2005

William Sherratt v. Clint Friel : Reply Brief

Utah Court of Appeals

William Sheenan
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IN THE UTAH COURT OF APPEALS

William Sheenan,
pro se, appellant,

v.

Clint Friel, Et al,
Appellee.

Reply To Appellee Brief

Case 20050108-CA

Appellant hereby files this Reply To Appellees Brief.

ARGUMENT

As STATED By Respondent/appellees Brief, pg. 2, Rule 12(b)(6) concerns the sufficiency of the pleadings..." The District Court Ruling becomes a self-fulfilling declaration that Appellant's claim was "...dismissed for technical deficiencies about which [we] had no way of knowing..." (Appellee Brief, pg 6., citing Lewis v Casey, 518 U.S 343 (1996) at 351.

THE DISTRICT COURT ruled, and

Therefore admits at the same time, that the petition meets the requirement of actual injury, because it was legally insufficient to sustain the action.

Appellant still does not know what was lacking, or how to correct that failure.

The courts ruling that the petition failed to state a claim is by definition a ruling that the petition was dismissed for insufficiency not merit. Therefore the court should have caught the redundency of that ruling.

This clearly shows actual injury is occurring during the courts ruling.

If Appellant had access to a legal library, he could learn what mistake he made.

If the court had recognized the prejudice occurring during the issuance of the Ruling, (however, prejudice is rarely seen by the actor) denial of access was shown

The irony of this event is crystal clear: Appellant failed to claim injury, so we will injure his claim by termination. We will kill the claim because it can't show an injury.

That's the same as euthanizing an unconscious person because they can't show they are injured, or claim injury.

The court has a duty to act as the "Doctor" in this case, and recognize that the injury is self-evident when a petition fails due to insufficiency, not merit.

If an adequate law

library, or legal access existed in the UTAH STATE prison, legal sufficiency could be learned, and complying with Rules would be more possible than it is now.

Further, Appellees Brief on pg. 6 & 7, contain statements clearly made in bad faith.

A Motion to suspend the Rules for Good Cause, when granted, shows there was prejudicial damage which in the interest of justice required the Rules to be suspended by this Court. (See Exhibit #24 Petition, & #25) Corrective ACTION, by definition, declares wrongful ACTION has preceded it.

The Brief also plainly and INTENTIONALLY lays the blame for using the progeny system on Appellants. All exhibits and mail progeny handling forms support Appellants claim that

prison staff required the use of the property system. (See Exhibit 5, pgs 3 & 4, 5, 6, & 7. Petition) Appellant had no choice - if he wanted his petition mailed, he was required to comply with prison staffs directives; and then prison staff refused TO MAIL them. (See Exhibits #1 thru #7 Petition)

Further, as explained in the petition (and as should be apparent to any person filing an initial Brief in the U.S. Supreme Court) a case number CANNOT be provided before it is assigned. Appellant believes that this is a long-standing and well known Rule of the court, and any lawyer would know that. Trying to discredit Appellants Claim in this manner shows bad faith. The Attorney General should be reprimanded and required to correct this practice.

5 of 13

Clearly, the prison mail systems serial non compliance with known legal mail handling requirements and policies is constitutionally defective, since Ms. Galetka should have known the Rules for legal mailing were defective? A case number can only be provided by the U.S. Supreme Court AFTER the petition is received in the mail. Further, changing this practice to prevent further injury does not remove the fact of non cure, the non-mailing of the petition.

When a court has to suspend or excuse Rule compliance, and that action is caused by prison staff failures, the suspension or correction become prima facie evidence of injury having occurred, which required Rule suspension or correction. Prison STAFFS actions are not the courts responsibility, but protecting the rights of inmates is. When a court has to correct prison

staffs actions, evidence is obvious that improper action broke the constitutional rules of filing due process. Prisons' staff must therefore be compelled to comply with the rules through court declaration.

This court, in the interest of justice, for cause shown, suspended the rules so that unconstitutional delay and harassment could be corrected, and Appellants claims could be filed.

If no unconstitutional action occurred, the rules would have no need to be suspended. Exhibits # 24 + 25.

Finally, on page 8 Appellees Brief, # II, Appellee claims that "unspecified statements" were made that prison staff C. Marc Puckett made a false statement in the grievance process.

The court was provided the grievance in its entirety, and it shows that the

statement made by Lt. Puckett that it was an administrative decision based upon the closing of the Timpanogos facility that necessitated Appellants move, not retaliation as claimed. That statement was clearly challenged as being false, and prison staff grievance personell knew the closing moves didn't begin until over a month later. (At the same time the grievance was being processed.) This claim was NOT denied by prison staff, or respondent, at any time, and the false statement was allowed to be presented to the court. The closing of that facility, and the date of the moves, is available to all prison staff, and to the Attorney General. Both the prison administration and the Attorney General should have known this report was false, yet they still submitted it to be relied upon.

8/12

Filing a false report in an official proceeding is a felony violation of obstruction of justice, and ignorance of that false report is not an affirmative defense when the report is available, and has been challenged. Failure to scrutinize the report contained in a government office and in the possession of government officers does not remove the obligation of presenting truthful statements to the court.

Further, the Attorney Generals statements in their brief clearly assert false claims as well. I- on page 7, line 15 (last paragraph) they state that petitioners ... non compliance ... caused the delay."

This is a bold lie. The Exhibits in the petition provide a prima facie case and evidence that the prison policies caused the delays.

9 of 12

Appellants only compliance was in accord to the rules set by the prison. See Exhibit 5

Further, holding Appellant responsible for assigning a U.S. Supreme Court Case Number is both bad faith and false claiming in an official process. See the Exhibits #22, #23 for prison mail room denials + forms.

Finally, Appellees assertion on page 8 that "a continuing denial of forms and retaliatory actions for seeking grievances and legal remedies", makes only general statements in support. Appellee ignores the 31 Exhibits in the petition and calls them general statements. Their dates and sequences of events establishes retaliation and continued harassment and denials over a 6 month period.

Retaliation has been shown to. This is not a "general statement."

Conclusion

Appellant Asserts That All Actions of the District Court Judge, And his determinations, are not correct. This Court has the Duty to decide, after reviewing the evidence, if Appellants Assertions are correct.

Appellee admits that the petition is insufficient and "leaves critical elements of his claims unestablished" Pg. 9, Brief. And that the Court dismissed for this Reason.

Adequate Access to the Courts has been Ruled, and the Claims dismissed for failure to State a Claim.

The merits were Ruled non-frivolous.

Utah State Prisons Access Program is not sufficient Nore Adequate.

Appellant has suffered injury.

Held

He could not succeed in filing a sufficient filing on a non-frivolous claim.

This court should provide remedy as it deems proper to correct this.

This court should provide remedy for relief from retaliation and false reports.

Respectfully Submitted,

8/22/05 W. Shendell

Certificate of Mailing

I certify I mailed a copy of this document to Nancy Kemp, Attorney at 100 E. 300 So. 5th floor, S.L.C. UT- 84114-0857 on the day of August, 2005

W. Shendell