

1994

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

Utah Court of Appeals

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BRIEF

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

William Remine,
Petitioner and
Appellant

**PETITION FOR
REHEARING**

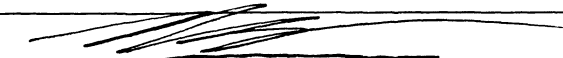
vs
Utah Board of Pardons
Respondant and
Appellee

Case no 940459-CA

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I hereby certify That The Foregoing Petition
For Rehearing is submitted in good Faith and
not To cause delay.



William Remine

With respect to the courts conclusion that "... due process safeguards do not apply in this case because it is not an original parole grant hearing". In support of this conclusion the court cites State v. Labrum. The court is full of shit! Labrum in no way supports the courts ludicrous contentions. It would be self-defeating to require procedural safeguards in the decision making process at the original parole grant hearing, and then allow the Board to arbitrarily rescind those decisions at will. Neither Greenholtz, Foote, nor Labrum was intended to be self-defeating.

Moreover it is well settled that the Board must afford due process safeguards throughout all their proceedings: original parole grant hearings: Greenholtz v. Inmates of Nebraska penal and Correctional Complex, 442 U.S. 1, 99 S.Ct. 2100; Foote v. Utah Board of Pardons, 136 Utah Adv. Rep 3; and Labrum v. Utah Board of Pardons, 227 Adv. Rep 30. Parole Revocation hearings: Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593; Gagnon v. Scarpelli, 411 U.S. 778. Rescission hearings: Green v. McCall, 822 F.2d 284.

Turning to the question of what procedures generally apply to Rescission hearings, two Supreme Court decisions seem to set these boundaries: Morrissey v. Brewer, 408 US 471, which deals with parole revocation; and Wolff v. McDonnell 418 US 539, which deals

with the deprivation of good time. Both Morrissey and Wolff require written notice of the "claimed violations" or "actual changes". Therefore, there is no need to address the question of which set of safeguards must be satisfied. The lesser standards of Wolff are enough to establish a due process violation in this case.

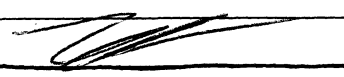
Wolff at 564 "... under procedures in effect at the time of trial, it would appear that the inmate first receives notice of the actual changes at the time of the hearing before the adjustment committee". The court held that this procedure was inadequate. Similarly, the procedure afforded to Remine was inadequate. Remine first received notice of the "actual changes" at the time of the hearing:

The only distinction is, Wolff addresses the reshaping of the nature of the changes on evidence relied upon, prior to the hearing, whereas Remine's case deals with an ambiguous change that was not specified until the time of the hearing. [Prior to the hearing neither the changes on evidence had any definite shape or form, they were ambiguous]. Nevertheless, the court has held that it is inadequate for the accused to first receive notice of the "actual changes" at the time of the hearing.

The notice of The charges must contain a syllabus, that discloses enough information "to give The charged party a chance to marshal The Facts in his defense and to clarify what The charges are, in Fact" [Wolff at 564]

The notice given to Remine contained no syllabus it was ambiguous Remine could neither clarify what The charges were or marshal The Facts in his defense because The charge was ambiguous and failed to disclose enough information.

Submitted This 5 day of October 1994


William Remine
Attorney Pro Se

Comes now third party appellee, UTAH STATE RETIREMENT OFFICE, to submit its Amendments to Brief of Third Party Appellee Utah State Retirement Office as follows:

Page 2, paragraph 1, insert reference to the Record at page 45 at the end of the paragraph.

Page 2, paragraph 2 is amended to read as follows:

Plaintiff's Second Amended Complaint asserted three claims for relief: (1) breach of express contract, (2) breach of regulations based on an implied in fact contract, and (3) unjust enrichment. (R. 322-323). The trial court granted Defendants' and Third Party Defendants' Motion for Summary Judgments on claims (1) and (2) on December 3, 1993. (R. 411-412). On April 8, 1994, the trial court also dismissed with prejudice claim (3) on the grounds of no cause of action. (R. 452-453).

Page 3, paragraphs 1, 2, and 3 insert reference to Record at page 232 at the end of the paragraphs.

Page 3, paragraph 4, insert following language at the end of the paragraph: "(Unable to cite to Record because document was not contained in Record.)"

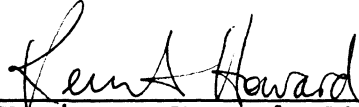
Page 3, paragraph 5, insert following language at the end of the paragraph: "(Filed with the Supreme Court.)"

Page 4, paragraph 6 is amended to read as follows:

At the outset of this controversy, the Retirement Office was not included as a party. This joinder was effectuated much later, never at the instigation of Nichols, and was based on the following theory proffered in Third Party Defendant Darrell White's and Box

Elder County School District's Third Party Claim against the Retirement Office: All "savings" which were realized by Box Elder County School District and forwarded to the State Office of Education were transferred to the Retirement Office, and as the repository of that money, the Retirement Office may have liability to return that money to the retirees pursuant to a local school district contract. (R. 45).

DATED this 28th day of November, 1994.



Kevin A. Howard, Attorney for
Utah State Retirement Board