

2004

Utah v. Leonard Preston Gall : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

State of Utah,

Plaintiff and Appellee

vs.

Leonard Preston Gall,
Defendant and Appellant

Case No. 20040540-CA

REPLY BRIEF OF APPELLANT

Appeal from a judgment of:

1. Guilty and Mentally Ill of Manslaughter, U.C.A., §76-5-205, a second degree felony, with dangerous weapons enhancement, U.C.A. §76-3-203;
2. Guilty and Mentally Ill of Theft of Automobile, U.C.A. §76-6-404, a second degree felony; and
3. Not Guilty By Reason of Insanity on a charge of aggravated burglary, U.C.A., §76-6-203, a first degree felony,

entered pursuant to pleas thereto, in the Third Judicial District, Salt Lake County, State of Utah, the Honorable Judith S. Atherton, presiding.

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UTAH APPELLATE COURTS

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ARGUMENT

With respect to matters not addressed in this Reply Brief, LPG relies upon his Opening Brief.

I. Overview

Lenny Gall, who loved and cared for his mother his whole life, during a psychotic, delusional state, caused the death of his mother, Susan Gall. Under traditional common law, due to his psychosis, LPG almost certainly would not have been held criminally responsible. That, of course, would not have meant LPG would have been set free; just that he would be confined in the psychiatric hospital so long as he was found to suffer from mental illness and dangerous.

Utah, like many other states, has modified the traditional common law rule to make it more restrictive. Utah's restrictions are more severe than most other states, however, because it has limited the not guilty by reason of insanity (NGRI) judgment in homicide cases to situations where the defendant did not know the victim was human. U.C.A. §76-2-305(a); and *State v. Herrera*, 895 P.2d 359 (Utah 1995).

LPG was originally charged with murder and theft of his mother's car,¹ but pursuant to the advice of his then counsel, Mr. Stephen McCaughey, he entered into a plea agreement of guilty and mentally ill (GMI) for manslaughter and theft, and NGRI to a new charge of aggravated burglary with a deadly weapon enhancement.

¹ R.6-7, Add.1-2. The "Add.____" designations are to the Addendum to LPG's opening brief.

During the sentencing phase, in early 2004, and well before the sentencing hearing, due to Food and Drug Administration proceedings, LPG found out the psychiatric drugs he was given are known to cause psychosis in some people, including extreme violence. He brought this to the attention of Mr. McCaughey and after Mr. McCaughey failed to act upon it, LPG brought it directly to the trial court's attention.² LPG, but not Mr. McCaughey, (a) moved for an offense reduction under U.C.A. §76-3-402 and requested the impending sentencing hearing be continued "to decide what to do about this new information,"³ and (b) presented the information regarding the iatrogenic cause of his psychosis in support of sentencing that:

be structured that if and when, but only if and when, I am found safe for a conditional release or discharge by the hospital and authorized by the Court, that such conditional release or discharge will be possible.⁴

Since it became apparent Mr. McCaughey was not going to do anything on LPG's behalf at sentencing, Mr. Mcaughey was discharged by LPG and asked to withdraw as counsel,⁵ which Mr. McCaughey did unconditionally.⁶

However, at the sentencing hearing, neither the trial court nor Mr. McCaughey even acknowledged his discharge and withdrawal, essentially acting as if they had never

² R.523, Add.52.

³ *Id.*

⁴ R. 526, Add.54.

⁵ R.531, Add.59.

⁶ R.532, Add.60.

occurred.⁷ All Mr. McCaughey did at the sentencing hearing was characterize the offense reduction motion "frivolous."⁸

The trial court, hearing no argument in favor of the offense reduction motion, nor any argument for any kind of consideration in sentencing on LPG's behalf, sentenced LPG to one to fifteen years for each offense to run consecutively, plus one to five years for the weapon enhancement,⁹ which was the maximum available. Because of the way the disposition on the NGRI interacts with the GMI convictions, LPG does not receive the benefit of the NGRI disposition that would permit a discharge, conditional or otherwise, when it is determined (if ever) it is safe to do so, nor does he receive the benefit of the term setting process for the GMI convictions under Utah's indeterminate sentencing system because of the NGRI disposition.

These facts create a host of legal infirmities with the trial court proceedings. Two of these are *per se* violations of the constitutional right to counsel requiring reversal without a showing of prejudice.

First, Mr. McCaughey's disloyalty at sentencing by characterizing the offense reduction motion "frivolous," without more, invalidates the entire proceeding including the GMI and NGRI judgments because it is disloyalty *per se*.¹⁰ Second, as very recently held by the United States Supreme Court in *United States v. Gonzalez-Lopez*, __ U.S. __,

⁷ R. 609.

⁸ R.609:4-5, Add.119-20.

⁹ R609, Add.116-124; R538, Add.125

126 S.Ct. 2557 (2006), LPG had an absolute right to the non-appointed attorney of his choice, and the failure to honor that right during the sentencing phase is a structural defect mandating reversal and remand.

With respect to the former, as was set forth in LPG's opening brief and will also be discussed below, whether or not LPG moved to withdraw the guilty plea before sentence was announced is irrelevant. Attorney disloyalty invalidates the proceeding. However, even leaving aside the disloyalty in terming the offense reduction motion "frivolous," the absolute failure of Mr. McCaughey to do anything on LPG's behalf during the sentencing phase is ineffective assistance of counsel as a matter of law.

There are absolutely no facts in the record to support the aggravated burglary judgment because LPG was in the family home with permission. Under U.C.A. §76-2-305(a) and *Herrera*, only if the perpetrator did not know the victim was human can a homicide result in a not guilty by reason of insanity judgment. Under the extraordinary facts in *Herrera* the perpetrator was found to be legally insane when he killed one victim, thinking she was a robot and not legally insane when he attempted to kill other victims. Here, there was no explanation of how LPG could be NGRI of the aggravated burglary and guilty of the manslaughter. These points were made in LPG's opening brief, yet the State totally ignored them in its brief, presumably because it could not address them.¹¹

(Continued footnote)-----
¹⁰ See, LPG's opening brief, pp 13-16, including its citation to *Osborn v. Shillinger*, 861 F.2d 612, 625 (CA10 1988) that terming the offense reduction motion frivolous is a *per se* violation of the Sixth Amendment right to counsel.

¹¹ Because the State failed to even attempt to rebut this, it will not be addressed further in this reply brief.

Finally, under the facts of this case, it is illegal for LPG to have been convicted for manslaughter and acquitted as not guilty by reason of insanity for aggravated burglary because the two crimes merge as a part of one continuous course of conduct/lesser included offense under U.C.A. §76-1-402(1); *State v. Bradley*, 752 P.2d 874 (Utah 1985); and *State v. Ross*, 951 P.2d 236 (Utah 1997).¹²

II. The Trial Court's Failure to Honor LPG's Discharge of Mr. McCaughey was A Structural Defect Requiring Reversal.

§V of LPG's Opening Brief, discusses how it was reversible error for the trial court to fail to address LPG's discharge of Mr. McCaughey, his retained counsel, and proceeding with the sentencing as if he had not been discharged. In response, the State makes two arguments: (1) Mr. McCaughey was retained, not appointed counsel, and (2) the error was harmless.

On June 26, 2006, in *Gonzalez-Lopez*, the United States Supreme Court definitively addressed both contentions by holding a criminal defendant has the absolute right to choose his own non-appointed counsel and a violation of such right is a "structural defect" requiring reversal without any additional showing of harm or prejudice. *Gonzalez-Lopez* is both controlling and dispositive here.

Even though it is not required, LPG was also clearly prejudiced.

First, prejudice has been established because the result was LPG's right to move to withdraw the guilty plea was improperly cut off. The State, at 34-35, argues this did not

¹² This issue is addressed for the first time here, but for the reasons stated in Section IX LPG believes it is necessary to do so.

demonstrate any prejudice, because there was "nothing in the record [that] supports defendant's allegation that he wanted to withdraw his guilty [plea] before sentencing." However, as set forth at page 30 of LPG's brief, he specifically requested "some time to sort out what should be done about [finding out his psychosis was likely treatment caused]." Not having a chance to discuss his options with new counsel was clearly prejudicial because LPG is now faced with the entire jurisdiction question about ineffective assistance of counsel with respect to the GMI pleas because he did not move to withdraw the guilty pleas.¹³

A second way LPG was prejudiced is Mr. McCaughey's sabotaging of the offense reduction motion. As will be discussed below, whether or not LPG's psychosis was iatrogenic (treatment caused) is extremely relevant to the merits of the offense reduction motion as well as for the sentencing decisions. The trial court's leaving Mr. McCaughey in place deprived LPG from having the analysis of why the iatrogenic nature of LPG's psychosis warranted the trial court granting the offense reduction motion presented at the sentencing hearing. This was clear prejudice.

In addition, LPG was prejudiced because Mr. McCaughey did absolutely nothing on LPG's behalf during the sentencing phase. As a result, LPG received the absolute maximum confinement possible under the plea agreement.

¹³ In its November 25, 2005 Order, this Court denied LPG's Rule 23B remand motion with respect to the guilty pleas because of the failure to move to withdraw, so prejudice is established with respect to the Rule 23B remand motion as well.

In sum, even though dishonoring LPG's right to choose his non-appointed counsel is a structural defect which must be reversed under *Gonzalez-Lopez* without showing of prejudice, LPG was prejudiced.

III. This Court Has Jurisdiction to Consider the Disloyalty Claim

In §1 of the Argument in his Opening Brief, LPG cited to United States Supreme Court, Utah Supreme Court, and 10th Circuit Court of Appeals cases, all of which are controlling, that attorney disloyalty renders a conviction invalid without consideration of any other factor, such as the necessity of moving to withdraw a guilty plea.¹⁴ The State failed to address any of these cases.

While the U.S. Supreme Court in *Gonzalez-Lopez* did not specifically state that attorney disloyalty is the same sort of "structural defect" as denial of the right to choose retained counsel, it is clear it is because, "[it] affect[s] the framework within which the trial proceeds, and [is] not 'simply an error in the trial process itself.'" *Id.*, at 2564. The same sort of language was used in the cases holding attorney disloyalty constitutes a *per se* constitutional defect cited in §V of LPG's Opening Brief. For example, in *United States v. Cronin*, 466 US 648, 656-7, 104 S.Ct. 2039, 2045-6 (1984), the United States Supreme Court held that in the case of attorney disloyalty, "the process loses its character as a confrontation between adversaries, [and] the constitutional guarantee is violated."

¹⁴ *United States v. Cronin*, 466 US 648, 656-7, 104 S.Ct. 2039, 2045-6 (1984) ; *Glasser v. United States*, 315 U.S. 60, 75-76, 62 S.Ct. 457, 467-68 (1942); *State v. Holland*, 876 P.2d, 357, 361 (Utah 1994); *Fisher v. Gibson*, 282 F.3d 1283 (CA10, 2002); and *Osborn v. Shillinger*, 861 F.2d 612, 625 (CA 10 1988).

Attorney disloyalty renders a conviction invalid. No motion to withdraw the guilty plea is required in the face of attorney disloyalty. The disloyalty renders the conviction invalid. The state did not address this.

IV. This Court Has Jurisdiction to Consider Whether the Not Guilty By Reason of Insanity Stipulated Judgment Was the Result of Ineffective Assistance of Counsel

On page 21 of his Opening Brief, LPG points out that a not guilty by reason of insanity stipulated judgment is not a guilty plea to which either U.C.A. §77-13-6 or *State v. Merrill*, 2005 UT 34, 114 P.3d 585 apply.¹⁵ The State, on page 16 of its brief, concedes this, but argues a jurisdictional bar against considering ineffective assistance of counsel claims for guilty convictions absent a motion to withdraw the guilty plea divests this Court of jurisdiction over the NGRI plea. This can not be. The State certainly cites no authority for the proposition that lack of jurisdiction for one appeal point divests this Court of jurisdiction of an appeal point this Court does have jurisdiction over.

As set forth in LPG's Opening Brief, because this court does have jurisdiction over the NGRI plea, the question is whether this allows the Court to consider the related claims regarding the guilty plea. This is akin pendent jurisdiction. This principle was acknowledged by Chief Justice Crockett in *State v. Robinson*, 23 Utah 2d 78, 80 457 P.2d 969, 969 (Utah 1969):

¹⁵ As also pointed out, in its November 25, 2005, Order in this case, this Court ruled" we do not determine what effect, if any, Merrill would have on the stipulation for entry of a not guilty by reason of insanity judgment on the aggravated burglary count, which was contained in the plea agreement."

When a case is before this court on a proper constitutional ground, the court should review whatever other assignments of error it thinks the interests of justice require.[FN6]

FN6. The powers of this court in such circumstances are not unlike that labeled as 'pendent' jurisdiction in the Federal Courts.

The State failed to address this.

V. Mr. McCaughey Provided Ineffective Assistance of Counsel at Sentencing

The State admits Mr. McCaughey did nothing on LPG's behalf during the sentencing phase, justifying it on the ground the plea agreement was such a good deal.¹⁶ However, counsel clearly also had an obligation to represent LPG at the sentencing phase, making the State's argument a tacit admission of ineffectiveness. There was much Mr. McCaughey should have done.

For example, at the sentencing hearing, the State declared defendant's mental illness "did not lessen his culpability."¹⁷ This was an improper argument by the prosecutor, and that it failed to even draw a response from Mr. McCaughey demonstrates his ineffectiveness. As Justice Stewart stated in his concurrence in *State v. Young*, 853 P.2d 327, 419, n. 1 (Utah 1993), there are two types of culpability, legal culpability, which determines whether someone is to be held criminally accountable at all, and moral culpability, where mitigating circumstances, such as mental illness, come in to play to potentially reduce the penalty.

¹⁶ State's Brief, pp 20-26.

¹⁷ Add.120, R.609:5.

Most importantly, the iatrogenic (treatment caused) nature of LPG's psychosis was a huge mitigating circumstance that should have been pressed at sentencing.

In addition, Ms. Gustin, Mr. McCaughey's co-counsel, stated in her motion to withdraw that "Steve McCaughey and Ms. Gustin cannot not adequately represent Leonard Gall, Jr."¹⁸ This statement by co-counsel can not be ignored.

VI. The Court Erred in Failing to Consider the Iatrogenic Nature of LPG's Psychosis and Reduce the Sentence.

The State asserts the trial court considered the treatment caused nature of LPG's psychosis resulting in the tragedy, but could only point to the trial court's statement that it had "received and reviewed 15 letters, as well as numerous documents concerning mental health issues with regard to the defendant."¹⁹ This is ambiguous at best and since the trial court never even mentioned the iatrogenic (treatment caused) nature of the homicide it would be gross speculation to conclude that it considered this factor. Moreover it is clear the only factor that played any part in the trial court's decision to deny the offense reduction motion was "This was a crime of extreme violence and a 402 reduction is simply out of the question in this case."²⁰

To hold, as the state asserts, that the "general rule" in *State v. Helms*, 40 P.3d 626, 2002 UT 1, ¶8 & 112 that the trial court is upheld "even if it failed to make findings on the record whenever it would be reasonable to assume that the court actually made such findings," applies in this case is to render meaningless the other core *Helms* holding that,

¹⁸ R.535, also reproduced as the sole addendum to this brief.

¹⁹ P. 31 of State's Brief, R.609:5.

"A trial court abuses its discretion in sentencing when . . . it 'fails to consider all legally relevant factors.'" In *Helms* the trial court found it was reasonable to assume the proper considerations had been taken into account because the trial court stated, "the court has gone over this presentence report rather carefully, and read it, and what has taken place."

Under *Helms* the sentencing is not upheld if there are any grounds, to do so, but rather if it is "reasonable to assume" the trial court actually considered, "all legally relevant factors." Here, just the opposite occurred; the trial court specifically stated its reason for denying the sentence reduction motion was because it "was a crime of extreme violence." Thus, it is not reasonable to assume the court actually considered the treatment caused nature of LPG's psychosis.

Moreover, *Helms*, at ¶12, held where the brevity of the sentencing order and the facts surrounding it are sufficiently ambiguous, the assumption that all legally relevant factors were considered should not be made. That is exactly the case here. LPG, but not Mr. McCaughey, made a very compelling showing that he was less morally culpable because his psychosis was caused by his treatment. He submitted reports by a very knowledgeable psychiatrist, Grace E. Jackson, MD, and Ph.D., psychologist, Ann Blake Tracy that this was very likely the case. This demanded specific attention from the trial court, which it did not receive.

The State argues at page 31 of its brief that LPG's claim that "his mental illness is iatrogenically induced does not distinguish him from any other mentally ill offender. Nor

(Continued footnote)-----
²⁰ R609-6, Add. 121.

does it lessen his culpability." Here again, the State fails to distinguish moral culpability from legal culpability. It absolutely lessens LPG's moral culpability if his crime was the result of the psychiatric treatment he was given. This goes directly to the "history and character" of LPG, and is a factor the trial court was required to consider under U.C.A. §76-3-402(1). Under the circumstances of this case it is simply not "reasonable to assume" it was considered.

VII. The Court Should Address the Illegal Incarceration Regime As Applied to LPG in This Case.

At page 36, the State's Brief suggests this Court should not consider the illegal nature of LPG's incarceration regime because LPG did not present the reasons in his opening brief to justify considering issues first raised on appeal, citing to *State v. Dean*, 2004 UT 63, ¶13, 95 P.3d 276, (citing to *State v. Holgate*, 2000 UT 74, ¶11, 20 P.3d 346); and *State v. Pinder*, 2005 UT 15, ¶45, 114 P.3d 551. However, LPG did present such reasons for both the constitutional and Americans with Disabilities Act arguments at pp 3 and 4 of his brief. The State complains this is insufficient under *State v. Norris*, 2004 UT App 452, ¶6, n.2 (unpublished memorandum decision), but *Norris* involved plain error, while here the justification for failure to preserve the issue below is ineffective assistance of counsel. As LPG stated in his Opening Brief, "The party may also assert ineffective assistance of counsel in failing to preserve the issue, citing to *State v. Hansen*, 2002 UT 114, ¶21, fn2, 61 P.3d 1062. Under *Hansen*, if an issue was not preserved due to ineffective assistance of counsel, it may be raised on appeal.

VIII. The State Essentially Admits LPG's Analysis of the Discriminatory Effect of the NGRI and GMI Dispositions.

The State's substantive argument, is similarly not well taken. At page 37, the State asserts LPG's argument is erroneous because it is "based on the [incorrect] premise that he must serve thirty years in the State Hospital before he can be considered for release."

However, this is a misstatement of LPG's argument. What LPG actually argued is:

However, it appears the Board of Pardons will not even set his term while he is at the hospital on the NGRI disposition. At the same time, the hospital can not even consider LPG for release under the NGRI disposition until he serves his sentence, which not having been set, is 30 years. Thus, solely by virtue of his NGRI status his prison sentence is, in effect, increased from a baseline of 4 years and 6.4 months to 30 years.²¹

The State admits this is true at page 22 of its brief

If defendant becomes stable enough to be released from the State Hospital within thirty years, then he will be transferred to the State Prison to serve the remainder of his sentence as determined by the Board of Pardons.

In other words, so long as LPG is at the State Hospital serving his GMI sentences the Board of Pardons will not set his term. This can go on for 30 years, even though his baseline term for the GMI sentences under the Matrix is 4 years and 6.4 months.²²

As set forth in LPG's opening brief, this is in stark contrast to someone committed to the State Prison, where their term will be decided "as soon as practicable."²³ This disparity is solely a result of his mental illness designation and, as set forth in LPG's

²¹ LPG's Opening Brief, p. 36, emphasis in original.

²² The State does not dispute this baseline term analysis.

²³ U.A.C. §R671-201.

opening brief, is a violation of both the Equal Protection Clause and the Americans with Disabilities Act.

The unconstitutionality arises as applied to LPG because the combination of dispositions deprives LPG of his rights under both Utah's indeterminate sentencing system and NGRI regime. LPG is committed to the State Hospital on the NGRI for from 5 years to life and at the same time 2 to 30 years on the GMI sentences. As set forth in LPG's Opening Brief, the baseline term for the GMI sentences under the "Matrix" is four years and 6.4 months. If LPG was in the State Prison on the GMI judgments, this is the amount of time, plus or minus, he would be facing.

Similarly, if LPG was at the State Hospital solely on the NGRI, the hospital could consider changing LPG's status based on therapeutic and treatment factors and could consider him for release (conditional or otherwise) after five years. However, so long as he is also serving his prison term while at the State Hospital, they do not have that option. Being committed to the State Hospital on his NGRI disposition prevents LPG from receiving the benefit of Utah's indeterminate sentencing system and this in turn prevents him from receiving the benefit of Utah's NGRI disposition regime. This is very analogous to *State v. Smith*, 909 P.2d 236, 244 (Utah 1995), where the Utah Supreme Court held a sentencing decision that did not allow the Board of Pardons to exercise the discretion intended in Utah's indeterminate sentencing system rendered the sentencing decision improper.

IX. The NGRI Acquittal on the Aggravated Burglary Charge Precludes Conviction of Manslaughter.

After careful consideration, LPG believes he must also draw the Court's attention to the additional plain error that the NGRI disposition on the aggravated burglary charge violates U.C.A. §76-1-402(1) as interpreted by *Bradley* and *Ross*. This was not raised below, nor precisely in the way here, in LPG's opening brief.²⁴ Under Appellate Rule 24(c) and *Romrell v. Zions First National Bank*, 611 P.2d 392, 395 (Utah 1980), matters not raised in the opening brief are not normally considered, but the court nevertheless "in its discretion, may decide a case upon any points that its proper disposition may require, even if first raised in a reply brief." In *Romrell* the Utah Supreme Court found the failure to make requisite findings warranted reversal even though it was raised for the first time in the reply brief.

Here, LPG believes *Gonzalez-Lopez* is dispositive and the other points he has raised are meritorious and therefore this Court does not need to reach the issue. However, should this Court disagree, the failure to raise it now will most likely lead to a legitimate claim of ineffective assistance of counsel in this appeal, to be pursued at the post conviction relief stage and, if unsuccessful, through *habeas corpus* proceedings.

The defect with regard to the dispositions is that under the facts of this case, the manslaughter is a lesser included offense of the aggravated burglary. LPG was acquitted

²⁴ Even though this precise formulation of the lesser included offense/merger problem with the interplay between the NGRI and GMI dispositions was not raised in LPG's opening brief, the fundamental inconsistency of the dispositions was raised in §II.A., of LPG's brief in connection with the ineffective assistance of counsel claims.

(by reason of insanity) of the aggravated burglary and because the two crimes merge as a part of one continuous course of conduct/lesser included offense under U.C.A. §76-1-402(1), *Bradley*, and *Ross*, it is illegal for him to have been convicted and punished for the manslaughter. In *Bradley*, the Utah Supreme Court held that aggravated assault was a lesser included offense of aggravated burglary. The same analysis under the facts here reveal that the manslaughter is a lesser included offense of the aggravated burglary. Here LPG was acquitted of the greater offense, aggravated burglary, by reason of insanity, and under U.C.A. §76-1-402(1) his conviction for the lesser offense of manslaughter can not stand. This is plain error and this Court has discretion to decide the case on this basis. Because LPG was acquitted on the aggravated burglary charge by reason of insanity (and committed to the State Hospital for up to life, therefor), the guilty and mentally ill conviction on the manslaughter charge should be vacated.

Because the precise formulation of the problem with the not guilty by reason of insanity acquittal for the aggravated burglary and conviction on manslaughter being a violation of U.C.A. §76-1-402(1) was not raised previously, it does seem the State should be given an opportunity to address it and LPG certainly does not object to it submitting a supplemental brief on this issue.

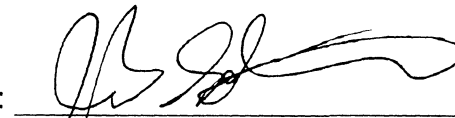
CONCLUSION

For the foregoing reasons, Defendant/Appellant Leonard Preston Gall respectfully requests this Court to:

- A. Vacate the Guilty and Mentally Ill on the manslaughter charge for violating U.C.A. §76-1-402(1) ; or
- B. In the alternative, Vacate the Judgments in this matter because of attorney disloyalty and remand for further proceedings; or
- C. In the alternative:
 - (1) Vacate the Not Guilty By Reason of Insanity Judgment for lack of any factual basis; or
 - (2) Vacate the Not Guilty By Reason of Insanity Judgment due to attorney disloyalty/ineffective assistance of counsel;
 - (3) Vacate the sentences in this matter and remand for sentencing proceedings consistent with the decision of this Court; or
- D. In the further alternative,
 - (1) Declare the incarceration regime under the judgments in this case unconstitutional as a violation(s) of the Equal Protection Clause of the United States Constitution and/or the Uniform Application provision of the Utah Constitution as applied to Defendant; and/or
 - (2) Declare the incarceration regime under the judgments in this case a violation of the Americans with Disabilities Act.

RESPECTFULLY SUBMITTED this 25th day of July 2006.

LAW PROJECT FOR PSYCHIATRIC RIGHTS, INC.

By: 
James B. Gottstein, Esq.
Alaska Bar No. 7811100

FILED DISTRICT COURT
Third Judicial District

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APR 28 2004

SALT LAKE COUNTY

By Deputy Clerk

IN THE THIRD DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, :
Plaintiff, : MOTION TO WITHDRAW
AS COUNSEL
v. :
LEONARD PRESTON GALL, : Case No. 011919226
Judge Atherton
Defendant. :

SUSANNE GUSTIN hereby moves this Court to allow her to withdraw as co-counsel for the above-named Defendant. Defendant's father, Leonard Gall Sr., has interfered with the case to the point that Steve McCaughey and Ms. Gustin cannot adequately represent Leonard Gall Jr.

DATED this 27th day of April, 2004.

Susanne Gustin
SUSANNE GUSTIN-FURGIS
Attorney for Defendant

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Fax (907) 274-9493

Attorney for Defendant and Appellant.
Admitted *Pro Hac Vice*

IN THE UTAH COURT OF APPEALS

State of Utah,)	
)	
Plaintiff and Appellee)	
)	
vs.)	
)	CERTIFICATE OF SERVICE
Leonard Preston Gall,)	
)	
Defendant and Appellant.)	Case No. 20040540-CA
)	

I HEREBY CERTIFY that on July 26, 2006, true and correct copies of:

1. Reply Brief of Appellant; and
2. Certificate of Service

were served by U.S. Mail on:

Christopher D. Ballard
(2 copies of brief)
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