

1995

Luis R. Fernandez vs. Utah Board of Pardons : Brief of Appellant

Utah Court of Appeals

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Luis R. Fernandez.

Brent A. Burnett; Jan Graham.

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FILED

Utah Court of Appeals

JAN 10 1996

IN THE UTAH COURT OF APPEALS
STATE OF UTAH

Marilyn M. Branch
Clerk of the Court

LUIS R. FERNANDEZ
APPELLANT,
-VS-
UTAH BOARD OF PARDON'S
APPEALLEE,

COURT OF APPEALS
No. 950465-CA

BRIEF OF APPELLANT

AN APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
JUDGE SANDRA N. PEULER, PRESIDING

UTAH COURT OF APPEALS
BRIEF

UTAH
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DOCKET NO. 950465CA

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FILED

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Marilyn M. Branch
Clerk of the Court

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State V. DROBEL, 815 P.2d 724 (UTAH App. 1991)

State V. RICHARDS, 740 P.2d 1314 (UTAH 1987)

State V. SCHRAUDER, 712 P.2d 264 (UTAH 1985)

OTHER AUTHORITIES

SEC. 76-3-202 (2)

SEC. 76-3-202 (3) (6) UTAH CODE ANN.

SEC. 76-3-202 (3) (C) UTAH CODE ANN.

SEC. 76-3-202 (4) UTAH CODE ANN.

SEC. 76-3-203

SEC. 76-3-405

R671-205-1 (3) BOARD RULES UTAH ADMINISTRATIVE CODE

STATEMENT OF JURISDICTION OF THE COURT OF APPEALS

THIS APPEAL IS FILED PURSUANT TO UTAH CODE
ANNOTATED, § 78-2A-3 (2)(9) (1992)

STATEMENT OF NATURE OF THE PROCEEDINGS

THIS IS AN APPEAL FROM THE JUDGMENT OF THE THIRD
JUDICIAL DISTRICT COURT.

APPELLANT FILED AN EXTRAORDINARY WRIT WITH THE
THIRD JUDICIAL DISTRICT COURT REQUESTING RELIEF AGAINST
THE UTAH STATE BOARD OF PARDONS FOR VIOLATING APPELLANTS DUE
PROCESS RIGHTS. THE HONORABLE JUDGE SANDRA N. PEULER
DENIED APPELLANTS REQUEST FOR RELIEF. APPELLANT NOW
SEEKS APPELLATE REVIEW.

NATURE OF THE CASE

THIS IS A CIVIL MATTER ALLEGING THAT THE UTAH BOARD
STATE OF PARDONS DENIED APPELLANT HIS DUE PROCESS RIGHTS
BY IMPROPERLY TOLLING THE TIME APPELLANT WAS INCARCERATED
AT F.C.I FLORENCE, IN COLORADO...

Disposition OF THE CASE

1. PETITIONER WAS CONVICTED ON MAY 8, 1990 AND SENTENCED
BY THE EIGHT DISTRICT COURT TO SERVE A 0-5 YEAR SENTENCE,
(3rd FELONY) FOR POSSESSION OF A CONTROLLED SUBSTANCE.

2. PETITIONER WAS SERVED WITH A FEDERAL DETAINER AND WAS
SUBSEQUENTLY TAKEN INTO FEDERAL CUSTODY TO STAND TRIAL IN UNITED
STATES DISTRICT COURT, DISTRICT OF UTAH.

3. ON OR ABOUT APRIL 23, 1991 PETITIONER WAS ADJUDGED GUILTY BY
JUDGE DAVID SAM AND ORDERED TO SERVE AN 18 MONTH FEDERAL SENTENCE.
PETITIONER RECEIVED CREDIT FOR TIME SERVED AND A 90 DAY EVALUATION.

PETITIONER'S EXPIRATION DATE WAS NOVEMBER 10, 1993.

4. AFTER PETITIONER WAS SENTENCED IN FEDERAL COURT HE APPEARED BEFORE THE UTAH STATE BOARD OF PARDONS AND PAROLED TO SERVE HIS FEDERAL SENTENCE.
5. PETITIONER WAS INCARCERATED IN THE FEDERAL SYSTEM FOR (18) MONTHS AND WAS PLACED ON FEDERAL PAROLE.
6. PETITIONER WAS RETURNED TO UTAH FOR HIS STATE AND FEDERAL PAROLE. THE UTAH STATE BOARD OF PARDONS CREDITED PETITIONER'S STATE SENTENCE FOR THE (18) MONTHS HE SERVED IN FEDERAL CUSTODY.
7. AFTER (6) MONTHS ON PAROLE, PETITIONER VIOLATED HIS STATE OF UTAH PAROLE AND SUBSEQUENTLY TAKEN INTO CUSTODY WHICH RESULTED IN HIS (A) FEDERAL PAROLE VIOLATION. JUDGE DAVID SAM ORDERED PETITIONER TO SERVE ANOTHER 12 MONTHS IN FEDERAL PRISON.
8. IN FEBRUARY 1993, PETITIONER WAS DELIVERED TO F.C.I FLORENCE COLORADO, TO SERVE HIS FEDERAL PAROLE VIOLATION SENTENCE. WHILE PETITIONER WAS IN FEDERAL CUSTODY THE UTAH STATE BOARD OF PARDONS PLACED A HOLD ON PETITIONER TO BE RETURNED BEFORE THE BOARD PENDING ADJUDICATION OF A STATE PAROLE VIOLATION FOR FAILURE TO REPORT IN 11 AND 12 MONTH OF 1992.
9. ON OR ABOUT JANUARY 11, 1994 PETITIONER WAS TAKEN INTO CUSTODY BY UTAH AUTHORITIES, AND RETURNED TO UTAH, AND PLACED IN THE UTAH STATE PRISON.
10. ON OR ABOUT MARCH 10, 1994, PETITIONER APPEARED BEFORE THE UTAH STATE BOARD OF PARDONS, WHERE HE RECEIVED A PAROLE RELEASE DATE OF APRIL 23, 1994.
11. AFTER THIS RELEASE PETITIONER WAS ONCE AGAIN CHARGED WITH VIOLATING HIS PAROLE AND RETURNED TO THE UTAH STATE PRISON.
12. ON NOVEMBER 9, 1994, PETITIONER APPEARED AGAIN BEFORE THE UTAH BOARD OF PARDONS WHERE HE RECEIVED A DIRECTION FOR EXPIRATION OF SENTENCE ON FEBRUARY 26, 1996.
13. PETITIONER'S COMPLAINT STEMMED FROM THE UTAH BOARD OF PARDONS FAILURE TO CREDIT HIM FOR THE 12 MONTHS OF HIS FEDERAL PAROLE VIOLATION AND BY PLACING A PAROLE HOLD (DETAINEE) ON HIM HE WAS EFFECTIVELY "IN CUSTODY AWAITING A HEARING BEFORE THE BOARD" AND UNDER SEC. 76-3-202 (3) UTAH CODE, HE SHOULD BE PROPERLY WITH ALL TIME SPENT IN FEDERAL CUSTODY.

SUMMARY OF ARGUMENTS

PART - ONE -

ON OR ABOUT MAY 8, 1990, I WAS SENTENCED BY EIGHT DISTRICT COURT TO SERVE A 3-5 YEAR SENTENCE (3rd Felony) FOR POSSESSION OF A CONTROLLED SUBSTANCE.

ON OR ABOUT JUNE 1990 I WAS SERVED WITH A FEDERAL DETAINER, I THEN FILED A DISPOSITION ON MY FEDERAL DETAINER, AND ON OR ABOUT MARCH OF 1991, I WAS WRITTEN OUT OF STATE CUSTODY BY THE U.S. MARSHALLS AND PLACED IN SALT LAKE COUNTY JAIL, AWAITING A COURT HEARING FOR POSSESSION OF A CONTROLLED SUBSTANCE.

ON OR ABOUT THE FIRST PART OF APRIL 1991 THE HONORABLE JUDGE DAVID SAM FOUND ME GUILTY OF POSSESSION OF A CONTROLLED SUBSTANCE, AND ON OR ABOUT APRIL 23, 1991 JUDGE DAVID SAM ASKED ME IF I WOULD RATHER DO FEDERAL TIME, AFTER A FEW DAYS I WAS BROUGHT BACK TO THE UTAH STATE PRISON AND TAKEN IN FRONT OF THE UTAH BOARD OF PARDONS, AND THE BOARD OF PARDONS TOLD ME THEY WERE GOING TO PAROLE ME TO MY FEDERAL DETAINER, THEN THE U.S. MARSHALLS PLACED ME IN THE SALT LAKE COUNTY JAIL, WHILE IN JAIL A MEMBER FROM THE PAROLE BOARD BROUGHT ME A PAPER (PAROLE AGREEMENT) TO SIGN, STATING THAT WHEN I WAS RELEASED ON FEDERAL PAROLE, I WOULD ALSO BE DOING MY STATE PAROLE.

ON OR ABOUT MAY OF 1991 I WAS DELIVERED TO F.C.I PHOENIX ARIZONA TO COMMENCE DOING MY 18 MONTHS FOR POSSESSION OF A CONTROLLED SUBSTANCE.

ON OR ABOUT AUGUST OF 1992 I WAS PLACED ON FEDERAL PAROLE, AND AT THE SAME TIME I MET WITH MY STATE PAROLE OFFICER AND STARTED MY STATE PAROLE. IN DECEMBER OR NOVEMBER OF 1992 I VIOLATED MY STATE AND FEDERAL PAROLE. IN FEBRUARY OF 1993 I WAS DELIVERED TO F.C.I FLORENCE COLORADO, TO DO MY FEDERAL PAROLE VIOLATION (12) MONTHS.

ON OR ABOUT NOVEMBER OF 1993 I WAS TOLD BY THE CASE MANAGER OF F.C.I FLORENCE COLORADO, THAT THE UTAH BOARD OF PARDONS HAD PLACED A DETAINER ON ME SHORTLY AFTER MY ARRIVAL TO F.C.I FLORENCE COLORADO, AND I WAS TOLD THAT ON JANUARY 11, 1994 MY RELEASE FROM FEDERAL PRISON, THAT UTAH STATE PAROLE OFFICIALS WOULD BE THERE TO TAKE ME INTO UTAH STATE CUSTODY, AND RETURN ME TO THE UTAH STATE PRISON.

SUMMARY OF ARGUMENTS

- TWO -

ON OR ABOUT MARCH 10, 1994, I WENT BEFORE THE UTAH STATE BOARD OF PARDONS, WHERE I RECEIVED A PAROLE DATE FOR APRIL 23, 1994. AFTER MY RELEASE I AGAIN VIOLATED MY PAROLE AGREEMENT, AND WAS BROUGHT BACK TO THE UTAH STATE PRISON.

AGAIN ON NOVEMBER 9TH, 1994, I AGAIN APPEARED BEFORE THE UTAH BOARD OF PARDONS; AND AT MY PAROLE HEARING I WAS TOLD TO COMPLETE THE REMAINDER OF MY 0-5 YEAR SENTENCE, UNTIL EXPIRATION, WHICH AT THE TIME SET FOR FEBRUARY 26, 1996,.

MY COMPLAINT IS THAT WHILE IN CUSTODY AT THE F.C.I FLORENCE COLORADO, THE BOARD OF PARDONS KNEW OF MY WHEREABOUTS, AND AT THEIR FIRST CHANCE PLACED A HOLD (DETAINER) ON ME, AND KEEPING ME FROM MY FREEDOM. I FELT THAT I WAS MOST CERTAINLY EFFECTIVELY "IN CUSTODY AWAITING A HEARING BEFORE THE UTAH BOARD OF PARDONS," AND UNDER SEC. 76-3-202 (3)(C) UTAH CODE HE SHOULD BE PROPERLY CREDITED WITH THE TOTAL TIME SPENT IN FEDERAL CUSTODY.

SUMMARY OF ARGUMENTS

- THREE -

WHILE UNDERGOING THE PROCESS OF MY WRIT FOR EXTRA ORDINARY RELIEF AND MY DOCKETING STATEMENT, I WAS SENT BY MAIL HERE AT THE UTAH STATE PRISON, A DOCUMENT FROM THE UTAH STATE BOARD OF PARDONS, STATING THAT MY PAPER WORK HAD COME BEFORE THE UTAH STATE BOARD OF PARDONS FOR A SPECIAL ATTENTION HEARING, THIS HEARING WAS HELD ON OR ABOUT MARCH OF 1995, I HAD NOT AT NO TIME REQUESTED NOR HAD NO KNOWLEDGE OF ANY KIND OF HEARING IN MY BEHALF. I WAS NOT ABLE TO ATTEND THIS HEARING, NOR DID I GET THE CHANCE TO DEFEND MYSELF, WHICH WOULD CLEARLY VIOLATE MY DUE PROCESS RIGHTS. AND AT THE BOTTOM OF THIS DOCUMENT IT WAS STATED THAT MY FEBRUARY 26TH, 1996, EXPIRATION DATE HAD BEEN REINDED OR MODIFIED TO NOVEMBER 20, 1997. I PERCEIVE THIS ACT AS UNJUSTLY PROVOKED BY THE UTAH STATE BOARD OF PARDONS FOR THE FILING OF MY WRIT FOR EXTRA ORDINARY RELIEF, THE UTAH STATE BOARD OF PARDONS ALSO TOLDED THE (18) EIGHTEEN MONTHS THAT I SPENT IN CUSTODY AT F.C.I PHOENIX, ARIZONA, WHICH THE UTAH STATE BOARD OF PARDONS ORIGINALLY GAVE ME CREDIT FOR.

[SEE EXHIBIT A]

CONCLUSION AND REQUEST FOR RELIEF

THE Appellant REQUESTS THE COURT CONSIDER RELIEF TO CORRECT THE ERRORS CLAIMED BY THE DEFENDANT BY REVERSING THE ERROR OF THE UTAH BOARD OF PARDONS.

WHERE FOR THE Appellant Prays THAT THE COURT WILL GRANT THE Appellant THE (12 MONTHS) THAT WAS TOLLED ILLEGALLY BY THE UTAH BOARD OF PARDONS...

Respectfully Submitted This 6th Day of January, 1996

Luis R. Fernandez

LUIS R. FERNANDEZ

ATTORNEY PRO SE

OBSCIS 99992230

HEARING WORKSHEET
NAME FERNANDEZ, LUIS RICHARD

USP 14614

SPECIAL ATTENTION REVIE

OBSCIS 99992230

NAME FERNANDEZ, LUIS RICHARD

USP 14614

HEARING DATE: [REDACTED]

OATH _____

Sex: M Marital: M Date of Birth: 03/02/1953 Age at Commitment: 37
Location: 111B UINTA III Class: B2K Age at Hearing: 42
Assignment: UNEMPLOYED Last Grade: 11 Caseworker: POE, ELLEN
Last Discipline Hearing Last Prison Psych 10/28/94
Last Board Hearing 03/14/1995

01 OFFENSE 37-8(Z) POSSESSION C/S CASE# 891800015 FS
CONCURRENT DEGREE: 3rd degree felony MAXIMUM TERM YEARS: 5
UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE
JUDGE DRANEY CTY Uintah RESTITUTN 0.00 FINES 0.00

TYPE	CREDIT TIME			DAYS	TYPE	TOLL TIME			DAYS
	START	END				START	END		
JAIL	02/27/89	03/23/89		25	R REG	12/07/90	04/23/91		138
JAIL	12/05/89	01/21/90		48	R REG	04/24/91	08/28/92		493
JAIL	01/22/90	02/01/90		11	R REG	12/16/92	01/11/94		392
DIAG	02/02/90	05/07/90		95	R REG	06/02/94	08/24/94		84

UNSPECIFIED DAYS: 0

DUPLICATE CREDIT:

CREDIT DAYS: 179

DUPLICATE TOLL DAYS: 0

REGULAR TOLL DAYS: 1107

COMMITMENT: 05/08/1990 ADJUSTED: 11/21/1992 EXPIRATION DATE: 11/20/1997

Exhibit A

00018