

1993

William Remine v. Utah Board of Pardons : Petition for Rehearing

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

William Remine; Attorney Pro Se.

James H. Beadles.

Recommended Citation

Petition for Rehearing, *Remine v. Utah Board of Pardons*, No. 930752 (Utah Court of Appeals, 1993).
https://digitalcommons.law.byu.edu/byu_ca1/5655

This Petition for Rehearing is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH COURT OF APPEALS
BRIEF

UTAH
DOCUMENT
KFU
50
.A10
DOCKET NO.

930752-CA

FILED

SEP 23 1994

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

William Remine,
Petitioner and
Appellant

PETITION FOR
REHEARING

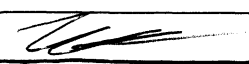
vs.
UTAH BOARD OF Pardons
Respondant and
Appellee

CASE NUMBER
930752-CA

William Remine
P O Box 250
DRAPER UT 84020

James H. Readles
330 South 300 East
Salt Lake City UT 84111
Phone: 575-1600

Petitioner, William Remine,
attorney pro se, hereby certifies that
this petition for rehearing is presented
in good faith and not for delay.
Dated this 21 day of September 1994


William Remine
Attorney Prose

With respect to the notice and stipulation. The court's reasoning is based on a clearly erroneous assumption that: "The record establishes that petitioner stipulated to a dismissal of five charges against him in exchange for his guilty plea to one of the charges." The court's conclusion has no bases in fact! The plea was entered on March 24, 1993, a record of that proceeding is attached hereto [A cassette tape]. Review this record it does not support the court's conclusion.

How many times must the petitioner reiterate to this court that all the respondent's arguments have no base in fact! The arguments may have a base in law but they lack the very facts they argue!

With respect to the court's position that: "petitioner failed to establish how that [inaccurate] information impacted the board's decision." The court's reasoning seems to be in conflict with the reasoning of *Morrissey v. Brewer* 408 US at 487 and 489. Pursuant to *Morrissey* the board has the duty to explain the evidence and reasons for revoking parole, not the petitioner.

IF The COURT can not see From The Boards Rationale how That inaccurate information impacted The Boards decision, Then The court should address The matter as a due process violation. A violation of provision (F) of The minimum procedural Requirements of Morrissey at 489.

However, if The court accepts The Boards Rationale at Face Value as TRUE, correct and in compliance with The provisions of Morrissey. Then The court must assume That petitioners parole was revoked For:

1. inaccurate criminal history information;
 2. inaccurate and undisclosed information Regarding prior violations of parole and probation;
 3. inaccurate and undisclosed information Regarding petitioner's Release plans;
 4. inaccurate and unchanged accusations Regarding petitioner's parole programming
 5. inaccurate undisclosed and unchanged accusations That The petitioner "obscended supervision Twice prior To Being violated".
- [These accusations were not even changed in The allegations That

were dismissed By The stipulation] Assuming The Rationale States The True and correct Reasons For Revoking parole, The one charged violation of parole could not have Been a substantial Reason For Revoking parole, since The Rationale does not even mention it. nothing in The Rationale is even Related To The one charged violation, which shows it is Relatively insignificant.

In The Rationale The Board States Five Reasons For Revoking petitioner's parole. All Five of These Reasons are Based on inaccurate information. This is a due process violation of The most Basic sort. The prejudice of having parole Revoked For erroneous Reasons is self-evident, it is an obvious injustice.

A parole Revocation decision should Be Based on "verified Facts" and "an accurate knowledge of The parolee's Behavior". Morrissey at 484. The Board may not consider inaccurate information at any phase of The Revocation process. Morrissey at 480 and 484, see ex rel. Menechino v. Warden, 27 N.Y. 2d 376, 379 and n.2, 267 N.E. 2d 238, 239, and n.2 (1971)

Three of The Reasons Stated in The Rationale were Based on information That was not disclosed To The petitioner. This violates provision (b) of The minimum procedural Requirements of Morrissey at 489. The prejudice From This Failure To disclose is self-evident, The petitioner could not challenge on rebut The accuracy of This undisclosed information. This is a "substantial and prejudicial denial of a constitutional Right."

Two of The Reasons Stated in The Rationale were unchanged accusations of parole violations. The petitioner did not receive notice of These claimed violations of parole. This violates provision (a) of The minimum procedural Requirements of Morrissey at 489. This prejudiced The petitioner in That he was not given an opportunity To prepare a defense against These unchanged accusations. This is a "substantial and prejudicial denial of a constitutional Right."

One of The Reasons Stated in The Rationale was Based on inaccurate information That The Board Refused To correct even

AFTER BEING PROVIDED PROOF THAT IT WAS ERRONEOUS. THE BOARD'S CONDUCT SHOWS A DEEPSEATED PREJUDICE, WHICH VIOLATES PROVISION "65" OF THE MINIMUM PROCEDURAL REQUIREMENTS OF MORRISSEY AT 489. MOREOVER THE BOARD'S CONDUCT VIOLATES THE VERY INTENT OF MORRISSEY AT 484. THIS IS AN OBVIOUS SUBSTANTIAL AND PREJUDICIAL DENIAL OF A CONSTITUTIONAL RIGHT.

WITH RESPECT TO THE COURT'S ASSUMPTION THAT: "IN FACT, THE REVOCATION WAS BASED ON PETITIONER'S PLEA OF GUILTY TO ONE OUT OF SIX CHARGES MADE AGAINST HIM". THE COURT'S ASSUMPTION IS IN CONFLICT WITH THE EVIDENCE BEFORE THE COURT. THE ONLY EVIDENCE BEFORE THE COURT AS TO THE REASONS FOR REVOKING PAROLE IS THE BOARD'S RATIONALE. THE RATIONALE STATES FIVE SUBSTANTIAL REASONS^{FOR} REVOKING PAROLE, INCLUDING SEVERAL UNCHANGED ACCUSATIONS OF PAROLE VIOLATIONS, BUT IT DOES NOT EVEN MENTION THE CHANGE THAT PETITIONER PLEADED GUILTY TO. THIS SHOWS THAT THE CHANGE WAS RELATIVELY INSIGNIFICANT IN THE BOARD'S DECISION TO REVOKE PAROLE. MOREOVER NOTHING IN THE RATIONALE EVEN RELATES TO THE CHANGE THAT PETITIONER PLEADED GUILTY TO, WHICH SHOWS THAT IT WAS NOT A

substantial Reason For Revoking parole.

The petitioner has requested The Board To clarify The Reasons For it's decision at least 6 Times. The Board Refuses To do so. In The answer and motion To dismiss, The Respondants admit, in paragraph #6 That They Received such a Request at The hearing on may 21, 1993, But They deny Refusing To state The Reasons For The decision. A Record of That proceeding is attached hereto. This Record clearly shows That The Board Refused To state or discuss The Reasons For The decision.

Furthermore This Record shows The Respondants pleadings violate Rule 11, Rules of civil procedure, at least a dozen Times, paragraphs #5, #6, #7, #10, etc. The Record also shows That The Board Refused To correct Their Records on The petitioner. In The pleadings The Respondants attorneys have either Failed To make reasonable inquiries or improperly denied factual contentions For The purpose of obstructing litigation.

With Respect To The courts assumption That: "The AP and P evaluation and Recommendation... contained no inaccurate information". The assumption is plainly in error. AP and P's evaluation and Recommendation Begins and ends with scandalous information. paragraphs #1 #2 and #8 are not at all accurate. The court should also note This was AP and P's second evaluation and Recommendation. The First one contained other scandalous information. Furthermore, in Both of AP and P evaluations and recommendations, They Recommended That The petitioner Be ordered or Required To pay Restitution That was previously paid in Full. AP and P Knew The Restitution was paid in Full But They did not like The manner in which it was paid, so They wanted The petitioner To pay it again [ABSURD BUT TRUE!].

The court should also note That one of The charges against The petitioner That was dismissed was For not paying This Restitution That was paid in Full. The other Four charges That were dismissed were similarly scandalous. They all lacked essential elements That precluded Them From Being violations of parole.


With respect to the court's reasoning regarding the ineffectiveness of petitioner's counsel, the court's reasoning is plainly untenable. The court's reasoning improperly places the burden of explaining the reasons for revoking parole on the petitioner. Pursuant to Morrissey, the Board has the duty of explaining the reasons for revoking parole. Furthermore, the court overlooks the obvious prejudice of having parole revoked for erroneous reasons, such as reasons based on inaccurate information. Morrissey at 480 and 484. Finally, the court's reasoning neglects to consider all of the claims of ineffectiveness. The petitioner relied on his counsel for several other defense objectives: paragraph 3 i of the petition: obtaining documentary evidence; impeach AP and P's credibility; object to and defend against improper accusations, such as those in paragraph 1, 2 and 8 of AP and P's evaluation and recommendation; etc.

With respect to the court's footnote, the court does not need to determine an issue plainly spelled out in state law, UCA 77-27-11(5) and UAC: R671-308; R671-505.

Other Related Facts: The petitioner did not agree to the stipulation. The petitioner's counsel accepted the stipulation without consulting him. In essence the stipulation was nothing more than the Attorney General's office agreeing to dismiss frivolous allegations. The petitioner entered his guilty plea to the one charge weeks before the stipulation. With respect to the notice, the petitioner did inform his attorney he wanted proper notice, so he could prepare for the hearing, his counsel failed to raise the objection.

With respect to the manner in which this court construes the pleadings and generally reasons that this pro se litigant should be held to jump through all the legal hoops, this pro se litigant can only hope that in the future this court will adopt the reasoning of *Haines v. Kerner* 404 US 519, 92 S. CT 494 (1972); *Hughes v. Rowe* 449 US 5, 101 S. CT 173 (1980) and seek the ends of justice rather than the ends of judicial bureaucracy.

Submitted this 21 day of September 1994.


William Remine
Attorney Pro Se