

2005

# William Sherratt v. Clint Friel : Brief of Appellant

Utah Court of Appeals

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William Sherratt; Appellant Pro Se.

Unknown.

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William Sherratt  
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ORIGINAL

IN THE UTAH COURT OF APPEALS

William Sherratt,  
Appellant, pro se,

Appellants Brief

v.  
Clint Friel, et al.,  
Appellee.

20050108-CA  
CASE 20050189  
-ORAL ARGUMENT AND  
PUBLISHED OPINION REQUESTED  
(B)

UTAH Code, Section 64-9b-4, (1)  
"Rehabilitative and job opportunities  
AT THE UTAH STATE PRISON AND  
PARTICIPATING COUNTY JAILS SHALL  
NOT BE FORCED UPON ANY INMATE  
CONTRARY TO THE UTAH CONSTITUTION,  
ARTICLE XVI, SECTION 3(2), BUT  
INSTEAD SHALL BE ON A COMPLETELY  
VOLUNTARY BASIS." Appellant has  
volunteered for "rehabilitative + job opps"  
UTAH PRISON'S B-BLOCK OMR,  
RELYING ON THE INMATE OMP  
(mapping) PROGRAM, AND C-BLOCK  
OMR'S RULINGS THAT APPELLANT  
WAS NOT "MAP COMPLIANT",  
PUNISHED APPELLANT AND HARASSMENT  
ATTEMPTS TO FILE LEGAL PROCESS  
AND ACTS OF FILING REDRESS  
DOCUMENTS (Habeas Corpus and  
PRISON GRIEVANCES), CONTRARY TO

FILED  
JUL 26 2005

# ORIGINAL

information to their possession involving Appellants compliance with Map directives and the signed Agreement in their possession. Further, B-Block OMR and staff officers retaliated and created a coercive environment for Appellant filing grievances and requesting legal access services from B-Block staff, including denial of access to prison indigent inmate documents and their use, approval, and mailing. This shows "MAP" is not voluntary. Following the denial of the forms and signatures, Appellants complained to staff officers and filed grievances against those involved. As a result, B-Block staff further restricted access to work, and rehabilitation programs with a retaliatory move to an idle-block - Oquikha - 3, section 1.

Still further, Appellants legal mail was refused mailing, and was placed in the property system which

resulted in a failure to mail clearly marked privileged mail envelopes in a timely fashion, and ultimately resulted with the envelopes being returned over a week later - HAVING NOT BEEN MAILED AT ALL.

Still further, ignoring documents and reports in their possession, they relied upon, and filed their own, false statements to support their actions.

Also showing the coercive nature of OMR and prison staff, "clearances" for job and therapy programs and their availability to appellant are required.

Clearly, the OMP (Map) program, and the way it is administered are not completely voluntary and OMR's use of punishment after denying access to programs requested by appellant, and retaliatory punishment for seeking redress of prison staff's

Actions, and Appellants choice to file legal action challenging his conviction and The Actions of prison staff, violate Appellants Constitutional and STATUTORY rights. See Habeas Petition for documentation and Exhibits.

### BACKGROUND

The "map", "OMR", and "OMP" issues involved here are a continuation of the issues raised in Case No: 90050108-CA, and show the retaliatory nature of the claims, and the original false reports entered. THE "MAP AGREEMENT" IS A CONTRACT.

### ARGUMENT

In Lewis v. Casey, 518 U.S. 343, 349 (1996) The Supreme Court reasoned that "pursuit of a non-frivolous claim" is a right of inmates. All claims were ruled "non-frivolous", by the Habeas Judge. A Second panel of The U.S. Supreme Court also ruled in Bounds v. Smith, 430 U.S. 817 (1977) That access to the means and postage, forms, legal law and assistance

Through law libraries, attorneys, and legal books and case law are to be determined by each state, with the directive that the process must be sufficient to provide reasonable access to the courts. The 10<sup>th</sup> Circuit, in *Carper v. Deland*, 54 F 3d 613 (10<sup>th</sup> Cir. 1995) requires a duty to provide services to "initial pleadings." Further, *Love v. Summit County*, 776 F 2d 908 (10<sup>th</sup> Cir. 1985) protects inmates rights to have the ability to prepare legal petitions or complaints.

It is important to note that the focus is on an inmate's ability to prepare and file legal documents, not whether or not the inmate succeeds in his filing. As reasoned in *Treft v. Galetka*, 74 F 3d 191 (10<sup>th</sup> Cir 1996) "A refusal to process any mail from a prisoner impermissibly interferes with the addressee's First Amendment Rights". (emphasis added) Respondent K. Galetka was the officer who refused to mail the U.S. Supreme Court petition

"Service Copy to the Utah Attorney General". "Service Copies" are required mailings. Further, as ruled in *Smith v. Erickson*, 884 F.2d 1108 (8th Cir. 1989) that court ruled that "right of access violated because prison officials refused to provide indigent inmates with free postage, or supplies for legal mail." (emphasis added).

Indigent inmates (of which Appellant has been ruled a member) are required by prison staff to use "Indigent Forms". Utah State Prison staff withheld the forms and kept them out of the "prison block library", requiring an officers permission to receive one. Appellant was routinely refused access for up to 3 weeks at a time. Respondents admit these allegations are true, and the Habeas Judge ruled the factual allegations true, claiming it did not reach constitutional violation.

The reasoning in Trett, (supra.) Smith, Bounds, Carper and Love, (supra) all specifically hold that these acts are clear violations of Access to the courts. (For additional reasoning see Memorandum in Opposition, herein as Exhibit #1). See pages 20 thru. 24, for additional case law.

As raised in the Habeas Petition, and the Opposition to Dismiss Memorandum, a complete sequence of events and dates has been shown, with the Habeas Court ruling them factual.

Appellant asserts the Habeas Judge erred in his ruling. Appellant's rights have been impeded, harassed, and denied with retaliatory action following See ADDENDUM A.

In the interest of economy, see pages 23 thru. 28 for case law and argument of the Retaliatory Actions claims, in the Opposition Memorandum (Exhibit #1)



The Habeas Exhibits clearly show a continuing denial of forms and retaliatory actions for seeking grievances and legal remedies. They also show false statements being made by prison staff.

It is important to note that prison staff do not attempt to establish a lack of factual evidence - showing a grievance system that does not base its rulings and findings on properly scrutinized factual evidence and testimony. Instead, they base their rulings on the basis that "Inmate has not proven his claim", when the inmate has not been given a forum to prove his claim, nor has he been requested to provide proof at a hearing with prison staff. This equates to denying due process in the resolution of the grievance, as well as a denial of due process causing the grievance.

This shows the prevailing attitude of prison staff of arbitrariness and capriciously determining grievance rulings without inquiring into the facts or providing a forum for facts to be proven.

Then, punishing and retaliating against the inmate for filing his grievances and raising his claims shows their intent to create a punitive and coercive environment for that inmate, for doing what the law clearly provides for.

This attitude permeates to the very top of the chain of command, who refuse to get involved in the determination or the seating of the process.

At no time was a hearing requested, or the inmate talked to about proof of his claims, in this process. This cannot meet due process directives in any way.

## Conclusion

Appellant has followed his Map Agreement, has abided by prison policies and directives, and has followed legal mandates in filing his grievances and legal actions. His success was met with harassment, delay, denial of mailing, denial of forms to complete process of obtaining copies for legal filing, retaliation in 14 months of additional lockdown and punishment including, but not limited to verbal abuse, retaliatory moves, being ignored for weeks of requests for forms, denial of due process in the grievance process, and denial of notice of acts that result in punishment for inmates.

Prison policy is silent as to these types of actions, and OMR staff and prison administration fail to attempt a reasonable scrutiny, or provide due process in claimed violations notice, scrutiny, and resolution.

See Habeas Petition and its Exhibits to verify this circumstance.

It is important to note that the initial retaliation came as a result of the filing of a sworn Habeas Petition, as raised in Case No: 20050108-CA, and continued through a 14 month period, before Oquith, 3 staff officer, and JMC, Keith Savage acknowledged there was no legal basis for the lockdown or punishment and reversed the actions of 2 Captains, 2 Lieutenants, 3 Sergeants, 3 case workers, 16 officers, 2 Deputy Wardens, and 8 Administrators, including the Executive Director, Mr. Chabries. The MAP Agreement forces choices, and is a contract.

Appellants circumstances have not changed during the entire process, yet he has been both punished and rewarded, then punished and rewarded; showing the arbitrary and capricious nature,

As well as the retaliatory nature of prison staffs actions. THE UTAH Governor also declined action. Appellant still declares his innocence, and will continue to fight. This is legally allowed.

Respondent has labelled Appellant a prodigious litigator.

Appellant will litigate when litigation is legally provided for on non frivolous claims.

This Court should grant a hearing to allow the evidence claimed and shown to be scrutinized as due process requires. *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963; *Sandlin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293; *Buckner v. Davis*, 237 F3d 1113 (9th Cir. 2001); *Johnson v. Stovall*, 233 F3d 486 (7th Cir 2000); *Lucero v. Warden*, 841 P2d 1230 (Ut app 1992). U.S. Constitution Amendments 1, 5, 8, 14.

Respectfully Submitted,

7-16-05

WHA Shenneth

## Certificate of Service

I certify I mailed a true  
copy of the foregoing to the  
Attorney General at 260 E. 300 S.  
6th Fl. S.L.C., UT 84114

W. M. Sheneck

7-21-05

ADDENDUM

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

FILED DISTRICT COURT  
Third Judicial District

WILLIAM HENRY SHERRATT,  
Petitioner,  
  
vs.  
  
CLIENT FRIEL,,  
  
Respondent.

RULING and ORDER

JAN 13 2005

SALT LAKE COUNTY

Deputy

Case No. 040922903

Honorable BRUCE C. LUBECK

DATE: January 13, 2005

The above matter came before the court for decision on Respondent's Motion to Dismiss filed December 22, 2004. Petitioner filed an opposition response on January 6, 2005. Respondent filed a reply on January 6, 2005. Respondent filed a Notice to Submit on January 6, 2005.

Because the court believes the issues created by the petition have been authoritatively decided no hearing is granted.

The court has reviewed the pleadings of the parties and the entire file, and concludes as follows.

BACKGROUND

Petitioner is an inmate at the Utah State Prison and on October 28, 2004, filed a petition for extraordinary relief under URCP 65B(b) alleging a substantial number of claims against respondent, the Warden.

Respondent sought and obtained an enlargement of time to respond and then filed this current motion to dismiss.

DISCUSSION

The court has examined the petition and all attachments carefully, as well as the pleadings of the parties concerning this motion to dismiss. The inmate grievance forms and responses have been examined.

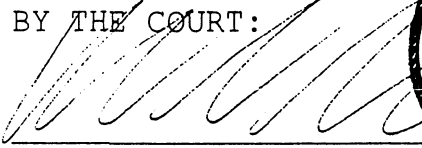
In this motion the court takes the allegations as true. Even so, the court does not believe petitioner has pleaded facts that, if proven, would amount to a showing of actual injury in his alleged lack of access to the courts.

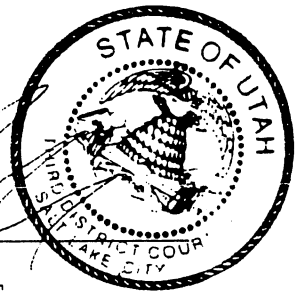
For the reasons set forth in the memorandum of respondent the motion to dismiss is GRANTED and the petition for extraordinary relief is DISMISSED.

Respondent is to prepare an order reflecting this ruling in compliance with Rule 7(f), URCP.

DATED this 13 day of July, 2005.

BY THE COURT:

  
BRUCE C. LUBECK  
DISTRICT COURT JUDGE





30335 AE 204  
P.O. Box 250  
Napier, VT 84020

LAMIDU 1

## IN THE THIRD DISTRICT COURT

William Sheehan,  
Petitioner, please,  
v. > > Memorandum in  
Opposition to Respondents  
Motion to Dismiss

Clint Friel, et al.,  
Respondents. Case 040922903  
Judge Bruce Lubek

Comes Now Petitioner and files this  
Memorandum in opposition to  
The Respondents Motion to Dismiss  
pursuant to Rule 12

### INTRODUCTION

Petitioner is currently incarcerated at  
the Utah state prison and under the  
doctrine of "continuing wrong" has filed  
the Habeas Petition here Argued.

Respondents conclude that "petitioner's  
petition fails to state a claim upon  
which relief can be granted."

### Rule 8 Admissions

Rule 8 states that failure to deny,  
admits.

Respondents has failed to deny any  
factual allegations in the petition,  
therefore, they are admitted.

## STATEMENT OF FACTS

1 - ON March 15, 2004 I ~~handed~~ <sup>completed</sup> a completed U.S. Supreme Court Petition for Certiorari, A 3<sup>RD</sup> DISTRICT GSA Petition, A 3<sup>RD</sup> DISTRICT GSB Petition AND A 5<sup>TH</sup> DISTRICT Malfeasance in Office Suit (totalling over 1800 pages in documents and exhibits) TO THE CONTRACT ATTORNEY David Angerhofer during a scheduled visit. Attorney Angerhofer sent me back to B-Block for a "Indigent Copies Request Form". Sargeant Birmingham AND Officer Bang SAID - "We don't have that form".

I returned to the CONTRACT ATTORNEY Room and informed MR. Angerhofer. He said to mail one to them when I could get it so they could copy the papers.

I mailed A "Kite" to CHS DAVID Wolf that same day.

ON March 16, CHS Wolf provides A form to me AT 2:00pm, AFTER calling me out TO the OMR room.

AT 3:00pm That day, AFTER filling out The form, I ASKED SGT Birmingham TO TAKE the completed form TO SGT Wolf - who was STILL in The office.

SGT. Birmingham refused and SAID I would have to do it myself, tomorrow.

## (Background)

I was locked down for filing a 65C Petition attacking my conviction in 5<sup>th</sup> District Court in August of 2003, and for simultaneously filing an Appeal of a denial of a different Habeas Petition in the Utah Supreme Court.

The violations of Rights has been filed in a 65B Petition in 3<sup>rd</sup> District Court, Case No: 040905805, still pending.

I am locked down AT 11:30 AM daily and restricted privileges as outlined in that Petition, which lockdown continues as of the date of this writing.

All cases listed above are still active:

1- My "First" Habeas, 5<sup>th</sup> District Court Case No: 020500440 is currently being awaiting resolution in the U.S. Supreme Court, Case No: 03-10288 (which is one of the documents copies were needed of in this Habeas Petition) on the docket.

2- The "Second" Habeas, 5<sup>th</sup> District Case No: 030500719 is currently under appeal in the Utah Court of Appeals, Case No: 20040541-CA pending review.

3- The "Third" Habeas (The 1<sup>st</sup> 65B Petition) is one of the documents needing copies - 3<sup>rd</sup> Dist. Case 040905805 listed above) pending.

4- The 65A Petition, same case No: 040905805 is still pending.

5- The Malfeasance in Office Suit is currently active in 5<sup>th</sup> District Court case No: 040500252-MI, set for oral argument on Sept. 27, 2004; Also one of the documents being copied in this petitions issue.

#### (Statement of Fact Continued)

On March 16, I requested another attorney visit.

On March 17, 2004, I mailed the completed, signed and verified "Duplication of Personal Legal Papers for Inigent Inmates" form, FDr 15/02.11, Revised 12-1-96, to the attorneys.

On March 23, 2004 I attempted to mail the copy of the "U.S. Supreme" petition and was instructed that "Due to its bulk", it must be mailed through property."

I complied, and Officer Herring signed for the petition on Property Contract # 160320 on 3-23-04. See Exhibit 1

Since I only recieved 1 copy from the contract attorneys, I wrote asking if they had mailed the Utah Attorney Generals copy, required by U.S. Supreme Court Rules 12 and 29, to be served prior to being issued a case number by the U.S. Supreme Court. I also requested another visit on March 24, 2004, for the contract attorneys. See Exhibit # 2

On March 29, 2004 I requested a 3<sup>rd</sup> Attorney visit, having not been called since March 15, 2004.

On April 5, 2004 I was called for an attorney visit (see Exhibit #2 date in "STATUS of Appointment" and submitted for a 2<sup>nd</sup> copy of the U.S. Certiorari since the Utah Attorney General had not been served.

I had mailed weekly letters to the U.S. Supreme Court updating the progress of the problem and its resolution.

On April 13, 2004, I placed the copy received with Officer ~~Ray~~ Bang in B-Block "property" for mailing. See Exhibit #3 - Property contract #160294, at 8:00 AM.

On April 13, 2004, I was called out for "property" and was handed a Brown garbage bag containing "something". The property receipt (see Exhibit #4 - DATED 4-13-04 - "From" Supreme Court. IT WAS THE U.S. Certiorari petition being returned, after being received on March 26 in the U.S. Supreme Court, for correction.

Upon opening the bag, following signing for the "property", I WAS APPALLED TO see that the petition had been removed from the large manila envelopes AND was held together by 1 rubber band, sitting on top of the "Privileged Legal Mail" envelopes IT WAS originally sent in.

I TOLD officer May AND he SAID, "I only deliver what I'm given, TALK TO PROPERTY."

ON April 17, 2004 I Filed Grievance # 99085418 (See Exhibit # 5 - 17 pages) The grievance was completed on August 13, 2004 (see last page of Exhibit # 5) WITHOUT EVER HAVING BEEN TALKED TO BY ANYONE AT ANY TIME THROUGHOUT THE 4 MONTHS IT TOOK TO COMPLETE. ON April 19, I WROTE TO Lt. Puckett about the problem - he SAID TO inform him. ON April 22, 2004 The copy of The U.S. CERTIORARI That was mailed to The UTAH ATTORNEY General on April 13, 2004 WAS refused by "PROPERTY" AND GIVEN TO MAILROOM ON 4/22/04 (See Exhibit # 6 - which is a copy of the yellow copy of PROPERTY Contract # 160794. See also Exhibits # 22 and # 23.

ON April 23, 2004, Officer McLean, The "Legal mail" handler returned The 3 manila envelopes to me through "Legal Mail" - See Exhibit # 7 - U.D.C. - D.I.O. - "Privileged Mail Form" # 0638, at The Wasatch Chapel.

The mailing never left The prison.

ON April 13, 2004 I requested an ATTORNEY visit WITH The contract attorneys. See Exhibit # 8. (AT B-BLOCK.)

ON April 21, 2004 I requested an ATTORNEY visit. See Exhibit # 9. (AT B-BLOCK)

ON April 23, 2004, I requested a visit. (AT C-BLOCK).

On April 26, 2004 I requested a visit with the contract attorneys - See Exhibit # 10.

On April 26, I met with the contract attorneys on the 4-13-request. See "STATUS" section.

On May 4, 2004, after correction and copies were completed, I mailed both copies of the U.S. Supreme Court CERTIORARI OUT - See PROPERTY CONTRACTS # 171948 and 171949. See Exhibits #11 and #12, with officer Mayo.

On May 7, 2004, I requested another attorney visit. (AT B-Block) See Exhibit # 18.

On May 14, 2004 I had a medical visit. While waiting for medical I saw Attorney Angerkofen pass us in the hall. While I was waiting for movement back - an A team was called. No movement was allowed. I asked the "Medical" Guard if I could go down the hall to the attorney visit. He refused. See Exhibit # 18 - 10:30 note - "officer use only" When the A-Team "cleared", the attorneys were gone.

B-Block staff reported to the attorneys that I had refused the call.

On May 19, 2004 I received a docket sheet from 5th District Court showing an order being issued on Case No: 030.500719 on May 11,

2004 and a copy of the order (the original) being mailed on the 12<sup>th</sup> of May.

I have never received the original to this date.

I requested, through my sister, another copy - which I received on May 28, 2004.

On May 21, 2004 I filed a grievance (# 990854561) about the last 9 attorney requests. See Exhibit # 13 - 9 pages. The grievance was completed August 13, 2004. See pg. 9 of Ex. # 13.

I was never contacted at any time during this grievance.

On May 21, 2004 I requested "Indigent Copies" from CTS Wolf - there still weren't any in the "Block Library".

On May 29, 2004 I filed a grievance on the lost court order from 5<sup>th</sup> District Court. See Exhibit # 14 - 7 pages. The grievance was completed August 13, 2004. See pg. 7 of Ex. # 14.

I was never contacted at any time during this grievance either!

On May 28, 2004 I filed an attorney request. See Exhibit # 15



On June 1, 2004 I requested copies of Civil Court Rules AND STATUTES from CTS Wolf.

On June 3, 2004 I requested "Indigent Copies forms" from CTS Wolf - 2<sup>nd</sup> request and B-Block staff - 1<sup>st</sup> request since I had not heard on the May 21<sup>st</sup> request from Wolf.

On June 4, 2004 I wrote to CTS D'Amico for "Indigent Copies forms". Requested visit with attorneys - See Exhibit # 21.

Also on June 4, 2004 I wrote to SGT Cawley B-Block for indigent copies forms. He refused to take my "KITE". It is enclosed AS EXHIBIT # 16 - 2 pgs. (front and back)

On June 6, 2004 I filed a Motion for extension of time for the appeal since I could not get the "copies" form and time was running out. The Notice of Appeal on 5<sup>th</sup> District # 030500719 was filed on May 19, 2004. The Docket Statement + Copies was due June 9, 2004. I still didn't have a copies form.

On June 7, 2004 I had a contract attorney visit and I gave Attorney Angerhake the items needing copies. He sent me BACK to B-Block to get either a "copies request form" OR a written statement of indigency from a Block officer. I went BACK to B-Block and talked to Officer Bang about a "copies request" - OR a "indigent statement

Officer Bang said "We don't have any forms", and "I'm not going to take time to verify your indigency status."

I told him I had been asking for 2 weeks or more and I needed it for the attorney as time was running out.

He refused to help me, even though he was sitting at the computer when I came up to the "Bubble".

I was told to, "wait for Wolf".

Officer Wolf was in the OMR office at the time, in OMR.

I returned to the attorney visit room and told Attorney Angerhofer of the refusal.

He, Angerhofer, said, "file a grievance - I'm your witness. Denial of Access to the Court."

On June 9, 2004 I filed grievance # 990854719 attached as Exhibit # 17 - 12pgs. The grievance was completed on August 13, 2004. See pg. 12- Ex. 17.

I was never talked to by anyone during this grievance process.

On June 9, 2004 I requested Indigent Copies Forms from Wolf again, along with rules

AND STATUTES AGAIN, and for a notary.

On June 11, 2004 I again wrote to Wolf for indigent copies forms, statutes & rules and a notary.

On June 14, 2004 I wrote a letter to Capt. Long about my trouble getting copies.

On June 15, 2004 AT 7:30am I was called into the OMR room with LT- PUCKETT, Capt. Long and Officer Bang.

LT. PUCKETT, who was just returning from vacation leave, jumped on me for "Breaking the chain of command" and chastized me for "going over my head!" "This is my kingdom - I'm the King!" "My officers aren't here to jump at your commands. They do their job! IT'S your fault for not planning ahead. You can tell when you're going to need copies - you should take responsibility for your own needs, not expect us to come at your beck and call!"

Captain Long then demanded, "Do you know how to get copies Mr. Sheeran?"

I replied, "Yes, I do."

Capt. Long - "Tell me how, then!"

I did. I told him, "I had to get an

get it signed by an officer, then mail or carry it to the contract attorneys with the "copies" originals for copying."

He said - "That's right - you get copies from the contract attorneys - not from block officers or staff!" "Why don't you do that?" "I gave the attorney your letter on the way here this morning!" I replied - "I need an indigent copies form and a signature - that's what I have been trying to do for 3 weeks!"

Lt. Packett interrupted and asked Officer Bang if "we have indigent copies forms

Officer Bang said, "No - I've never seen them."

"See", "Ma, Sheanaa, you're in the wrong. We don't have indigent copies forms to give you!"

I replied, "Yes there are. Mr. Wolf has given me forms before - and more than once." "Why don't you just put them in the library box on the table with the other forms?"

Ct's D'Amico and Officer King walked into the room at this point.

Lt. Packett asked Officer King if he knew

copies request forms". Mr. King said, "Sure - They're available - I've seen them".

Lt. PUCKETT stammered and turned to CHS D'Amico and asked - "D'Amico - do we have indigent copies forms?".

CHS D'Amico said, "NO - we don't - The inmate has to ask an officer to look up his status and we're real busy".

Mr. King responded - "Yes There's a form - -".

Lt. PUCKETT Then Acquiesced and said that I should be more patient and plan ahead - "You know all about the law, don't you Mr. Sherratt?"

I said, "No - I'm learning as I go".

He said "yes, you do - so you're smart enough to foresee when you need copies for the courts orders - you should accept that responsibility on yourself, instead of Bothering my staff!"

I replied - "I have no way of guessing when the courts going to issue an order - why don't you just put the forms in the tier 'library-box'?"

Lt. PUCKETT said, "You can go, Mr. Sherratt".

I left, and as I left - I said, "I still need my indigent copies form".

At 3:00 That afternoon, Wolf sent a copies form down - but didn't talk to me or address the other issues - including the Notary. The form was not signed.

On June 21, 2004, I was "rolled up" by Officer Bang and sent to Oquirrh 3 - an "idle block".

On the way to O-3 I was stopped for an attorney visit, and attorney Angerkoter said he'd send me a copy of his answer to Captain Long's letter he gave him on the 15<sup>th</sup> before meeting with Lt. Puckett and I. See Exhibit #19, and Exhibit #20

Upon arriving at Oquirrh 3 (O-3) I went to the tier library box and picked up 5 copies of the "Indigent copies form - titled "Duplication of Personal Legal papers for Indigent Earners". The form was last revised in 1996.

The only place they "don't exist" is on B-Block, Wasatch site.

On June 27, 2004 I filed a retaliation grievance on B-Block grievance #

990854993, for moving me to an idle block - which prevents me from going to U.S.U. classes, and from having a job, and no Chapel Access.

This grievance is currently at level 3 - it is copied & sent as Exhibit #31 when completed

I have not been spoken to during this grievance either!

Since coming to O-3 - All Attorney Requests have been received and visits have resulted.

All requests for notary have been timely done, within 2 days of the request.

I have used over 20 "Indigent copies forms" with no problems - Officers sign them when asked.

On June 27, 2004, I filed a Motion to mailed the docketing statements for the appeal that were due on the 21<sup>st</sup> of June in the Utah Court of Appeals, since the Utah Supreme Court had transferred the case there. I HAD to refile delay caused motions.

On July 6, 2004 I mailed a Motion to Suspend the Rules to allow the docket statement to be "timely filed" because of the prisons actions that delayed the copies and mailing.

On July 13, 2004 The Utah Court of Appeals ordered the rules suspended to allow for timely filing of the docket statement for good cause shown. See Exhibit #24. See also Exhibit #25 - 5 pgs.

On August 1, 2004, a Defendants copy of a summons (in 5<sup>th</sup> District Court Case 040500252m) was returned as being refused because it was not "legal" was submitted in. All 2 All

without any charges, and was mailed the second time. It was clearly marked "Defendants copy" Case No: 040500252-ME.

On August 13, 2004, Mail Problem #041797 was received with an envelope clearly marked "Legal Mail", Defendants copy - Notice of Action pursuant to 63-30711, 12+13 See Exhibit #26

It was resubmitted without any charges on 8-16. And it was mailed.

On August 20, 2004, Indigent envelopes bearing the Gunnison Prison Address were handed out instead of envelopes for Draper. When the envelopes were used to mail court documents - They were refused mailing.

See Exhibits #27 (problem form - note stamp used to correct mistake "UTAH STATE PRISON P.O. Box 250 Draper Utah 84020") Problem Form # 042142, and 3 "privileged mail forms", #'s 04521, 04522, & 04523 I mailed them out on 8-26-04.

The "privileged mail" handler, Officer McLean filled out the forms, watched me handwrite what the "stamp identified before" said and then re-submitted all 3 envelopes.

On July 23, 2004 I mailed 6 envelopes out as "Legal Mail" - 2 without an "additional postage authorization for Indigent Mail" and 4 with the Additional postage form. See Exhibit #28 - showing 4 processed on the 26th and mailed - 2 processed on the 27th (with a modified computer printout deleting the date section on the left column). See also on 8-11 Problem #041797



privileged mail forms #04943 + #04951  
for identification, and envelope faces -  
Exhibits # 29 and #30.

## RESPONDENTS FAILURE TO DENY POINTS

Respondent has failed to deny or  
argue points I, II, III, IV, or V in  
the petition, so they are admitted.

Respondent has provided one additional  
Exhibit (Exhibit 4 - titled "Letter  
from Contract Attorneys") in their  
Motion to Dismiss.

Petitioner wishes to thank them for  
more "hair" to cover the "bald  
assertion" of his claims of denial  
of access; not that it could find  
much room prior to the new  
Exhibit, already having 32 Exhibits.

## Respondent's Exhibit #4, ADDITIONAL EVIDENCE

In the November 30, 2004 Letter  
from the Contract Attorneys the  
following evidence arises:

1 - Entry dated 1-5-04 (letter) The result of  
the request was, "none beyond  
scope for child support issue"

2- Entry of 3-15-04 (met) - See (1) -

The contract attorneys were told by prison staff that petitioner "did not qualify as indigent," when the 6 month account balance filed with this court to support the Affidavit of Impecuniosity clearly shows that on March 16, 2004 there was a grand total of \$0.22 in the account.

3- Then notice (4) "~~over~~ 2000 copies made" for U.S. Supreme Court. "Informed Stennett that the U.S. Supreme Court does not require an inmate to provide copies of pleadings, only the original."

This is represented as being done on March 16, 2004.

4- The attorneys failed to provide a copy to be served on the Utah Attorney General's Office; which filing is required prior to a case number being assigned in the U.S. Supreme Court, and which copy wasn't made until April 7, 2004. (see entry 4-05-04 (met)). That's a 2 week delay by itself.

5- 6-7-04 (met) "NOT INDIGENT" - photocopies denied. 2<sup>nd</sup> denial of copies due to indifference of prison staff.

6- 7-7-04 - DENIED ALL RULES STATUTES AFTER

Having informed Attorneys in person about needing Civil Rules & Statutes for the malfeasance suit (see 3-15-04 entry (1)) - Denied in person.

7- 8-4-04 entry - case law AND statutes beyond scope (of contract). Denied in person AGAIN.

Exhibit 4 (Respondents Motion to Dismiss) provides corroboration and credibility to petitioners claim of hindrance, denial and harassment in preparing and copying legal documents.

Petitioner asserts that Respondent has failed to prove their case, and have failed to meet their burden; they have actually provided more evidence and facts supporting the denial of access claim.

Therefore, their Motion to Dismiss should fail.

## Legal Analysis

Petitioners sworn statement, and the factual sequence of events shown in the Exhibits and petition provide proof that his "pursuit of a nonfrivolous legal claim" has been impeded. *Lewis v. Casey*, 518 U.S. 343, 349 (1996).

As Respondent concedes in Point 1, pg. 2, *Bounds v. Smith*, 430 U.S. 817 828, 68 S.2d 17 (1977) The U.S. Supreme Court's main concern is protecting the ability of an inmate to prepare a petition or complaint, and in requiring prison officials to assist in "the preparation and filing of meaningful legal papers." See also *Casper v. Deland*, 54 F.3d 613, 617 (10th Cir. 1995) requires duty to "the preparation of initial pleadings." And as Respondent admits, *Lowe v. Summit County*, 776 F.2d 908, 914 (10th Cir. 1985) also protects the inmates right to have the ability to prepare legal petitions or complaints. Petitioner was preparing initial pleadings, and appeals. Respondent attempts to establish the dates of a transaction that began the copying and production of a finished petition including required copies for service and their mailing. They chose to ignore the exhibits provided (#1, 2, 3, 4, 5 & 6) that show the attempts (with successes and failures) at copying and mailing the petition and its "service" copy. (Petitioner Exhibits)

Also ignored is Exhibit #7 - showing the "service copies" being returned, having never left the prison, on April 23, 2004. *Id.* The total delay of this action spanned from March 15, 2004 to April 23, 2004 - just to mail out 1 copy of the petition and 1 copy for service. Both prison staff (preparation room & mail room)

STAFF AND THE CONTRACT ATTORNEYS  
FAILED TO HANDLE THE PETITIONS PROPERLY  
AND WITHOUT DELAY OR HINDERANCE.

THIS CLAIM ALONE CONQUERS RESPONDENTS  
MOTION TO DISMISS.

IT IS IMPORTANT TO NOTE THAT DURING  
THE TIMEFRAME OF THE FACTUAL ADMITTED  
ACTIONS INVOLVED IN THE PETITION, AND  
UP TO AND INCLUDING THE DATE OF THIS  
MEMORANDUM, PETITIONER WAS INDIGENT.

UTAH STATE PRISON POLICY ADMITS THAT  
IT WILL DENY LEGAL MAIL, HANDLED  
THROUGH "PROPERTY" FROM BEING MAILED.  
SEE GRIEVANCE # 990854418 (EXHIBIT # 3 RESPONDENT;  
LEGAL MAIL IS NOT "PROPERTY", AND  
U.S.P.'S POLICY CLEARLY "HINDERS" THE  
FILING OF THE BULKY PETITIONS, AS EVIDENCED  
BY PETITIONS EXHIBIT #7.

RESPONDENT GALETKA HAS WORKED IN THE  
MAIL ROOM FOR YEARS. SEE TRETT V.  
GALETKA, 74 F3d 191, 195 (10th Cir 1996) STATING,  
"A REFUSAL TO PROCESS ANY MAIL FROM A  
PRISONER IMPERMISSIBLY INTERFERES WITH  
THE ADDRESSEE'S FIRST AMENDMENT RIGHTS."

FURTHER, IN SMITH V. ERICKSON, 884 F2d  
1108, 1109-11 (8th Cir. 1989) THAT COURT RULED  
THAT "RIGHT OF ACCESS VIOLATED BECAUSE  
PRISON OFFICIALS REFUSED TO PROVIDE  
INDIGENT INMATES WITH FREE POSTAGE,  
OR SUPPLIES FOR LEGAL MAIL; OFFICIALS

must furnish inmates with basic materials to draft and mail legal documents."

In the instant case, U.S.P. - B-Block Staff refused "Indigent copies Authorization forms", and signatures verifying indigency which prevented the copying of his materials. They were eventually provided after numerous successive requests covering weeks of time; Respondent fails to deny these facts, so they are admitted.

Then, U.S.P. "Property Staff" and "Mailroom Staff" refused to mail them quoting policy. Respondents do not deny these facts either, so they are admitted.

Property staff recognized the clearly marked legal mail envelopes should have been mailed and took them to the Mailroom. Respondent Galeota should have known that a case number is not assigned by the U.S. Supreme Court until after the petition is received AND service on the Utah Attorney General can be verified. Her actions were arbitrary, the Petition was mailed without a case number; the Attorney General was not. Respondents also admit this.

In the Grievance Response quoted by

Respondents, U.S.P. Staff ~~XXXX~~ ~~XXXX~~ SAID "Petitioner did not qualify for mailing out indigent property."

It was not property. It was obviously "Privileged Legal Mail." That was also admitted on pg. 3 of Respondents Motion Memorandum. *Procunier v. Martinez*, 416 U.S. 396, 413-14 (1974). Petitioner fully complied with Prison Policy in mailing his Petition and the "Service copy" identified. *Thunberg v. Abbot*, 490 U.S. 401, 409 (1989).

The injury is obvious; Required court documents were denied mailing, causing numerous letters and much anxiety to petitioner to rectify the damage. His Petition was placed in jeopardy as being refused for failure to comply with the Rules. Then, after filing the appropriate grievance, Petitioner was moved from B-Block in retaliation of filing his grievance.

To show or "to succeed on his Retaliation claims, [The inmate] need not establish an independent constitutional interest in either assignment ~~to~~ to a given prison or placement in a single cell." *Pratt v. Rowland*, 65 F.3d 802, 806, 07 (9th Cir. 1995).

Further it is reasoned in *Crawford-El v. Britton*, 523 U.S. 574, 584, 118 S.Ct. 1584, 140 L.Ed.2d 759 (1998), *rev'd* 93 F.3d 813

(D.C. Cir. 1996), "claim stated by prisoner alleging that misdelivery of box of legal papers denied ~~the~~ right of access to courts, [need not] adduce ... evidence of improper motive to rebut motion for summary judgment." *Penrod v. ZAVARRA*, 94 F3d 1399, 1404-05 (10th Cir. 1996) "prison officials may not harass or retaliate against inmate for exercising right to petition government for redress of grievances." See also *Muhammed v. Pitcher*, 35 F3d 1081, 1085 (6th Cir. 1994), "First Amendment right violated by prison policy of opening mail from Attorney General's office outside prisoners presence." *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963; *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293. Further, for a government to punish a person because he had done what the law plainly allows him to do is a due process violation of the most basic sort. *U.S. v. Sanders*, 211 F3d 711 (2d Cir. 2000). "penalizing conduct that involves no intentional wrongdoing by an individual can run afoul of the Due Process Clause." *Buckner v. Davis*, 237 F.3d 1113 (9th Cir. 2000). Finally, *Johnson v. Stovall*, 233 F3d 486, 489 (7th Cir. 2000) "A complaint need only allege a chronology of events from which retaliation may be inferred." See Statement of Facts - This Memorandum, AND Petition, AND Exhibits.

B-Block staff made sure Pettinier was idle, and thus meriting their action, by moving him to Quard 3 - an idle block.



Petitioner was further restricted from a volunteer job as literacy, tutoring, loss of yard access, exercise, religious programs and college classes

Oquirrh 3 staff tried for months to determine why petitioner was sent there. Only after being grieved did B-Block attempt to explain why. Respondent Marc Puckett filed a false report that it was because the Timpanogas facility was being closed to male inmates. That didn't happen until mid July - early August

Oquirrh 3 staff member Officer Savage, on October 8, 2004 (without being requested to by petitioner) ended the lockdown because "I can find no reason why you don't have your levels - I'm giving you your H level." Oquirrh 3 OMR agreed and declared petitioner eligible to advance, ending 4 months of additional restriction - for no violation of policy.

There is no factual basis for Lt. Puckett's claim, and no evidence in support has been shown.

The denial of Attorney Requests results in delays in court proceedings and suspension of Rules for cause, creating long delays and harassment in the process. Respondents do not deny this.

Therefore, it is admitted. The admitted facts show that Officer Paul Bang, the same officer who refused the indigent verification, and was grieved by petitioner, was the same officer involved in the meeting with Long and Puckett, and who told petitioner, "I hope you are not ready to move in 15 minutes," when being moved to Oquendo 3, and was also the officer who said I refused the attorney visit, and reported to medical that I had refused to go to an appointment - when Officer Bang had refused to open the cell door for the movement to the infirmary. Respondents do not deny any factual allegation, so they are admitted. Respondents Motion should fail. Petitioner has stated a claim for relief.

### CONCLUSION

The court may review the petition and dismiss it if the legality has already been adjudicated or if the petition is frivolous on its face. Rule 65 B. However, If the petition is not dismissed as frivolous on its face, the court shall issue a hearing order directing the respondent to appear before the court at a specified time for a hearing on the legality of the restraint." I.D. Also, "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: Ed Lucero v. Warden, 841 P2d 1230 (Ut. App. 1992).

This court has ruled it cannot find the petition frivolous on its face, so petitioner is entitled to a hearing on the merits.

Further, When "reviewing the grant of a Motion to Dismiss under Rule 12(b)(6), we view the facts alleged in the pleadings and the inferences drawn from those facts in a light most favorable to the plaintiff, and judgment should not have been granted unless the moving party has established that there is no material issue of fact to resolve, and that it is entitled to judgment in its favor as a matter of law." JABLONSKI v. Pan American World Airways, Inc., ~~553 F.2d 290~~ 853 F2d 290, 91 (3rd Cir. 1988).

Respondent admits all facts so their Motion should fail as they have failed to meet their burden as to the facts, and also fail to show they are entitled to judgment in their favor.

Respondents have failed to attempt any corrective action, and in spite of the evidence, without any investigation, have allowed the undisputed claims of violation of retaliatory actions to go unimpaired.

Respondents do not dispute that these actions are part of a continuing wrong, beginning in August, 2003 and continuing through the present, as alleged in itabaw 040905805, 3rd District, now pending, and cannot show that judgment should be rendered in their favor.

Petitioner prays this court schedule a hearing on the merits and compel Respondent to bring Petitioner before the court pursuant to Rule 65 B.

Respectfully Submitted,

12-28-04

Wm Shewell.

pro se.

I certify I mailed a copy of the foregoing to The Utah Attorney General at 160 E 300 So. 5th Fl S.L.C., UT 84111-0816, this day of

Wm Shewell