

2005

William Sherratt v. Clint Friel : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WILLIAM SHERRATT, :

Petitioner/Appellant, :

v. :

Case No. 20050108

CLINT FRIEL. :

Respondent/Appellee. :

Appeal from an Order of Dismissal of the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Bruce C. Lubeck, presiding

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ORAL ARGUMENT NOT DESIRED BY RESPONDENT/APPELLEE.

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LIST OF ALL PARTIES

To the best of Respondent's knowledge, all interested parties appear in the caption of this brief.

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PRIOR AND RELATED APPEALS

Sherratt v. Friel, No. 20050189 (Utah App.), pending before this Court, appeals from the district court's dismissal of petitioner's claim that his exclusion from the Utah State Prison's sex offender treatment program, based on petitioner's failure to acknowledge his crimes, violates his constitutional rights. The present appeal claims that the prison has retaliated against petitioner for bringing the prior legal action by interfering with his access to the courts and by placing him in more restrictive housing. The Court declined to consolidate the appeals by Order entered May 18, 2005.

IN THE UTAH COURT OF APPEALS

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CLINT FRIEL, :

Respondent/Appellee. :

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

Petitioner, an inmate at the Utah State Prison (USP), filed this action in the Third Judicial District Court on October 28, 2004, under Utah R. Civ. P. 65B(b), claiming interference with his access to the courts and retaliation for grieving the alleged interference (R. 12-129). Respondent, USP Warden Clint Friel, moved to dismiss the case under Utah R. Civ. P. 12(b)(6) (R. 141-67). The court entered a Ruling and Order (R. 203-05) on January 13, 2005, directing respondent to prepare an order dismissing the case. Petitioner filed a notice of appeal on January 25, 2005 (R. 209). Under Utah R. App. P. 4(c), the notice of appeal became effective when the final order was entered on March 31, 2005 (R. 216-18). Utah Code Ann. § 78-2a-3(2)(f) (West 2004) gives this Court appellate jurisdiction over the appeal from denial of the petition for extraordinary relief.

ISSUES PRESENTED UPON APPEAL

Petitioner does not identify any specific error in the district court's Ruling and Order, as finalized in its Order of March 31, 2005, nor does his brief contain a statement of issues; rather, it repeats the same claims made in the petition and also addresses issues not raised in the district court. To the extent that petitioner challenges the entire basis of the district court's dismissal, the issues for review are (1) whether the district court correctly concluded that petitioner was not denied access to the courts, and (2) whether the district court correctly concluded that prison officials' actions, including a change in petitioner's housing assignment, were not retaliatory. Warden Friel raised these issues in the memorandum supporting his motion to dismiss (R. 143-50).

"It is clear that rule 12(b)(6) of the Utah Rules of Civil Procedure does apply to habeas corpus petitions." Alvarez v. Galetka, 933 P.2d 987, 989 (Utah 1997). "Rule 12(b)(6) concerns the sufficiency of the pleadings, not the underlying merits of a particular case." Id. For this reason, the appellate court accepts the factual allegations of the petition as true and reviews the district court's ruling non-deferentially for correctness. If the petition does not sufficiently allege all the elements of the cause of action, the habeas court's dismissal of the petition before an evidentiary hearing is correct. Id.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

All relevant text of constitutional provisions, statutes, and rules pertinent to the issues before the Court is contained in the body of this brief.

STATEMENT OF THE CASE

A. Nature of the Case, Course of Proceedings, and Disposition Below

Petitioner filed his Petition for Extraordinary Relief pursuant to Utah R. Civ. P. 65B(b) in the Third Judicial District Court in and for Salt Lake County, State of Utah, on October 28, 2004. The petition complained of conditions of confinement during the period from March 1, 2004, through September 1, 2004, relating to legal access, handling of legal mail, the prison grievance procedure, and an allegedly retaliatory change of housing (R. 12-129). After obtaining an enlargement of time (R. 139-40), Warden Friel moved to dismiss the action for failure to state a claim upon which relief can be granted (R. 141-67). Following petitioner's opposing memorandum (R. 175-202) and Warden Friel's reply (R. 168-71), filed the same day, the court entered a Ruling and Order on January 13, 2005, without hearing, granting Warden Friel's motion on the ground that, taking all of petitioner's allegations as true, the facts, even if proven, would not amount to a showing of actual injury sufficient to withstand a motion to dismiss (R. 203-05). The court directed Warden Friel to prepare an order reflecting the ruling. Petitioner filed his Notice of Appeal on January 25, 2005 (R. 209), which was deemed filed on March 31, 2005, the day the final order was entered (R. 216-18).

B. Statement of Relevant Facts

A motion to dismiss under Utah R. Civ. P. 12(b)(6) accepts, for purposes of the motion, the facts as stated in the petition. According to the petition, on March 15, 2004, petitioner sought but was not provided a form permitting him to obtain copies without

payment for use in his legal actions (an "indigent copies form"). He acknowledged receiving the form the next day (R. 16). Nothing in the petition's allegations shows that he sustained any actual injury from this one-day delay, though he asserted that delay in obtaining the form at other times was a continuing problem. Petitioner also recounted delays in receiving requested attorney visits, difficulty with the prison's system for handling legal mail, and a housing reassignment to an "idle" block in retaliation for filing grievances about the foregoing problems. However, he stated that since the housing change, "[a]ll attorney requests have been received and visits have resulted" (R. 29). He further pointed out that "[a]ll requests for notary have been timely done, within 2 days of the request" (*id.*). He conceded that he has "used over 20 'indigent copies forms' with no problems- officers sign them when asked" (*id.*). He also noted that a tardy docketing statement allegedly delayed by copy and mailing problems was accepted for filing (*id.*) and that documents initially rejected for mailing were mailed on resubmission (R. 29-30). The district court agreed with Warden Friel that these facts constitute neither denial of access to the courts nor retaliatory action, and dismissed the petition for that reason.

SUMMARY OF ARGUMENT

The district court granted Warden Friel's motion to dismiss "[f]or the reasons set forth in the memorandum of respondent" (R. 204). Those reasons include (1) the lack of prejudice to petitioner's exercise of access to the courts, (2) the limited nature of the legal assistance the prison is required to provide inmate litigants, (3) petitioner's noncompliance with the prison's "privileged legal mail" policy, (4) the absence of a right

to any particular prison housing, (5) the legitimate administrative concerns underlying petitioner's housing change, and (6) the deference due to the prison's administrative decisions. See R. 144-49. Rather than addressing these grounds for the district court's dismissal, petitioner's brief addresses offender programming issues not previously raised in this case. With regard to the issues decided by the district court, petitioner simply refers the Court to the petition and memorandum filed there. See Petitioner's Brief at 7. Petitioner's brief presents no reasoned argument or authority showing error in the district court's decision. This Court has not hesitated to decline consideration of issues that are inadequately briefed under Utah R. App. P. 24. Even applying a lenient standard to petitioner's brief due to his pro se status, the brief cannot support reversal of the district court's dismissal.

Two premises govern this case: (1) a claim of denial of access to courts requires a showing of actual injury, and (2) inmates have no right to any particular prison housing. Because petitioner has shown neither actual injury to court access nor a right to particular housing, the district court's dismissal of the petition in its entirety must stand.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY CONCLUDED THAT PETITIONER WAS NOT DENIED ACCESS TO THE COURTS.

Precedent mandates that an inmate who alleges that his right of access to the courts has been violated must show actual injury. "It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer,

actual harm" Lewis v. Casey, 518 U.S. 343, 349 (1996). Moreover, the injury must be prejudicial, such as the inability to file a complaint at all, or the dismissal of a complaint for technical deficiencies about which the inmate had no way of knowing. See id. at 351. Nothing in petitioner's pleadings or in his brief to this Court establishes that petitioner has suffered an actionable injury with regard to court access. In fact, in his memorandum opposing Warden Friel's motion to dismiss this action, petitioner listed five cases as "still active" (R. 177), and admitted that a tardy docketing statement in an unidentified case before this Court was deemed timely filed "for good cause shown" (R. 189). In short, petitioner has failed to identify any instance in which his access to the courts has been thwarted by the actions of prison employees. Because, under Casey, actual injury is an essential element of a claim of interference with access to courts, see 518 U.S. at 351, petitioner's failure to show injury left the district court with no alternative to dismissing this claim.

Petitioner raises two issues in support of his legal access claim: delay in obtaining "indigent copies" forms and irregularities in the prison's legal mail system. As to delay in receiving the proper form, petitioner's brief identifies no particular incident in which his legal access was prejudiced by the alleged delay. At no time in the course of this lawsuit has petitioner established actual injury stemming from the delay in obtaining forms. The district court correctly concluded that the facts alleged by petitioner failed to state a claim upon which relief can be granted. Because petitioner has not shown that the district court

erred in concluding that his facts failed to establish the "constitutional requisite" of actual injury, there are no grounds on which to disturb its dismissal.

Petitioner's claim that mishandling of his legal mail interfered with his access to the courts also falls short of demonstrating injury. Although he claims that the prison's treatment of his legal mail interfered with his access to the courts, he has failed to identify any actual injury caused by the alleged mishandling. Without more, his claim cannot stand. Treff v. Galetka, 74 F.3d 191 (10th Cir. 1996), cited by petitioner, is not to the contrary. Treff complained of delays in mail to and from the federal district court, but did not show that the delays prejudiced him. The court concluded that in the absence of prejudice, Treff's constitutional right to access the courts was not denied. Like Treff, petitioner has not shown how any irregularity in the legal mail system operated to his detriment. As stated above, he identifies no case in which tardy mailing caused him actual harm, and even concedes that this Court filed his tardy docketing statement on a showing of good cause (R. 189).

Moreover, petitioner does not dispute his noncompliance with the mailing system--noncompliance that caused the delays of which he complains. As recounted in the memorandum supporting Warden Friel's motion to dismiss, petitioner attempted to use the property system for some of his legal mail, but did not qualify for mailing out indigent property. Once the improperly mailed items were returned to him, he failed to provide a case number as required on the form for requesting additional postage on

privileged mail. See R. 146. Petitioner's serial noncompliances cannot render the prison's legal mail system constitutionally defective.

In short, nothing in petitioner's brief demonstrates error in the district court's dismissal of his legal access claim. For this reason, the district court's decision on this claim warrants affirmance.

II. THE DISTRICT COURT CORRECTLY RULED THAT PETITIONER FAILED TO SHOW RETALIATION BY PRISON OFFICIALS.

While petitioner claims the prison perpetrated "a continuing denial of forms and retaliatory actions for seeking grievances and legal remedies" (Aplt. Brief at 8), he makes only general statements in support of his position: that prison staff made allegedly false (but unspecified) statements, that the grievance procedure does not provide him a hearing, and that the findings of hearing officers are not based on "properly scrutinized factual evidence and testimony" (id.). These general statements are insufficient to provide this Court a basis for review or reversal. "As we have all too often had to reiterate, 'a reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository in which the appealing party may dump the burden of argument and research.'" State v. Gomez, 2002 UT 120, ¶20, 63 P.3d 72 (quoting State v. Bishop, 753 P.2d 439, 450 (Utah 1988) (quoting Williamson v. Opsahl, 92 Ill. App.3d 1097, 48 Ill. Dec. 510, 416 N.E.2d 783, 784 (1981)).

Scrutinizing the petition is of little assistance. The only additional mention of retaliation is petitioner's assertion that he filed a retaliation grievance "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" (R. 188). The Supreme Court made clear in Meachum v. Fano that a prisoner's conviction is sufficient to extinguish any liberty interest in a particular housing assignment. "That life in one prison is much more disagreeable than in another does not in itself signify [a constitutional violation] when a prisoner is transferred to the institution with the more severe rules." Meachum, 427 U.S. 215, 225 (1976). Noting that "[t]ransfers between institutions, for example, are made for a variety of reasons and often involve no more than informed predictions as to what would best serve institutional security or the safety and welfare of the inmate," id., the court expressed unwillingness to second-guess the housing decisions of prison administrators. That petitioner was moved to what he perceives as less desirable housing is simply not of constitutional magnitude. As petitioner's dissatisfaction with his housing assignment does not state a claim upon which relief can be granted, the district court correctly dismissed the claim on that ground.

CONCLUSION

Petitioner's brief on appeal, like his petition, leaves critical elements of his claims unestablished. For this reason, the district court dismissed the petition in its entirety, and petitioner has provided no grounds to revive it. Therefore, Warden Friel respectfully requests this Court to affirm the district court's order of dismissal.

Dated this 18th day of August, 2005.



Nancy L. Kemp
Assistant Attorney General
Attorney for Respondent/Appellee

CERTIFICATE OF DELIVERY

I hereby certify that on this 15th day of August, 2005, I caused to be mailed, first class postage prepaid, two true and correct copies of the foregoing BRIEF OF APPELLEE to the following:

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10/15/05