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William L. Sales v. Scott Carver : Unknown

Utah Court of Appeals

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William L. Sales.

Jan Graham; Lorenzo Miller.

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LITAH COURT OF APPEALS
BRIEF

IN THE LITAH COURT OF APPEALS

940213-CA

DOCKET NO.

WILLIAM L. SALES,
PETITIONER,

v.

CASE # 940213-CA

SCOTT CARVER, ET. AL.,
RESPONDENT.

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FILED

NOV 2 1994

COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

WILLIAM L. SALES,
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RESPONDENTS.

CASE # 940213-CA

JURISDICTION

JURISDICTION IS BROUGHT TO THE HONORABLE COURT PURSUANT TO THE UTAH CODE ANNOTATED 78-2A-3 ET. SEQ.

STATEMENT OF THE ISSUES AND THE RELIEF THAT IS SOUGHT

THE ISSUES IN THIS CASE ARE AS FOLLOWS:

1. THE BOARD OF PAROLE ERRONEOUSLY WENT OVER THE PAROLE GUIDELINES BY SIXTEEN (16) YEARS.
2. THE BOARD OF PAROLE FAILED TO ALLOW PETITIONER TO EXAMINE THE COMPLETE CONTENTS OF HIS FILE PRIOR TO THE PAROLE BOARD'S HEARING TO VERIFY THE ACCURACY OF THE INFORMATION THAT WAS USED AGAINST HIM.

THE PETITIONER REQUESTS THE FOLLOWING RELIEF:

1. FOR AN ORDER FROM THIS COURT DIRECTING THE BOARD OF PAROLE TO DISCLOSE ITS ENTIRE FILE ON PETITIONER OR AT LEAST A SUMMARY OF THE FILE'S CONTENTS TO PETITIONER BEFORE PETITIONER'S PAROLE DETERMINATION HEARING IN A TIMELY MANNER THAT AFFORDS PETITIONER A REASONABLE CHANCE TO PREPARE FOR THE HEARING.
2. FOR AN ORDER FROM THIS COURT DIRECTING THE BOARD OF

PARDONS TO GIVE PETITIONER A REASONABLE OPPORTUNITY TO REBUT ANY MISINFORMATION IN ITS FILES THAT THE BOARD EARLIER RELIED UPON.

3. FOR AN ORDER FROM THIS COURT DIRECTING THE BOARD OF PARDONS TO VACATE ITS DETERMINATION ON PETITIONER'S PAROLE AND AN ORDER TO GIVE A DEFINITE PAROLE DATE IN ACCORDANCE WITH THE GUIDELINES.

STATEMENT OF FACTS

ON THE 10TH DAY OF JULY 1989 THE PETITIONER WAS COMMITTED TO THE UTAH STATE PRISON BY JUDGE LIND OF THE THIRD DISTRICT COURT ON THE CHARGE OF ROBBERY. PETITIONER WAS SENTENCED TO A SECOND DEGREE FELONY TO BE RAN CONSECUTIVELY WITH A FIRST DEGREE FELONY WHICH PETITIONER HAD BEEN GIVEN PAROLE ON.

PETITIONER WAS SEEN BY THE BOARD OF PARDONS ON JULY 19, 1989. DURING THE HEARING THE BOARD OF PARDONS BROUGHT UP NUMEROUS CHARGES THAT PETITIONER NEVER DID AND WAS NEVER EVEN INDICTED FOR THEM. THE BOARD OF PARDONS ALSO STATED THAT PETITIONER WAS A HABITUAL CRIMINAL EVEN THOUGH HE WAS NEVER CONVICTED OF HABITUAL CRIMINAL. PETITIONER WAS ALSO ALLEGED TO BE A COCAINE AND HEROIN ADDICT THOUGH PETITIONER HAS NEVER EVEN USED COCAINE OR HEROIN.

PETITIONER WAS INFORMED THAT HIS GUIDELINES FOR THE TIME HE SHOULD SERVE WAS 6 YEARS. THE BOARD ERRONEOUSLY EXCEEDED THE GUIDELINES AND SAID PETITIONER WAS TO SERVE 20 YEARS.

STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE

THE PETITIONER IS ENTITLED TO A HEARING TO DETERMINE HIS DATE OF PAROLE SEE UTAH CODE ANN § 77-27-5(2)(1990); UTAH ADMIN. R 655-311 (1988); CF. UTAH CONST ART VII § 12. THE FACT THAT HE IS ENTITLED TO A HEARING HIS DATE OF PAROLE IMPLIES THAT DUE PROCESS PROTECTIONS AT THE PAROLE HEARING. FOOTE V. UTAH BD.

OF PARDONS, 208 P.2D 734, 735 (UTAH 1991). INDEED, THOUGH TO A LESSER DEGREE DUE TO HIS INCARCERATION, PETITIONER HAS A LIBERTY INTEREST PROTECTED UNDER ARTICLE 1 SECTION 7 OF THE UTAH CONSTITUTION, WHICH LIBERTY INTEREST IS ANALOGOUS TO THE LIBERTY INTEREST AFFORDED A DEFENDANT IN A FEDERAL COURT AT THE TIME OF SENTENCING. ID.; SEE ALSO STATE V. HOWELL, 707 P.2D 115, 117 (UTAH 1985); GARDNER V. FLORIDA, 430 U.S. 349, 358, 51 L.ED.2D. 303, 402 (1977). THIS LIBERTY INTEREST CANNOT BE TAKEN AWAY FROM PETITIONER WITHOUT DUE PROCESS. UTAH CONST. ART. 1 § 7. THE QUESTION PETITIONER ASKS THIS COURT TO ANSWER, THEREFORE, IS WHAT PROCESS IS DUE AT THE TIME OF HIS PAROLE DETERMINATION HEARING. ALTHOUGH THE COURT HAS RULED ON ONE OF THE ISSUES IN LABRUM V. UTAH BOARD OF PARDONS, 227 UTAH ADV. REP. 30, DEC. 6, 1993 THESE PROTECTIONS WERE NEVER GIVEN TO PETITIONER. THIS COURT SHOULD REVIEW THE PROCEDURES USED BY THE BOARD OF PARDONS TO SEE WHETHER THEY MEET THE MINIMUM DUE PROCESS REQUIREMENTS OF ARTICLE 1 SECTION 7 OF THE UTAH CONSTITUTION. HATCH V. DELAND, 790 P.2D 49, 50 (UTAH APP 1990).

MEMORANDUM OF POINTS AND AUTHORITIES

- I. PETITIONER HAS A LIBERTY INTEREST IN PAROLE RELEASE SECURED BY UTAH'S AND THE U.S. CONSTITUTION BY INSTITUTING A CRITERIA [GUIDELINES] THAT WHEN MET WOULD GIVE THE OUTCOME TO BE REACHED.

THE FEDERAL LAW IS CLEAR THAT OFFICIAL REGULATIONS OR OFFICIAL STATUTES ARE NOT THE ONLY SOURCE OF A LIBERTY INTEREST. A PROTECTED LIBERTY INTEREST MAY ARISE WHEN "PARTICULARIZED STANDARDS OR CRITERIA GUIDE THE STATE DECISION MAKERS". OLIM V. WAKINEKONO, 461 U.S. 238 (1983). IN LUCAS V. HONGES, 730 F.2D 1493 (D.C. CIR 1984), FOR EXAMPLE, THE COURT HELD THAT OFFICIAL STATEMENTS OF PRISON POLICY CONTAINED IN INTERNAL DIRECTIVES OF OFFICIALS AT THE DISTRICT OF COLUMBIA DETENTION FACILITY COULD GIVE RISE TO A LIBERTY INTEREST EVEN THOUGH THE STATEMENTS WERE NOT PROMULGATED UNDER THE ADMINISTRATIVE PROCEDURE ACT OR PUBLISHED IN THE DISTRICT OF COLUMBIA REGISTER. THE SIXTH CIRCUIT IN WALKER V. HUGHES, 568 F.2D

1247, 1254-56 (6TH CIR 1977) FOUND A LIBERTY INTEREST IN POLICY STATEMENTS ISSUED BY THE FEDERAL BUREAU OF PRISONS AND THE WARDEN OF A FEDERAL INSTITUTION EVEN THOUGH NEITHER HAD BEEN PROMULGATED UNDER THE ADMINISTRATIVE PROCEDURE STANDARDS OR PUBLISHED IN THE FEDERAL REGISTER. [REFER TO UTAH'S ADMINISTRATIVE RULE MAKING ACT].

IN BILLS V. HENDERSON, 631 F.2D 1287, 1291 (6TH CIR 1980) THE COURT HELD THAT A LIBERTY INTEREST WAS ESTABLISHED BY A PRISON RULE CONTAINED IN AN "ADULT SERVICES POLICIES AND PROCEDURES MANUAL ON THE DEPARTMENT OF CORRECTION GUIDELINE" THE TENTH CIRCUIT IN GURULE V. WILSON, 635 F.2D 782, 785 (10TH CIR 1980) FOUND A PROTECTED LIBERTY INTEREST IN THE "OFFICIAL STATEMENT OF POLICY" ISSUED BY THE ADMINISTRATOR OF ONE COLORADO PENITENTIARY. SIMILARLY, THE SEVENTH CIRCUIT HAS HELD THAT A LIBERTY INTEREST MAY BE CREATED BY "INTRA AND INTER INSTITUTIONAL DIRECTIVES CONTAINING GUIDELINES FOR ALLOWING OR DENYING COMPENSATORY GOODTIME" ARSBERRY V. SIELAFF, 586 F.2D 37, 47 (7TH CIR 1978); HARRIS V. McDONALD, 737 F.2D 662, 664 (7TH CIR 1984).

IN GREENHOLTZ V. INMATE OF THE NEBRASKA PENAL AND CORRECTIONAL COMPLEX, 442 U.S. 1, 60 L.ED.2D 668 (1979). IN A CONCURRING OPINION JUSTICE BRENNAN STATED THAT "RESPONDENTS MUST SHOW - BY REFERENCE TO STATUTE, REGULATION, ADMINISTRATIVE PRACTICE, CONTRACTUAL ARRANGEMENT OR OTHER MUTUAL UNDERSTANDING - THAT PARTICULARIZED STANDARDS OR CRITERIA GUIDES THE STATE DECISION MAKERS" CONNECTICUT BOARD OF PARDONS V. DUMSCHAT, 452 U.S. 458, 467 (BRENNAN, J., CONCURRING). SEE ALSO HEWITT V. HELMS, 459 U.S. 460 WHERE JUSTICE STEVENS STATED, "IT DOES NOT MATTER WHETHER THE STATE USES A PARTICULAR FORM OF WORDS IN ITS LAWS OR REGULATIONS OR INDEED WHETHER IT HAS ADOPTED WRITTEN RULES AT ALL" ID. AT 486 N.12.

PETITIONERS CONTENDS THAT THE SENTENCING GUIDELINES NOW UTILIZED IN THIS STATE, BY BOTH JUDGES AND THE BOARD OF PARDONS, CONSTITUTES THE TYPE OF REGULATION AND PRACTICE WHICH GIVES RISE TO A LIBERTY INTEREST UNDER FEDERAL LAW. THESE GUIDELINES WERE CREATED BY THE UTAH COMMISSION OF CRIMINAL AND JUVENILE JUSTICE WHICH CONSISTED OF JUDGES, ADMINISTRATORS, AND LAWYERS FROM ALL FACETS OF THE CRIMINAL AND CORRECTIVE LAW SYSTEM.

THESE GUIDELINES ARE UTILIZED BY A DEFENDANT'S ATTORNEY IN ADVISING A DEFENDANT WHETHER TO PLEAD GUILTY OR NOT; ARE USED BY PROBATION OFFICERS IN PREPARING PRESENTENCE REPORTS; ARE USED BY SENTENCING JUDGES IN DETERMINING THE TYPE OF SENTENCE TO BE IMPOSED; ARE USED BY PRISON SCREENING OFFICERS IN DETERMINING WHERE TO PLACE AN INMATE FOR INCARCERATION; AND ARE USED BY THE BOARD OF PARDONS IN EVALUATING THE TIME AN INMATE SHOULD BE INCARCERATED.

IN THE INSTANT CASE IT IS QUITE PROBABLE THAT THE LOWER COURT, DEFENDANT'S ATTORNEY, AND CERTAINLY DEFENDANT ANTICIPATED THAT HE WOULD BE INCARCERATED FOR A PERIOD APPROXIMATING THE GUIDELINE CRITERIA. THESE STATE GUIDELINES UTILIZE A VARIETY OF FACTORS IN DETERMINING A DATA INCLUDING THE SEVERITY OF THE CRIME, THE PREVIOUS HISTORY OF THE OFFENDER, EDUCATION AND A NUMBER OF OTHER PSYCHOLOGICAL AND HISTORICAL DATA. THUS, THESE GUIDELINES CREATE AN EXPECTATION BY SENTENCING JUDGE AND THE INMATE THAT HIS/HER SENTENCE WILL APPROXIMATE THESE PERIODS OF PROJECTED TIME. GREENWALTZ, SUPRA, 30-31 (MARSHALL, BRENNAN, STEVENS, J. DISSENTING)

THE FEDERAL SYSTEM OF DETENTION CONTAINS AN ELABORATE PROCEDURE FOR DETERMINING GUIDELINES FOR FEDERAL INMATES SEE 28 CFR § 2.20 ET. SEQ. SEVERAL FEDERAL DECISIONS HAVE HELD THAT ANY DECISION TO GO ABOVE THE GUIDELINES IN DETERMINING A PRESUMPTIVE PAROLE DATE IS A DEPRIVATION OF LIBERTY AND IS ENTITLED TO DUE PROCESS PROTECTION. IN DIXON V. HARDEN, 550 F.SUPP 157 (D. COLO. 1982) A FEDERAL INMATE COMPLAINED THAT HIS INCARCERATION FOR A TOTAL OF 78 MONTHS WAS OVER 25 MONTHS IN EXCESS OF THE FEDERAL GUIDELINE FOR THAT SENTENCE. THE DISTRICT COURT OF COLORADO CONCLUDED THAT BECAUSE OF THIS EXCESS OF GUIDELINES DEFENDANT WAS ENTITLED TO DUE PROCESS PROTECTION. THE COURT STATED:

ACCORDINGLY, I CONCLUDE THAT IN ARRIVING AT A DECISION TO GO ABOVE THE GUIDELINES APPLICABLE TO THE OFFENSES FOR WHICH LOUIS DIXON WAS SENTENCED, THE PAROLE COMMISSION IS LIMITED BY THE DUE PROCESS PROTECTION OF THE FIFTH AMENDMENT. ID AT 159

SEE ALSO, SOLOMON V. ELSEA, 676 F.2D 282 (7TH CIR 1982) AND EVANS V. DILLAHOUNTY, 662 F.2D 522 (8TH CIR 1981) (HELD AN INMATE WAS ENTITLED TO DAMAGES AGAINST A REGIONAL PAROLE COMMISSIONER UPON ALLEGATIONS OF UNCONSTITUTIONAL CONDUCT CAUSING A DECISION TO BE MADE OUTSIDE THE SENTENCING GUIDELINES).

WHEN THESE GUIDELINES ARE GROSSLY EXCEEDED AS IN THE INSTANT CASE, AN AUTOMATIC 5TH AMENDMENT DUE PROCESS RIGHT IS CREATED. THEREFORE, PETITIONER IS ENTITLED TO RELIEVE FEDERAL DUE PROCESS PROTECTION IN PAROLE BOARD HEARINGS CONDUCTED BY RESPONDENTS.

II. THE UTAH BOARD OF PARDONS FAILED TO DISCLOSE TO PETITIONER HIS ENTIRE FILE AND FAILED TO PROVIDE A MEANS OF CORRECTING INACCURATE INFORMATION.

THE COURT HAS JUST PREVIOUSLY RULED ON THIS ISSUE IN LABRUM V. UTAH BOARD OF PARDONS, 227 UTAH ADV REP 30 DEC 6, 1993. PETITIONER NOW ASKS THE QUESTION: SHOULDN'T PAROLE REVOCATION BE AFFORDED THE SAME CONSTITUTIONAL PROTECTIONS?

IN MAKING ITS DECISION TO DENY PETITIONER PAROLE, THE BOARD OF PARDONS RELIED UPON INFORMATION THAT WAS NEVER DISCLOSED TO PETITIONER. THIS INFORMATION WAS FALSE AND PETITIONER COULD HAVE PROVEN ITS INACCURACY IF GIVEN THE CHANCE. OUR JUDICIAL SYSTEM IS BASED UPON THE BELIEF THAT DEBATE BETWEEN ADVERSARIES IS ESSENTIAL TO THE TRUTH-SEEKING FUNCTION. GARDNER V. FLORIDA, 430 U.S. AT 360 (1977) BY PETITIONERS BEING DENIED THE INFORMATION THE PAROLE BOARD RELIED UPON IN PETITIONERS HEARINGS, THE PAROLE BOARD ELIMINATED AN ESSENTIAL ELEMENT OF THE ADVERSARIAL PROCEEDING, DENIED PETITIONER DUE PROCESS OF LAW, AND INVITED AND ENCOURAGED THE USE OF UNVERIFIED HEARSAY STATEMENTS AT UTAH'S EQUIVALENT OF THE FEDERAL SENTENCING HEARINGS

CONCLUSION

FOR THE FOREGOING REASONS, PETITIONER RESPECTFULLY REQUESTS THIS COURT TO VACATE THE BOARD OF PARDONS' RULING AND REMAND THIS MATTER BACK TO THE BOARD OF PARDONS WITH DIRECTIONS THAT THE BOARD OF PARDONS DISCLOSE ITS ENTIRE FILE AND TO FOLLOW ITS OWN GUIDELINES