULD HAVE BEEN PROPERLY PRESENTED BY COUNSEL, WHETHER SELF-RETAINED OR APPOINTED, SINCE COUNSEL WOULD HAVE BEEN ABLE TO REFRAIN FROM BECOMING NOTICABLY FRUSTRATED. SIMPLY BECAUSE COUNSEL WOULD HAVE ONLY A PROFESSIONAL ATTACHMENT TO THE RESCISSION HEARINGS, WHEREAS THE PETITIONER, HAS ALSO EMOTIONAL ATTACHMENTS.

THE FACT THAT PAUL LARSEN HAD HIS MIND ALREADY SET TO GIVE PETITIONER A MINIMUM OF FOUR MONTHS SHOWS THE ISSUE WAS NOT WHETHER THERE WAS CAUSE TO UPHOLD THE RESCISSION, BUT RATHER TO DETERMINE WHEN & IF THE PETITIONER WOULD BE GRANTED PAROLE. NOWHERE ON ANY OF THE DOCUMENTS SUBMITTED BY THE PETITIONER OR RESPONDENT ARE THE WORDS "NOTICE OF INTENT TO RESCIND PENDING PAROLE DATE" FOUND. ONLY THE FOLLOWING IS SEEN;

"THE ABOVE-ENTITLED MATTER, CAME ON FOR A HEARING BEFORE THE UTAH STATE BOARD OF PARDONS ON THE 0000 DAY OF 000000 1991, FOR CONSIDERATION 00000 AFTER THE STATEMENT OF 0000 AND THE FOLLOWING WITNESSES 00000 AND GOOD CAUSE APPEAR-
ING, THE BOARD MADE THE FOLLOWING DECISION AND ORDER 0000
(EMPHASIS ADDED).

THERE ARE NO TWO WAYS OF INTERPRETING OR "CHARACTERIZING" THE MEANING OF THE ABOVE-MENTIONED STATEMENT, AS IT IMPLIES EXACTLY WHAT PETITIONER ASSERTS, NOT WHAT RESPONDENT ATTEMPTS TO PERSUADE THE COURT INTO BELIEVING.

CONCLUSION

NOWHERE WAS IT SAID, NOR CAN IT BE FOUND THAT IT WAS SAID "MR. HIBBOTT, CAN YOU GIVE ANY REASON WHY YOUR PAROLE DATE SHOULD NOT BE RESCINDED AT THIS TIME?" CONTRARY TO THE RESPONDENT'S CLAIMS, THERE WERE NO RESCISSION HEARINGS, ONLY PAROLE GRANT HEARINGS. THERE WAS NOT EVEN NOTICE OF INTENT, ONLY NOTICE THAT RESCISSION HAD OCCURRED.

THE RESPONDENT STATES THAT "THE REMEDY FOR A DUE PROCESS VIOLATION WOULD BE TO GIVE ABBOTT A NEW HEARING BEFORE THE BOARD OF PARDONS. BUT ABBOTT HAD SUCH A HEARING ON AUGUST 22, 1991." IS THIS TO SAY THE BOARD OF PARDONS USED A PROPOSED RESCISSION HEARING THAT WAS IN ALL ACTUALITY A REPLACEMENT HEARING FOR VIOLATING PETITIONER'S DUE PROCESS RIGHTS?

PETITIONER, IN FACT, MADE OBJECTIONS KNOWN TO BOARD CHAIRMAN H. L. (PETE) HAUN, WHOM SUBSEQUENTLY DENIED PETITIONER'S REQUEST FOR A CHANGE & OVERRAULED PETITIONER'S OBJECTION.

THERE IS ALSO STILL THE ISSUE OF THE FALSE INFORMATION OF WHICH MAY HAVE PLAYED A PART IN THE BOARD'S DECISIONS.

THE NATURE OF THE DECISION TO BE MADE AT A PAROLE RESCISSION HEARING IS SIMILAR TO A PAROLE REVOCATION DECISION, BECAUSE THE CONDITIONS IMPEDING A PAROLEE-TO-BE'S ACHIEVEMENT OF ACTUAL LIBERTY ARE SPECIFIC & FACT-BOUND. THUS, PETITIONER ASKS, IS FALSE-INFORMATION BOUND BY FACTS?

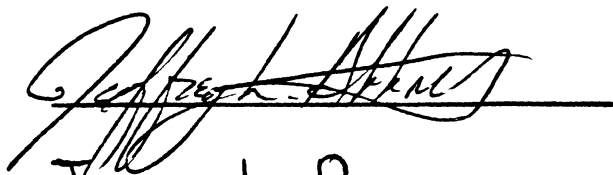
FINALLY, ALTHOUGH FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d 734 (UTAH 1991) DID NOT OUTLINE THE DUE PROCESS THAT MUST BE AFFORDED IT DID HOLD THAT THE BOARD OF PARDONS "PERFORMS A FUNCTION ANALOGOUS TO THAT OF A TRIAL JUDGE" & THAT "EQUIVALENT DUE PROCESS" IS REQUIRED BY THE UTAH CONSTITUTION. FOOTE V. UTAH BOARD OF PARDONS, 808 P.2d AT 735.

THERE IS NO QUESTION AS TO WHAT ONE'S RIGHTS ARE BEFORE A TRIAL JUDGE, SO THERE SHOULD BE NO QUESTION AS TO WHAT DUE PROCESS RIGHTS ONE HAS WHEN APPEARING BEFORE THE BOARD OF PARDONS. THUS, ANY DECISIONS MADE IN THIS MATTER SHOULD NOT BE OF DISMISSAL OF PETITIONER'S CLAIMS, BECAUSE THEY ARE NOT 'MOOT' BUT QUITE COLORABLE.

FOR THESE REASONS, PETITIONER OPPOSES SUMMARY JUDGEMENT & REQUESTS THIS HONORABLE COURT TO ALLOW THIS ACTION TO CONTINUE IT'S PROPER COURSE, AFTER WHICH THE MATTERS & THE RECORD CAN BE TAKEN UNDER ADVISEMENT & HABEAS RELIEF POSSIBLY GRANTED FOR PETITIONER.

DATED THIS 01ST DAY OF ^{JUNE}~~MAY~~, 1992.

RESPECTFULLY SUBMITTED,



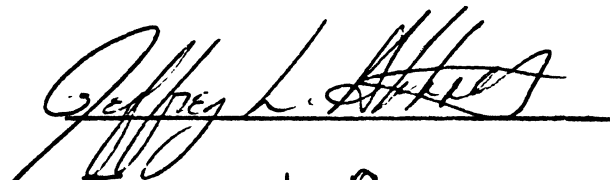
JEFFREY L. ABBOTT
PETITIONER & COUNSEL PRO-SE

* CERTIFICATE OF MAILING *

I, HEREBY CERTIFY THAT I CAUSED TO BE MAILED A TRUE & CORRECT COPY, POSTAGE-PRE-PAID, OF THE PETITIONER'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT TO;

STEVEN MORRISSETT
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR RESPONDENT
SUITE 204
6100 SOUTH 300 EAST
SALT LAKE CITY, UTAH 84107

DATED THIS 01ST DAY OF ^{JUNE}~~MAY~~, 1992.



JEFFREY L. ABBOTT
PETITIONER & COUNSEL PRO-SE

JEFFREY LYNN ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAAPER, UTAH 84020-0250

FILED DISTRICT COURT
Third Judicial District

JUN 5 1992

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

JEFFREY LYNN ABBOTT,
PETITIONER,

MOTION FOR EXTENSION OF TIME

-V-

STATE OF UTAH,
RESPONDENT.

CASE No: 920900544 HC
JUDGE: HONORABLE DAVID S. YOUNG

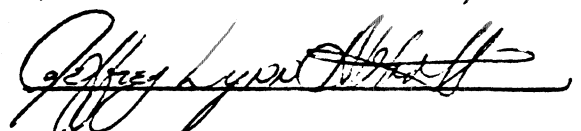
COMES NOW, THE PETITIONER, JEFFREY LYNN ABBOTT, PROCEEDING PRO-SE, ASKS THIS COURT TO GRANT AN EXTENSION OF TIME FOR PETITIONER TO FILE A REPLY TO THE RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT & IN SUPPORT OF SAID REQUESTS STATES AS FOLLOWS:

- 1) PETITIONER'S REPLY IS ALREADY COMPLETED, BUT WAS GIVEN TO PRISON ATTORNEYS TO BE COPIED.
- 2) THE ORIGINAL RESPONSE & DUPLICATES HAVE NOT BEEN RETURNED.
- 3) PETITIONER CAN HAVE RESPONSE FILED BY JUNE 09, 1992, & WILL.
- 4) PETITIONER DID NOT PURPOSELY CAUSE THIS UNWANTED DELAY.
- 5) PETITIONER STATES UNDER OATH & PENALTY OF PERJURY THAT STATEMENTS ONE (1) THRU FOUR (4) ARE TRUE.

WHEREFORE, PETITIONER PRAYS COURT & RESPONDENT WILL BE LENIENT & ALLOW PETITIONER UNTIL JUNE 09, 1992 TO FILE REPLY.

DATED THIS 28TH DAY OF May, 1992.

RESPECTFULLY SUBMITTED,



JEFFREY LYNN ABBOTT
PETITIONER & COUNSEL PRO-SE

000164

- Certificate of Mailing -

I hereby certify that I caused to be mailed a true & correct copy of Petitioner's Motion for Extension of Time, postage pre-paid to;

Steven Morrisett, Esq.
Assistant Attorney General
Ste. 204
6100 South 300 East
Salt Lake City, Utah

84107

Dated this 28th day of May, 1992.

Jeffrey Lynn Abbott
JEFFREY LYNN ABBOTT

JEFFREY L. ABBOTT
COUNSEL PRO-SE
POST OFFICE BOX 250
DRAPER, UTAH
84020-0250

THIRD JUDICIAL DISTRICT COURT
Third Judicial District

JUN 15 1992

SALT LAKE COUNTY

By _____ Deputy Clerk

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

JEFFREY L. ABBOTT,
PETITIONER,

-V-

STATE OF UTAH,
RESPONDENT.

NOTICE TO SUBMIT

CASE: 920900544 HC
JUDGE: HONORABLE DAVID S. YOUNG

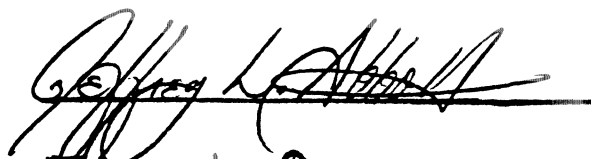
COMES NOW, THE PETITIONER, JEFFREY L. ABBOTT, PROCEEDING PRO-SE, HEREBY FILES THIS NOTICE, REQUESTING THE COURT CLERK, OR DESIGNEE TO SUBMIT THE FOLLOWING PLEADINGS TO THE HONORABLE DAVID S. YOUNG FOR THE PURPOSE OF OBTAINING A RULING. THE PLEADINGS ARE ALREADY FILED IN THE ABOVE-CAPTIONED MATTER & ARE IDENTIFIED AS FOLLOWS:

A) MOTION FOR ADJUSTMENT OF COURT DATE TO AVOID CONFLICTING WITH PETITIONER'S FEDERAL CASE.

B) MOTION FOR EXTENSION OF TIME TO FILE REPLY TO RESPONDENT'S MOTION FOR SUMMARY JUDGEMENT.

DATED THIS 10TH DAY OF JUNE, 1992.

RESPECTFULLY SUBMITTED,


JEFFREY L. ABBOTT
PETITIONER & COUNSEL PRO-SE

000166

Certificate of Mailing

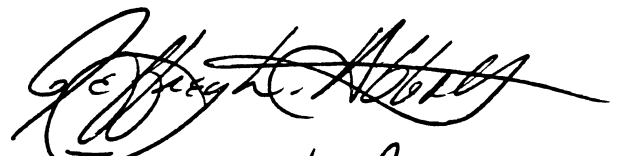
I, hereby certify that I caused to be mailed
a true & correct copy of the Petitioner's Notice
to Submit, postage pre-paid, to;

Steven Morrisett, Esq.

Associate Attorney General

Suite #204
6100 South 300 East
Salt Lake City, Utah
84107

Dated this 10th day of June, 1992.


JEFFREY L. ABBOTT

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

ABBOTT, JEFFREY LYNN	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 920900544 HC
	:	DATE 06/16/92
VS	:	HONORABLE DAVID S. YOUNG
	:	COURT REPORTER
STATE OF UTAH	:	COURT CLERK NP
DEFENDANT	:	

TYPE OF HEARING:
PRESENT:

P. ATTY. ABBOTT, JEFFREY PRO SE
D. ATTY. MORRISSETT, STEVEN

THE PETITIONER'S MOTION FOR AN EXTENSION OF TIME TO REPLY TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT IS MOOT AS THE PETITIONER STATED THAT HE COULD FILE BY JUNE 9, 1992 WHICH IS NOW PAST. THE MOTION FOR AN ADJUSTMENT OF TIME FOR THE COURT DATE AND AN EXTENSION IS DENIED. THE COURT WILL COOPERATE WITH THE FEDERAL COURT'S DATE AS SET AND WILL RECOGNIZE THAT THE PETITIONER MAY HAVE TO BE LATE FOR THE HEARING IN THIS COURT. HOWEVER, THE COURT IS OF THE OPINION THAT BOTH APPEARANCES MAY BE ACCOMODATED, THUS THE HEARING NOW SET FOR JUNE 22, 1992 SHALL REMAIN AS SCHEDULED. THE MOTION FOR ANOTHER DATE IS DENIED.

C.C. TO COUNSEL AND MR. ABBOTT, PRO SE

000168

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

ABBOTT, JEFFREY LYNN	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 920900544 HC
	:	DATE 06/22/92
VS	:	HONORABLE DAVID S. YOUNG
	:	COURT REPORTER EILEEN AMBROSE
STATE OF UTAH	:	COURT CLERK CGH
	:	
DEFENDANT	:	
USP	:	

TYPE OF HEARING: HABEAS CORPUS WRIT
PRESENT: PLAINTIFF DEFENDANT

P. ATTY. ABBOTT, JEFFREY PRO SE
D. ATTY. MORRISSETT, STEVEN

THIS CASE COMES NOW BEFORE THE COURT FOR A WRIT OF HABEAS
CORPUS HEARING, WITH APPEARANCES AS SHOWN ABOVE.

BASED ON DISCUSSION WITH COUNSEL AND MR. ABBOTT, THE COURT
GRANTS THE STATE'S MOTION FOR SUMMARY JUDGMENT. MR. MORRISSETT
IS REQUESTED TO PREPARE THE FINDINGS AND THE JUDGMENT.

ENTERED FOR RECORD
THIRD JUDICIAL DISTRICT

JUN 30 1992

By CLERK Deputy Clerk

R. PAUL VAN DAM (3312)
Attorney General
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondents
6100 South 300 East, Suite 204
Salt Lake City, UT 84107
Telephone: (801) 265-5638

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

JEFFREY LYNN ABBOTT,
Petitioner,

vs.

STATE OF UTAH

Respondent.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Case No. 920900544

Judge David S. Young

Having reviewed the petition for writ of habeas corpus and all testimony, evidence and documents presented by the parties and having considered the oral arguments, the court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The court finds no genuine issue as to the material facts presented in the testimony, evidence and supporting documents submitted in this case.

000170

2. The facts set forth in the Respondent's Memorandum in Support of Motion for Summary Judgment are undisputed and are incorporated herein.

3. The Board of Pardons ("the Board") held Petitioner's ("Abbott") original parole grant hearing on June 30, 1989. Abbott was given a March 12, 1991, parole date, conditioned upon his behavior in prison during the next sixty days.

4. Abbott committed numerous disciplinary violations in the next sixty days. The Board ordered a parole rescission hearing.

5. Abbott's first rescission hearing was on February 28, 1991. The Board, after notice and an opportunity for Abbott to be heard, extended Abbott's parole release date by two months. In the next sixty days, Abbott again received several disciplinary violations.

6. Abbott's second rescission hearing was on June 13, 1991. At this hearing, Abbott stated: "I'm going to end up getting out and just coming back . . . so just go ahead and expire me." In other words, he asked the Board to order him to serve the remainder of his sentence, then release him unconditionally. Abbott was given an October 8, 1991, parole date.

7. After receiving more disciplinary violations, Abbott appeared for his third rescission hearing on August 22, 1991. At this hearing, the Board rescinded Abbott's October parole date and set Abbott's sentence termination date for November, 1993.

8. Abbott filed the present action five months later, on January 30, 1992.

CONCLUSIONS OF LAW

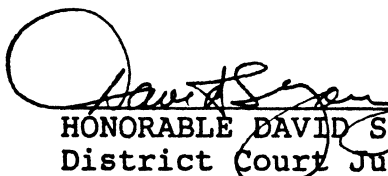
The court finds the following conclusions of law:

1. Abbott's action is barred by the statute of limitations, since Abbott did not bring this petition within the three month period required under Utah Code Ann. § 78-12-31.1.

2. Abbott had no constitutional right to appointed counsel at his parole rescission hearings.

3. Abbott waived his right to a different parole date when he told the Board of Pardons to "expire" him, that is, to order him to serve the rest of his term, then release him unconditionally.

4. As a matter of law, this petition is ordered dismissed for the reasons stated above.

 6/30/92
HONORABLE DAVID S. YOUNG
District Court Judge

CERTIFICATE OF MAILING

I certify that on the 29th day of June, 1992, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW to:

Jeffrey Lynn Abbott
Plaintiff
Utah State Prison
P.O. Box 250
Draper, Utah 84020

Marilee D. Betts

JUN 30 1992

SALT LAKE COUNTY

By CP
Deputy Clerk

R. PAUL VAN DAM (3312)
Attorney General
STEVEN MORRISSETT (6007)
Assistant Attorney General
Attorneys for Respondents
6100 South 300 East, Suite 204
Salt Lake City, UT 84107
Telephone: (801) 265-5638

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

JEFFREY LYNN ABBOTT,

Petitioner,

vs.

STATE OF UTAH

Respondent.

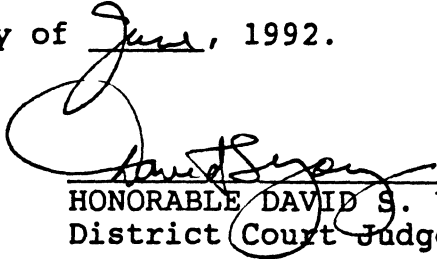
ORDER OF DISMISSAL

Case No. 920900544

Judge David S. Young

This matter came before the court on June 22, 1992, on Respondent's Motion for Summary Judgment. Based on the court's Findings of Fact and Conclusions of Law, respondent's Motion for Summary Judgment is granted and petitioner's action is dismissed with prejudice.

DATED this 30th day of June, 1992.


HONORABLE DAVID S. YOUNG
District Court Judge

000174

CERTIFICATE OF MAILING

I certify that on the 24th day of June, 1992, I caused to be mailed, postage prepaid, a true and correct copy of the foregoing ORDER OF DISMISSAL to:

Jeffrey Lynn Abbott
Plaintiff
Utah State Prison
P.O. Box 250
Draper, Utah 84020

Maile J. Peters

JEFFREY LYNN ABBOTT
PETITIONER & COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

FILED DISTRICT COURT
Third Judicial District

JUL 10 1992

By SALT LAKE COUNTY
[Signature] Deputy Clerk

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

JEFFREY LYNN ABBOTT,
PETITIONER,

-V-

STATE OF UTAH,
RESPONDENT.

NOTICE OF OBJECTIONS & REQUEST
FOR HEARING ON OBJECTIONS

CASE: 920900544 HC
JUDGE: HONORABLE DAVID S. YOUNG

COMES NOW, THE PETITIONER, JEFFREY LYNN ABBOTT, PROCEEDING PRO-SE,
& PURSUANT TO RULE 4-504 (2) OF THE UTAH CODE OF JUDICIAL ADMINISTRATION,
HEREBY FILES "NOTICE OF OBJECTIONS" TO THE COURT'S JUDGEMENT & TO
RESPONDENT'S PROPOSED "FINDINGS OF FACT & CONCLUSIONS OF LAW" & ORDER OF
DISMISSAL.

PETITIONER REQUESTS THAT A HEARING BE SET, SO AS TO ALLOW
PETITIONER TO PRESENT HIS OBJECTIONS ON THE RECORD.

DATED THIS 11th DAY OF July, 1992.

RESPECTFULLY SUBMITTED,

[Signature]

JEFFREY LYNN ABBOTT
PETITIONER & COUNSEL PRO-SE

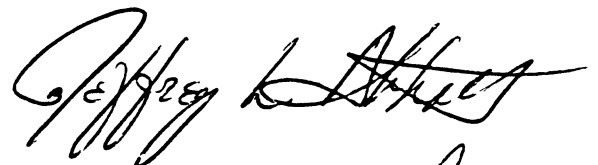
000176

CERTIFICATE OF MAILING

I, HEREBY CERTIFY THAT I CAUSED TO BE MAILED A
TRUE & CORRECT COPY OF THE PETITIONER'S "NOTICE OF
OBJECTIONS & REQUEST FOR HEARING ON OBJECTIONS,"
POSTAGE PRE-PAID, TO:

OFFICE OF THE ATTORNEY GENERAL
900 STEVEN MORRISSETT, ASST. ATTY. GEN.
SUITE #204
6100 SOUTH 300 EAST
SALT LAKE CITY, UTAH
84107

DATED THIS 06TH DAY OF July, 1992.


JEFFREY LYNN ABBOTT

UNSEL PRO-SE
UTAH STATE PRISON
ST OFFICE BOX 250
RAPER, UTAH 84020-0250

Third Judicial District

JUL 27 1992

SALT LAKE COUNTY
By [Signature]
Deputy Clerk

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

JEFFREY L. ABBOTT,
APPELLANT/PETITIONER,

-V-

STATE OF UTAH,
APPELLEE/RESPONDENT.

NOTICE OF APPEAL

CASES ~~920900544~~ HC
JUDGES HONORABLE DAVID S. YOUNG

COMES NOW, THE PETITIONER, JEFFREY L. ABBOTT, PROCEEDING PRO-SE, THE APPELLANT, IN THE ABOVE-CAPTIONED MATTER, & PURSUANT TO RULES 4 & 5 OF THE UTAH RULES OF APPELLATE PROCEDURE, DOES HEREBY GIVE NOTICE OF APPEAL TO THE STATE OF UTAH COURT OF APPEALS FROM THE "FINDINGS OF FACT & CONCLUSIONS OF LAW" & THE "ORDER OF DISMISSAL" ENTERED INTO THE RECORD ON JUNE 30, 1992, BY THE HONORABLE JUDGE DAVID S. YOUNG. HIS APPEAL IS TAKEN FROM THE ENTIRE JUDGEMENT.

DATED THIS 22ND DAY OF July, 1992.

RESPECTFULLY SUBMITTED,

[Signature]

JEFFREY L. ABBOTT
APPELLANT/PETITIONER & COUNSEL PRO-SE

000178

* CERTIFICATE OF MAILING *

I hereby certify that, on this 22ND day of July, 1992, I caused to be mailed a true & correct copy of the foregoing Petitioner & Appellant's "Notice of Appeal", postage pre-paid to;

Steven Morreault
Assistant Attorney General
Suite 204
6100 South 300 East
Salt Lake City, Utah
84107

Dated this 22ND day of July, 1992.

Jeffrey L. Abbott
JEFFREY L. ABBOTT
APPELLANT & PETITIONER

JEFFREY L. ABBOTT
COUNSEL PRO SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

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

JEFFREY L. ABBOTT,
APPELLANT/PETITIONER,

-V-

STATE OF UTAH,
APPELLEE/RESPONDENT.

CERTIFICATE OF MAILING

CASE: 920900544 HC
JUDGES HONORABLE DAVID S. YOUNG

I, JEFFREY L. ABBOTT, HEREBY CERTIFY THAT ON THIS DAY, I CAUSED TO BE MAILED A TRUE & CORRECT COPY OF MY AFFIDAVIT OF IMPECUNIORITY, POSTAGE PRE-PAID, TO;

STEVEN H. MORRISSETT
ATTORNEY FOR APPELLEES
SUITE #204
6100 SOUTH 300 EAST
SALT LAKE CITY, UTAH
84107

DATED THIS 13th DAY OF August, 1992.

Jeffrey L. Abbott
JEFFREY L. ABBOTT

000180

JEFFREY L. ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH
84020-0250

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

JEFFREY L. ABBOTT,
APPELLANT/PETITIONER,

- V -

STATE OF UTAH,
APPELLEE/RESPONDENT.

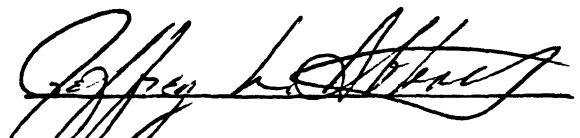
AFFIDAVIT OF IMPECUNIORITY

CASE: 920900544 HC
JUDGE: HONORABLE DAVID S. YOUNG

I, JEFFREY L. ABBOTT, DO SOLEMNLY AFFIRM THAT OWING TO MY POVERTY, I AM UNABLE TO BEAR THE EXPENSES OF THE APPEAL WHICH I AM ABOUT TO TAKE & THAT I BELIEVE I AM ENTITLED TO THE RELIEF SOUGHT BY SUCH AN APPEAL.

DATED THIS 3rd DAY OF August 1992.

RESPECTFULLY SUBMITTED,



JEFFREY L. ABBOTT
APPELLANT/PETITIONER

000181

Utah State Prison #19288
Utah Housing Facility #2208

Jeffrey L. Abbott
Counsel Pro-Se
Utah State Prison
Post Office Box 250
Draper, Utah

Monday August 23, 1992

84820-0250

Attn:

Official Shorthand Reporter
Third District Courthouse

Re: Request for Transcript
Abbott v. State of Utah
#920900544 HC

Dear Reporter,

You are hereby requested to prepare, certify, & transmit to the Clerk of the Trial Court, a transcript of the entire proceedings in the above case held before the Honorable Judge David S. Young on May 07, 1992.

You are further requested to acknowledge receipt of this request & to notify the Clerk of the Court of Appeals of the date on which you expect to file the transcript & of the date on which the transcript is filed.

This letter serves as certification to the Court that I have made satisfactory arrangements with you.

CC: CLERK OF THE TRIAL COURT
CLERK OF THE COURT OF APPEALS
ATTORNEY FOR THE APPELLEE

Sincerely Yours,
Jeffrey L. Abbott
JEFFREY L. ABBOTT
Appellant & Counsel Pro-Se

Utah State Prison #19288
Utah Housing Facility #2208

Jeffrey L. Abbott
Counsel Pro-Se BY Agul ERK
Utah State Prison
Post Office Box 250
Drapers, Utah
84020-0250

Monday August 13, 1992

Attn:

Official Shorthand Reporter
Third District Courthouse

Re: Request for Transcript
Abbott v. State of Utah
#920900544 HC
Judge Young

Dear Reporter,

You are hereby requested to prepare, certify, & transmit to the Clerk of the Trial Court, a transcript of the entire proceedings in the above case held before the Honorable Judge David S. Young on May 07, 1992.

You are further requested to acknowledge receipt of this request & to notify the Clerk of the Court of Appeals of the date on which you expect to file the transcript & of the date on which the transcript is filed.

This letter serves as certification to the Court that I have made satisfactory arrangements with you.

CC: CLERK OF THE TRIAL COURT
CLERK OF THE COURT OF APPEALS
ATTORNEY FOR THE APPELLEE

Sincerely yours,
Jeffrey L. Abbott
JEFFREY L. ABBOTT
Appellant & Counsel Pro-Se

Russell W. Bench
Presiding Judge

Judith M. Billings
Associate Presiding Judge

Regnal W. Garff
Judge

Pamela T. Greenwood
Judge

Norman H. Jackson
Judge

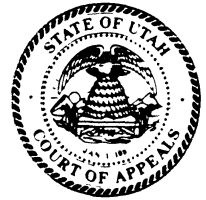
Gregory K. Orme
Judge

Leonard H. Russon
Judge

Utah Court of Appeals

400 Midtown Plaza
230 South 500 East
Salt Lake City, Utah 84102
801-533-6800

August 5, 1992



Mary T. Noonan
Clerk of the Court

FILED DISTRICT COURT
Third Judicial District

AUG 17 1992

SALT LAKE COUNTY

By

Shirley M. [Signature]
Deputy Clerk

Jeffrey L. Abbott
Utah State Prison
P.O. Box 250
Draper, UT 84020

In Re:

Jeffrey L. Abbott,
Petitioner and Appellant,
v.
State of Utah,
Respondent and Appellee.

920495-CA

Case No. 920495-CA

Dear Mr. Abbott:

Please be advised that the notice of appeal in this case has been filed with the Court of Appeals on August 4, 1992. The case number is 920495-CA and should be indicated on any future filings.

It appears that you will not have the assistance of an attorney in preparing papers for filing in this Court. This office is prohibited from writing your papers for you or doing your copywork. Please do not ask us to do so. If you will follow the Utah Rules of Appellate Procedure, you should be able to present your case with few problems.

Enclosed are important time limitations for your appeal. Failure to file designated papers within the time limitations may result in dismissal of your appeal.

Within ten days of the filing of the Notice of Appeal, Rule 11(e)(1) requires the appellant request from the reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary. The request must be in writing and directed to the court reporter by name. You must make satisfactory arrangements for payment, and file a certificate to that effect with the clerk of the court from which the appeal is taken and a copy with the Clerk of the Court of Appeals. Please be aware that a "no name" request for transcript may sit indefinitely without being delivered to the reporter. If no such parts of the proceedings are to be requested, within the same period the appellant must file a certificate to that effect with the clerk of the court from which the appeal is taken and a copy with the Clerk of the Court of Appeals.

000184

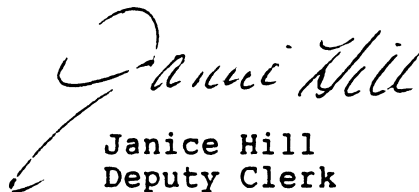
Case No. 920495-CA
August 5, 1992
Page -2-

Pursuant to Rule 21, copies of all papers filed with the Court of Appeals must be served on all other parties to the appeal. All papers filed must be accompanied by a certificate of service in the form of a statement of the date and manner of service, the names of the persons served, and the addresses at which they were served.

Please note that it is your responsibility to notify the Court of Appeals immediately in writing if you have a change of address during the appeal process.

The Docketing Statement, consisting of the original and four copies, is due within 21 days of the date the notice of appeal was filed in the trial court, which is August 17, 1992.

Sincerely,


Janice Hill
Deputy Clerk

cc: R. Paul Van Dam
✓ Third District, Salt Lake County #920900544 HC before
The Honorable David S. Young

000185

JEFFREY L. ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE BOX 250
DRAPER, UTAH 84020-0250

FILED DISTRICT COURT
Third Judicial District

AUG 18 1992

SALT LAKE COUNTY

Deputy Clerk

IN THE STATE OF UTAH COURT OF APPEALS

JEFFREY L. ABBOTT,
PETITIONER & APPELLANT,

-V-

STATE OF UTAH,
RESPONDENT & APPELLEE.

MOTION FOR EXTENSION OF
TIME TO FILE REQUEST FOR
TRANSCRIPT & DOCKETING
STATEMENT

544
CASE No: 920495-CA

COMES NOW, THE PETITIONER & APPELLANT, JEFFREY L. ABBOTT, PROCEEDING PRO-SE, & PURSUANT TO RULE 22 (B) OF THE UTAH RULES OF APPELLATE PROCEDURE, HEREBY MOVES THIS COURT TO GRANT AN EXTENSION FOR THE PETITIONER & APPELLANT TO FILE A REQUEST FOR TRANSCRIPT & DOCKETING STATEMENT WITH THE COURT & APPELLEE & IN SUPPORT OF SAID REQUEST, STATES AS FOLLOWS;

1) PETITIONER & APPELLANT NEEDS TO OBTAIN THE NAME OF THE COURT REPORTER TO SUBMIT THE REQUEST FOR TRANSCRIPT TO & MAKE SOME ARRANGEMENTS FOR PAYMENT SINCE PETITIONER & APPELLANT IS INDIGENT.

2) PETITIONER & APPELLANT FILED A REQUEST FOR TRANSCRIPT ALREADY, BUT DID NOT KNOW & STILL DOES NOT KNOW THE COURT REPORTER'S NAME.

3) PETITIONER & APPELLANT CAN OBTAIN THE COURT REPORTER'S NAME & HAVE A REQUEST FOR TRANSCRIPT FILED ON OR BEFORE AUGUST 31, 1992.

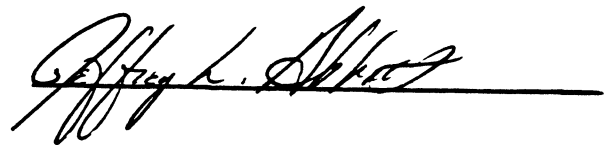
4) PETITIONER & APPELLANT IS IN THE PROCESS OF PREPARING A DOCKETING STATEMENT WHICH WILL TAKE LONGER THAN EXPECTED, BUT CAN BE FILED ON OR BEFORE AUGUST 31, 1992.

5) PETITIONER & APPELLANT IS ALSO WORKING ON SEVERAL FEDERAL CASES, & AN EXTENSION WOULD RELIEVE SOME OF THE BURDEN & ALLOW TIME FOR MORE RESEARCH TO OBTAIN BE DONE ON THIS APPEAL.

6) PETITIONER & APPELLANT HAS NO ACCESS TO ANY LAW LIBRARY OR RESEARCH MATERIALS, SO HE HAS TO DEPEND ON INFORMATION & RESEARCH MATERIALS DONATED BY JAILHOUSE LAWYERS TO PRESENT HIS CASE.

WHEREFORE, PETITIONER & APPELLANT PRAYS THIS COURT WILL GRANT THIS MOTION, & ALLOW AN EXTENSION TO AUGUST 31, 1992, FOR WHICH PETITIONER & APPELLANT CAN FILE A REQUEST FOR TRANSCRIPT, & A DOCKETING STATEMENT.

RESPECTFULLY SUBMITTED,



JEFFREY L. ABBOTT
PETITIONER & APPELLANT
COUNSEL PRO-SE

DATED THIS 13th DAY OF August, 1992.

JEFFREY L. ABBOTT
COUNSEL PRO-SE
UTAH STATE PRISON
POST OFFICE Box 250
DRAPER, UTAH 84020-0250

FILED DISTRICT COURT
Third Judicial District

AUG 18 1992

By [Signature] SALT LAKE COUNTY
Deputy Clerk

IN THE COURT OF APPEALS FOR THE STATE OF UTAH

JEFFREY L. ABBOTT,
PETITIONER & APPELLANT,

-V-

STATE OF UTAH,
RESPONDENT & APPELLEE.

CERTIFICATE OF MAILING

⁵⁴⁴
CASE No: 920495-CA

I HEREBY CERTIFY THAT I CAUSED TO BE MAILED, POSTAGE PREPAID, A TRUE & CORRECT COPY OF THE PETITIONER/APPELLANT'S "MOTION FOR EXTENSION OF TIME TO FILE REQUEST FOR TRANSCRIPT & DOCKETING STATEMENT," TO :

STEVEN MORRISSETT, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR RESPONDENT/APPELLEE
6100 SOUTH 300 EAST, SUITE #204
SALT LAKE CITY, UTAH 84107

JUDGE DAVID S. YOUNG
THIRD JUDICIAL DISTRICT COURT
240 EAST 400 SOUTH
SALT LAKE CITY, UTAH 84111

DATED THIS 13th DAY OF August, 1992.

[Signature]
JEFFREY L. ABBOTT
PETITIONER & APPELLANT

Utah State Prison #19288
Utah Housing Facility #2208

Jeffrey L. Abbott
Counsel Pro-Se
Utah State Prison
Post Office Box 250
Crapier, Utah

84020-0250

Thursday, August 13, 1992

FILED DISTRICT COURT
Third Judicial District

AUG 18 1992

By [Signature]
SAINT LAKE COUNTY
Deputy Clerk

Attn: Ms. Ellen Ambrose, C.S.R.
Official Shorthand Reporter
Third District Courthouse

Re: Request for Transcript
Robert V. State of Utah
#920900544 HC

Dear Reporter,

You are hereby requested to prepare, certify, & transmit to the Clerk of the Trial Court, a transcript of the entire proceedings in the above case held before the Honorable Judge David S. Young on May 07, 1992.

You are further requested to acknowledge receipt of this request & to notify the Clerk of the Court of Appeals of the date on which you expect to file the transcript & of the date on which the transcript is filed.

This letter serves as certification to the Court that I have made satisfactory arrangements with you.

CC: CLERK OF THE TRIAL COURT
CLERK OF THE COURT OF APPEALS
ATTORNEY AND THE ADDRESSEE

Sincerely Yours,
Jeffrey L. Abbott
JEFFREY L. ABBOTT
Counsel Pro-Se