

1993

Ronal Curtis v. Utah Board of Pardons, Scott Carver, Warden : Brief of Appellee

Utah Court of Appeals

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Ronald Curtis; Pro Se.

Jan Graham; Utah Attorney General; James H. Beadles; Assistant Attorney General; Attorneys for Appellees.

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

RONALD CURTIS,

Petitioner and Appellant,

v.

UTAH BOARD OF PARDONS, SCOTT
CARVER, Warden

Respondents and Appellees.

CASE NO. 930360-CA

Priority No. 15

BRIEF OF APPELLEES

APPEAL FROM DENIAL OF PETITION FOR EXTRAORDINARY WRIT 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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APPEARING PRO SE

ATTORNEYS FOR APPELLEES

FILED
Utah Court of Appeals

SEP 27 1993


Mary T. Noonan
Clerk of the Court

IN THE UTAH COURT OF APPEALS

RONALD CURTIS,
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IN THE UTAH COURT OF APPEALS

RONALD CURTIS,
Petitioner and Appellant,
v.
UTAH BOARD OF PARDONS, SCOTT
CARVER, Warden
Respondents and Appellees.

CASE NO. 930360-CA

Priority No. 15

BRIEF OF APPELLEES

BRIEF OF APPELLEES

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from the district court's summary dismissal of a petition for extraordinary relief brought pursuant to Rule 65B, Utah Rules of Civil Procedure. Because petitioner was convicted of a second-degree felony, original appellate jurisdiction lies with the Utah Court of Appeals under Utah Code Ann. § 78-2a-3 (2) (h) (Supp. 1993).

ISSUE PRESENTED UPON APPEAL

Did the district court correctly dismiss this complaint as frivolous on its face without ordering a response from the respondents?

STANDARD OF APPELLATE REVIEW

A lower court's "conclusions of law are accorded no deference but are reviewed for correctness." Termunde v. Cook, 786 P.2d 1341, 1342 (Utah 1990) (citing Fernandez v. Cook, 783 P.2d 547 (Utah 1989)); see generally Stewart v. State, 830 P.2d 306, 308 (Utah App. 1992).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following provisions are included in Addendum A to this brief. For the convenience of the Court, the entire district court record is included in Addendum B.

Utah Code Ann. § 64-13-6 (Supp. 1993)

Utah Code Ann. § 77-27-5 (1990)

Utah R. Civ. P. 65B (1993).

STATEMENT OF THE CASE

On April 9, 1993, Curtis filed a petition for extraordinary relief in Third District Court. The petition was brought pursuant to Rule 65B(c), Utah Rules of Civil Procedure and claimed that the Board of Pardons' original parole grant hearing was conducted in violation of his constitutional rights to due process. (R. 2-8; Addendum B). The parole grant hearing that Curtis challenges took place on March 3, 1989. (R. 2; Addendum B). Judge David S. Young dismissed the case, apparently pursuant to the provision of Rule 65B(c), Utah Rules of Civil Procedure that allows dismissal of frivolous claims without requiring a response. (R. 14; Addendum B).

As a result of his original parole grant hearing, the Board decided that Curtis would serve his entire 15-year prison term. Curtis's petition is a result of that decision and claims that it is improper because it exceeds the sentencing guidelines. (R. 3; Addendum B).

Because the trial court dismissed the petition in a summary fashion, the Board has never been served with it. Petitioner filed his Notice of Appeal on March 26, 1993.

STATEMENT OF THE FACTS

The facts pertinent to this case are set out in the Statement of the Case.

SUMMARY OF THE ARGUMENT

Rule 65B(c)(5), Utah Rules of Civil Procedure, allows a court to dismiss a claim when it appears to be "frivolous on its face." Curtis's petition was brought pursuant to Rule 65B(c), Utah Rules of Civil Procedure, regarding wrongful restraints on personal liberty. The trial court properly dismissed Curtis's petition for two reasons. First, as Judge Young indicated in his minute entry, the Board of Pardons has the discretionary authority to order petitioner to serve his full term in prison. Thus, the restraint on Curtis's personal liberty was not wrongful, but was the result of a lawfully imposed sentence and the Board's lawful refusal to exercise its discretion in Curtis's favor. Because the petition fails to set forth by a prima facie case that he is wrongfully restrained of his personal liberty, the trial court properly dismissed the petition as frivolous.

Second, Curtis's challenge to the Board's substantive decision not to grant him a parole date is not subject to judicial review pursuant to Utah Code Ann. § 77-27-5(3) (Supp. 1993). This Court has previously construed that provision to bar the type of judicial review Curtis requests.

ARGUMENT

Introduction

The only issue before this Court is whether the district court properly dismissed this case without issuing a hearing order to the respondents. Therefore, this brief does not address the merits of the petition except as necessary to determine whether the petition established a prima facie case for extraordinary relief.

Also, because the named respondents were never served or ordered to respond to the petition at the district court level, this Court has jurisdiction over the respondents only to the extent that they have consented to participate in the appeal. This Court should reject Curtis's attempt to establish his substantive claims through the appellate briefing process, and focus instead on the narrow issue stemming from the district court's order of dismissal before service.

POINT I

CURTIS IS NOT ENTITLED TO RELIEF PURSUANT TO RULE 65B(c) BECAUSE HIS INCARCERATION IS THE RESULT OF A LAWFUL CONVICTION AND SENTENCE; THEREFORE, IT IS NOT A WRONGFUL RESTRAINT ON HIS PERSONAL LIBERTY.

As evidenced by the exhibits attached to Curtis's petition, at the time of the original parole grant hearing in 1989, he was serving a sentence for the crime of sexual abuse of a child, a

second degree felony. (R. 8; Addendum B). Third District Court Judge Raymond Uno imposed an indeterminate sentence of not less than one nor more than fifteen years incarceration at the Utah State Prison.¹ (Id.) Under Utah law, that sentence, though styled indeterminate, lawfully "restrains" the offender of his liberty for the maximum term of the sentence unless terminated or commuted by the Board of Pardons. Utah Code Ann. § 77-18-4 (1990).

Because the restraint is the result of a lawful sentence, as evidenced by the Judgment, Sentence, and Commitment that Curtis attached to his petition, Carver's restraint is not wrongful. Indeed, the legality of Carver's actions is verified by the petition itself. Thus, the petition fails to establish a prima facie case that Carver is wrongfully restraining petitioner of his personal liberty.

The petition also fails to show by a prima facie case that the Board is wrongfully restraining petitioner of his liberty. First, the Board did not issue the judgment and commitment that led to the incarceration. Second, the Board is not, in fact, the restraining authority. Under Utah law, the Department of Corrections is the agency of state government that incarcerates individuals who are sentenced to prison by a court. Utah Code Ann. § 64-13-6 (Supp. 1993). The Board of Pardons is the agency of state government that administers and regulates the parole system and holds the power of executive clemency. Utah Const. art. VII, § 12 (1896) (amended

¹ The petitioner is still incarcerated at the Utah State Prison for this offense.

1992); Utah Code Ann. § 77-27-5 (Supp. 1993). Thus, Curtis's petition fails to establish a prima facie case that the Board is wrongfully restraining petitioner because, in fact, the Board is not restraining the petitioner.

POINT II

THE BOARD'S REFUSAL TO SHORTEN CURTIS'S PRISON TERM IS NOT SUBJECT TO JUDICIAL REVIEW PURSUANT TO UTAH CODE ANN. § 77-27-5 (3) (SUPP. 1993) AND THE SEPARATION OF POWERS CLAUSE OF THE UTAH CONSTITUTION.

What Curtis is actually attempting to challenge is the Board's refusal to exercise its discretionary authority in his favor so as to shorten his prison term. Because both the Utah Supreme Court and this Court have consistently refused to interfere with the Board's discretionary authority to set, or refuse to set, a parole date, Curtis's claim fails to establish a prima facie case for extraordinary relief. Foote v. Utah Board of Pardons, 808 P.2d 734, 735 (Utah 1991) (the number of years spent in prison left to the "unfettered discretion" of the Board of Pardons); Northern v. Barnes, 825 P.2d 696, 698 (Utah App. 1992), cert. granted, 843 P.2d 1042 (Utah 1992).

The unreviewability of the Board's substantive parole decisions is mandated both by statute and the Utah Constitution. Section 77-27-5 (3) states that the decisions and actions of the Board of Pardons are not subject to judicial review. In Northern, this Court interpreted that statute to shield the Board's substantive decisions from judicial oversight. Northern, 825 P.2d at 699. Although recognizing that section 77-27-5 (3) could not preclude review by extraordinary writ of alleged constitutional

violations, the Court stated that habeas corpus, due to section 77-27-5 (3), was not available to modify a release date.² Id.

However, section 77-27-5 (3) is not the only reason for the unreviewability of a Board decision. The Board is specifically created in the Utah Constitution, as part of the executive branch, to administer and regulate the parole system. Utah Const. art. VII, § 12 (1896) (amended 1992). Thus, the separation of powers clause, Utah Const. art. V, § 5, also prohibits the judiciary from substituting its judgment for that of the Board's. See Kimball v. Grantsville City, 19 Utah 368, 57 P. 1 (1899) (delegation of power to one branch implies inhibition against its exercise by another branch).

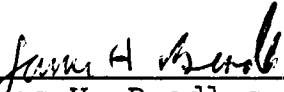
Because Curtis's claim is not even subject to judicial review pursuant to statute and the constitution, Curtis's attempt to obtain judicial review by extraordinary writ is without any legal merit and was properly rejected by the trial court.

² Curtis' petition also is not cognizable under the mandamus provisions of Rule 65B(e), Utah Rules of Civil Procedure. The purpose of mandamus is not to interfere with the "functions or the policies of other departments of government," or allow a court to substitute its judgment for that of an agency by telling the agency how to decide. Wright Development, Inc. v. City of Wellsville, 608 P.2d 232, at 233 (Utah 1980); see also Olson v. Salt Lake City School District, 724 P.2d 960 (Utah 1986).

CONCLUSION

For the foregoing reasons, respondents request that this Court affirm the trial court's order dismissing Curtis's petition.

JAN GRAHAM
Utah Attorney General

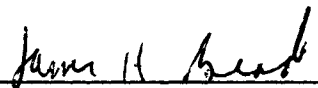


James H. Beadles
Assistant Attorney General

CERTIFICATE OF MAILING

I certify that on the 27th day of September 1993, I caused to be mailed, by U.S. Mail, postage prepaid, two true and correct copies of the foregoing **APPELLEE'S BRIEF** to:

Ronald Curtis
Utah State Prison
P.O. Box 250
Draper, Utah 84020



A D D E N D A

A D D E N D U M A

64-13-6. Purposes of department - Department duties.

- (1) The department shall:
 - (a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;
 - (b) implement court-ordered punishment of offenders;
 - (c) provide program opportunities for offenders;
 - (d) manage programs that take into account the needs and interests of victims, where reasonable;
 - (e) supervise probationers and parolees as directed by statute and implemented by the courts and Board of Pardons;
 - (f) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility; and
 - (g) cooperate and exchange information with other state, local, and federal law enforcement agencies to achieve greater success in prevention and detection of crime and apprehension of criminals.
- (2) (a) By following the procedures in Subsection (b), the department may investigate the following occurrences at state correctional facilities:
 - (i) criminal conduct of departmental employees;
 - (ii) felony crimes resulting in serious bodily injury;
 - (iii) death of any person; or
 - (iv) aggravated kidnapping.(b) Prior to investigating any occurrence specified in Subsection (a), the department shall:
 - (i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (a) has occurred; and
 - (ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (a).
- (3) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.

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77-27-5. Board of Pardons authority.

(1) (a) The Board of Pardons shall determine by majority decision when and under what conditions, subject to this chapter and other laws of the state, persons committed to serve sentences in class A misdemeanor cases at penal or correctional facilities which are under the jurisdiction of the Department of Corrections, and all felony cases except treason or impeachment or as otherwise limited by law, may be released upon parole, pardoned, restitution ordered, or have their fines, forfeitures, or restitution remitted, or their sentences commuted or terminated.

(b) The board may sit together or in panels to conduct hearings. The chairperson shall appoint members to the panels in any combination and in accordance with rules promulgated by the board, except in hearings involving commutation and pardons. The chairperson may participate on any panel and when doing so is chairperson of the panel. The chairperson of the board may designate the chairperson for any other panel.

(c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole, pardon, or commutation granted or sentence terminated, except after a full hearing before the board or the board's appointed examiner in open session. Any action taken under this subsection other than by a majority of the board shall be affirmed by a majority of the board.

(d) A commutation or pardon may be granted only after a full hearing before the board.

(2) (a) In the case of original parole grant hearings, rehearings, and parole revocation hearings, timely prior notice of the time and place of the hearing shall be given to the defendant, the county or district attorney's office responsible for prosecution of the case, the sentencing court, law enforcement officials responsible for the defendant's arrest and conviction, and whenever possible, the victim or the victim's family.

(b) Notice to the victim, his representative, or his family shall include information provided in Section 77-27-9.5, and any related rules made by the board under that section. This information shall be provided in terms that are reasonable for the lay person to understand.

(3) Decisions of the Board of Pardons in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a civil judgment.

(4) This chapter may not be construed as a denial of or limitation of the governor's power to grant respite or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment. However, respites or reprieves may not extend beyond the next session of the Board of Pardons and the board, at that session, shall continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the offense as provided. In the case of conviction for treason, the governor may suspend execution of the sentence until the case is reported to the Legislature at its next session. The Legislature shall then either pardon or commute the sentence, or direct its execution.

(5) In determining when, where, and under what conditions offenders serving sentences may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted, or their sentences commuted or terminated, the Board of Pardons shall consider whether the persons have made or are prepared to make restitution as ascertained in accordance with the standards and procedures of Section 76-3-201, as a condition of any parole, pardon, remission of fines or forfeitures, or commutation or termination of sentence.

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(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) 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.

(5) 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 need not state findings of fact or conclusions of law. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal.

(6) Responsive pleadings. If the petition is not dismissed as being frivolous on its face, the court shall direct the clerk of the court to serve a copy of the petition and a copy of any memorandum upon the respondent by mail. At the same time, the court may issue an order directing the respondent to answer or otherwise respond to the petition, specifying a time within which the respondent must comply. If the circumstances require, the court may also issue an order directing the respondent to appear before the court for a hearing on the legality of the restraint. An answer to a petition 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. Nothing in paragraph (c) shall be construed to prohibit the court from ruling upon the petition based upon a dispositive motion.

(7) 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.

(8) 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.

(9) 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.

(10) Hearing or other proceedings. In the event that the court orders a 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. The court may nevertheless direct the respondent to bring before it the person alleged to be restrained. If the petitioner waives the right to be present at the hearing, the court shall modify the hearing order accordingly. 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.

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A D D E N D U M B

RONALD CURTIS - APPELLANT VS. UTAH BOARD OF PARDONS - APPELLEE

JULY 30, 1993

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COURT OF APPEALS NO. 930360-CA

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

RONALD CURTIS

PLAINTIFF - APPELLANT

VS.

UTAH BOARD OF PARDONS

DEFENDANT - APPELLEE

CLERK'S CERTIFICATE

DISTRICT COURT NO. 930901978

COURT OF APPEALS NO. 930360-CA

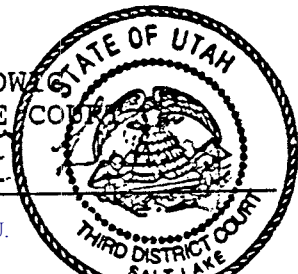
I, clerk of the above entitled court, do hereby certify that the hereto attached file contains all the original papers as requested by the designation on file herein, filed in the court in the above entitled case, including the Notice of Appeal which was filed on the 26th day of May 1993. I further certify 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 Court of Appeals of the State of Utah, pursuant to such appeal.

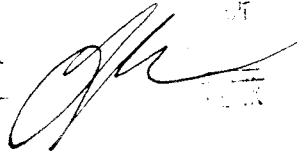
Witness my hand and the seal of said court at Salt Lake City, Utah, this 30th day of July 1993.

CRAIG E. LUDWIG
CLERK OF THE COURT

BY Craig E. Ludwig



RONALD CURTIS
Attorney Pro Se
Utah State Prison
P.O. Box 250
Draper, Utah 84020

APR 3 1978
BY: 

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

RONALD CURTIS,
Petitioner,

vs.

Utah State Board of Pardons,
SCOTT CARVER, Warden,
Respondent.

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PETITION FOR EXTRAORDINARY
RELIEF

Case No.

93090 1978 H/C

Judge

JUDGE DAVID S. YOUNG

93090

COMES NOW the Petitioner, Ronald Curtis, pursuant to the following Rule of Civil Procedure:

- 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: Utah State Prison, P.O. Box 250, Draper, Utah 84020.

2. Petitioner was convicted and sentenced at the following Court: Petitioner is challenging a Board of Pardons hearing.

The dates of the proceedings in which the conviction (or Board of Pardons decision) was entered are as follows: Petitioner's parole grant hearing was on March 3, 1989.

PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF

The case number for these proceedings is: ___ not known; ___ known and is case number N/A .

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:

a. Petitioner attended an original parole grant hearing on March 3, 1989. Wherein, petitioner's constitutional due process rights were violated.

b. Petitioner alleges that the respondents set a rehearing date for the petitioner above the sentencing guidelines without justification or reason.

c. Petitioner did not receive a rehearing date and was sentenced to serve the entire 15 years without a parole date.

d. Respondents refused and denied the petitioner the opportunity to present mitigating facts regarding his case during his appearance before the board of pardons and refused to allow the petitioner to present witnesses, documents psychiatric reports, etc.

e. Respondents refused and denied the petitioner the right to speak during his appearance before them on March 3, 1989.

f. Respondents refused and denied the petitioner the right to review documents upon which the respondents based their

PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF
decision.

g. Respondents also refused and denied the petitioner the right to present evidence or testimony on his own behalf. In fact, they refused to allow petitioner to speak at all.

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:

 X No It was not appealed because PLEADED GUILTY

 X Question not applicable since this claim concerns a parole grant 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 X No If so, the reasons for the denial of relief in the prior proceeding are as follows:

 N/A _____

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):

PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF

- 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): _____

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 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. The statute of limitations does not apply in this matter because the petitioner was convicted prior to the enactment of the law, and due to the continuing nature of the petitioner's incarceration UCA §78-12-31.5 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

PETITION FOR WRIT OF HABEAS CORPUS AND POST CONVICTION RELIEF
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.

Dated this 5 day of April, 1993.

Ronald Curtis
RONALD CURTIS
Attorney Pro Se

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

THE STATE OF UTAH,

Plaintiff,

vs. Ronald G. Curtis
(USP)

Defendant.

JUDGMENT, SENTENCE
(COMMITMENT)

Case No. CR86-1017
Count No. 2 (Amended)
Honorable Raymond H. Ho
Clerk Barbara A. Ho
Reporter Robert Lewis
Bailiff Randy Thomas
Date 6-1-87

FORDA

The motion of _____ to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is granted denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by a jury; the court; plea of guilty; plea of no contest; of the offense of Child Abuse, a felony of the 2 degree, a class _____ misdemeanor, being now present in court and ready for sentence and represented by Francis, and the State being represented by Lewis, is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

- Court recommends no offender rehabilitation preference
- to a maximum mandatory term of _____ years and which may be for life;
- not to exceed five years;
- of not less than one year nor more than fifteen years;
- of not less than five years and which may be for life;
- not to exceed _____ years;
- and ordered to pay a fine in the amount of \$ _____;
- and ordered to pay restitution in the amount of \$ _____ to be determined by restitution hearing
- such sentence is to run concurrently with # 1
- such sentence is to run consecutively with _____
- upon motion of State, Defense, Court, County are hereby dismissed.
- defendant to be given credit for time served since 4-13-87
- Defendant is granted a stay of the above (prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of _____, pursuant to the attached conditions of probation.
- Defendant is remanded into the custody of the Sheriff of Salt Lake County or delivery to the Utah State Prison, Draper, Utah, or for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.
- Commitment shall issue forthwith

DATED this 1st day of June, 1987

APPROVED AS TO FORM:

Defense Counsel

DISTRICT COURT JUDGE

ATTEST

H. DIXON HINDLEY
Clerk

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

JUN 4 1987

H. Dixon Hindley, Clerk 3rd Dist. C
By [Signature] Deputy Clerk

THE STATE OF UTAH,

Plaintiff,

vs. Ronald G Curtis
(USP)

Defendant.

JUDGMENT, SENTENCE
(COMMITMENT)

Case No. CR86-1017
Count No. 1 (Amended)
Honorable Raymond S. Ho
Clerk James A. Adair
Reporter Robert Lewis
Bailiff Nancy Bellas
Date 6-8-87

The motion of _____ to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is granted denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by a jury; the court; plea of guilty; plea of no contest; of the offense of Sexual Abuse of a child, a felony of the 2 degree a class _____ misdemeanor, being now present in court and ready for sentence and represented by J. P. Adams and the State being represented by L. Lewis, is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

RD

Court recommends six offender rehabilitation program

to a maximum mandatory term of _____ years and which may be for life;

not to exceed five years;

of not less than one year nor more than fifteen years;

of not less than five years and which may be for life;

not to exceed _____ years;

and ordered to pay a fine in the amount of \$ _____;

and ordered to pay restitution in the amount of \$ _____ to be determined by restitution hearing

such sentence is to run concurrently with Court #2

such sentence is to run consecutively with _____

upon motion of State, Defense, Court, Count(s) _____ are hereby dismissed

defendant to be given credit for time served since 4-13-87

Defendant is granted a stay of the above (prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of _____, pursuant to the attached conditions of probation.

Defendant is remanded into the custody of the Sheriff of Salt Lake County for delivery to the Utah State Prison, Draper, Utah, or for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.

Commitment shall issue forthwith

DATED this 1st day of June, 1987

APPROVED AS TO FORM:

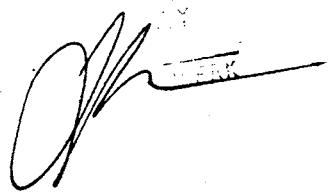
Defense Counsel

Deputy County Attorney

[Signature]
DISTRICT COURT JUDGE

ATTEST
H. DIXON HINDLEY
Clerk

[Signature]
Deputy Clerk

FILED
DISTRICT COURT
MAR 3 1 20 PM '93
BY 

RONALD CURTIS
Attorney Pro Se
Utah State Prison
P.O. Box 250
Draper, Utah 84020

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

RONALD CURTIS,
Petitioner,
vs.
UTAH STATE BOARD OF PARDONS,
SCOTT CARVER, Warden
Respondent.

AFFIDAVIT OF IMPECUNIORITY

CASE No.

930901978 HC

Judge

Young


STATE OF UTAH)
 : ss
COUNTY OF SALT LAKE)

RONALD CURTIS, 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 22 day of MARCH, 1993.

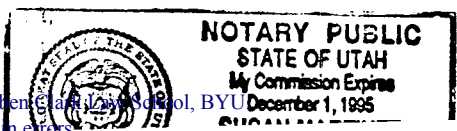

RONALD CURTIS

SUBSCRIBED AND SWORN TO before me this 22nd day of March, 1993.


NOTARY PUBLIC
Residing at: S.L. County

My Commission Expires:

12-1-95

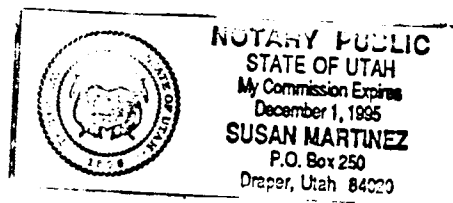


SUBSCRIBED AND SWORN TO before me this 5th day of April, 1993.

My Commission Expires:

12-1-95

Susan Martinez
NOTARY PUBLIC
Residing at: S.L. County



THIRD DISTRICT COURT
Third Judicial District

MAY 4 1993

SALT LAKE COUNTY
[Signature]

RONALD CURTIS
Attorney Pro Se
Utah State Prison
P.O. Box 250
Draper, Utah 84634

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

RONALD CURTIS,

 Petitioner,

vs.

UTAH STATE BOARD OF PARDONS,
SCOTT CARVER, Warden,

 Respondent.

*
*
*
*
*
*
*
*

MOTION FOR PREPARATION OF
TRANSCRIPTS AND COURT RECORDS
AND ORDER

Case No. 93090/1978 HC
Judge Young

Petitioner, RONALD CURTIS, 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): Parole Board minutes for March 3, 1989. 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):

MOTION FOR PREPARATION OF TRANSCRIPTS AND COURT RECORDS AND ORDER
The records will show the denial of the petitioner's due process rights.

DATED this 5 day of April, 1993.

Ronald Curtis
RONALD CURTIS
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 _____, 199____.

BY THE COURT:

DISTRICT COURT JUDGE

*5/4/93-denied
file unsigned
[Signature]*

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

CURTIS, RONALD	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 930901978 HC
	:	DATE 05/04/93
VS	:	HONORABLE DAVID S. YOUNG
	:	COURT REPORTER
UTAH STATE BOARD OF PARDONS	:	COURT CLERK NP
DEFENDANT	:	

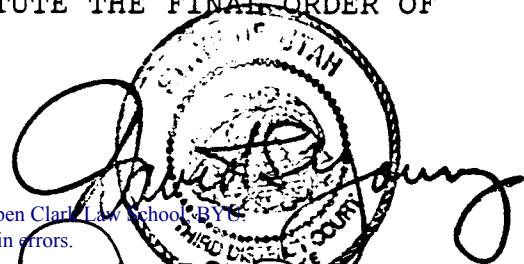
TYPE OF HEARING:
PRESENT:

P. ATTY. CURTIS, RONALD, PRO SE
D. ATTY.

THE PETITIONER HAS FILED A PETITION FOR EXTRAORDINARY RELIEF CLAIMING THAT HIS RIGHTS HAVE BEEN VIOLATED BY THE BOARD OF PARDONS WHEN THEY STATED AT HIS INITIAL HEARING THAT HE WOULD BE REQUIRED TO SERVE HIS ENTIRE TERM WITHOUT PAROLE. THE BASIS OF THAT DECISION IS A MATTER WITHIN THE SOUND DISCRETION OF THE BOARD OF PARDONS AND MAY NOT BE CHALLENGED WITHOUT AN ALLEGATION AS TO WHY THAT DECISIONS MAY BE "ARBITRARY AND CAPRICIOUS" OR "CRUEL AND UNUSUAL" IN SOME LEGAL WAY. THE DECISION TO REQUIRE THE PETITIONER TO SERVE ANY LAWFUL TIME WITHIN THE LIMITS OF THE JUDGMENT AND COMMITMENT IS AN APPROPRIATE OPTION OF THE BOARD AND IS FURTHER A MATTER FOR THEIR DISCRETION. THE PETITIONER ALLEGES NO FACTUAL BASIS WHICH WOULD GIVE RISE TO THE COURT'S CONSIDERATION OF THE PETITION ON IT'S MERITS.

THE PETITION IS THUS DENIED AND DISMISSED. THIS MINUTE ENTRY SIGNED BY THE COURT SHALL CONSTITUTE THE FINAL ORDER OF THE COURT.

C.C. TO MR. CURTIS, PRO SE



FILED
DISTRICT COURT

MAY 26 2 24 PM '93

THIRD JUDICIAL DISTRICT COURT
BY *Alk* CLERK

RONALD J. CURTIS
Petitioner Pro Se
P.O. Box 250
Draper, Utah 84020

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

2
1010156

RONALD J. CURTIS,	:	
Plaintiff/Appellant,	:	NOTICE OF APPEAL
vs.	:	
UTAH BOARD OF PARDONS,	:	Case No. 930901978 HC
Defendant/Appellee.	:	Judge David S. Young

NOTICE IS HEREBY GIVEN that Ronald J. Curtis, plaintiff/
appellant in the above-entitled action, hereby appeals to the
Utah Court of Appeals from the final judgement dismissing his
petition for writ of habeas corpus on the 4th day of May 1993
by the Honorable David S. Young, Judge, Third Judicial District
Court, in and for Salt Lake County, State of Utah.

DATED this 23rd day of May 1993.

Ronald J. Curtis
Ronald J. Curtis

FILED
DISTRICT COURT

MAY 26 2 24 PM '93

THE
C
BY Al DISTRICT CLERK

RONALD J. CURTIS
Petitioner Pro Se
P.O. Box 250
Draper, Utah 84020

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

RONALD J. CURTIS,	:	
Plaintiff/Appellant,	:	AFFIDAVIT OF IMPECUNIOSITY
vs.	:	
UTAH BOARD OF PARDONS,	:	Case No. 930901978 HC
Defendant/Appellee.	:	Judge David S. Young

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

I, Ronald J. Curtis, being first duly sworn according to law on my oath, depose and say:

1. I am the plaintiff/appellant in the above-entitled matter.
2. I am unable to prepay the costs of this action or to give security therefore because of my poverty.
3. I believe in good faith that I am entitled to the relief sought herein.

DATED this 21 day of May 1993.

Ronald J. Curtis
Ronald J. Curtis

Susan Martiny
NOTARY PUBLIC
STATE OF UTAH

RONALD J. CURTIS
Petitioner Pro Se
P.O. Box 250
Draper, Utah 84020

FILED
DISTRICT COURT

MAY 26 2 24 PM '93

BY AK CLERK

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

RONALD J. CURTIS,	:	
Plaintiff/Appellant,	:	DESIGNATION OF RECORD
vs.	:	
UTAH BOARD OF PARDONS,	:	Case No. 930901978 HC
Defendant/Appellee.	:	Judge David S. Young

TO THE CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY:

You are hereby requested to prepare, certify and transmit to the Utah Court of Appeals, with reference to the Notice of Appeal heretofore filed in this case, all documents contained in the file in the above-entitled matter.

DATED this 23 day of May 1993.

Ronald J. Curtis
Ronald J. Curtis

FILED
DISTRICT COURT

MAY 26 2 24 PM '93

THIRD DISTRICT
BY AK CLERK

RONALD J. CURTIS
Petitioner Pro Se
P.O. Box 250
Draper, Utah 84020

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

	:	
RONALD J. CURTIS,	:	
Plaintiff/Appellant,	:	CERTIFICATE
vs.	:	
UTAH BOARD OF PARDONS,	:	Case No. 930901978 HC
Defendant/Appeallee.	:	Judge David S. Young
	:	

TO THE CLERK OF THE DISTRICT COURT OF SALT LAKE COUNTY:

With reference to the Designation of Record heretofore filed by the plaintiff/appellant in the above-entitled matter, plaintiff hereby certifies that no transcript will be ordered or required in the above-entitled matter.

DATED this 23 day of May 1993.

Ronald J. Curtis
Ronald J. Curtis

FILED
DISTRICT COURT

MAY 26 2 24 PM '93

THIRD DISTRICT
BY DEPUTY CLERK

RONALD J. CURTIS
Petitioner Pro Se
P.O. Box 250
Draper, Utah 84020

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

RONALD J. CURTIS,	:	
Plaintiff/Appellant,	:	CERTIFICATE OF MAILING
vs.	:	
UTAH BOARD OF PARDONS,	:	Case No. 930901978 HC
Defendant/Appeallee.	:	Judge David S. Young

I hereby certify that I mailed a true and correct copy of the; Notice of Appeal, Certificate, Designation of Record, and Affidavit of Impecuniosity to, Attorney General Jan Graham, 236 State Capitol, Salt Lake City, Utah 84114, postage prepaid and mailed at Draper, Utah on the 24 day of May 1993.

Ronald J. Curtis
Ronald J. Curtis