

1994

John Kocher v. Scott Carver, Warden, Utah State Board of Pardons : Brief of Appellee

Utah Court of Appeals

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Nancy L. Kemp; Jan Graham.

David S. Steed.

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IN THE UTAH COURT OF APPEALS

JOHN KOCHER,

Petitioner-Appellant,

v.

UTAH STATE BOARD OF PARDONS and
SCOTT CARVER, Warden,

Respondents-Appellees.

:

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:

:

Case No. 940141-CA

Priority No. 3

BRIEF OF APPELLEES

- - - - -

APPEAL FROM DISMISSAL OF PETITION FOR WRIT OF
HABEAS CORPUS AND POST CONVICTION RELIEF IN
THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE
ANNE M. STIRBA, PRESIDING

UTAH COURT OF APPEALS
BRIEF

UTAH

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CLERK NO.

940141

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Attorney for Appellant

FILED
Utah Court of Appeals

DEC 15 1994

Marilyn M. Branch
Clerk of the Court

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
JURISDICTION AND NATURE OF PROCEEDINGS	1
ISSUES PRESENTED UPON APPEAL AND STANDARDS OF APPELLATE REVIEW	1
CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES	2
STATEMENT OF THE CASE	2
A. <u>Nature of the Case</u>	2
B. <u>Course of Proceedings and Disposition Below.</u>	3
C. <u>Statement of Relevant Facts</u>	4
SUMMARY OF ARGUMENT	5
ARGUMENT	7
POINT I THE DISTRICT COURT CORRECTLY CONSIDERED THE PETITION UNDER RULE 65B(e) OF THE UTAH RULES OF CIVIL PROCEDURE	7
POINT II THE DISTRICT COURT PROPERLY FOUND THAT PETITIONER FAILED TO ADDUCE FACTS SHOWING THAT RESPONDENTS ACTED IN VIOLATION OF LAW, EXCEEDED THEIR JURISDICTION, ABUSED THEIR DISCRETION, OR DENIED A RIGHT TO WHICH PETITIONER WAS ENTITLED.	9
CONCLUSION	15
ADDENDA	
ADDENDUM A: Order of Dismissal dated February 8, 1994	
ADDENDUM B: Letter from M. R. Sibbett, Chairperson, Utah State Board of Pardons, to John Kocher, USP #19261, dated June 16, 1993	
ADDENDUM C: Rescission Hearing Order and Rationale dated June 30, 1993	
ADDENDUM D: Decision and Order of Parole dated July 13, 1993	

TABLE OF AUTHORITIES

CASES CITED

<u>Foote v. Utah Bd. of Pardons</u>	
808 P.2d 734 (Utah 1991)	8
<u>Hall v. Utah Bd. of Pardons</u>	
806 P.2d 217 (Utah App. 1991)	2
<u>Lancaster v. Utah Bd. of Pardons</u>	
869 P.2d 945 (Utah 1994)	8-10
<u>Northern v. Barnes</u>	
870 P.2d 914 (Utah 1993)	2
<u>Oneida/SLIC v. Oneida Cold Storage and Warehouse</u>	
872 P.2d 1051 (Utah App. 1994)	13
<u>Padilla v. Utah Bd. of Pardons</u>	
839 P.2d 874 (Utah App. 1992)	2
<u>Preece v. House</u>	
252 Utah Adv. Rep. 10 (Utah Nov. 23, 1994)	9-10
<u>Prudential Capital Group Co. v. Mattson</u>	
802 P.2d 104 (Utah App. 1990)	14
<u>Rawlings v. Holden</u>	
869 P.2d 958 (Utah App. 1994)	2
<u>Saunders v. Sharp</u>	
806 P.2d 198 (Utah 1991)	13

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann. § 77-27-5 (Supp. 1993)	7
Utah Code Ann. § 78-2a-3 (Supp. 1994)	1
Utah R. App. P. 11	14
Utah R. Civ. P. 65B	1-3, 5-10

IN THE UTAH COURT OF APPEALS

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SCOTT CARVER, Warden,	:	
	:	
Respondents-Appellees.	:	

BRIEF OF APPELLEES

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

Petitioner, a now-paroled third degree felon, appeals from the district court's dismissal of his pro se petition for extraordinary relief from respondent Utah Board of Pardons' rescission of his parole date. The petition was brought under Rule 65B(c) of the Utah Rules of Civil Procedure on grounds that respondents had wrongfully restrained petitioner's personal liberty, but was decided under subsection (e) of the rule as a claim of wrongful use of judicial authority. Utah Code Ann. § 78-2a-3(2)(h) (Supp. 1994) grants this Court jurisdiction over appeals from petitions challenging Board decisions that do not involve a first degree or capitol felony.

ISSUES PRESENTED UPON APPEAL AND STANDARDS OF APPELLATE REVIEW

1. Did the district court correctly consider the petition under Rule 65B(e) of the Utah Rules of Civil Procedure?

In reviewing dismissal of a petition for extraordinary relief, an appellate court reviews the trial court's conclusions of law

without deference for correctness. Rawlings v. Holden, 869 P.2d 958, 960 (Utah App. 1994); accord, Padilla v. Utah Bd. of Pardons, 839 P.2d 874, 876 (Utah App. 1992).

2. Did the district court err in determining that the Board of Pardons regularly pursued its authority in rescinding petitioner's parole date?

On appeal from the dismissal of a petition for extraordinary relief, the reviewing court surveys the record in the light most favorable to the findings and judgment and will not reverse if the record provides a reasonable basis to support the trial court's decision. Northern v. Barnes, 870 P.2d 914 (Utah 1993); accord, Padilla, 839 P.2d at 876; Hall v. Utah Bd. of Pardons, 806 P.2d 217, 217 (Utah App. 1991).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

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

STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal from an order entered by the trial court on February 8, 1994 (Addendum A, R. 57-59), dismissing petitioner's claim that respondents violated his due process rights in rescinding his parole date. The trial court held that the claims were properly cognizable not under Rule 65B(b) or (c) of the Utah

Rules of Civil Procedure, but under subsection (e) of the rule. See Addendum A at R. 57-58. Finding that petitioner did not show any actions in which respondents failed to follow applicable law, exceeded their authority, or abused their discretion, the court denied the relief requested by petitioner and granted respondents' motion to dismiss the petition. See id. at R. 58.

B. Course of Proceedings and Disposition Below

On October 12, 1993, petitioner filed his petition for extraordinary relief in the Third District Court (R. 2-7). Alleging jurisdiction under Rule 65B(c) of the Utah Rules of Civil Procedure, petitioner claimed that respondents had violated his due process rights by rescinding his parole date based on a flawed prison disciplinary action. Although the petition states that petitioner attached supporting affidavits, records, and other evidence (see R. 5 at ¶ 7), the sole attachment to the petition contained in the court's record is petitioner's own affidavit simply repeating the general allegations of the petition (R. 7). Two days later, the district court judge ruled that the petition was not frivolous and ordered respondents to answer pursuant to Rule 65B(c)(5). R. 9-11.

On October 29, respondents filed a motion to dismiss the petition and a supporting memorandum. R. 14-35. In support of their motion, respondents argued that the petition failed to state a claim of unlawful restraint cognizable under Rule 65B(c). Petitioner responded by moving to strike the motion to dismiss and requesting a hearing. R. 38-46.

A hearing was held on December 12, 1993, and respondents' motion to dismiss was granted. R. 56. On March 2, 1994, following the trial court's February 8, 1994 order of dismissal (Addendum A, R. 57-59), attorney David S. Steed entered an appearance of counsel on petitioner's behalf (R. 60-61) and filed a notice of appeal (R. 62-63).

C. Statement of Relevant Facts

At the time the petition was filed, petitioner, a convicted felon, was confined to the Utah State Prison on third degree felony convictions of theft and auto theft (R. 24 and 27) following revocation of a prior parole (R. 32). At the time of his revocation hearing, petitioner was given a new parole date of August 24, 1993. R. 32. However, on June 16, 1993, the Board of Pardons advised petitioner by letter that it had received a rescission request based on unspecified prison disciplinary actions. Addendum B, R. 45. The letter requested petitioner to prepare to appear for a rescission hearing at the prison before a Board staff member on June 30, 1993, at 10:00 a.m. The letter also enumerated six categories of information contained in petitioner's Board file that could be considered, and noted that "[a]ny other specific items of information to be considered by the Board will be identified for you at the hearing and you will have an opportunity to respond at that time." Id. at R. 45.

At the June 30, 1993 hearing, the Board entered an interim order rescinding the August parole date and granting a new date of December 14, 1993. Addendum C at R. 29. Although the Board noted

employment possibilities, a meaningful support system, and acceptance of responsibility for some conduct as positive factors, it determined the rescission to be appropriate based on aggravating circumstances including denial or minimization of responsibility for other conduct; repeated, numerous incarcerations or parole revocation; a lack of participation in appropriate prison programming; and prison disciplinary problems or other defiance of authority. Addendum C at R. 30. The interim decision was affirmed on July 13, 1993. Addendum D, R. 26-27.

On October 12, 1993, petitioner filed his petition for writ of habeas corpus and postconviction relief in the Third District Court (R. 2-7), claiming that respondents had violated his due process rights by relying on false information in rescinding his parole date (R. 4).

SUMMARY OF ARGUMENT

Respondents do not disagree with petitioner's premise that petitions for extraordinary relief are available to seek review of certain actions of the Board of Pardons. They do, however, disagree with petitioner's understanding of the nature and scope of that review. As held by the court below and not contested here, the claims made by petitioner are properly characterized as claims that the Board of Pardons, an administrative agency, wrongfully used its judicial authority by exceeding its jurisdiction, abusing its discretion, or failing to act in accordance with applicable law pursuant to Rule 65B(e) of the Utah Rules of Civil Procedure.

Under subsection (e)(4), the district court's role can extend no further than assuring that the Board, in its actions, regularly pursued its authority. The fact that petitioner disagrees with the outcome of his rescission hearing is insufficient to show legal error on the Board's part.

Petitioner's reliance on the alleged mishandling of his prison disciplinary action is misplaced. By his own admission, he explained his concerns to the Board. By providing petitioner the opportunity to rebut claimed errors in the disciplinary proceedings, the Board provided him appropriate due process. Having entertained his explanation, the Board was entitled to weigh it against other considerations in determining that rescission was nonetheless warranted.

The court found that petitioner did not establish facts showing either an abuse of the Board's discretion or a failure by respondents to follow statutes, rules, or regulations governing their actions. Petitioner has not marshalled the evidence in favor of the court's findings as precedent requires. Moreover, petitioner's failure to provide a transcript of the district court hearing, as required by rule when findings or conclusions are challenged, precludes a showing that the findings lack a sufficient evidentiary basis. In light of these deficiencies, the findings must be accepted as valid, and review is limited to a determination of whether the court's legal conclusions are consistent with those findings. Since the facts as found by the court show no instances of violative conduct by respondents, the court's conclusion that

respondents regularly pursued their authority is inescapable.

Petitioner has not shown that the Board of Pardons violated his due process rights in any way. Because the Board regularly pursued its authority in rescinding his parole date, he is not entitled to relief, and the district court's dismissal of his petition must be affirmed.

ARGUMENT

POINT I

THE DISTRICT COURT CORRECTLY CONSIDERED THE
PETITION UNDER RULE 65B(e) OF THE UTAH RULES
OF CIVIL PROCEDURE.

Petitioner acknowledges and does not contest the propriety of the district court's ruling that petitioner's claims are appropriately actionable under subsection (e) of Rule 65B of the Utah Rules of Civil Procedure. See Brief of Appellant at 6, ¶ 10. Nonetheless, his arguments on appeal do not address whether respondents regularly pursued their authority in rescinding his parole date. Instead, petitioner argues that the substance of the Board's decision is wrong because of underlying flaws in a prison disciplinary action considered by the Board in its decisionmaking process. In effect, petitioner seeks this Court's review of the merits of the Board's determination, a result precluded not only by statute but by binding precedent.

As worded at the time of the district court's order of dismissal, Utah Code Ann. § 77-27-5(3) (Supp. 1993) stated that "[d]ecisions 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."¹ As petitioner correctly points out, Footte v. Utah Board of Pardons, 808 P.2d 734 (Utah 1991), established that despite this provision, review of Board actions is available in certain circumstances. However, as settled by binding authority, the scope of that review is limited to an examination of procedural due process pursuant to Rule 65B(e).

In Lancaster v. Utah Board of Pardons, 869 P.2d 945 (Utah 1994), the supreme court established both the rationale for the application of subsection (e) and the parameters of a subsection (e) review. Lancaster sought relief against the Board for, among other things, failing to fix a definite release date. The petition alleged jurisdiction under both subsections (c) and (e) of Rule 65B. The supreme court affirmed the trial court's dismissal of the petition as frivolous. The court rejected consideration of Lancaster's claims under subsection (c), holding that,

[a]s explained in Labrum, we must review the fairness of the process by which the Board undertakes its sentencing function, but we do not sit as a panel of review on the result, absent some other constitutional claim, such as cruel and unusual punishment. Accordingly, Lancaster's claim under Rule 65B(c) was properly dismissed as frivolous on its face.

Lancaster, 869 P.2d at 947 (citation omitted) (emphasis in original). Scrutinizing the claims under Rule 65B(e), the court

¹Effective May 2, 1994, the provision was amended to add the words "and Parole" after "Board of Pardons", but the substance of the provision remained unchanged.

determined that the dismissal was warranted by Lancaster's failure to allege "facts showing that the Board failed to act as required by law, exceeded its jurisdiction, abused its discretion, or refused him a right to which he was entitled." Id. at 948.

The application of subsection (e) to claims against the Board was most recently upheld in Preece v. House, 252 Utah Adv. Rep. 10 (Utah November 23, 1994). Preece challenged his Board-established parole date on several grounds, including the Board's alleged consideration of a prison disciplinary report that was supposed to have been expunged from his file. The supreme court found Preece's petition appropriate under subsection (e), see Preece, 252 Utah Adv. Rep. at 12, and relied on Lancaster to reject review of the Board's substantive decision. See id.

As in Preece and Lancaster, petitioner is entitled to a review of the procedure by which the Board reached its decision regarding his parole date. Likewise, as in these controlling precedents, he is entitled to no more. Statute and case law mandate affirmance of the court's application of Rule 65B(e) to petitioner's case.

POINT II

THE DISTRICT COURT PROPERLY FOUND THAT PETITIONER FAILED TO ADDUCE FACTS SHOWING THAT RESPONDENTS ACTED IN VIOLATION OF LAW, EXCEEDED THEIR JURISDICTION, ABUSED THEIR DISCRETION, OR DENIED A RIGHT TO WHICH PETITIONER WAS ENTITLED.

To succeed in his Rule 65B(e) claim, petitioner can obtain relief only on the following grounds:

(A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or

abused its discretion; (B) where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; or (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which petitioner is entitled.

Utah R. Civ. P. 65B(e)(2). As the court below properly found and the record sustains, petitioner did not adduce evidence demonstrating that respondents committed any such violation.

Petitioner argues extensively in his brief that the Board's rescission action is defective because the record before the Board included an allegedly flawed prison disciplinary proceeding. Petitioner's attack is misguided. Any error committed by prison authorities in the disciplinary proceeding is simply irrelevant to the issue of whether the Board violated petitioner's rights and goes to the merits of the Board's parole determination, a function "certainly well within the Board's discretion." Lancaster, 869 P.2d at 947. Indeed, as the supreme court noted in Preece, 252 Utah Adv. Rep. at 12, "so long as the period of incarceration decided upon by the board of pardons falls within an inmate's applicable indeterminate range, e.g., five years to life, then that decision, absent unusual circumstances, cannot be arbitrary and capricious." Petitioner has shown no unusual circumstances here.

Even assuming, solely for the purpose of argument, that the prison's disciplinary action were flawed as petitioner contends, petitioner has shown no impropriety by respondents that would entitle him to relief against them. Petitioner has made no claim that the Board used constitutionally defective procedures in its

decisionmaking process. He has not alleged that the Board provided inadequate notice of his rescission hearing. He has not claimed that the Board, in contemplating the rescission request, failed to advise him of the evidence that could be considered, prevented him from raising or responding to relevant issues, or denied any request for additional information. He has not asserted that the Board declined to provide an adequate written rationale for its rescission of his parole date. His sole claim against respondents is a challenge to the substance of the decision rescinding his parole date, not to the procedure by which that decision was reached. Although he complains that prison officials not made parties to this suit violated his rights in disciplining him for an infraction of prison rules, he does not claim that the respondents he has brought under the Court's jurisdiction bear any responsibility for those alleged violations.

Petitioner mischaracterizes the Board's rescission of his parole date as resulting from an "automatic rescision provision." See Brief of Appellant at 1. In contrast, the record reveals a course of deliberation that was anything but automatic. After receiving a rescission request based on multiple disciplinaries, the Board scheduled and advised petitioner of a hearing "to discuss this matter." Addendum B, R. 45. Following petitioner's explanation to the Board, an interim decision rescinding petitioner's parole date was entered on June 30, 1993 (Addendum C at R. 29), and a written rationale was provided (id. at R. 30). The interim decision was reviewed and affirmed by the Board on July

13, 1993 (Addendum D at R. 26), and a new order of parole was entered (id. at R. 27). Far from the automatic process that petitioner suggests, the Board's action represents an individual determination in which petitioner was afforded a full opportunity to air his concerns in accordance with due process.

The record before the Board included much more than a single prison disciplinary proceeding. As enumerated in the June 16, 1993 letter advising petitioner of his rescission hearing, petitioner's complete Board file was open for the Board's consideration, including

(1) Public information, including judgment and commitment orders, prior Board dispositions, parole agreements, and the like;

(2) Information generated from Adult Probation and Parole, including presentence and postsentence reports, probation violation reports, parole progress and violation reports, diagnostic reports, and so forth;

(3) Prison information, including board reports, disciplinaries, progress and rescission reports, psychologicals, etc.;

(4) Information generated internally for the Board, including worksheets, routings, guideline matrices, alienist reports, warrant requests;

(5) Other criminal justice information, including police and prosecutorial reports, recommendations from sentencing judges, criminal record data, other court documents;

(6) Other correspondence sent to the Board concerning you.

Any other specific items of information to be considered by the Board will be identified for you at the hearing and you will have an opportunity to respond at that time.

Addendum B, R. 45 (emphasis supplied).

Because petitioner attacks the court's finding that

respondents engaged in no conduct violative of his rights, he is obligated to marshal the evidence in support of the court's finding. The Supreme Court of Utah has outlined an appellant's burden:

An appellate court does not lightly disturb the verdict of a jury nor the findings of fact made by a trial court. If a challenge is made to the findings, an appellant must marshal all evidence in favor of the facts as found by the trial court and then demonstrate that even viewing the evidence in a light most favorable to the court below, the evidence is insufficient to support the finding of fact. If the appellant fails to marshal the evidence, the appellate court assumes that the record supports the findings of the trial court and proceeds to a review of the accuracy of the lower court's conclusions of law and the application of that law to the case.

Saunders v. Sharp, 806 P.2d 198, 199 (Utah 1991). As this Court has elaborated, "[s]uccessful challenges to findings of fact thus must demonstrate to appellate courts first how the trial court found the facts from the evidence and second why such findings contradict the weight of the evidence." Oneida/SLIC v. Oneida Cold Storage and Warehouse, 872 P.2d 1051, 1053 (Utah App. 1994). Petitioner here has taken neither step.

Petitioner does not claim that he was unable to raise his concerns about the disciplinary action against him to the Board. By petitioner's own admission, he explained to the Board the errors he perceived in the disciplinary action on which his petition focuses. See R. 48. However, the Board's written rationale for its decision shows that on balance, the Board considered the aggravating circumstances of denial and minimization of

responsibility, petitioner's incarceration and revocation history (see R. 32), his programming record, and his prison disciplinary problems to favor delay of his parole by less than four months. See Addendum C at R. 30. On appeal, petitioner leaves wholly unaddressed this record evidence of respondents' appropriate exercise of discretion. He shows neither how the court used the evidence before it to find respondents in compliance with their legal duty, nor why the weight of the evidence requires a different result. Petitioner's failure to meet his burden of marshalling mandates affirmance of the court's findings: respondents did not fail to follow governing statutes, rules, or regulations, did not exceed their authority, and did not abuse their discretion. See Addendum A at R. 58, ¶ 3.

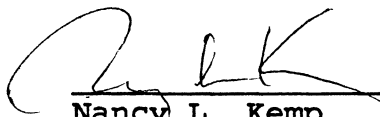
Under Rule 11(e) of the Utah Rules of Appellate Procedure, "[i]f the appellant intends to urge on appeal that a finding or conclusion is unsupported by or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion." Where an appellant does not provide a transcript in accordance with the rule, a reviewing court is incapable of assessing the correctness of the findings, and is limited to "review[ing] the court's legal conclusions for consistency with the findings, giving them no deference." Prudential Capital Group Co. v. Mattson, 802 P.2d 104, 106 (Utah App. 1990). Petitioner has provided no transcript here. Therefore, he can succeed on appeal only if the lower court's conclusion is inconsistent with the facts as it found them.

As previously discussed, the court found no evidence showing actions by respondents that were in excess of their jurisdiction, abusive of their discretion, or noncompliant with governing law, and petitioner has not marshalled the evidence to show these findings in error. Petitioner's failure of proof cannot be used to thrust his burden upon respondents. The court's conclusion that respondents regularly pursued their authority is entirely consistent with the facts as the court found them, and its consequent dismissal of the petition is unassailable.

CONCLUSION

For the reasons set forth above, respondents respectfully request the Court to affirm the district court's dismissal of the petition in this case.

Dated this 15th day of December, 1994.



Nancy L. Kemp
Assistant Attorney General



CERTIFICATE OF MAILING

I hereby certify that on this 15th day of December, 1994,
I caused to be mailed, postage prepaid, two true and accurate
copies of the foregoing BRIEF OF APPELLEES to the following:

David S. Steed, Attorney
Hilton & Steed, P.C.
Provo Office
P. O. Box 50371
Provo, Utah 84605-0371

A handwritten signature, likely "D. Steed", is written in black ink above a horizontal line.

ADDENDUM A

FILED IN OLEHN'S OFF.
Salt Lake County, Utah

FEB 08 1994

By [Signature] Deputy Clerk

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

JOHN KOCHER,

Petitioner,

v.

UTAH STATE BOARD OF PARDONS,
et al.,

Respondents.

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ORDER OF DISMISSAL

Judge Anne M. Stirba

Case No. 930905892 HC

The above-entitled matter came before this Court on December 10, 1993, for Respondents' Motion to Dismiss. The Respondents present being represented by Lorenzo K. Miller, Assistant Attorney General, and Petitioner was also present. The Court hereby FINDS AND CONCLUDES:

1. For the reasons stated in Respondents' Motion to Dismiss, Petitioner's petition for Writ of Habeas Corpus is improperly asserted as a Rule 65B(b) or (c) action.

2. Petitioner's claims are properly characterized as Rule 65B(e) claims.

3. There is no record before the Court which demonstrates that the Respondents failed to follow statutes, rules or regulations governing their actions, exceeded their authority or abused their discretion Respondents.

Having made the foregoing Findings and Conclusions, the Court orders the following:

1. Respondents' motion to dismiss is granted.
2. The relief Petitioner seeks is denied.
3. The case is hereby dismissed.

DATED this 8th day of February, 1994.


BY THE COURT:


HONORABLE ANNE M. OSTIRBA
Third District Court



CERTIFICATE OF MAILING

I hereby certify that a true and accurate copy of the foregoing order of dismissal was mailed, postage prepaid, to David S. Steed, 203 South 1920 West, Provo, UT 84601, this 1st day of February, 1994.

_____

ADDENDUM B



State of Utah

BOARD OF PARDONS AND PAROLE

Michael O. Leavitt
Governor
Michael R. Sibbett
Chairman
Donald E. Blanchard
H.L. (Pete) Haun
Curtis L. Garner
Cheryl Hansen
Members

448 East 6400 South - Suite 300
Murray, Utah 84107
Tel (801) 261-6464
Fax (801) 261-6481

June 16, 1993

John Kocher, USP# 19261
P.O. Box 250
Draper, Utah 84020

Dear Mr. Kocher:

This is to notify you that a Rescission Request has been received at the Board that indicates you have disciplinaries. This may effect your current status. Therefore, please be prepared to appear before a Board of Pardons Staff Member on June 30, 1993 at 10:00 am at the Utah State Prison Main Facility; Draper, Utah in a Rescission Hearing to discuss this matter.

In connection with your upcoming hearing, everything in your Board file may be considered. Like other offenders' files, your file contains its own variation of the following categories of information:

- (1) Public information, including judgment and commitment orders, prior Board dispositions, parole agreements, and the like;
- (2) Information generated from Adult Probation and Parole, including presentence and postsentence reports, probation violation reports, parole progress and violation reports, diagnostic reports, and so forth;
- (3) Prison information, including board reports, disciplinaries, progress and rescission reports, psychologicals, etc.;
- (4) Information generated internally for the Board, including worksheets, routings, guideline matrices, alienist reports, warrant requests;
- (5) Other criminal justice information, including police and prosecutorial reports, recommendations from sentencing judges, criminal record data, other court documents;
- (6) Other correspondence sent to the Board concerning you.

Any other specific items of information to be considered by the Board will be identified for you at the hearing and you will have an opportunity to respond at that time.

If you have further questions, please ask your caseworker.

Sincerely,

M.R. SIBBETT, CHAIRPERSON
UTAH STATE BOARD OF PARDONS

Enid O. Pino/pc

Enid O. Pino, Hearing Officer
Utah State Board of Pardons

ADDENDUM C



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

The status of KOCHER, JOHN RICHARD, USP No. 19261, OBSCIS No. 50755 came before the Utah State Board of Pardons on the 30th day of June, 1993, for the following consideration:

RESCISSION HEARING

CRIME OF COMMITMENT	COURT CASE #	JUDGE	EXPIRATION
1 AUTO THEFT	5 6202	PAGE	01/28/1994
3 THEFT	5 921900119	HYDE	02/10/1997

ORDER

After the statement of John Richard Kocher and the following witnesses,
 1) _____ 2) _____,
 and for good cause appearing, the Board of Pardons made the following decision:

Rescind 8/24/93 parole date,
 Begin parole on 12/14/93 with the following special conditions:

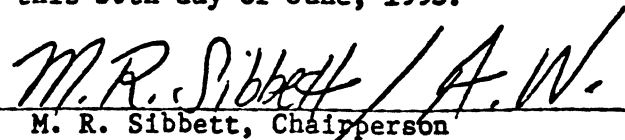
1. I.S.P.
2. No Alcohol
3. Restitution 4,308.00
Case # 6202
4. Restitution 624.96 #0199
5. _____
6. _____

Amend parole agreement to add/delete/modify the conditions described above
 Terminate sentence (including parole supervision) on _____
 Expiration of sentence to be effective on _____
 Schedule rehearing for _____
 Other: _____

The reasons for this decision are identified on the attached page.

At the discretion of the Board of Pardons, this decision is subject to review and modification at any time prior to actual release from custody.

By order of the Board of Pardons of the State of Utah, I affix my signature on behalf of the Chairperson of the Board this 30th day of June, 1993.


 M. R. Sibbett, Chairperson

RATIONALE FOR DECISION ON

John Kocher
Name
19261
USP#



HEARING DATE: 6/30/93
HEARING TYPE: Rescission

BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

The Board of Pardons' decision is based on the following factors:

AGGRAVATING

MITIGATING

OFFENDER'S BACKGROUND

 Criminal history significantly underrepresented by guidelines
(i.e., more than 4 felony convictions and/or 8 misdemeanors)
 History of similar offenses
 Pattern of increasingly or decreasingly serious offenses . . .
 History of unsuccessful or successful supervisions

CHARACTERISTICS OF THE OFFENSE

 Use of weapons or dangerous instrumentalities
 Demonstration of extreme cruelty or depravity
 Abuse of position of trust, special skill, or responsibility
 Multiple incidents and/or victims
 Personal gain reaped from the offense

OFFENDER'S TRAITS DURING THE OFFENSE

 Motive (intentional, premeditated vs. impulsive, reactionary) .
 Role (organizer, leader vs. follower, minimal participant) . .
 Obstruction of justice vs. early withdrawal or self-surrender .

VICTIM CHARACTERISTICS

 Extent of injury (physical, emotional, financial, social)
 Relatively vulnerable victim vs. aggressive or provoking victim
 Victim in position of authority over offender

OFFENDER'S PRESENT CHARACTERISTICS

✓ Denial or minimization vs. complete acceptance of responsibility ✓
✓ Repeated, numerous vs. first incarceration or parole revocation
 Extent of remorse and apparent motivation to rehabilitate . . .
✓ Timeliness and extent of efforts to pay restitution
✓ Prison programming (effort to enroll, nature of programming) .
✓ Prison disciplinary problems or other defiance of authority . .
 Employment possibilities (history, skills, current job, future) ✓
 Extent of community fear, condemnation
 Degree of meaningful support system ✓
 Nature and stability of release plans
 Unusual institutional vulnerability (due to age, health, other)
 Overall rehabilitative progress and promise
 Lengthy history of alcohol/drug abuse vs. apparent rehabilitation
 Substantial continuous period in custody on other charges . . .
 Likely release to detainer

OTHER

3 is motivated, new wife & newborn son.

6/30/93
Date

[Signature]
Board Member

00030

ADDENDUM D



BEFORE THE BOARD OF PARDONS OF THE STATE OF UTAH

UTAH STATE OBSCIS NO. 50755

Consideration of the Status of KOCHER, JOHN RICHARD PRISON NO. 19261

The above-entitled matter came on for consideration before the Utah State Board of Pardons on the 13th day of July, 1993, for:

RESCISSION HEARING

After a review of the submitted information and good cause appearing, the Board makes the following decision and order:

RESULTS

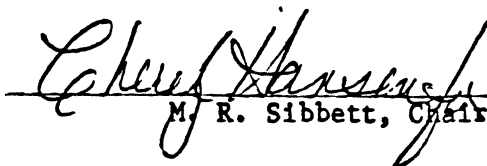
Rescind 08/24/1993 parole. Parole effective 12/14/1993. Interim decision of 06/30/93 affirmed.

- 1 Successfully complete ISP Program.
- 2 Not consume or possess any alcohol.
- 3 Pay restitution of \$4308.00 - CASE# 6202.
- 4 Pay restitution of \$624.96 - CASE# 0119.

No Crime	Sent Case No.	Judge	Expiration
1 AUTO THEFT	5 6202	PAGE	01/28/1994
3 THEFT	5 921900119	HYDE	02/10/1997

This decision is subject to review and modification by the Board of Pardons at any time until actual release from custody.

By order of the Board of Pardons of the State of Utah, I have this date 13th day of July, 1993, affixed my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.


M. R. Sibbett, Chairman

00026

Michael O. Leavitt
Governor
Michael R. Sibbett
Chairman



Members
Donald E. Blanchard
H.L. (Pete) Haun
Curtis L. Garner
Cheryl Hansen

BEFORE THE BOARD OF PARDONS AND PAROLE OF THE STATE OF UTAH

ORDER OF PAROLE
UTAH STATE OBSCIS NO. 00050755
UTAH STATE PRISON NO. 19261
IN THE MATTER OF THE APPLICATION OF KOCHER, JOHN RICHARD

This matter of application for parole, termination of sentence, or expiration of sentence having come before the Utah State Board of Pardons in a regularly scheduled hearing on the 13th day of July, 1993, and the applicant appearing in person or having waived in writing the right to appearance and the Board having heard the case, issues the following order:


It is hereby ordered that KOCHER, JOHN RICHARD be paroled from the punishment and sentence heretofore imposed upon him/her by a judge of the Second District Court in and for the County of Davis, Weber for the crime(s) of AUTO THEFT, 3rd degree felony, Expiration 01/28/94; AUTO THEFT, class A misdemeanor, Expiration 04/22/90; THEFT, 3rd degree felony, Expiration 02/10/97.

The parole shall not become effective until 14th day of December, 1993. The applicant agrees to the conditions of parole and evidences his agreement by signing the parole agreement. The parole agreement or contract shall be administered by duly authorized agents of the Utah State Department of Corrections for the Utah State Board of Pardons.

It is further ordered that if and in the event the above named applicant shall be guilty of any infractions of the rules and regulations of the Utah State Prison or shall fail or refuse to perform duties as assigned by the Utah State Prison or is found to be in violation of any other law of the State of Utah prior to the effective date of said parole, then this Order of Parole is revoked and becomes null and void.

Dated this 13th day of July, 1993.

By Order of the Board of Pardons of the State of Utah, I have this 15th day of July, 1993, reduced its decision in this matter to writing and hereby affix my signature as Chairman for and on behalf of the State of Utah, Board of Pardons.



M.R. Sibbett, Chairman