

1994

William Lettig v. Scott V. Carver, Warden, Utah
State Prison - Draper; M.R. Sibbett, Chairman of
the Utah Board of Pardons; Fred Trujillo, Hearing
Officer for The Utah Board of Pardons; and All
Other Board of Pardons Members Not Presently
Known to Petitioner : Brief of Appellant

Utah Court of Appeals

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Debra Moore; Assistant Attorney General; Attorney for Appellees.

Rosemond Blakelock; Blakelock & Stringer; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

WILLIAM LETTIG,
Petitioner and Appellant

Priority No. 13

vs.

SCOTT V. CARVER, Warden, Utah :
State Prison - Draper; M.R. :
Sibbett, Chairman of the Utah :
Board of Pardons; FRED :
TRUJILLO, Hearing Officer for :
The Utah Board of Pardons; and :
ALL OTHER BOARD OF :
PARDONS MEMBERS NOT PRESENTLY :
KNOWN TO PETITIONER, :
Respondents - Appellees :

Case No 940380 - CA

CASE NO. 940380-CA

BRIEF OF APPELLANT

APPEAL FROM AN ORDER DENYING A PETITION FOR
EXTRAORDINARY WRIT IN THE THIRD DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH, THE
HONORABLE DAVID S. YOUNG, PRESIDING

DEBRA MOORE
Assistant Attorney General
330 South 300 East
Salt Lake City, Utah 84111

ROSEMOND BLAKELOCK (6183)
Blakelock and Stringer
37 East Center, Suite 200
Provo, Utah 84606
Telephone: (801) 375-7678

ATTORNEY FOR APPELLEES

ATTORNEY FOR APPELLANT

UTAH COURT OF APPEALS

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ATTORNEY FOR APPELLEES

ATTORNEY FOR APPELLANT

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BRIEF OF APPELLANT

STATEMENT OF JURISDICTION

This Court has jurisdiction to consider this case pursuant to Utah Code Ann. § 78-2a-3(h) (Supp 1993), which grants this court original appellate jurisdiction over appeals from "orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons." Appellant Lettig was originally convicted second degree felony; therefore, this Court has jurisdiction.

ISSUES PRESENTED FOR REVIEW

1. Did the trial court apply the correct standard of review in it's examination of the Board's actions.

2. Did the Board provide sufficient portions of Petitioner's file to him, pursuant to Labrum, to enable Petitioner to adequately present his case to the Board, and make the appropriate corrections or clarifications.

3. Did the three Board members who determined Petitioner's rehearing date, have sufficient accurate documentation to justify a 1996 rehearing.

4. Did the Board abuse it's discretion, exceed it's jurisdiction or fail to perform a duty as required by law.

5. Did the Board violate Petitioner's Due Process rights under Article I, Section 7 of the Utah Constitution.

STANDARD OF REVIEW

The choice of a standard of review, for all issues raised, is a legal conclusion that this Court can review for correctness. State v. Pena, 869 P.2d 932, 936 (Utah 1994); State v. Warden, 813 P.2d 1146, 1150 (Utah 1991).

STATUTES

Utah Code Ann. § 78-2a-3(h) (Supp 1993)

STATEMENT OF THE CASE

On November 2, 1993, Petitioner filed this petition for extraordinary Writ, challenging the actions and decisions of the Board. Lettig claimed that the Board had deprived him of his liberty by revoking his parole and ordering a rehearing for September 1996, without adequate explanation of its reason for denying parole and exceeding the guidelines. Lettig claimed that the guidelines created an expectation of parole, or liberty interest, under Utah law which is protected under the due process clauses of both the state and federal constitutions that the Board violated his rights by exceeding those guidelines.

On December 14, 1993, at a hearing, the Court ordered that the Board grant petitioner a parole hearing and access to his parole file in accordance with the Labrum decision. Subsequently, the Board provided Petitioner an inadequate and incomplete copy of its parole file.

A new hearing before the Board took place January 19, 1994. The result of the new hearing was that the Board ordered an additional requirement, a psychological exam of the Petitioner, prior to any reappearance before the Board. Such an order was retaliatory in nature, without adequate support or explanation.

An Evidentiary Hearing was held on April 18, 1994, before Judge David S. Young. At the Evidentiary Hearing, the Board submitted Petitioner's entire Board "file" into evidence. Petitioner submitted into evidence his copy of the material

provided to him, pursuant to the Labrum decision, in compliance with the order of Judge Young. It was only after examining the entire Board file, (submitted as an Exhibit) that the inaccurate information upon which the decision to grant a 1996 rehearing, was discovered.

Apparently, the Board based their "final" decision on inaccurate information as follows:

a. The inaccurate "fact" that this was Petitioner's "sixth" parole violation. In truth was, that it was only the fourth.

b. The inaccurate "fact" that Petitioner placed "many other citizens" life in peril, when he was arrested for Failure To Stop At Officer's Command. This "fact" was a blatant exaggeration of the truth, which was never supported by any information or report.

Petitioner has long felt that he has been the subject of retaliatory animus on the part of the Board, and was not able to confirm such a belief, until he was afforded the opportunity to examine his entire Board file, which was submitted as an exhibit at the Evidentiary Hearing. The file provided to Petitioner differed from the information available in the Petitioner's entire file, which was placed into evidence at the Evidentiary Hearing. The entire Board file contains references to the Petitioner as a "sniveler", and exhibits a personal disregard for the Petitioner, without benefit of any rationale. In fact, Board's members Don Blanchard and Heather Cook stated on 2-13-92, "...could someone please tell [Defendant] to quit sniveling!" See addendum C.

At the Evidentiary hearing, the testimony of Mr. Garner indicates that while Mr. Garner could remember little else about Lettig (he did not remember the actual number of previous paroles, the mitigating circumstances) he did recall that he had discounted Mr. Lettig's expression of remorse, without explanation or rationale. Such selective application of an expression by an inmate demonstrates a pattern of bias, prejudice and unequal treatment.

It was Don Blanchard who, on July 21, 1993, made the recommendation to change Petitioner's rehearing date to September, 1996. The same Don Blanchard who one year prior had labeled Lettig a "sniveler" in his permanent file, and the same Don Blanchard who caused Mr. Garner to be aware of little else at the evidentiary hearing, except the fact that he totally discounted Lettig's remorse and in fact used Lettig's expression of remorse as a factor to weigh heavily against Lettig in conducting the parole hearing for Lettig, in January, 1994.

The trial court found that the Petitioner failed to prove any wrongful conduct by the Board in this case, and concluded that the Petitioner's case was without merit and should be dismissed. However, the trial court failed to examine the Petitioner's entire Board file, and compare it to the information which was made available to the Petitioner (by the Board), and failed to note that the testimony of Mr. Garner was not supported by the documentation in the file.

STATEMENT OF FACTS

On November 10, 1992 Appellant Lettig was released from the Utah State Prison under a parole agreement signed by the Utah Board of Pardons and Parole (hereinafter "Board").

On June 4, 1994, Lettig was brought back to the Utah State Prison and incarcerated, after he plead guilty to a third degree felony, Failure To Stop At Officer's Command, by Judge Frank G. Noel. Lettig was also incarcerated with several technical parole violations; removal of personal ISP monitoring device and failure to maintain record of residence while on parole.

On July 21, 1993, Petitioner appeared before a single-member panel of the Board, for a parole revocation hearing. The single-member was Fred Trujillo, who exhibited such prejudice toward Petitioner, as to comment on the record that the police (in Petitioner's third degree felony conviction) should have "taken a more permanent solution" to the Petitioner's case.

Mr. Trujillo issued an interim decision revoking Petitioner's parole and ordering that Petitioner's case be scheduled for a rehearing in September of 1995, to consider the next possible parole date. No actual parole date was given.

On or about July 26, 1993, the Board came together at a meeting and considered Petitioner's case and the interim decision of July 21, 1993, and modified the September, 1995 date. A new rehearing date of September, 1996 was set. Petitioner was not present at that meeting and no new evidence or testimony was taken

or considered by the Board. The Rehearing date exceeded the guidelines, and no adequate, and accurate, explanation has ever been provided to Lettig.

On November 2, 1993 Lettig filed a Petition For Extraordinary Relief. Lettig claimed that the Board had deprived him of his liberty by revoking his parole and ordering a rehearing for September of 1996 without an adequate explanation of its reasons for denying parole and exceeding the guidelines, and without adequate access to his file which the Board used to make a final determination.

On December 14, 1993, the case came before the trial court for a scheduled evidentiary hearing to resolve the issues pending. At that time the trial court ordered that Lettig should be permitted to examine his file, pursuant to Labrum v. Utah Board of Pardons, and that the Board should conduct a new parole hearing for Lettig, for the purposes of considering Lettig's parole date.

The Board provided Lettig a partial copy of his file, and a hearing was held on January 19, 1994, in accordance with the court's order. On March 7, 1994 the Appellant requested to amend his complaint and the request was granted, and the amended petition was filed with the court.

An evidentiary hearing was held on the Petition for extraordinary relief on April 18, 1994. The actual information upon which the Board based their "modified" decision was inaccurate, and Petitioner was unaware of the inaccuracy - until the Board submitted the Petitioner's entire file into evidence as an exhibit,

at the Evidentiary (hearing held April 18, 1994) before Judge Young.

Some of the inaccuracies discovered were not included in the information in the Petitioner's file which the court ordered the Board to provide to the Petitioner. In addition, Mr. Garner testified that the decision of the Board was based upon prior convictions, the number of previous paroles (which was an error in Lettig's file) and Lettig's "lack of remorse at the parole hearings". In fact, there is documentation in Lettig's file to indicate that Mr. Lettig was very remorseful, in fact historically he did express remorse, and was never arrogant or defiant.

The Court found that it was convinced by Mr. Garner's testimony. However, the finding of the court are not supported by Mr. Garner's testimony, and are in direct opposition with Mr. Garner's testimony. Additionally the findings of the court do not indicate that the court examined the exhibits (entire Board file of Lettig, tapes of the hearings, etc).

Although the court did examine the entire Board file enough to note Lettig was paroled four times in the past twenty (20) years, and not six (as Mr. Garner and Mr. Trujillo had stated at Lettig's parole hearings) the court failed to examine the file enough to reach a determination as to the other inaccuracies, and prejudicial statements found in the file.

SUMMARY OF ARGUMENT

The trial court did not apply the correct standard of review in it's examination of the Board's actions.

The Board of Pardons did not provide sufficient portions of Petitioner's file to him, pursuant to Labrum, to enable Lettig to adequately present his case to the Board, and make the appropriate corrections or clarifications, or explanations. The actual file reveals that the decision of the Board of Pardons was based upon inaccurate information, and a general prejudice to Appellant Lettig, so egregious that it constitutes a violation of Lettig's Due Process rights under Article I, Section 7 of the Utah Constitution.

The three Board members who determined Petitioner's rehearing date, did not have sufficient accurate documentation to justify a 1996 rehearing, and comments contained in the file, which were made by Don Blanchard and Heather Cook, regarding the fact that they considered Lettig a "sniveler", were so inappropriate as to render the remaining Board members incapable of a just and fair determination. In fact, the one item of information Mr. Garner was able to testify to (without looking at the file) was that he recalled that Mr. Lettig had expressed "appropriate remorse", but decided to discount the expression of remorse, without reason, explanation or justification.

The Board of Pardons abused it's discretion, and exceed it's jurisdiction by failing to perform their duties as required by

law, and the trial court failed to properly examine Lettig's claim's in that regard, or the evidence presented to support Lettig's claim.

ARGUMENT

THE TRIAL COURT DID NOT CORRECTLY REVIEW EVIDENCE BEFORE THE BOARD OF PARDONS, THUS THE TRIAL COURT IMPROPERLY DEFERRED TO THE BOARD. THE JUDGMENT OF THE TRIAL COURT MUST BE VACATED.

Appellant Lettig requested that the trial court conduct a review of the Board's revocation proceeding and that was done in the evidentiary hearing held on April 18, 1994. In substance, Lettig's rule 65B petition request was a request for an appellate review of the Board. In re Discharge of Jones, 720 P.2d 1356, 1360 (Utah 1986); Bennion v. Utah State Bd. of Oil, Gas and Mining, 765P 2d. 1135, 1139-1140 (Utah 1983) Erkman v. Civil Service Comm'n, 198 P2d 238, 240 (Utah 1948); Tolman v. Salt Lake County Attorney, 818 P.2d 23, 26 (Utah App. 1991); Vali Convalescent and Care Inst., v. Dep't of Health, 797 P.2d 438m 443-44 (Utah App. 1988; see also Craig v. State, 844 P.2d 1371, 1373, (Idaho App. 1992); (appeal of district court decision affirming parole commission revocation; In re Appeal of Banks, 630 P.2d 1131, 1133-34 (Kan. 1981) (appeal of administrative decision not to build health facility).

Due to the nature of the appeal, the court should have examined the evidence upon which the Board relied and examined said evidence for clear error. Norman H. Jackson, 7 *Utah Standards of Appellate Review* 9, 13 (1994); Alta Indus. Ltd. v. Hurst, 846 P.2d

1282, 1287 (Utah 1993); Kennecott Corp. v. State Tax Comm'n, 858 P.2d 1381, 1385 (Utah 1993). Not only did the trial court fail to examine the evidence Lettig marshalled, but the evidence the Board supplied was never examined for inaccuracy or due process violations.

The trial court's resulting obligation (at the evidentiary hearing) was to examine the evidence marshalled and examine the Board's findings, and the evidence upon which the Board based their findings, and make a determination as to whether or not the decision was based upon correct and appropriate information, or simply the opinion of the Board that Lettig was a "sniveler" who did not deserve a parole.

The Board never revealed the real reasons for denying Lettig a parole date. The Board's own rules require that an "explanation of the reason for [a] decision [be] given and support in writing." Utah Admin. R. 671-305-2 (1992). When the Board failed to provide the actual basis upon which the decision that Lettig should be given a 1996 rehearing date.

The trial court's findings of Fact, Number 40, found that the decision not to set a parole date for Lettig was based, in part upon "Petitioner's lack of remorse at the parole hearings". However, Lettig's file contains a Board Action Routing Sheet, Parole Violation Hearing, dated July 21, 1993, which states "The subject did display remorse for his actions.....". See addendum B. In addition, Mr. Garner's testimony was not that the Petitioner Lettig displayed a "lack of remorse", as the trial court's Findings

of Fact, Number 40 stated, but, the testimony of Mr. Garner was that Lettig had "five or six or seven" previous paroles (When in fact, he had four) and:

"....at prior hearings [Lettig] displayed himself well, and displayed appropriate remorse and so forth and as a result I think I, as the person conducting the Hearing this time, tended to discount those things at the hearing".

Q. Tended to Discount what?

A. His expressions of remorse, expression of intentions to do better from here on out.

Q. I am a little confused. So your testimony is that even though he displayed remorse and appropriate affect you discounted that display?

A. Correct".

(T. at 27)

There simply was not testimony by Mr. Garner's at the evidentiary hearing, that Lettig was "not remorseful" and the trial court's finding's in that regard improperly supported the Board's actions. Appellant Lettig is unable to defend or overcome such findings by the trial court.

The testimony contradicts the findings. In short, there is simply no rationale or explanation for the Board's actions, which can be supported by either testimony or documentation, and the trial courts' findings are in error.

The trial Court erred when it did not consider or examine the fact that any remorseful or contrite statement's made by Lettig may

have been considered "sniveling" by Mr. Garner, and in fact he was punished (by refusing to follow the Utah Sentence and Release Guidelines) for making any comments relative to his remorse. The Trial Court's Findings of Fact and Conclusions of Law are erroneous and demonstrate a lack of determination to find out the actual basis upon which the Board made their decisions regarding Appellant Lettig.

Mr. Garner also testified that even though Mr. Lettig has only been paroled three times on his current conviction in 1988, he considered negatively the fact that Mr. Lettig had been paroled on another expired sentence. (T. at 55).

Also Mr. Alan R. Walker testified at the evidentiary hearing. Mr. Walker prepared the report upon which the Board members based their decision. The testimony of Mr. Walker was that he prepared the worksheets for parole violations hearings. (T at 107). Mr. Walker's report was greatly exaggerated and contained inaccurate statements. Mr. Walker's report states that Mr. Lettig "endangered the lives of countless numbers of people in his attempt to escape". (T at 115). In fact, Mr. Lettig was not the driver of the car, but a passenger. An unarmed passenger. The "weapon" which the report refers to is the car itself. There was no documentation submitted to Mr. Lettig which supported Mr. Walker's baseless statements.

Mr. Walker also testified that his report indicated that Mr. Lettig had six prior paroles. The Findings of Fact, issued by the trial court determine that was not accurate. (T at 116)

Although the trial court did note at Finding of Fact number 5,

at page 2, that there had not been six previous paroles, but four. The Findings of Fact did not address at any point the fact that the Board of Pardons based their decisions on a misleading and inaccurate report, made by Mr. Walker. However, Mr. Garner did testify that when Mr. Lettig's counsel attempted to clarify the situation Mr. Garner consider that to be denial or minimizing the situation.

If the purpose of Labrum, was to allow for correction and clarification, and the Board member holds the correction process against the inmate seeking parole, then the notion of due possess has been completely abandoned. The result of Mr. Lettig's attempt to clarify and correct, through both the Board process and the court system, has been that (without being present at the hearing) the Board, on it's own initiative, extended his rehearing date another year in the future. The only occupance, or cause, known to Mr. Lettig is his singular attempt to seek fair treatment. The signal or message from the Board is clear, if an inmate seeks to correct or clarify, the Board punishes them and labels the punishment it's "right" under the Utah indeterminate sentencing system. Such behavior is a blatant violation of due process.

Mr. Lettig marshalled evidence for the trial court that demonstrated clear error on the part of the Board. The trial court's resulting obligation was then to reject the Board's findings as incorrect. Crockett v. Crockett, 836 P.2d 818, 820 (Utah App. 1992) (because of failure to marshal evidence, appellate court assumes record support findings), and also by "elementary

principles of appellate review," Sawyers v. Sawyers, 558 P.2d 607, 608 (Utah 1976) (in the absence of a record, findings are presumed to have been supported by admissible, competent and substantial evidence) Appellant Lettig demonstrated to the trial court that the Board's findings could not be supported by the record in his file and the testimony of Mr. Garner was that he based his decision in inaccurate information and discounted Mr. Lettig's remorse. Based upon the evidence, the decision of the Board could not be supported by "admissible competent and substantial evidence" Id. at 607.

In Ward v. Smith, the court adopted a standard of deference to Board decisions but held that if there exists "a clear abuse of rightful discretion" the Board results could be overturned.

Ward v. Smith, 573 p.2d 781, 782 (Utah 1978). When Mr. Garner refused to accept a statement of remorse, and counted it against Mr. Lettig, when Mr. Garner was not even aware of the actual number of previous paroles, and held an inaccurate number against Lettig, and when the Board unilaterally imposed an additional year, without hearing, Lettig's presence, and no event other than Lettig's attempt to gain access to the court system, via the Writ process, the Board went way beyond their boundaries and abused their "rightful discretion".

THE BOARD DID NOT PROVIDE SUFFICIENT PORTIONS OF APPELLANT'S FILE TO HIM TO ENABLE LETTIG TO ADEQUATELY PRESENT HIS CASE, TO EITHER THE BOARD OR THE TRIAL COURT. NEITHER THE BOARD NOR THE TRIAL COURT CONSIDERED THE INACCURACIES OR THE PREJUDICE EXHIBITED, IN THE FILE, TOWARD THE APPELLANT BY THE BOARD, THUS VIOLATING LETTIG'S DUE PROCESS RIGHTS.

The Board's counsel placed Lettig's entire file into evidence, at the evidentiary hearing. At no time prior to the evidentiary was Lettig ever able to examine his entire file. Neither Lettig nor his counsel were provided adequate access to the file during the evidentiary hearing, sufficient to examine the file and compare the file to the "copy" Lettig had received. While the Board could have simply placed a copy of what was given to Lettig into evidence, they opted to place the entire, original file into evidence. Thus, Lettig is now entitled to examine the exhibit and determine if anything exists in the Board's file which can possibly explain the Board's prejudicial treatment of Lettig.

The Findings of Fact issued by the trial court do not indicate that the trial court made a thorough examination of Lettig's file, nor indicate the trial court had examined each exhibit, nor mention that the portions of the file provided to Lettig differ considerably, in content, from that which was supplied to Lettig. In Labrum, 870 P.2d at 909, the Supreme Court of the state of Utah made a determine that supported the due process rights established in the Utah Constitution, Article 1, § 7, and stated that due process "requires that the inmate know what information the Board will be considering at the [original parole grant] hearing] and that the inmate know soon enough in advance to have a reasonable

opportunity to prepare responses and rebuttal of inaccuracies".

Labrum further held that the rule applied "to any inmate who currently had a claim pending in the district court or on appeal before this court or the court of appeals challenging original parole grant hearing procedures on due process grounds." Id at 914.

Therefore, the Board abused its discretion, and exceeded its jurisdiction when they failed to perform their duties as set forth in Labrum. Additionally, the trial court not only failed to take note of the Board's inadequate performance with Lettig, the trial court simply rubber stamped the Board's performance, made Findings of Fact which cannot be supported by testimony.

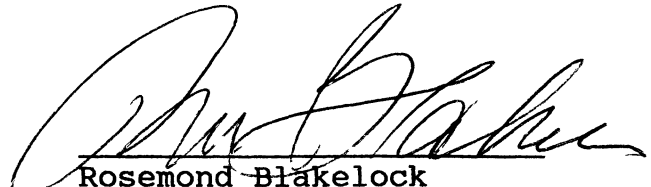
While the trial court's Finding's of Fact and Conclusions of law, #32, at page 7, acknowledged that the trial court had ordered, and the Board subsequently provided Lettig with a copy of his parole file, in accordance with Labrum, the findings do not indicate that the trial court examined the "copy" of Lettig's file which was placed into evidence by Lettig, and compared it with the "original" file placed into evidence by the Board. It was only through such a comparison, after the evidentiary hearing, that Lettig's counsel was able to discover that inaccuracies still remained, corrections had not been made, and that Lettig's original file had sections (unavailable, and unknown to Lettig) had labeled Mr. Lettig as a "sniveler". Such remarks and covert communications between Board members appear to be the actual basis upon which Lettig's parole status was determined. It appears to be the basis upon which Mr. Garner discounted entirely Mr. Lettig's remorse and

refused to even consider the fact that Mr. Lettig appeared to be remorseful.

CONCLUSION

Appellant respectfully requests that the Court vacate the trial court's order and order that Appellant be granted a new parole hearing in which accurate information is considered and further that the Board be instructed to make a fair, impartial determination, which is supported by competent, accurate, and substantial evidence.

RESPECTFULLY SUBMITTED THIS 3rd day of February, 1995.


Rosemond Blakelock
attorney for Appellant

MAILING CERTIFICATE

I hereby certify that on the ^{3rd} day of February, 1995, I caused to be mailed, by U.S. Mail postage prepaid, two (2) true and correct copies of the foregoing BRIEF OF APPELLANT to:

DEBRA J. MOORE

330 South 300 East

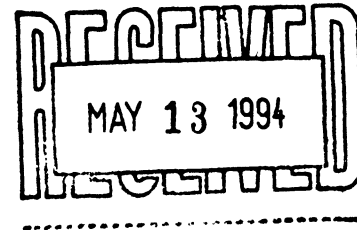
Salt Lake City, Utah 84111.



ADDENDA

ADDENDUM A

LORENZO K. MILLER (5761)
Assistant Attorney General
JAN GRAHAM (1231)
UTAH ATTORNEY GENERAL
Attorneys for Defendants
330 South 300 East
Salt Lake City, Utah 84111
Telephone: (801) 575-1600



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

WILLIAM M. LETTIG,

Plaintiff,

v.

SCOTT V. CARVER, et al.,

Defendants.

**FINDINGS, CONCLUSIONS
and FINAL ORDER**

**Case No. 930906342 HC
Judge David S. Young**

The above-entitled matter came before this Court on April 18, 1994, for an evidentiary hearing on Petitioner's Petition for extraordinary relief. The Respondents were represented by Lorenzo K. Miller, Assistant Attorney General, and Petitioner was present and represented by Rosemond G. Blakelock. The Court having taken testimony and evidence in this case, having been fully briefed by the parties, having carefully considered the facts and evidence of this case, and having heard the arguments, issued its final judgment. Based upon the above, the Court now makes the following findings:

FINDINGS OF FACT

1. Petitioner William M. Lettig is presently incarcerated at the Utah State Prison and serving two valid indeterminate sentences of imprisonment: the first for Theft, a second degree felony, and the second for Evading Arrest\Failure to Stop, a third degree felony.

2. Prior to the sentences Petitioner is now serving, Petitioner was also serving sentences for the crimes of Carrying a Concealed & Dangerous Weapon, a third degree felony, Attempted Escape from Custody, a third degree felony, two separate charges of Attempted Robbery, a third degree felony, and Reckless Driving, a misdemeanor.

3. On November 10, 1992, Petitioner was released from the Utah State Prison under a parole agreement signed by the Utah Board of Pardons and Parole (hereinafter "Board").

4. As a condition of that parole, Petitioner agreed to abide by all the terms and conditions of the parole agreement as set by the Board, including obedience to federal, state and local laws.

5. This was Petitioner's fourth parole from the prison since his initial incarceration in December 1975; all prior paroles ended in revocation because Petitioner failed to abide by the parole agreements and continued criminal activity and misbehavior while on parole.

6. On July 21, 1993, Petitioner appeared before a single-member panel of the Board for a fourth parole revocation hearing.

7. Petitioner was represented by counsel at that time, and counsel participated throughout the revocation proceedings before the Board.

8. At the hearing, Petitioner pled "guilty" to having violated four separate conditions of his parole agreement, including having been convicted of a new felony offense while on parole; Petitioner also pled "no contest" to a fifth parole violation allegation.

9. Petitioner's counsel did not object to the Board's actions while conducting the hearing, and Petitioner submitted the case for the Board's final decision regarding revocation.

10. The board member conducting the hearing issued an interim decision revoking Petitioner's parole and ordering that Petitioner be re-incarcerated at the prison based upon Petitioner's guilty pleas.

11. Instead of giving Petitioner another parole date, the board member ordered that Petitioner's case be scheduled for rehearing in September of 1995 to consider the next possible parole date.

12. In addition to the above order, the board member issued a written rationale for his decision, and that rationale contained the reasons for giving a 1995 rehearing date.

13. On August 3, 1993, the full Board came together at a regularly scheduled meeting and considered Petitioner's case and the interim decision of July 21, 1993.

14. At that time, the Board adopted the interim decision to revoke Petitioner's parole date and to re-incarcerate him, but it modified the 1995 rehearing dated to be 1996.

15. Petitioner was not present at that meeting, and no new evidence or testimony was taken or considered by the Board at that time.

16. On November 2, 1993, Petitioner filed a petition for extraordinary relief, pursuant to Utah R. Civ. P. 65B(c) and (e) (1993), challenging the actions and decisions of the Board.

17. In that petition, Petitioner claimed that the Board had deprived him of his liberty by revoking his parole and ordering a rehearing for September of 1996 without an adequate explanation of its reasons for "denying parole and exceeding guidelines."

18. Petitioner asserted that by exceeding the guidelines, the Board violated the Cruel and Unusual Punishment Clause of the United States Constitution and the analogous clause of the state constitution.

19. Petitioner also claimed that the guidelines created an expectation of parole (or liberty interest) under Utah law which is protected under the due process clauses of both the state and federal constitutions and that the Board violated his rights by exceeding those guidelines.

20. Petitioner also claimed that the Board failed to allow Petitioner the right to present evidence in his behalf and that it failed to accept evidence in his favor at the parole revocation hearing.

21. Petitioner also challenged the ultimate decision of the Board to grant him a 1996 rehearing; he did not claim that the Board had failed to provide him access to the Board's files or the information considered at the hearing.

22. Petitioner requested that the court order "respondents to rehear petitioner's case and grant him parole within the stated Guidelines."

23. On December 14, 1993, the case came before the court for a scheduled evidentiary hearing to resolve the issues pending before the court.

24. At that hearing, Petitioner had no witnesses to call but instead offered a statement to the court raising issues that had never been raised and were not part of the record.

25. Petitioner did not refute the facts put forth by the Board but argued that the case of Labrum v. Utah Board of Pardons, 227 Utah Adv. Rep. 30 (Utah, Dec. 6, 1993), applied to his case and should be considered by the court.

26. Prior to that date, the Labrum case was not in issue and was not briefed by the parties.

27. Based upon discussion with the parties, the court concluded that Petitioner was entitled to a parole hearing on the new criminal conviction leading to the parole revocation hearing and Petitioner's recommitment.

28. The court also concluded that the Labrum protections should be applied to that new hearing.

29. The court ordered the Board to grant Petitioner a parole hearing to consider the possibility of a future parole date on the new conviction and to grant Petitioner access to his parole file in accordance with the Labrum decision.

30. The court stated that the new hearing was not intended to affect Petitioner's prior guilty pleas before the Board or to modify the Board's determination to revoke Petitioner's previous parole date.

31. The court's stated intention was that the Board hold an original parole-grant hearing (on Petitioner's new conviction) and to consider a possible early release date for that conviction.

32. Subsequently, the Board provided Petitioner a copy of its parole file, in accordance with its interpretation of the Labrum decision, and it reheard Petitioner's case.

33. The new hearing took place on January 19, 1994, in accordance with the court's order, the stipulations of the parties, and R671 of the Utah Administrative Code (1993).

34. Petitioner was present at the hearing and represented by his own counsel, Rosemond Blakelock.

35. On March 7, 1994, this matter again came before the court, and Petitioner requested to amend his complaint against the Board.

36. The Court granted Petitioner's motion to amend, over Respondents' objection, and ordered that the amended petition be filed on March 18, 1994.

37. Respondents were ordered to file an answer to the amended petition by April 1, 1994, and the case was set for an evidentiary hearing to be conducted on April 18, 1994.

38. On April 18, 1994, an evidentiary hearing was held in this matter, and at that time, the court heard testimony from numerous witnesses regarding the Board's procedural processes and actions in Petitioner's case.

39. Curtis Garner, the board member who conducted the January 1994 hearing, testified that the sentencing matrix contained in the

Utah Sentence and Release Guidelines is used to calculate minimum sentence terms and that numerous other factors must also be considered when setting a parole date.

40. Mr. Garner testified that Board's decisions in this case were affected by Petitioner's prior convictions, the number of previous paroles and Petitioner's lack of remorse at the parole hearings.

41. Mr. Garner testified that the Board routinely deviates from the guidelines and that the guidelines are only one of many factors used by the Board in determining an early-release date.

42. Mr. Garner also testified that the Board does not feel bound by the guidelines but merely considers the guidelines as a recommendation, not the actual sentence of imprisonment.

43. Witness James Furner, a parole officer for Adult Probation and Parole, testified that he never told Petitioner that he [Mr. Furner] intended to see Petitioner serve every year of his sentence.

44. Mr. Furner also denied Petitioner's allegations of altering the condition of any weapons taken from Petitioner's home during or of any other improprieties in the supervision of Petitioner's case.

45. The court finds that Mr. Garner and Mr. Furner's testimonies were convincing, and that they did not demonstrate any animosity or bias toward Petitioner as alleged in the complaint.

46. The court also finds that Petitioner has failed to prove that the Board acted inappropriately in this matter.

47. The Board's entire records on Petitioner was introduced as an exhibit, and those records indicate that Petitioner has been paroled from his sentence of incarceration on at least four separate occasions.

48. Petitioner testified that he did not dispute the fact that he violated his parole in this case or that the Board was authorized to revoke his parole based upon the five violations of the parole agreement.

49. When asked what proceedings the Board could give him to make the hearing in his case more fair, Petitioner referred to the guidelines but did not identify any additional procedural protections that should be afforded by the Board.

50. Accordingly, the court finds that Petitioner's claims in this case go directly against the substance of the Board's ultimate parole decision, attacking the Board's ability to deviate from the guidelines in his case, not against the procedural protections afforded by the Board. Based upon the above findings of fact, the court now makes the following conclusions:

CONCLUSIONS OF LAW

Petitioner has failed to prove that the Board failed to perform an act required by law or that the Board has exceeded its jurisdiction or abused its discretion in this case. Indeed the records of the Board show that the Board acted within its authority under state and federal law and properly applied the guidelines in Petitioner's case.

The court also concludes that the Board had adequate cause and justification to revoke Petitioner's parole, based upon his admitted violations of the parole agreement, and to deny him a parole date on the new crime of commitment, regardless of the guideline matrix.

Furthermore, the court concludes that Petitioner failed to establish that the Board violated his procedural due process rights under either state or federal law. The guidelines contained in the Utah Sentence and Release Guidelines are used as a tool to calculate minimum release dates, and the Board had sufficient cause in this case to exceed those guidelines based upon Petitioner's prior paroles and the other circumstances of his case that were identified by the Board in its written rationale.

Furthermore, the court concludes that Petitioner has failed to prove or even establish that the Board has abused its discretion, exceeded its jurisdiction or failed to perform a duty required by

law. Additionally, Petitioner has failed to demonstrate a basis that would entitle him to the judicial relief requested in his amended petition.

Based upon the above and the fact that Petitioner has failed to prove any wrongful conduct by the Respondents in this case, the court concludes that Petitioner's claims against the Respondents are without merit and should be dismissed as a matter of law.

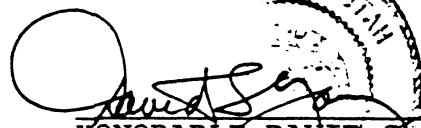
Having made the foregoing findings and conclusions, the court makes the following order:

FINAL ORDER

1. Respondents' motion for judgment is hereby granted.
2. The relief Petitioner seeks in his amended petition is denied as a matter of law.
3. This case is dismissed with prejudice.
4. Respondents' motion to seal the Board of Pardons' file and records from public disclosure is hereby denied.
5. Respondents' counsel (in the presence of Petitioner's counsel or representative) is hereby granted permission of the court to take the Board of Pardons' file, which was admitted as evidence, from the court for the sole purpose of making a copy of that record. Upon completion of copying, the file shall be immediately returned to the court in its original condition and organization.

Dated this 23^d day of May, 1994.

BY THE COURT:


HONORABLE DAVID S. YOUNG
Third District Court

CERTIFICATE OF MAILING

I hereby certify that on the 11th day of May, 1994, I
caused to be mailed, postage prepaid, an exact copy of the attached
(proposed and unsigned) Findings, Conclusions and Final Order to:

ROSEMOND G. BLAKELOCK
ATTORNEY FOR PETITIONER
BLAKELOCK & STRINGER
37 EAST CENTER #200
PROVO, UTAH 84606

Cecil Miller

ADDENDUM B

ME: William Letting

USP #: 13689

TE: 2/13/92

OBSCIS #: _____

ATUS: Rehearing _____ Parole 1/14/92 Other _____

COMMENTS AND RECOMMENDATION: Reduce input sub AB RX
to sub Abuse RX (less Restrictive
NO waiver needed). Leave ISP/EM,
NO contact w/ Cindy A PERGES, RDT,
NO Alc & Antabuse. ISSUE New
PA. TCR.

ROUTING RESULTS:

to	Haun	2 Don Blanchard	3 Mike Sibbett	Bill Peters	Heather Cooke
_____	Date <u>2-14-92</u>	Date <u>2/22/92</u>	Date _____	Date <u>2/13/92</u>	
_____	Agree <u>AGB</u>	Agree <u>MPA</u>	Agree _____	Agree _____	
_____	Dissent _____	Dissent _____	Dissent _____	Dissent _____	
_____	Comments <u>See Comments</u>	Comments <u>See Comments</u>	Comments <u>See Comments</u>	Comments <u>See Comments</u>	<u>AC</u>

AC - I CAN GO ALONG WITH CHANGING
INP S/A RX TO REGULAR OUTPATIENT, BUT
ALL OTHER CONDITIONS MUST REMAIN
(INCLUDING ISP + EM). (AND COULD SOMEONE
PLEASE TELL D TO QUIT SNIVELING!)
yes on all counts, - some things get pretty in-judicial including
snivelling

PROTECTED

DARED: 2/25/92
pn

ADDENDUM C

Fred Trujillo

BOARD ACTION ROUTING SHEET
PAROLE VIOLATION HEARING

RE: William Lettig

USP # 13684

DATE: 7/21/93

MARY

current matter represents the offender's **sixth** parole violation. It is very concerning to note that not only did Mr. Lettig abscond supervision, he was also convicted of a new Third Degree Felony, Failure to Stop at an Officer's Command; the penalties of which amount to 24 months. This new conviction is especially aggravated to the fact that Lettig placed the officer's life in peril, as well as many other citizens. (please refer to the attached info.). Based upon the totality of this violation, the DOC has recommended a five year rehearing. The subject did display remorse for his actions and did plead for a parole date, however, because this H.O. is of opinion that Lettig needs time to prove himself, a rehearing, but of a lessor amount of time will be suggested.

RECOMMENDATION:

Before, my interim decision was to revoke the previous parole date of 11/10/92, and to set a rehearing in September of 1995, (after the total service of 30 months).

1. <u>RFB</u> <u>7-26-93</u> Date <u>7/26/93</u> Agree <u>[initials]</u> Dissent _____ Comment _____	2. <u>[initials]</u> Date <u>7/26/93</u> Agree <u>[initials]</u> Dissent _____ Comment _____	3. <u>7/26/93</u> Date <u>7/26/93</u> Agree <u>[initials]</u> Dissent _____ Comment _____	4. <u>7/26/93</u> Date <u>7/26/93</u> Agree <u>[initials]</u> Dissent _____ Comment _____	5. <u>7/26/93</u> Date <u>7/26/93</u> Agree <u>[initials]</u> Dissent _____ Comment _____
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revoke by H.O. interim decision from Rehear 9-95 to a Rehearing in Sept. of 1996.

Entered: 8/3/93 635