

1992

# Inmates of the Utah State Prison v. The Utah Department of Corrections : Brief of Appellant

Utah Court of Appeals

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Frank D. Mylar; Assistant Attorney General.

Ameer L. Hassan; Pro Se.

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UTAH  
COURT  
OF APPEALS

50

.A10

DOCKET NO.

920097

IN THE UTAH COURT OF APPEALS

INMATES OF THE  
UTAH STATE PRISON,  
AT GUNNISON,  
Plaintiff - Appellant,  
v.  
THE UTAH DEPARTMENT  
OF CORRECTIONS,  
Defendant - Appellee.

BRIEF  
OF  
APPELLANT

No: 920097-CA

Ameer L. Hassan, pro se  
2778 Hargrove Rd #291  
Smyrna, Ga. 30080

Frank D. Mylar, Asst Atty. Gen.  
6100 South 300 East, Suite 204  
Salt Lake City, Utah 84107

**FILED**

MAR 26 1992

**COURT OF APPEALS**

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ARGUMENT

APPELLANT DELIVERED  
PLEADINGS AND PAPERS  
TO PRISON AUTHORITIES  
FOR MAILING TO  
SALT LAKE COUNTY  
SHERIFF . . . . . ( 8 )

- 1.
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THE DISTRICT COURT  
FAILED OR REFUSED  
TO EXERCISE ITS  
DISCRETIONARY  
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10.		
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13.		
14.	<u>U.S. V. REED</u> , 573 F.2d 1020 (8th Cir. 1978) - - -	(21)
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17.	Supp. 635 (N.D. Ill. 1971) - - - - -	(21)
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- 2.
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- 4.
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- 6.
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- 8.
9. RULE 6SA(a)(e)(1), URCP, . . . . . (19)
- 10.
- 11.

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- 13.
14. 28 U.S.C. § 1292, . . . . . (21)
- 15.
16. 42 U.S.C. § 1983, . . . . . (4)
- 17.
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1. STATEMENT OF JURISDICTION

2.  
3. The interlocutory order of the Sixth District  
4.  
5. Court in and for Sanpete County was entered on  
6.  
7. January 15, 1992; a copy of that order is attached  
8.  
9. hereto as Appendix I. A notice of Appeal  
10.  
11. and Designation of Record were filed with the  
12.  
13. clerk of the aforesaid Court on or about  
14.  
15. January 27, 1992; copies of those papers, along  
16.  
17. with the clerk's certificate, are attached  
18.  
19. hereto as Appendix II. Jurisdiction is  
20.  
21. conferred by Rule 5, State Rules of  
22.  
23. Appellate Procedure.  
24.  
25.  
26.

1. STATEMENT OF ISSUES  
2. PRESENTED ON APPEAL  
3.

4. This interlocutory appeal is taken on an  
5.  
6. abuse of discretion standard. The issues  
7.  
8. presented are rooted in the facts which  
9.  
10. support this appeal. The issues themselves  
11.  
12. are as follows :  
13.

14.  
15. 1. APPELLANT DELIVERED  
16. PLEADINGS AND PAPERS  
17. TO PRISON AUTHORITIES  
18. FOR MAILING TO  
19. SALT LAKE COUNTY  
20. SHERIFF.

21.  
22. 2. THE DISTRICT COURT  
23. FAILED OR REFUSED  
24. TO EXERCISE ITS  
25. DISCRETIONARY POWER(S).  
26.

STATEMENT OF THE CASE

Appellant filed a case at equity, authorized by 42 U.S.C. § 1983 to redress the deprivations, under color of state law, of rights secured and guaranteed by the constitution of the United States. Appellant sought a preliminary injunction in lieu of a TRO predicated upon irreparable injury, loss, or damage. The case was assigned to the Hon. David L. Mower, district court judge. Appellants' relief was denied. Judge Mower entered an Order on Motion for Temporary Restraining Order or Preliminary Injunction. An

1. appeal was taken. Judge Mower also  
2.  
3. entered an order as to form of pleadings  
4.  
5. which resulted in the deletion of the Latin  
6.  
7. phrase et. al. from the case file. The order  
8.  
9. was entered without appellants' Motion for  
10.  
11. Certification of Class being heard first.

12.  
13. An appeal was taken on this issue

14.  
15. Appellant has appealed both issues  
16.  
17. under the rubric "abuse of discretion."

18.  
19.  
20. A. FACTS

21. 1) Appellant filed complaint and  
22. other papers on or about December 24, 1991;

23.  
24. 2) The actual docketing was delayed  
25. by prison mail procedure(s) at the Central  
26. Utah Correctional Facility;

1                    3) The complaint, inclusive of the  
2 Notice of Preliminary Injunction, was not served  
3 until January 23, 1992; a copy of the  
4 Return of Service is attached hereto as  
5 Appendix III;  
6

7                    4) The order(s) of the lower court  
8 denying the injunction and regarding form of  
9 pleadings were entered on January 15, 1992.  
10 ( See Appendix I )  
11

12                    5) The Notice of Appeal was filed  
13 on or about January 27, 1992. ( See Appendix II )  
14

15                    6) The Court of Appeals did not  
16 procure jurisdiction over this appeal until  
17 approximately February 18, 1992;  
18

19                    7) The adverse party did not file  
20 his Motion to Dismiss until February 11, 1992;  
21

22                    8) The Court of Appeals took  
23 jurisdiction over district court case number  
24 920600003 before appellants' reply and  
25 opposition to appellees Motion to Dismiss  
26 was due;

1. 9) The district court entered a  
2. premature order denying preliminary injunction;  
3.

4. 10) The district court entered  
5. an order regarding form of pleadings that  
6. had the practical effect of denying certification  
7. of class without having first heard the  
8. motion thereon.  
9.  
10.  
11.

### 12. SUMMARY OF ARGUMENT

13.

14. Briefly, the lower court abused its  
15. discretion when it entered a premature  
16. order denying preliminary relief sought  
17. on complaint to enjoin appellee from acts  
18. or omissions which subjected appellant to  
19. irreparable injury, loss, or damage. All  
20. appellant could do is deliver his pleadings  
21.  
22.  
23.  
24.  
25.  
26.

1. to prison authorities for mailing and await return of  
2.  
3. service. That court further abused its discretion  
4.  
5. when it failed or refused to hear appellant's  
6.  
7. Motion for Certification of Class and entered an  
8.  
9. Order Regarding Form of Pleadings having the  
10.  
11. practical effect of denying class certification.  
12.  
13.  
14.

15. ARGUMENT  
16.  
17.

18. APPELLANT DELIVERED PLEADINGS  
19. AND PAPERS TO PRISON AUTHORITIES  
20. FOR MAILING TO  
21. SALT LAKE COUNTY SHERIFF  
22.

23. On January 15, 1992 Judge David L. Mower  
24.  
25. entered an order denying a preliminary injunction  
26.

1. sought by appellant in a case at equity. That  
2.  
3. order reads in part(s) pertinent as follows:

4.  
5.  
6. A preliminary injunction can never  
7. be issued without notice to the  
8. adverse party. . . . . The court  
9. can find no notice to the adverse  
10. party in this action. True it is  
11. that some of plaintiffs' filings  
12. include the word "notice" in  
13. the title of the pleading, but the  
14. fact is that none shows the method  
15. or manner used to give notice.

16.  
17.  
18. Judge Mower was certainly able to  
19.  
20. ascertain that appellant was requesting the  
21.  
22. issuance of a TRO or preliminary  
23.  
24. injunction, this in spite of the fact that  
25.  
26. there was no specific pleading requesting



1. Such. In his own words Judge Mower says, and  
2.  
3. I quote: "the request appears to be implicit,"  
4.  
5. unquote. Appellant would here argue that a  
6.  
7. similar implication existed by virtue of the  
8.  
9. fact that appellant filed a Notice of Preliminary  
10.  
11. Injunction along with his complaint. ( See  
12.  
13. page two of the lower courts' order at  
14.  
15. Appendix I and the Return of Service at  
16.  
17. Appendix III ) This, in and of itself,  
18.  
19. should have "implied" to Judge Mower  
20.  
21. that the method or manner used to give  
22.  
23. notice of the injunction would be service  
24.  
25. via complaint pursuant to Rule 5 (a) and  
26.

1. Rule 58A(d), URC P. Appellant respectfully  
2.  
3. submits that he could not demonstrate the  
4.  
5. method or manner used to give service  
6.  
7. absent the Return of Service at Appendix III,  
8.  
9. which was not effected until January 23, 1992 -  
10.

11. Thus, the denial of the injunction was premature,  
12.  
13. and as a result, the district court abused  
14.  
15. its discretion.

16.  
17. Appellant maintains that all he could  
18.  
19. do is deliver his pleadings and other papers  
20.  
21. for service on the adverse party to prison  
22.  
23. authorities for mailing and await the  
24.  
25. return of service from the County Sheriff.  
26.

1. FALLEN V. UNITED STATES, 378 U.S. 139, 84 S.Ct. 1689,

2.  
3. 12 L.Ed.2d 760 (1964) (Notice of Appeal by a prisoner

4.  
5. in the form of a letter delivered well within the time

6  
7. fixed for appeal to prison authorities for mailing to

8.  
9. the clerk of the district court held timely filed

10  
11. notwithstanding that it was received by the

12.  
13. clerk after expiration of the time for appeal;

14.  
15. the appellant "did all he could" to affect

16.  
17. timely filing) cf., RICHEY V. WILKINS,

18.  
19. 335 F.2d 1 (2d Cir. 1964); HALFEN V. U.S.,

20.  
21. 324 F.2d 52 (10th Cir. 1963). Appellant in

22.  
23. the "instant" appeal maintains that he "did

24.  
25. all he could" to affect service of notice on adverse party.

26.

1. The premature order denying the injunction  
2  
3. and the incidents thereof are inextricably bound  
4.  
5. to the fact that appellant "did all he could."

6.  
7.  
8. THE DISTRICT COURT  
9. FAILED OR REFUSED  
10. TO EXERCISE ITS  
11. DISCRETIONARY  
12. POWERS)

13  
14. Appellant filed a case at equity  
15.  
16. in the Sixth District Court of Sanpete  
17.  
18. County. Appellant sought to file that  
19.  
20. case as a class action pursuant  
21.  
22. to the applicable provisions of  
23.  
24. Rule 23, URCF. In so doing, the  
25.  
26. appellant here on the "instant" appeal

1. designated both parties in the case caption "et. al."  
2.  
3. inasmuch as there are questions of law or fact  
4.  
5. common to the inmate class of persons; claims  
6.  
7. or defenses of the representative parties typical  
8.  
9. of the claims or defenses of the class; and the  
10.  
11. party opposing the class, i.e., inmates, had  
12.  
13. acted or refused to act on grounds generally  
14.  
15. applicable to the class. Another important  
16.  
17. factor was, as indicated by the affidavit  
18.  
19. supporting the Motion for Class Certification in  
20.  
21. the district court file bearing one hundred  
22.  
23. and five signatures, the class is so numerous  
24.  
25. that joinder of all members is, and remains,  
26.

1 impracticable. Additionally, since appellants'

2 claim did in part focus on administrative

3 rulemaking requirements, certification of

4 class was also predicated upon U.C.A.

5 63-46a-2 (13)(a)(iv) although not

6 explicitly stated on the motion.

7 Appellant respectfully submits that when

8 the Hon. David L. Mower entered his Order Regarding

9 Form of Pleadings, that order had the practical

10 effect of denying class certification without first

11 having heard the motion thereon. Appellants

12 argument on this point is two pronged: (1) The

13 district court failed or refused to exercise

1. its discretionary power(s), i.e., proper discretion,  
2.  
3. when it entered its order regarding form of  
4.  
5. pleadings without hearing Motion for Certification  
6.  
7. of Class ; (2) As a direct or proximate result  
8.  
9. of the aforesaid failure or refusal appellant  
10.  
11. was denied due process. In the aggregate,  
12.  
13. the district court abused its discretion.

14.  
15. Due process of law connotes the process  
16.  
17. used to give effect to the law. See, JENKINS  
18.  
19. V BALLANTYNE, 8 Utah 245, 30 P. 760, 16 L.R.A.  
20.  
21. 689 (1892). In motion practice, due process  
22.  
23. requires that notice be given to the persons  
24.  
25. whose rights are to be affected ; it hears to  
26.

1 determine good cause or the lack thereof ; it  
2  
3 proceeds upon inquiry ; and it renders its  
4  
5 order only after a hearing - Cf., RIGGINS

6  
7 V. DISTRICT COURT OF SALT LAKE COUNTY, 89

8  
9 Utah 183, 51 P.2d 645 (1935). The abuse  
10  
11 of discretion argued as to this point  
12  
13 constitutes arbitrary exercise of the power(s)  
14  
15 of the judicial branch of government, such  
16  
17 as to deny due process. See, JENKINS,  
18  
19 30 P. at 761 (due process intended to secure  
20  
21 the individual from the arbitrary exercise of  
22  
23 the powers of government). Cf. JOINT

24  
25 ANTI-FASCIST REFUGEE COMM. V. MCGRATH,  
26



1. 341 U.S. 123 (1951) ; WOLFF V. McDONNELL ,

2.  
3. 418 U.S. at 558 , 41 L.Ed. 2d at 952 (1974)

4.  
5. citing , DENT V. WEST VIRGINIA , 129 U.S. 114, 123 ,

6.  
7. 32 L.Ed. 623 , 9 S.Ct. 231 (1899) ( Touchstone

8.  
9. of due process is protection of the individual  
10. against arbitrary action of government ).

11.  
12. Appellant respectfully submits that for  
13.  
14. the reasons herein stated on this point of  
15.  
16. arguement, the lower courts' abuse of discretion  
17.  
18. denied due process.  
19.

20.  
21.  
22. CONCLUSION

23.  
24.  
25. Appellant was entitled to the preliminary  
26.

1. injunction by virtue of the language at  
2.  
3. Rule 65A(c)(2), URCP when he effected service  
4.  
5. upon the adverse party by and through the  
6.  
7. Salt Lake County Sheriff on January 23, 1992.

8.  
9. Moreover, appellants entitlement thereto was  
10.  
11. expressed by virtue of the language at

12.  
13. Rule 65A(c)(1), URCP, cf. SYSTEM CONCEPT

14.  
15. INC. V. DIXON, 669 P.2d 421, 428 (Utah 1983)

16.  
17. ("the likely or threatened occurrence of harm");

18.  
19. FLORIDA MEDICAL ASSN, INC. V. UNITED STATES

20.  
21. DEPARTMENT OF HEALTH, EDUCATION AND WELFARE,

22.  
23. 601 F.2d 199 (5th Cir. 1979) ( a preliminary

24.  
25. injunction may issue upon notice to adverse party).

26.

1. Appellant was deprived of that entitlement when  
2.  
3. the district court entered its premature order  
4.  
5. of January 15, 1992 denying the injunction -

6.  
7. "All appellant could do" was deliver pleadings  
8.  
9. and other papers to prison authorities for mailing and,  
10.  
11. await the return of service from the County  
12.  
13. Sheriff, without which appellant could not  
14.  
15. demonstrate to the court(s) that the adverse  
16.  
17. party had been served.

18.  
19. Appellant incorporates the second point of  
20.  
21. argument and its germane conclusions intrinsic  
22.  
23. thereto herem by reference.

24.  
25. The abuse of discretion standard is  
26.


1. applied, or applicable, to the decision making  
2.  
3. process. See, MORRISSEY V. BREWER, Supra,  
4.  
5. 408 U.S. 471, 92 S.Ct. 2593 ; 293 F.2d 317  
6.  
7. (8th Cir. 1961) ; CLEVELAND V. CICCONE, 517  
8.  
9. F.2d 1082 (8th Cir. 1975) ; CREECH V.  
10.  
11. UNITED STATES BOARD OF PAROLE, 538  
12.  
13. F.2d 205 (8th Cir. 1976) ; UNITED STATES V.  
14.  
15. REED, 573 F.2d 1020 (8th Cir. 1978) ; and  
16.  
17. UNITED STATES ex-rel. CARLOSCIA V. MEISNER,  
18.  
19. 331 F.Supp. 635 (N.D. Ill. 1971). Although  
20.  
21. this is not a matter of parole, the abuse  
22.  
23. of discretion standard is applicable to both  
24.  
25. the judiciary, see, 28 U.S.C. § 1292 and  
26.

1. to administrative actions as contemplated in  
2  
3 PEOPLE V HASBROUCK, 39 P. at 919 (1895) and  
4  
5 FOOTE V. BOARD OF PARDONS, 156 Ut. Adv Rep. 3 (1991),  
6.  
7. particularly with respect to those persons clothed  
8.  
9 with absolute immunity for the decisions that they  
10.  
11. make.

12.  
13. It is the patent conclusion of appellant  
14.  
15. that the law as applied to the facts warrants  
16.  
17. the order(s) of the lower court being vacated  
18  
19. and the case remanded thereto for further  
20  
21. proceedings, not exclusive of the Motion for  
22  
23 Class Certification. Moreover, the evidence  
24.  
25. attached hereto and submitted herewith as  
26.

1. Appendixes I through III supports the facts  
2.  
3. directly connected to the argument, thus entitling  
4.  
5. appellant to the appropriate relief as requested  
6.  
7. in the ninth (9th) paragraph of his docketing  
8.  
9. statement.  
10.

11. RESPECTFULLY SUBMITTED ON THIS 24 DAY OF MARCH, 1992.  
12.

13.  
14.   
15. AMET K. NASSARI, PRO SE  
16.  
17.  
18.  
19.  
20.  
21.  
22.  
23.  
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25.  
26.

# APPENDIX

## I

FILED  
DISTRICT COURT, STATE OF UTAH

12 PM 4 48

DISTRICT COURT, STATE OF UTAH

- o SEVIER COUNTY      R SANPETE COUNTY      R. Adams KANE COUNTY  
250 North Main      160 North Main      76 North Main  
Richfield, UT 84701      Manti, UT 84642      Kanab, UT 84744  
(801) 896-9256      (801) 835-2131      (801) 644-2458
- o GARFIELD COUNTY      o PIUTE COUNTY      o WAYNE COUNTY  
55 South Main      21 North Main      18 South Main  
Panguitch, UT 84759      Junction, UT 84740      Loa, UT 84747  
(801) 676-8826      (801) 577-2840      (801) 836-2731

Inmates of the Utah State Prison at  
Gunnison,

Plaintiffs,

ORDER ON MOTION FOR  
TEMPORARY RESTRAINING  
ORDER OR PRELIMINARY  
INJUNCTION and ORDER  
REGARDING FORM OF  
PLEADINGS

vs.

Case number 920600003

Utah Department of Corrections,

Defendant.

ORDER ON MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY  
INJUNCTION

Plaintiffs made an initial filing in this case which included eight separate  
pleadings:

1. Affidavit of Impecuniosity;
2. Summons;
3. Complaint;



4. Amended complaint;
5. Notice of Temporary Restraining Order or Alternative Preliminary Injunction;
6. Request for Discovery and Production of Documents;
7. Notice of Motion and Motion for Certification of Class; and
8. Plaintiffs' Brief in Support of Temporary Restraining Order or Alternative Preliminary Injunction.

While there is no specific pleading requesting the issuance of a temporary restraining order or a preliminary injunction, the request appears to be implicit in the pleadings which have been filed. A response to such a request is in order.

A preliminary injunction can never be issued without notice to the adverse party. Rule 65A (a)(1), Utah Rules of Civil Procedure, as amended effective September 1, 1991. The Court can find no notice to the adverse party in this action. True it is that some of plaintiffs' filings include the word "notice" in the title of the pleading, but the fact is that none shows the method or manner used to give notice.

Hence, to the extent plaintiffs have requested a preliminary injunction, the request is DENIED.

A temporary restraining order can be issued without notice to the adverse party under certain circumstances. However, one of the prerequisites to such an

ex-parte issuance is that

" ... applicant ... certifies to the court in writing as to the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required." Rule 65A (b)(1), Utah Rules of Civil Procedure, as amended effective September 1, 1991.

I have searched plaintiffs' pleadings for such a certification and have found none.

Hence, to the extent plaintiffs have requested a temporary restraining order, the request is DENIED.

ORDER REGARDING FORM OF PLEADINGS

The Clerk has filed this case using the Latin phrase "et al." at the end of the plaintiffs' and defendant's designations in the style of the case. However, neither the complaint nor the amended complaint name any parties other than those listed herein.

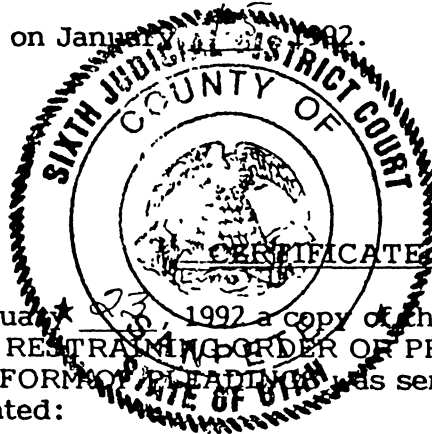
Hence, the Clerk should delete the "et al." designation from the case file, any case labels and from any other case name references maintained in the Clerk's

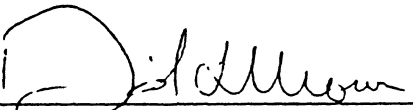
Inmates v. Utah Department of Corrections, 920600003  
ORDER ON MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY  
INJUNCTION and ORDER REGARDING FORM OF PLEADINGS, Page -4-

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office.

Signed on January 23, 1992:



  
David L. Mower, Judge

CERTIFICATE OF SERVICE

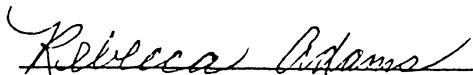
On January 23, 1992 a copy of the above ORDER ON MOTION FOR  
TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION and ORDER  
REGARDING FORM OF PLEADINGS was sent to each of the following by the  
method indicated:

Addressee

Method (M=mail, P=in  
person, F=fax)

Ameer L. Hassan  
P.O. Box 550  
Gunnison, UT 84634

[M]



APPENDIX

II

Ameer L. Hassan, pro se  
Central Utah Correctional Facility  
P.O. Box 5570  
Gunnison, Utah 84634

FILED  
SANPETE COUNTY, UTAH

JAN 30 AM 11 47

ARVID F. CHRISTIANSEN  
CLERK

BY R. Adams DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF SANPETE, STATE OF UTAH

INMATES OF THE  
UTAH STATE PRISON,  
AT GUNNISON,  
Plaintiff - Appellant,  
v.  
THE UTAH DEPARTMENT  
OF CORRECTIONS,  
Defendant - Appellee.

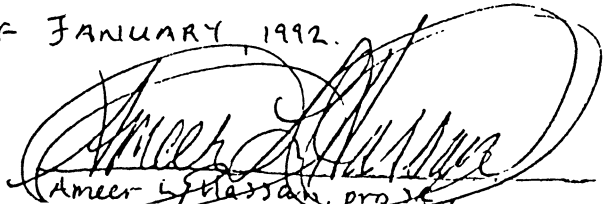
NOTICE  
OF  
APPEAL

Case No: 92660003

NOTICE IS HEREBY GIVEN that plaintiff  
shall hereby appeal to the Utah Court of Appeals  
from the order of January 15, 1992 entered in this  
action denying plaintiffs' request for preliminary  
injunction and TRO on the captioned - Courts'  
Order On Motion For Temporary Restraining Order-  
Or Preliminary Injunction and Order Regarding  
Form Of Pleadings.

Plaintiff takes appeal on abuse of discretion  
standard.

DATED ON THIS 27TH DAY OF JANUARY, 1992.

  
Ameer L. Hassan, pro se

FILED  
CLERK OF DISTRICT COURT, UTAH  
JUL 30 AM 11 47  
J. L. JENSEN  
CLERK  
BY *R. Adams* DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT  
IN AND FOR THE COUNTY OF SANPETE, STATE OF UTAH

INMATES OF THE  
UTAH STATE PRISON,  
AT GUNNISON,  
Plaintiff - Appellant,

v.  
THE UTAH DEPARTMENT  
OF CORRECTIONS,  
Defendant - Appellee.

DESIGNATION  
OF RECORD  
ON APPEAL

Case No: 920600003

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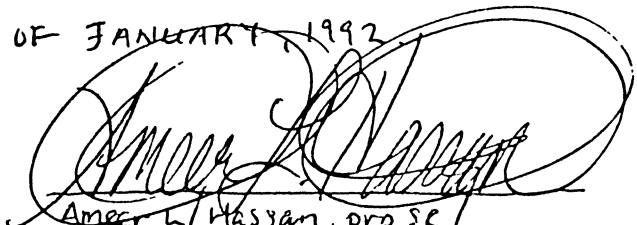
TO THE CLERK OF THE COURT:

You are hereby requested to designate for preparation and subsequent transmission to the Utah Court of Appeals such relevant portions of the record as would enable said court to undertake sufficient consideration and determination of the issues on appeal as follows:

1. The Affidavit of Impecuniosity;
2. Summons;
3. Complaint;
4. Amended Complaint;

5. The Notice of TRO or Alternative Preliminary Injunction;
6. Order On Motion For Temporary Restraining Order Or Preliminary Injunction and Order Regarding Form Of Pleadings;
7. Notice of Appeal; and
8. The Docket Sheet of the Captioned - Court.

DATED ON THIS 27th DAY OF JANUARY, 1992



Ameer L. Hassan, pro se  
Central Utah Correctional Facility  
P.O. Box 550  
Gunnison, Utah 84634

SIXTH JUDICIAL DISTRICT COURT  
SANPETE COUNTY - STATE OF UTAH

\*\*\*\*\*

INMATES OF THE UTAH STATE PRISON  
AT GUNNISON,

Plaintiff,

-vs-

UTAH DEPARTMENT OF CORRECTIONS,

Defendant.

CLERK'S

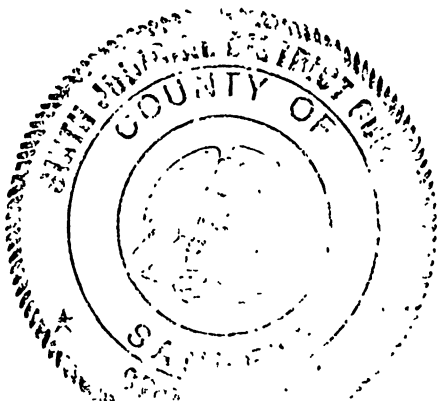
CERTIFICATE

Case No. 920600003

\*\*\*\*\*

I, Kristine Christiansen, County Clerk of Sanpete County, State of Utah,  
and Ex-Officio Clerk of the Sixth Judicial District Court hereby certify  
the enclosed document(s) to be the original instrument contained in the  
above-entitled case. (Original Notice of Appeal & Designation of Record on Appeal)

WITNESS MY HAND, the Seal of my Office at Manti, Utah, this 30th  
day of Jan., 1992.



KRISTINE CHRISTIANSEN  
Sanpete County Clerk

By Rebecca Adams  
Deputy Clerk and Court Clerk



# APPENDIX

## III

# RETURN OF SERVICE

STATE OF UTAH }  
COUNTY OF SALT LAKE } s.s. SHERIFF'S OFFICE

☒ Original  
☐ Amended  
☐ Duplicate

1) SERVED Utah Dept. Corrections ☒ Defendant ☐ Plaintiff  
☐ Witness ☐ Garnishee (3rd Party) ☐ Defendant ☐ Plaintiff \* ☐ Other \_\_\_\_\_

2) DATE RECEIVED 1-22-92 3) DATE SERVED 1-23-92

4) PROCESS ☒ Summons ☐ Complaint ☐ Criminal summons ☐ Amended summons ☒ Amended complaint  
☐ Verified complaint ☐ Order to show ☐ Sup-order ☐ Small claims—order & affidavit ☐ Order ☐ Garnishment  
☒ Notice ☐ Civil subpoena ☒ Affidavit ☐ Motion ☐ Petition ☐ Notice of hearing ☐ Information ☐ Testimony  
☐ Decree ☐ Certificate ☐ Citation ☐ Exhibits ☐ Declaration ☒ Other Request

5) TYPE OF SERVICE ☐ Personal ☐ Left at residence with \_\_\_\_\_  
(name & relationship)  
\_\_\_\_\_ at usual place of abode with a person of suitable age and  
discretion there residing ☐ Posted \*(see item 9) ☐ Company or Corp. \_\_\_\_\_  
(name & title)

☒ Other By Majean Peterson Executive  
Sec. For O'Hare McCatter + who is The person who accept  
For The Dept.

6) LOCATION OF SERVICE 6100 So. Fashion Blvd. ☐ Home ☒ Business  
☐ Other \_\_\_\_\_ (Specify, jail, hospital, etc.)

7) ☒ I further certify that at the time of service, on copy served, I endorsed the date, signed my name and official title thereto.

8) ☐ I tendered a fee of \$ \_\_\_\_\_, & took receipt which is hereto attached.

9) ☐ Mailed a copy of notice, postage prepaid, to said defendant on (date) \_\_\_\_\_  
at given address, (see item 6), by clerk \_\_\_\_\_

AARON D. KENNARD, Sheriff of Salt Lake County, State of Utah

DOCKET # 92007612  
PROCESSED BY DM  
SHERIFF'S FEES:  
Service \$ \_\_\_\_\_  
Mileage \$ NC  
Total \$ \_\_\_\_\_

I certify that the forgoing is true and correct and that this certificate  
is executed on (date) 1-23-92

By Emmett Hughes  
(Deputy Sheriff)

1  
2  
3 CERTIFICATE OF MAILING  
4  
5.

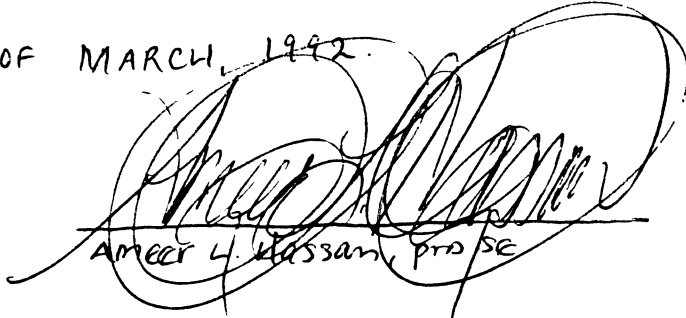
6. I, Ameer L. Hassan do hereby certify that I  
7. mailed eight (8) copies, inclusive of one (1) original  
8. signature, of the brief of appellant to:  
9

10.  
11. The Utah Court of Appeals  
12. 400 Midtown Plaza  
13. 230 South 500 East  
14. Salt Lake City, Utah 84102

15.  
16. and two (2) true and exact copies of the same to;

17.  
18.  
19. Frank D. Mylar, Asst. Atty. Gen.  
20. 6100 South 300 East, Suite 204  
21. Salt Lake City, Utah 84107

22.  
23. On this 24th DAY OF MARCH, 1992.

24.  
25.   
26. Ameer L. Hassan, pro se

DOCUMENT

K F U

50

.A10

DOCKET NO.

92-0107-3A

FILED

NOV 14 1991

CLERK SUPREME COURT  
UTAH

Supreme court - State of Utah  
IN RE. Gotschall - V - Eldon Barnes

Stanley E. Gotschall

V. S.

Eldon Barnes

Former warden of the  
Utah State Prison

Case no 900183

Brief - To Support Facts  
OF The case

782-P2d 459

Appellant's Brief

1. I raised the issue in my rit about, my attorney  
only spending a total of thirty minutes on my case  
prior to going to trial, and also made the comment  
that F. Lee Bailey, could not prepare for a second  
degree murder trial, in just thirty minutes.

2. I he also did not object, to hardly anything  
when objections should have been made.

3 As I stated to Judge Reno, If we had of return  
to the scene of the crime, I could have explained  
the circumstances much better and probably  
would not have been convicted of anything, except  
maybe involuntary manslaughter.

4. The court nor my attorney, made an issue, of  
me bringing in my witnesses, on my behalf.

also if I had been allowed to post bail, I could  
ve prepared my case, a lot better myself, it was  
impossible to do anything, while I was in jail.

Also I was not allowed to have, any input into  
my appeal, my attorney, never once contacted me  
thru my trial, I had several things to discuss  
with her, but she never gave me the opportunity.

I ask this court to please weigh all the facts  
refully, and come to the proper decision.

written by myself on this 13th day of Nov.  
1991.

J. E. Pete Sotichall

hereby state I sent a copy of this brief  
to the Utah State Attorney General. on this  
same date

J. E. Pete Sotichall