

1992

# Martin L. Gaal v. Tamara Holden : Petition for Writ of Certiorari

Utah Supreme Court

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UTAH SUPREME COURT  
BRIEF

**920277**

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No. 920277

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IN THE  
UTAH SUPREME COURT

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MARTIN L. GAAL, PETITIONER

vs.

TAMARA HOLDEN, RESPONDENT

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PETITION FOR WRIT OF CERTIORARI TO THE UTAH  
COURT OF APPEALS

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PETITION FOR WRIT OF CERTIORARI

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**FILED**

JUN 15 1992

CLERK SUPREME COURT  
UTAH

### QUESTIONS PRESENTED

Is the Utah Court of Appeals bound by decisions of this Court ?

Is judicial review of Utah Board of Pardons decisions available to inmates of the Utah State Prison ?

Is the preclusion of all judicial review set forth in Title 77-27-5(3), Utah Code Ann. constitutional under the Constitution of Utah, article I, section 11 ?

Does judicial review of Board of Pardons decisions have to include claims of the denial of due process ?

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No. \_\_\_\_\_

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IN THE  
UTAH SUPREME COURT

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MARTIN L. GAAL-PETITIONER  
VS.  
TAMARA HOLDEN-RESPONDENT

---

PETITION FOR WRIT OF CERTIORARI TO THE  
UTAH COURT OF APPEALS

---

PETITIONER, Martin L. Gaal, respectfully prays that a Writ of Certiorari issue to review the judgement and opinion of the Utah Court of Appeals granting summary affirmance and dismissing his appeal of the denial and dismissal of a petition for a writ of habeas corpus in the Third Judicial District Court.

OPINIONS BELOW

The opinion of the Utah Court of Appeals is cited as Martin L. Gaal v. Tamara Holden, 920181-CA, filed 14 May 1992. The opinion is annexed hereto as Appendix A to this petition.

### JURISDICTION

The opinion of the Utah Court of Appeals was filed on 14 May 1992.

Jurisdiction to hear this matter is conferred on this Court pursuant to Rule 42 of the Rules of the Utah Supreme Court, and, Title 78-2-3(3)(a), of the Utah Code Annotated.

### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, section 11 of the Constitution of the State of Utah is set forth in Appendix B of this petition.

Title 77-27-5(3) of the Utah Code Annotated is set forth in Appendix C of this petition.

### STATEMENT OF THE CASE

After having been found guilty of two second degree felonies, in the Third Judicial District Court, the petitioner was committed to the Utah State Prison in 1987. Once he had served the term of imprisonment set by the Utah Board of Pardons, the petitioner was paroled to a half-way house. After some months at the half-way house, the petitioner was returned to the Utah State Prison, for allegedly having escaped custody. While the escape charges were dropped, the petitioner was sent back before the Board, and given an additional eighteen months, to serve, for being unaccountable, even though Board member Heather Cooke knew that the petitioner was with a Utah Department of Corrections employee.

The petitioner then petitioned the Third Judicial District Court for habeas corpus relief. In his petition, the petitioner alleged that the Board gave him an additional eighteen months for being unaccountable from the half-way house, while he was with an employee of the Department. The petitioner supported this petition with an affidavit sworn by the officer he was with. The petition essentially stated that the petitioner was being punished for being unaccountable, when he was in fact accounted for, and with an officer.

Judge Timothy Hanson dismissed the petition on its face, stating that it was frivolous. The Court, in part, stated, that while the petitioners claim is interesting, it does not give the court the power to intervene in the Boards decision, and that "this is not the appellate court for the Board of Pardons".

The petitioner appealed to the Utah Court of Appeals, who, after the notice was filed, set the matter for sua sponte consideration of affirmance. After briefs were filed, the court affirmed the district court decision and dismissed the petitioners appeal.

This petition follows.

#### REASONS FOR GRANTING CERTIORARI

The decision of the Utah Court of Appeals is in conflict with this Court's decision in Foote v. Board of Pardons, 808 P.2d 734 (Utah 1991), and article I, section 11 of the Constitution of Utah. As well as this Courts decision in Junn v. Cook, 791 P.2d 873, 876 (Utah 1990).



The Court of Appeals stated, "the Board's decision involving such claims is not subject to judicial review. Utah Code Ann. 77-27-5(3)." This Court in Foote stated, Since an appeal is barred by this provision, and since an appeal is the only legal remedy that could exist in this case, it follows that no remedy at law exists. However, if section 77-27-5(3) was intended to preclude all judicial review, both by way of law and by way of extraordinary writs, then that section runs afoul of article I, section 11 of the Utah Constitution." See also Dunn v. Cook, 791 P.2d 873.

The Court of Appeals also stated that since the petitioner had not made an exact and specific allegation of the denial of due process, this Courts decision in Foote, could not govern. In the Foote opinion, the Chief Justice did not write that in order to gain judicial review, one had to be denied due process. The Chief Justice wrote, "In addition, the mandate of the due process clause . . . ." The opinion does not state that one must be deprived of due process to have the constitution apply and gain judicial review. While the petitioner did not state, "I was denied due process", he did state that he was given eighteen months more in prison for being with a correctional officer, when the Department thought he had escaped. Was due process used. Probably not. Was it alleged, not in specific language. But the District Court refused to even consider the affidavit of the officer, and stated that the claim was interesting, but not dispositive. Either the petitioner was on escape status, and had in fact escaped, or he was with an officer.

If he was with an officer, as is sworn to, then why is he being punished, for escaping. Was due process applied in this matter. Absolutely not. Had the Board considered the facts, the petitioner would not be serving eighteen months for being where he was supposed to be.

This Court has already stated that judicial review is available. And, In addition, due process applies to actions taken by the Board.

This Court has also held that, "To be entitled to writ, a petitioner must show that there was an obvious injustice or a substantial and prejudicial denial of a constitutional right."

Hurst v. Cook, 777 P.2d 1029, 1035 (Utah 1989), also Dunn, at 876.

It is an injustice to incarcerate an inmate for being unaccountable from a half-way house when he was in fact with a Department of Corrections employee. If the State of Utah is going to put people in prison, let it be for valid reasons. Not for reasons that do not stand up to constitutional muster.

The United States Supreme Court, in Jencks v. U.S., 353 U.S. 657 (1957), stated that, "The interest of the United States, is not that it shall win the case, but that justice will be done." Justice has not been done here. The District Court should have held a hearing on the merits of the petition. And, if proven, should have vindicated the rights of the petitioner. "Crime is contagious. If the government becomes the lawbreaker, it breeds contempt for the law." (Louis D. Brandeis-U.S. Supreme Court Justice-1856-1941) The opinion of the Court of Appeals is contrary to prior opinions of this Court, and the Constitution of the State of Utah.

If justice is to prevail in Utah, the petitioner should be allowed to present his claims to an unbiased court for a decision on the merits. Both the Utah Constitution and the Constitution of the United States guarantee the right of access to the Court. The denial of the petition on its face, is a denial of those rights.

WHEREFORE, for the reasons set forth above, the petitioner prays that this Court grant certiorari and review the facts of this matter, remand it to the District Court for a full and fair hearing, and any further remedy this Court may deem just and proper.

RESPECTFULLY SUBMITTED this 9th day of June 1992.

Martin L. Gaal  
Martin L. Gaal

FILED

MAY 14 1992

IN THE UTAH COURT OF APPEALS

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*Mary T. Noonan*  
Mary T. Noonan  
Clerk of the Court  
Utah Court of Appeals

Martin L. Gaal,  
Petitioner and Appellant,  
v.  
Tamara Holden,  
Respondent and Appellee.

MEMORANDUM DECISION  
(Not For Publication)

Case No. 920181-CA

F I L E D  
(May 14, 1992)

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Third District, Salt Lake County  
The Honorable Timothy R. Hanson

Attorneys: Martin L. Gaal, Draper, Appellant Pro Se  
R. Paul Van Dam and Lorenzo K. Miller, Salt Lake  
City, for Appellee

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Before Judges Orme, Bench, and Billings (Law & Motion).

PER CURIAM:

This matter is before the court on sua sponte notice of consideration for summary affirmance pursuant to Rule 10(e), Utah Rules of Appellate Procedure. Because we find that the appeal presents no substantial question for review, we affirm.

Petitioner appeals the trial court's dismissal, without a hearing, of his petition for writ of habeas corpus. In essence, petitioner claims that the finding of the Board of Pardons (Board) that petitioner violated the terms of a work release program was erroneous and that the trial court should have reviewed the Board's decision to extend petitioner's parole date for 18 months on the basis of that allegedly erroneous finding.

In considering an appeal from a dismissal of a petition for writ of habeas corpus, we accord the trial court's conclusions of law no deference and review them for correctness. Fernandez v. Cook, 783 P.2d 547, 549 (Utah 1989). In this case, the trial court concluded that the petition was frivolous because it essentially sought appellate review of the Board's factual

## APPENDIX "A"

APPENDIX "B"

ARTICLE I, SECTION 11, CONSITUTION  
OF UTAH

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

## APPENDIX "C"



TITLE 77, CHAPTER 27, SECTION 5 (3)  
UTAH CODE ANNOTATED, AS AMENDED 1953

Decisions of the Board of Pardons in cases involving paroles, pardons, commutations, or terminations of sentences, restitution, or remission of fines or forfeitures are final and are not subject to judicial review.