

Mr. Henry L. Rudolph
3020 Homestead
Cheyenne, WY 82001

RE: **17-4168, Rudolph v. Hanson, et al**
Dist/Ag docket: 2:14-CV-00883-CW

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,



Elisabeth A. Shumaker
Clerk of the Court

cc: C. Michael Judd
J. Clifford Petersen
Ruby S. Redshaw
John A. Snow
Peggy E. Stone
Mark D. Tolman
Valerie M. Wilde

EAS/sls

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

September 12, 2018

Elisabeth A. Shumaker
Clerk of Court

HENRY LEE RUDOLPH,

Plaintiff - Appellant,

v.

TIMOTHY HANSON; KAREN STAM;
CHARLES BEHRENS; BARBARA
BYRNE; KATHERINE BERNARDS
GOODMAN; ERIN RILEY; MICHAEL
SIBBETT; KEITH HAMILTON; JESSE
GALLEGOS; CURTIS GARNER; ALEX
HUGGARD,

Defendants - Appellees.

No. 17-4168
(D.C. No. 2:14-CV-00883-CW)
(D. Utah)

ORDER AND JUDGMENT*

Before BRISCOE, HARTZ, and BACHARACH, Circuit Judges.

Plaintiff Henry Rudolph appeals from the dismissal by the United States District Court for the District of Utah of his suit under 42 U.S.C. § 1983 alleging

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

violations of his rights under the First, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendments. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Plaintiff's claims arise out of his prosecution and conviction for aggravated burglary and violation of a protective order. His first trial was in August 1994, and he was eventually convicted in 1996. He unsuccessfully pursued postconviction relief in state and federal court, with his last claim dismissed by this court in 2009. He was paroled by the Utah Board of Pardons and Parole in 2014. This suit was filed on December 2, 2014.

The district court dismissed defendant Timothy Hanson on the ground that judges are entitled to absolute judicial immunity. *See Stein v. Disciplinary Bd. of Supreme Court of NM*, 520 F.3d 1183, 1195 (10th Cir. 2008). It dismissed defendant Karen Stam on the ground that public defenders do not act under color of state law when representing clients. *See Polk County v. Dodson*, 454 U.S. 312, 325 (1981). It dismissed defendants Charles Behrens, Barbara Byrne, and Catherine Bernards Goodman on the ground that prosecutors enjoy absolute prosecutorial immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 424 (1976). It dismissed the claims against witness Alex Huggard based on his testimony at Plaintiff's trials on the ground that the claims were barred by Utah's four-year residual statute of limitations. *See Fratus v. Deland*, 49 F.3d 673, 675 (10th Cir. 1995). It dismissed the claims against Michael Sibbett, Keith Hamilton, Jesse Gallegos, and Curtis Garner, because they were entitled to absolute immunity for their actions as members of the Utah Board of

Pardons and Parole. *See Knoll v. Webster*, 838 F.2d 450, 451 (10th Cir. 1988). And it dismissed defendant Erin Riley, who acted as the state's attorney in Plaintiff's postconviction actions, on the ground that she enjoyed absolute immunity for her actions. *See Robinson v. Volkswagenwerk AG*, 940 F.2d 1369, 1373 (10th Cir. 1991) (noting absolute immunity has been extended to government lawyers acting as advocates in civil proceedings); *Ellibee v. Fox*, 244 Fed. Appx. 839, 844 (10th Cir. 2007) (rejecting claim that government attorney "is not entitled to absolute prosecutorial immunity when he is acting as defense counsel for the state in a civil habeas action"). Although defendants Hanson, Byrne, Sibbett, and Hamilton had not yet been served, the district court exercised "its screening authority to dismiss these defendants." R., Vol. I at 438.

The district court's decision is soundly based on legal precedent and principles, and Plaintiff's brief on appeal offers no authority or argument that calls the decision into question. Therefore, we **AFFIRM** the judgment below.

Entered for the Court

Harris L Hartz
Circuit Judge

WAYNE A. FREESTONE
DAVID J. ANGERHOFER
CONTRACT ATTORNEYS
50 West 300 South, Suite 900
Salt Lake City, Utah 84101
(801) 322-1503
(801) 363-0844

A

M E M O R A N D U M

TO: HENRY RUDOLPH USP #23634

DATE: May 5, 1995

RE: REQUESTED LEGAL SERVICES

Please be advised that your Civil Rights Complaint and accompanying documents for RUDOLPH vs. HUGGARD, et. al. These have been mailed to the court.

Please be advised that your 2254 Petition For Writ of Habeas Corpus was also mailed to the Federal District Court.

Thank You.

CONTRACT ATTORNEYS



E. NEAL GUNNARSON
District Attorney for Salt Lake County
KATHERINE BERNARDS-GOODMAN, 5446
Deputy District Attorney
231 East 400 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 363-7900

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

THE STATE OF UTAH,)
Plaintiff,) RESPONSE TO MOTION TO DISMISS
-vs-) COUNT I
HENRY LEE RUDOLPH,) Case No. 941901206FS
Defendant.) Hon. PAT B. BRIAN

The State, by and through its attorney, Katherine Bernards-Goodman, Deputy District Attorney, hereby responds to Defendant's Motion to Dismiss Count I Aggravated Burglary.

In the information dated August 4, 1994 the defendant was charged with an aggravated burglary, under Utah Code Annotated Title 76, Chapter 6, Section 203. The intent alleged was intent to commit a sexual assault. The Defendant was charged with Aggravated Sexual Assault and Violation of a Protective Order as well. Mr. Rudolph was found not guilty on December 1, 1994 of the aggravated sexual assault and it has been conceded that this charge cannot be relitigated.

However, the Defendant was found guilty of Aggravated Burglary and Violation of a Protective Order. While the jury found that the defendant did not commit an aggravated sexual assault, this does not preclude them, nor is it inconsistent for them, to find the defendant had the

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



B

JAN GRAHAM
ATTORNEY GENERAL

CAROL CLAWSON
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

PALMER DEPAULIS
Chief of Staff

July 3, 1996

Mr. Henry L. Rudolph
450 South 3rd East
Salt Lake City, UT 84111

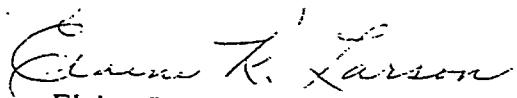
Dear Mr. Rudolph:

Your letter of June 6, 1996, regarding alleged corruption by a Judge, prosecutor and several police officers was reviewed by the Criminal Enforcement screening committee.

The Salt Lake District Attorney has jurisdiction over the criminal prosecution of matters which occur in Salt Lake County. The Attorney General's office investigates and prosecutes cases which are multi-county or if requested to do so by the county or district attorney who has jurisdiction. The elected District Attorney has broad prosecutorial discretion in determining whether or not to prosecute, or in your case refile charges, in any criminal case. Only in very rare circumstances will we intervene or overrule a decision made by a county or district attorney. Nevertheless, in a case such as yours, which has already been prosecuted and there is now pending prosecution, it would be a conflict for the Attorney General's office to have any involvement since this office represents the State in any appeal you might file.

Since you have not been successful in defending yourself against all the original charges, you should contact a private attorney or, if you can't afford an attorney, you should consider asking for a legal defender to handle your defense. A defense attorney would also know how to handle the alleged perjury by a witness for the prosecution.

Very truly yours.


Elaine R. Larson
Investigations Division

28
STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



FILED

MAR 2 1997

CLERK SUPREME COURT
UTAH

JAN GRAHAM
ATTORNEY GENERAL

CAROL CLAWSON
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

PALMER DEPAULIS
Chief of Staff

March 26, 1997

FILED

MAR 28 1997

CLERK SUPREME COURT
UTAH

Re: Henry Rudolph v. Captain Cunningham et al, 970110

Dear Mr. Butler:

The Office of the Attorney General recently learned of the pendency of the above-captioned appeal, which is from a district court order dismissing as frivolous on its face a Rule 65B petition for extraordinary relief. The State respondents were not served or ordered to respond by the trial court and, consequently, did not appear there and submit to that court's jurisdiction.

Respondents are not waiving service of the original petition and will not appear as parties on appeal. Accordingly, we will not be filing any brief or memorandum in this case.

Very truly yours,

ANNINA M. MITCHELL
Deputy Solicitor General

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL



JAN GRAHAM
ATTORNEY GENERAL

JAMES R SOPER
Solicitor General

REED RICHARDS
Chief Deputy Attorney General

9 November 1999

Patrick Fisher
Clerk
UNITED STATES COURT OF APPEALS, TENTH CIRCUIT
1823 Stout Street
Denver, Colorado 80257

Re: *Rudolph v. Galetka*, Case No. 99-CV-371

Dear Mr. Fisher:

This office recently received your letter, signed by Deputy Clerk L. Balzano, dated 18 November 1999. The letter states that the Court has construed documents filed by Mr. Rudolph as an opening brief and invites "appellee" to file a responsive brief within 30 days.

The State of Utah is not a party to this action. Although a State agent was named in, the petition below, the district court has not served upon the Attorney General a copy of the petition and an order requiring the State to file a response as specified in rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Nor does the State by this letter enter a general appearance in this case or waive formal service.

Accordingly, the Utah Attorney General does not intend to file a brief in this appeal.

Very truly yours,

J. FREDERIC VOROS, JR.
Chief, Criminal Appeals Division

jm

copy: Henry L. Rudolph

CONCLUSION

Commission properly examined petition for additional workers' benefits under the standard set forth in *Health Care v. Board of Review*, 839 6 (Utah Ct. App. 1992). Additionally, in acted within the scope of its determining that Lieberman's subsequent the natural result of his earlier primary injury. Iningly, we affirm the Commission's conclusions.

Thorne, Jr., Judge

CONCUR:

Jackson, Presiding Judge
Davis, Judge

"a usual or ordinary" exertion is sufficient legal causation requirement; however, "a preexisting condition must show that the contributed something substantial to increase ready faced in everyday life because of his *en v. Industrial Comm'n*, 729 P.2d 15, 25

precisely, the claimant must establish that aggravation is causally linked to the primary injury. See *Intermountain Health Care v. 839 P.2d 841, 846 (Utah Ct. App. 1992)*. responsibility for costs resulting from gravations to compensable workplace injuries etc. The claimant must first demonstrate that it aggravation is the "natural result" of the place injury or accident. *Mountain States v. McKeon*, 706 P.2d 601, 602 (Utah 1985). Commission adopted the findings of the ALJ.

Cite as
439 Utah Adv. Rep. 8

IN THE SUPREME COURT OF THE STATE OF UTAH

RUDOLPH,
ff and Appellant,

LETKA, Warden, Utah State Prison,
Plaintiff and Appellee.

218
1/18/02

5X (D.J. was not present) 1/18/02
District, Salt Lake
table Pat B. Brian

BY:
n L. Preston, Salt Lake City, for plaintiff

Opinion is subject to revision before final
publication in the Pacific Reporter.

RIAM:
ORTS

1 Plaintiff Henry L. Rudolph appeals from the denial of his petition for post-conviction relief. We take jurisdiction over the appeal under sections 78-2-2(3)(j) and 78-2a-3(2)(f) of the Utah Code.

2 The State initially charged Rudolph with aggravated burglary, aggravated sexual assault, and violation of a protective order. His first trial, at which he appeared pro se with stand-by counsel, ended with convictions of aggravated burglary and violation of a protective order but acquittal of aggravated sexual assault. After Rudolph appealed, this court summarily reversed and remanded the case for a new trial because a malfunction in the recording equipment had destroyed the trial court record. Rudolph again represented himself at his second trial, which ended in a mistrial. After a third trial, at which he was represented by court-appointed counsel, Rudolph was again convicted of aggravated burglary and violation of a protective order. He appealed, and this court affirmed his convictions. *State v. Rudolph*, 970 P.2d 1221 (Utah 1998). *31985/1/18/02*

3 In this appeal from the denial of a subsequent petition for post-conviction relief, Rudolph raises four issues not previously raised on direct appeal: (1) Though not asserted at trial or on direct appeal, the issues he now raises warrant review because of unusual circumstances; (2) Utah's burglary statute, as interpreted by this court on direct appeal and as applied to Rudolph, is constitutionally vague because it fails to sufficiently identify or define a forbidden act; (3) Rudolph was denied the right to represent himself in violation of the Sixth Amendment of the U.S. Constitution; and (4) Rudolph was deprived of effective assistance of counsel at trial and on direct appeal.

STANDARD OF REVIEW

4 We review an appeal from an order dismissing or denying a petition for post-conviction relief for correctness without deference to the lower court's conclusions of law. *Julian v. State*, 966 P.2d 249, 252 (Utah 1998).

ANALYSIS

5 A petition for post-conviction relief is a collateral attack on a conviction and sentence and is not a substitute for direct appellate review. *Carter v. Galletka*, 2001 UT 96, ¶6, 1 P.3d _____. Any issues that were not addressed on direct appeal but could have been raised may not be raised for the first time in a post-conviction relief proceeding absent unusual circumstances. This rule applies to all claims, including constitutional questions. *Julian*, 966 P.2d at 258. *11-22-02* *1/18/02*

6 Rudolph does not articulate any unusual circumstances other than noting that the errors committed below were obvious and involved the denial of substantial constitutional rights. His constitutional claims with respect to section 76-6-202(1), Utah's burglary statute, and self-representation are therefore procedurally barred, because he has not demonstrated an obvious injustice or a substantial and prejudicial denial of a constitutional right. *Carter*, 2001 UT 96 at ¶15 (citing *Hurst v. Cook*, 777 P.2d 1029, 1035 (Utah 1989)).

7 However, under Utah's Post-Conviction Relief Act, a petitioner may raise the issues he failed to raise on direct appeal through an allegation of ineffective assistance of counsel at trial and on appeal if he was represented by the same counsel during both phases

of the criminal proceedings. Utah Code section 78-2-2a-104(1)(d) (1996). "When that court represents [a] defendant on appeal, [her] ineffective assistance claim cannot be raised because it is unreasonable to expect [trial counsel] to raise the issue of [her] own ineffectiveness at trial on direct appeal." *State v. Labrum*, 881 P.2d 900, 907 (Utah Ct. App. 1994) (internal quotations omitted); *Pasqual v. Carver*, 876 P.2d 364, 365 n.1 (Utah 1994); *Parsons v. Barnes*, 871 P.2d 516, 521 (Utah 1994). Given that this is the case here, we therefore reach the issue whether Rudolph's counsel was ineffective when she failed both at trial and on appeal to challenge Rudolph's right to represent himself at trial and to challenge the Utah burglary statute on vagueness grounds.

8 With respect to the first issue, Rudolph has not provided this court with any evidence or transcripts from his third trial that would demonstrate his continued wish to represent himself.

9 When a defendant predicates error to this court, he has the duty and responsibility of supporting such allegation by an adequate record. Absent that record, defendant's assignment of error stands as a unilateral allegation which the review court has no power to determine. This court simply cannot rule on a question which depends for its existence upon alleged facts unsupported by the record.

State v. Wulffenstein, 657 P.2d 289, 293, cert. denied, 460 U.S. 1044 (1982); see also Utah R. App. P. 11(e)(2). The lower court concluded that appointed counsel represented Rudolph at trial without his protest, that he requested continued representation by the Legal Defenders office during sentencing, and that he permitted the lawyer to represent him on appeal, even though he also filed pro se briefs which this court considered in affirming the conviction. *Rudolph*, 970 P.2d at 1225. Absent evidence to the contrary, we agree with the lower court that Rudolph's request for court-appointed counsel went beyond mere acquiescence and simple cooperation. He has therefore waived his right to claim that counsel was ineffective when she did not raise his right to self-representation under the Sixth Amendment of the U.S. Constitution.

10 With respect to the second issue, we conclude that the claim of ineffective assistance of counsel in failing to challenge the Utah burglary statute on vagueness grounds has also been waived. Rudolph could and should have raised that issue himself, because he filed his own briefs on direct appeal. *Rudolph*, 970 P.2d at 1225.

11 Even were we to reach the issue of ineffective assistance of counsel, Rudolph would still have to demonstrate (1) that his counsel's representation fell below an objective standard of reasonableness and (2) that her ineffective assistance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Rudolph has failed to establish substandard performance under the first prong of the *Strickland* test. Rudolph's counsel challenged the elements of the burglary statute only through claims of erroneous jury instructions. She may well have made the tactical decision not to pursue a constitutional challenge to the burglary statute because this court endows legislative enactments with

upon which they can be construed as conforming to constitutional requirements. *State v. DeBooy*, 2000 UT 32, ¶28, 996 P.2d 546 (citing cases); see also *State v. Krueger*, 1999 UT App 54, ¶21, 975 P.2d 489. Counsel's challenge to the jury instructions achieved the same result, and that trial strategy did not fall below an objective standard of reasonableness.

¶11 Having found no substandard performance on behalf of counsel, we need not reach the second prong of the *Strickland* test.

CONCLUSION

¶12 We hold that Rudolph's request for court-appointed counsel continued through his appeal as of right, and thus counsel was not ineffective in not raising the issue of self-representation. Likewise, counsel was not ineffective when she did not challenge the burglary statute on vagueness grounds. The denial of the petition for post-conviction relief is affirmed.

¶13 (2) *Transcript required of all evidence regarding challenged finding or conclusion.* If 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. Neither the court nor the appellee is obligated to correct appellant's deficiencies in providing the relevant portions of the transcript.

NOT TRUEY NOA 6802

4-7-1997 Composite record is included
Cite as
pro se 439 Utah Adv. Rep. 10, lost trans
victory UBOP-000C
IN THE SUPREME COURT
OF THE STATE OF UTAH

STATE OF UTAH, by and through Division of
Forestry, Fire & State Lands,
Plaintiff and Appellant,
v.

TOOELE COUNTY, Utah; Six Mile Ranch
Company; Craig S. Bleazard; Mark C.
Bleazard; and John D. Bleazard,
Defendants and Appellees.

No. 20000493
FILED: 01/18/02
2002 UT 8

Third District, Tooele Dep't
The Honorable David S. Young

ATTORNEYS:

Mark L. Shurtleff, Atty Gen., Annina M.
Mitchell, Asst. Atty Gen., Salt Lake City, for plaintiff
Douglas J. Ahlstrom, Tooele, and George S.
Young, Brent A. Bohman, Salt Lake City, for
defendants

*This opinion is subject to revision before final
publication in the Pacific Reporter.*

Forestry, Fire, and State Lands, appeals from a summary judgment order upholding Tooele County's vacation of its interests in a portion of West Stansbury Road near the Great Salt Lake. We reverse and remand.

BACKGROUND

¶1 In March 1993, following repeated vandalism to their respective properties on Stansbury Island, landowners Six Mile Ranch Company, Craig S. Bleazard, John D. Bleazard, and Mark C. Bleazard (collectively, "the Bleazards") petitioned Tooele County ("the County") to vacate its interests in the northern portion of the main access road to the area, West Stansbury Road. Subsequently, the County published notice of the Bleazards' petition to vacate West Stansbury Road in the local newspaper, the *Tooele Transcript-Bulletin*. This notice, which appeared in the *Transcript-Bulletin* once a week from May 18 to June 8, 1993, stated in pertinent part:

NOTICE IS HEREBY GIVEN that the Tooele County Commission will conduct a public hearing [on] June 15, 1993, concerning a proposal to vacate approximately eight (8) miles of the northerly portion of the Tooele County road located along the West side of Stansbury Island. A petition from landowners whose property adjoins the majority of this County road was filed with Tooele County asking that this road be vacated. One land owner in the same area is not included in the petition for vacation and, therefore, the Tooele County Commission, pursuant to its own order, has included the remainder of the County road running through these properties for consideration to be vacated.

The legal description of the County road considered for vacation is as follows:

Commencing along the South line of Section 16, Township 1 North, Range 6 West, Salt Lake Base and Meridian, and continuing North through Sections 6, 9, 4 and 5 of the said Township and Range; and thence running through Sections 32, 29, 20, 21, 16 and 9 of Township 2 North, Range 6 West, Salt Lake Base and Meridian.

In addition to its notice in the *Transcript-Bulletin*, the County mailed written notice of the proposal to various property owners with land abutting West Stansbury Road, but it did not send written notice to the State of Utah ("the State").

¶3 Shortly thereafter, on June 15, 1993, the County held a public hearing concerning the Bleazards' petition. Approximately one month later, on August 17, 1993, the County enacted by a two-to-one vote Tooele County Ordinance 93-9, vacating the County's interest in West Stansbury Road pursuant to the description of the road published in the County's prior notice.

¶4 On June 11, 1999, the State filed suit in the Third District Court for Tooele County challenging the validity of Ordinance 93-9 pursuant to sections 27-12-102.3 and -102.4 of the Utah Code. Specifically, the State alleged that in adopting the

October 16, 2018

Elisabeth A. Shumake
Clerk of Court

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

HENRY LEE RUDOLPH,

Plaintiff - Appellant,

v.

TIMOTHY HANSON, et al.,

Defendants - Appellees.

No. 17-4168

ORDER

Before BRISCOE, HARTZ, and BACHARACH, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

Elisabeth A. Shumake

ELISABETH A. SHUMAKER, Clerk

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

September 12, 2018

Elisabeth A. Shumaker
Clerk of Court

HENRY LEE RUDOLPH,

Plaintiff - Appellant,

v.

TIMOTHY HANSON; KAREN STAM;
CHARLES BEHRENS; BARBARA
BYRNE; KATHERINE BERNARDS
GOODMAN; ERIN RILEY; MICHAEL
SIBBETT; KEITH HAMILTON; JESSE
GALLEGOS; CURTIS GARNER; ALEX
HUGGARD,

Defendants - Appellees.

No. 17-4168
(D.C. No. 2:14-CV-00883-CW)
(D. Utah)

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violations of his rights under the First, Fifth, Sixth, Eighth, Thirteenth, and Fourteenth Amendments. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

Plaintiff's claims arise out of his prosecution and conviction for aggravated burglary and violation of a protective order. His first trial was in August 1994, and he was eventually convicted in 1996. He unsuccessfully pursued postconviction relief in state and federal court, with his last claim dismissed by this court in 2009. He was paroled by the Utah Board of Pardons and Parole in 2014. This suit was filed on December 2, 2014.

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Pardons and Parole. *See Knoll v. Webster*, 838 F.2d 450, 451 (10th Cir. 1988). And it dismissed defendant Erin Riley, who acted as the state's attorney in Plaintiff's postconviction actions, on the ground that she enjoyed absolute immunity for her actions. *See Robinson v. Volkswagenwerk AG*, 940 F.2d 1369, 1373 (10th Cir. 1991) (noting absolute immunity has been extended to government lawyers acting as advocates in civil proceedings); *Ellibee v. Fox*, 244 Fed. Appx. 839, 844 (10th Cir. 2007) (rejecting claim that government attorney "is not entitled to absolute prosecutorial immunity when he is acting as defense counsel for the state in a civil habeas action"). Although defendants Hanson, Byrne, Sibbett, and Hamilton had not yet been served, the district court exercised "its screening authority to dismiss these defendants." R., Vol. I at 438.

The district court's decision is soundly based on legal precedent and principles, and Plaintiff's brief on appeal offers no authority or argument that calls the decision into question. Therefore, we **AFFIRM** the judgment below.

Entered for the Court

Harris L Hartz
Circuit Judge

Appendix 4/10

11/02/1998

Utah Supreme Court

Docket Event Listing

State v. Rudolph

Docket No: 960482 Docket Date: 11/13/1996

App. Type: Criminal Appeal

Agency: 3rd District Court, Salt Lake

Case: 941901206

Status: Dismissal Pending

Staff:

BUSINESS State of Utah - Appellee

JAN GRAHAM (OFFICE OF ATTORNEY GENERAL)

LAURA DUPAIX (ASSISTANT ATTORNEY GENERAL)

Henry Lee Rudolph - Appellant

KAREN STEM (SALT LAKE LEGAL DEFENDER ASSOCIATION)

JOAN B. ATT (SALT LAKE LEGAL DEFENDER ASSOCIATION)

KRISTINE M. ROGERS (SALT LAKE LEGAL DEFENDER ASSOCIATION)

SHANNON PRESTON (ATTORNEY AT LAW)

11/08

Designation of Record

11/18

Transcript Request Received

11/20

11-17-95:1-5-96: 2-20-96:4-2-96:

1996

1-27-96. Brad Young is the reporter.

03

Notice of Appeal Filed

11/20/1996

Notice of Counsel

11/20/1996

Brad Young and Kristine M. Rogers appear

11/20/1996

by

11/20/1996

Filed.

11/20/1996

Letter from State Filed

of Time for TranscriGranted 11/12/1996 DMJ
4, 1997 to Brad Young to file the

3 01/

Transcript Filed in

Brad Y

at the transcripts were placed on

file with

3rd District Court Jan. 6, 1997.

6/1997 Misc. Letter

gal Defenders to Bunny Neuenschwander requesting she
find out who reported the October 6, 1995 hearing.

10 01/ 8/1997 Miscellaneous Memorandum

Ex parte pro se submission of fraudulent documents

11 02/26/1997 Called for Record

Sent letter.

12 03/14/1997 Notice of Transcript Filed in

Eileen Ambrose indicates that the transcripts were placed on file with the district court March 17, 1997.

- 13 04/07/1997 Motion-Supplement Record Granted 04/08/1997 RCH

1 vol. transcript. This is a complete volume which replaces transcripts which were lost from the record.

- 14 04/08/1997 Motion-Supplement Record Granted RCH
It is ordered that the enclosed volume containing transcripts of hearings from Sept. 9, 1994 through Jan 13, 1995 be included in the record of this case.

- 15 04/08/1997 Record Sent to T.Ct. (per requ
1 vol. replacement transcript sent to DC for pagination

16 04/09/1997 Transcript Request Received -
Hearing held February 9, 1996.
Request was directed to Bunny Neuenschwander.

17 04/10/1997 Misc. Letter
letter from Mr. Rudolph.

- 18 04/21/1997 Notice of Transcript Filed in
Indicated by the filing of the transcripts with the record.

- 19 04/21/1997 Record Filed
3 vols. pleadings: 16 vols. (12 transcripts bound together).

20 04/22/1997 Set Briefing Schedule
Appellant's brief is due June 2, 1997.

21 04/24/1997 Clerk's Note
*Record Checked out by LDA, Joan Watt.

- 22 05/12/1997 Misc. Letter
From court reporter indication that the hearing held on February 6, 1996 was continued and there's no transcript.

23 05/22/1997 Extension of Time for Appellant Stipulation
Stipulation that appellant's brief is due July 2, 1997.

- 24 06/20/1997 Supplement to Brief
Copies sent by Joan Watt of an argument prepared by Henry Rudolph to supplement the opening brief.

25 06/20/1997 Appellant's Brief Filed

26 06/20/1997 Clerk's Note
*Record returned by LDA this date.

- 27 06/26/1997 Misc. Letter
Letter from Laura Dupaix stating that Attorney General's Office needs Record.

28 06/30/1997 Appearance of Counsel
Laura Dupaix appears as counsel for State of Utah.

29 07/03/1997 Extension of Time for Appellee Stipulation

Stipulation that appellee may have up to and including
August 19, 1997 to file their brief.

30 08/14/1997 Extension of Time for Appellee Granted 08/18/1997 PHB
Granted that appellee may have up to and including
September 18, 1997 to file their brief. (30 days)

31 09/10/1997 Extension of Time for Appellee Granted 10/03/1997 LHR
Granted 15 days to October 3, 1997 to file brief.

32 09/10/1997 Attorney Called
Laura Dupaix phoned asking where the State's exhibits are,
they are not with the record.

33 09/12/1997 Supplemental Record Filed
2 envelopes of exhibits.

34 09/29/1997 Misc. Letter
Letter from AG, Laura Dupaix, to check out record.

35 10/01/1997 Motion-Accept Overlength Brief Denied 10/01/1997
Appellee request permission to file a brief of no more
than 60 pages.

36 10/01/1997 Motion-Accept Ovrlngth Brief D MDZ

37 10/03/1997 Appellee's Brief Filed

38 10/22/1997 Calendared
Set for 12/01/1997 at 13:30

39 10/24/1997 Extension of Time for Reply Br
Stipulation that appellant may have up to and including
November 17, 1997 to file reply brief (15 days)

40 10/24/1997 Miscellaneous
Joan Watt authorizes representative to check out record on
her behalf.

41 11/14/1997 Appellant's Reply Brief Filed
Pro se brief

42 12/01/1997 Submitted on Oral Argument

43 02/24/1998 Misc. Letter
From Mr. Rudolph requesting docket print-outs for 970110 and
960482. Sent print outs this day.

44 07/31/1998 Opinion Filed
Howe/CJ [REDACTED] Affirmed

45 08/10/1998 Extension of Time for Rehearin
Motion Stipulation and Order for Extension of time to file Petition for
Rehearing

46 08/11/1998 Extension Granted PHB

It is hereby ordered that an extension of time be given to Petitioner for preparation of a petition for rehearing up to and including September 3, 1998.

47 09/03/1998 Appearance of Counsel
Appearance of Co-counsel of Sharon L. Preston, co-counsel with Joan C. Watt.

48 09/03/1998 Brief Lodged
Petition for Rehearing filed by LDA needs attorney signature on certificate of service

49 09/03/1998 ~~Petition for Rehearing~~ ~~denied~~ 10/29/1998 RCH
Filed by Henry Lee Rudolph, pro se.
9-4-98 Petition filed by Joan Watt and Sharon Preston on behalf of appellant.

50 10/29/1998 Petition for Rehearing Denied RCH

51 12/31/2099 Post Rehear Pet. - Remittitur Due 11/03/1998

Prepared By

Phone

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

HENRY LEE RUDOLPH,

Plaintiff.

v.

TIMOTHY HANSON et al.,

Defendants.

MEMORANDUM DECISION & ORDER
OF THIS COURT

Case No. 2:14-CV-883-CW

District Judge Clark Waddoups

51361, 81343 Attacks v. U.S.

The Amended Complaint here alleges civil-rights violations regarding Plaintiff's prosecution and conviction by the State of Utah for a crime occurring on August 1, 1994. The

procedural facts are best described by the Utah Supreme Court in State v. Rudolph, 970 P.2d 1221 (Utah 1998): "We did not review the sufficiency of the incomplete transcript, which was largely and inexplicably destroyed (per curiam), FRAUD and

The State charged Rudolph with aggravated burglary, aggravated sexual assault, and violation of a protective order. He appeared pro se with the assistance of standby counsel. Following a jury trial in late 1994, he was convicted of and sentenced on the charges of aggravated burglary and violation of a protective order, but was acquitted on the charge of aggravated sexual assault.

U.S. v. Rudolph
Jackson v. U.S.
Brown v. La.
Evans v. U.S.

Rudolph appealed his convictions to this court. Because significant portions of the trial transcript were incomplete due to technical problems with the court reporter's machinery, we summarily reversed his convictions and remanded his case to the trial court for a new trial on the aggravated burglary and violation of a protective order charges. On remand, the trial judge, Judge Timothy R. Hanson, recused himself, and the case was reassigned to Judge Pat B. Brian.

Pat B. Brian

U.S. v. Rudolph
Pat B. Brian
Jackson v. U.S.
Evans v. U.S.

In February 1996, Rudolph's new trial began, and he again appeared pro se. However, during the redirect examination of the State's first witness, the court granted Rudolph's motion for a mistrial. He also moved to recuse Judge Brian from further

KR 11/11/06

3144, 3455

proceedings in the case. Although Judge Brian apparently granted this motion, he continued to preside over Rudolph's third trial.

6/9/10 compl.

At the third jury trial, Rudolph was represented by court-appointed counsel. He was again convicted of aggravated burglary and violation of a protective order and was sentenced to concurrent prison terms as prescribed by statute. Rudolph now appeals from ~~the~~ ^{DS, CE, Extra facts} ~~84, 86, 88, 90, 92~~ these convictions.

1st Judicial Dist/Utah
June 12, 2010
60 ALR 3d 176 U.S.A

Excerpts
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Id. at 1223-1224.

Plaintiff names these defendants: Timothy Hanson (judge at one of Plaintiff's criminal trials); Karen Stam (Plaintiff's public defender); Charles Behrens, Barbara Byrne, and Katherine Bernards Goodman (prosecutors); Erin Riley (Assistant Attorney General representing State in Plaintiff's state post-conviction proceeding); Michael Sibbett, Keith Hamilton, Jesse Gallegos, and Curtis Garner (Utah Board of Pardons and Parole (BOP) members).¹ Service of the Amended Complaint on Hanson, Byrne, Sibbett, and Hamilton remains unexecuted. Pending motions to dismiss have been filed by Stam, Behrens and Bernard Goodman (together), Riley, Gallegos, and Garner.

UNSERVED DEFENDANTS

The Court ordered service on all defendants in this case; however, despite extra efforts, Hanson, Byrne, Sibbett, and Hamilton remain unserved. Even so, the Court exercises its screening authority to dismiss these defendants.

A. Standard of Review

This Court shall dismiss any claims in a complaint filed *in forma pauperis* if they are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary

¹ Two defendants--Alex Huggard and Jeremy Holt--have already been dismissed from this action. (See Docket Entry #s 44 & 66.)

relief against an immune defendant. 28 U.S.C.S. § 1915(e)(2)(B) (2017). "Dismissal of a pro se complaint for failure to state a claim is proper only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend."

Perkins v. Kan. Dep't of Corrs., 165 F.3d 803, 806 (10th Cir. 1999). When reviewing a complaint's sufficiency complaint the Court "presumes all of plaintiff's factual allegations are true and construes them in the light most favorable to the plaintiff." *Hall v. Bellmon*, 935 F.2d 1106, 1109 (10th Cir. 1991).

Because Plaintiff is proceeding *pro se* the Court must construe his pleadings "liberally" and hold them "to a less stringent standard than formal pleadings drafted by lawyers." *Id.* at 1110. However, "[t]he broad reading of the plaintiff's complaint does not relieve [him] of the burden of alleging sufficient facts on which a recognized legal claim could be based." *Id.* While Plaintiff need not describe every fact in specific detail, "conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based." *Id.*

B. Defendant Hanson

It is well settled that judges "are absolutely immune from suit unless they act in clear absence of all jurisdiction," meaning that even erroneous or malicious acts are not proper bases for § 1983 claims." *Segler v. Felfam Ltd. P'ship*, No. 08-1466, 2009 U.S. App. LEXIS 10152, at *4 (10th Cir. May 11, 2009) (unpublished) (quoting *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978)). Regarding the allegations here, Defendant Hanson acted in a judicial capacity in presiding over a criminal trial, so he is entitled to absolute immunity. *See Doran v. Sanchez*, No. 08-2042, 2008 U.S. App. LEXIS 17987, at *2 (10th Cir. Aug. 19, 2008) (unpublished). Defendant Hanson is thus dismissed.

C. Defendant Byrne

A prosecutor acting within the scope of her duties enjoys absolute immunity from suit under § 1983. *Imbler v. Pachtman*, 424 U.S. 409, 424 (1976). As a prosecutor, Defendant Byrne's acts, as alleged by Plaintiff, relate to advocacy before the court. Defendant Byrne is therefore entitled to absolute prosecutorial immunity from this lawsuit. *Ex. 1b*

D. Defendants Sibbett and Hamilton

These defendants will be treated together with their fellow BOP members in a section *Ex. 1b* below granting the motion to dismiss of Defendants Gallegos and Garner.

E. Conspiracy Claim against all Defendants

Petterson, M. 11/12
W. M. Wilson, M. 11/12
The Court includes in its screening section its short analysis regarding Plaintiff's
conspiracy claim. Such a claim requires Plaintiff to "specifically plead 'facts tending to show
agreement and concerted action.'" *Beedle v. Wilson*, 422 F.3d 1059, 1073 (10th Cir. 2005)
(quoting *Sooner Prods. Co. v. McBride*, 708 F.2d 510, 512 (10th Cir. 1983)). Plaintiff has not
met this responsibility in his complaint; his vague assertions that multiple people lied to effect
his illegal trial and incarceration, and, therefore, a conspiracy must be involved, are not enough.
This claim is thus dismissed as to all defendants. *Ex. 1b*

WCA
Ex. 1b
Ex. D

MOTIONS TO DISMISS OF REMAINING DEFENDANTS

A. Standard of Review

To withstand a motion to dismiss brought under Federal Rule of Civil Procedure 12(b)(6), "a complaint must have enough allegations of fact, taken as true, 'to state a claim to relief that is plausible on its face.'" *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210, 1214 (10th Cir. 2011) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). While "a court

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must accept as true all of the allegations contained in a complaint,” this rule does not apply to legal conclusions. *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “[A] plaintiff must offer specific factual allegations to support each claim.” *Id.* (citation omitted). A complaint survives only if it “states a plausible claim for relief.” *Id.* (quoting *Iqbal*, 556 U.S. at 679); see also *Manzanares v. Reyes*, No. 2:14-CV-40, 2015 U.S. Dist. LEXIS 136437, at *3-5 (D. Utah Sep. 14, 2015) (report and recommendation).

B. Defendant Stam

Defendant Stam's motion was filed February 9, 2017. (Docket Entry # 57.) Plaintiff was given thirty days to respond but did not. In any event, Defendant Stam's argument is irrefutable

"It is axiomatic that before a litigant may pursue and claim that he has been deprived of a constitutional right--including the right to due process of law--he must first establish that the challenged conduct constituted 'state action.'" *United States v. Int'l Bd. of Teamsters*, 156 F.3d

354, 359 (2d Cir. 1998); *see also Lindsey v. Thomson*, 275 Fed. Appx. 744, 746 (10th Cir. 2007).

Public defenders do not act under color of state law when representing clients. *Polk*

County v. Dodson, 454 U.S. 312, 325 (1981); see also *Shue v. Custis*, 531 Fed. Appx. 941, 942 (2013).

¹⁰ (10th Cir. 2013) (“It is long established that public defenders do not act under color of state law.”)

¹ while providing legal assistance to a client accused of criminal wrongdoing.”). Public Def.

providing legal assistance to a client accused of criminal wrongdoing. 3. Public defenders

¹⁰ act independent of any state authority. *See Zapata v. Public Defenders Office*, 252 Fed. Appx.

237, 239 (10th Cir. 2007). The Court thus grants Defendant Stam's motion to dismiss.

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→ Docket 4-30-42

C. Defendants Behrens and Bernards-Goodman

Plaintiff objected to Defendants' joint motion to dismiss. (Docket Entry #s 35 & 41.) Ex 10
4/3/18
Defendants persuasively argue that, as criminal prosecutors, they have absolute immunity from Plaintiff's claims as alleged.

"[A]bsolute immunity defeats a suit at the outset, so long as the official's actions were within the scope of the immunity." *PJ v. Wagner*, 603 F.3d 1182, 1195 (10th Cir. Utah 2010) (brackets in original) (internal quotation marks omitted) (quoting *Spielman v. Hildebrand*, 873 F.2d 1377, 1381 (10th Cir. Kan. 1989); *Imbler v. Pachtman*, 424 U.S. 409, 430 (U.S. 1976)). Both Defendants Behrens and Bernards-Goodman were deputy district attorneys at the time they prosecuted Plaintiff. Behrens represented the State of Utah in the first trial, and Bernards-Goodman represented the State of Utah in the third trial, and both are entitled to absolute immunity. The United States Supreme Court, in *Imbler*, held "that in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under § 1983." 424 U.S. at 431. Plaintiff's allegations against Behrens and Bernards-Goodman relate only to their actions in prosecuting him. This entitles them to absolute prosecutorial immunity.

See Coleman v. Stephens, No. 16-6057, 2016 U.S. App. LEXIS 11656, at *2 (10th Cir. June 23, 2016). Moreover, Plaintiff has alleged no facts which, taken as true, would remove Defendants from the coverage of prosecutorial immunity.

Accordingly, the Court concludes that Defendants Behrens and Bernards-Goodman are entitled to absolute immunity and the Amended Complaint should be dismissed with prejudice with respect to them. *See 8.4, 8.3, 3.4 and 3.3* *As used, complaint fails to establish (A)
prosecutorial misconduct!*

*11-22-94
spike cells. Still angles
Bad faith, cover, collusion 5/10/95 Ltr.
LSD, AG, Ct. SCt. 3, 3*

D. Defendant Riley

Plaintiff objected to Defendant's joint motion to dismiss. (Docket Entry #s 37 & 46.) Defendant persuasively argues that, as a criminal prosecutor representing the State in a post-conviction proceeding, has absolute immunity from Plaintiff's claims as alleged.

The Tenth Circuit has held, "Absolute immunity applies to the adversarial acts of prosecutors during post-conviction proceedings, including direct appeals, habeas corpus proceedings, and parole proceedings, where the prosecutor is personally involved in the subsequent proceedings and continues his role as an advocate." *Ellibee v. Fox*, 244 Fed. Appx. 839, 844-45 (10th Cir. 2007) (quoting *Spurlock v. Thompson*, 330 F.3d 791, 799 (6th Cir. 2003)); *see also Robinson v. Volkswagenwerk AG*, 940 F.2d 1369, 1373 (10th Cir. 1991) (noting absolute immunity also has been extended to government lawyers involved in civil proceedings). In *Ellibee*, the Plaintiff tried to say that prosecutorial immunity did not apply to counsel "acting as a defense counsel for the stat in a civil habeas action" and was explicitly rejected by the Tenth Circuit. *Id.*

The Court therefore concludes that Defendant Riley is entitled to absolute immunity and the Amended Complaint should be dismissed with prejudice as to her. THE COURT

E. Defendants Sibbett, Hamilton, Gallegos and Garner

Defendant Garner filed a motion to dismiss. (Docket Entry # 29.) Plaintiff responded. (Docket Entry # 33.) Defendant Gallegos filed a substantially similar motion to dismiss. (Docket Entry # 59.) Plaintiff filed objections to their arguments. (Docket Entry # 61.)

Because the arguments for Garner and Gallegos are essentially the same as those that would be made for Sibbett and Hamilton, the Court grants the motions to dismiss as to all four of

these BOP defendants. (Garner's Motion to Dismiss, Docket Entry # 29, p. 5 n.2) ("Although they have yet to be served, these same arguments apply to former Utah Board of Pardons and Parole members Michael Sibbett, Keith Hamilton, and Jesse Gallegos. Requiring service upon them is therefore futile and a waste of judicial resources."). *Notwithstanding Marin*

The Tenth Circuit has long held that members of the BOP are "absolutely immune from damages liability for actions taken in performance of the [BOP's] official duties." *Knoll v. Webster*, 838 F.2d 450 451 (10th Cir. 1988). This means that these BOP defendants may not be sued because Plaintiff did not like or disagreed with decisions they made as members of BOP. None of the Amended Complaint's claims overcome BOP Defendants defense of absolute immunity. The Court therefore grants BOP Defendants' motions to dismiss.

CONCLUSION

In screening the Amended Complaint, the Court concludes that it fails to state a claim upon which relief may be granted regarding Defendants Hanson and Byrne and Plaintiff's broad conspiracy claim construed to be against all Defendants. *Rebennack, Mattoff 5-98-3 AF*

IT IS THEREFORE ORDERED that Defendants Hanson and Byrne and Plaintiff's conspiracy claim construed against all Defendants are DISMISSED.

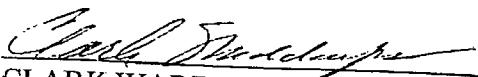
IT IS FURTHER ORDERED that motions to dismiss as to Defendants Stam, Behrens, Bernards-Goodman, Riley, Sibbett, Hamilton, Gallegos, and Garner are all GRANTED. (Docket Entry #s 29, 35, 37, 57 & 59.)

IT IS FINALLY ORDERED that Plaintiff's motion for relief from the order dismissing Defendant Huggard is **DENIED**. (Docket Entry # 72.)

This case is **CLOSED**.

DATED this 2nd day of October, 2017.

BY THE COURT:



CLARK WADDOUPS
United States District Judge

CERTIFIED COPY A Appendix

Varin
Advoc.
ESDK

F

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

STATE OF UTAH,) Civil No. 941901206
Plaintiff,) Judge Timothy Hanson
vs.) Motion Hearing
HENRY LEE RUDOLPH,)
Defendant.)

November 22, 1994

APPEARANCES:

For the State: Charles D. Behrens, Esq.

For the Defendant: Henry Lee Rudolph, Pro Se

David L. Sanders, Esq.



1 THE COURT: Mr. Rudolph, everything the state is
2 going to do in this trial starting Monday is going to be
3 prejudicial to you. That's what it's supposed to be.
4 They're trying to prove that you committed this crime.

5 MR. RUDOLPH: With falsified evidence.

6 THE COURT: If it's falsified.

7 MR. RUDOLPH: I can prove it.

12 MR. RUDOLPH: Would you like to see the
13 pictures, Your Honor?

14 THE COURT: Hand the pictures to your lawyer.
15 What did you say, Mr. Rudolph?

16 . MR. RUDOLPH: Nothing, Your Distinguished Honor.

17 THE COURT: Be careful, Mr. Rudolph. Be very
18 careful.

19 MR. RUDOLPH: I know being a black man I have
20 to, but I've been in prison all my life and now I see it
21 happening again. Now, I can show you very simply. You see
22 that pen there? That pen is there to indicate the size of
23 the blade. The cup is there to indicate the size of the
24 handle. Now, right here, look at this cup. That cup right
25 there is tipped over. If you look right there, there is the

1 knife taken right there in the block, so I have to give away
2 my case right now. There's a picture of the knife where it
3 was. Now, how are those two consistent? There's a picture
4 of the cup in the kitchen also. How is that consistent?

5 MR. SANDERS: May I approach the bench, Your
6 Honor?

7 THE COURT: You can.

8 MR. RUDOLPH: The Hogle Zoo cup is right there
9 on the counter.

10 → THE COURT: I see it.

11 MR. RUDOLPH: Now it's in the bedroom along with
12 the knife, both on the counter. The pen is there as
13 illustrative and so is the cup.

14 MR. SANDERS: May I approach again, Your Honor?

15 THE COURT: Yes. What say the state?

16 MR. BEHRENS: I don't recall where the report
17 said the knife was found, Your Honor. May I sit down to
18 respond?

19 THE COURT: Yes, you may.

20 MR. BEHRENS: Thank you. I don't recall what it
21 says. I've always interpreted the photograph of the knife
22 next to the pen at least to show scale. I don't know if the
23 knife was found in that location or not. I haven't talked to
24 the officers about where they actually found it. I've always
25 interpreted that photograph to show the scale of the knife.

1 I intend to have the knife in court, but wanted to ~~argue~~
2 that separate.

3 THE COURT: Anything else on the motion to
4 exclude the knife at this stage of the proceeding?

5 MR. RUDOLPH: Yes, Your Honor. I'd like you to
6 look on page 11 of the crime management report right there
7 and it will tell you the location of that knife.

8 MR. SANDERS: It's the part that's marked in
9 yellow, Your Honor.

10 THE COURT: Hand that back. Anything else, Mr.
11 Rudolph, in support of your motion to exclude the knife at
12 this stage of the proceeding?

13 MR. RUDOLPH: Other than what was in my motion,
14 Your Honor. I'm just looking for a fair trial, that's all.

15 THE COURT: Motion denied. It's premature at
16 best. Argument one of the motion in limine suggests that
17 only the testimony of Detective Alex Huggard ought to be
18 allowed and that other officers should not be allowed to
19 testify purely on the basis that it's cumulative. Is there
20 anything further you wish to add on that subject, Mr.
21 Rudolph, other than what's in your motion?

22 MR. SANDERS: To suppress the testimony of the
23 officers.

24 MR. RUDOLPH: I don't know that it would do any
25 good anyway, Your Honor, but I would like to suppress it

1 because Officer Huggard is the only one that has any
2 firsthand information from either of the two parties to this
3 incident. Anything else would be second party hearsay and
4 totally based on reconstructed testimony based on whatever
5 allegations were made and ex-parte allegations. That's
6 essentially what all of this evidence is related to. It's
7 one point of view, and all I'm trying to do at this point in
8 time at this motion hearing is just to level the ~~playing ground~~ around
9 to where the trial will be fair. Evidently because I have
10 the audacity to go to trial most things are going to be
11 admitted irrespective to the fairness, so I don't know
12 exactly what I should say or do at this particular point in
13 time, Your Honor. After all, I'm just a novice law student.
14 I am an innocent man.

15 THE COURT: What I suggest you do is you set
16 forth all the legal basis that you believe supports your
17 motion.

18 MR. RUDOLPH: I believe it's up there, Your
19 Honor. Well, in the crime management report all of the
20 officers referred to Detective Huggard anyway, so I guess he
21 was supposed to carry the ball for them. If you're going to
22 let it in, which is absolutely within your discretion, I have
23 no problem with it actually. I wouldn't mind letting the
24 report in too because I think that he would need that to
25 refresh his memory, and incidentally that's how I wanted to

1 contradict some of his testimony, is by referring to what he
2 actually wrote down as compared to what he is going to say
3 the next time.

4 THE COURT: And you'll certainly be entitled to
5 do that, but what you're asking me to do now is rule in
6 advance that three persons, and I don't know what they're
7 going to say, should be excluded from testifying. I cannot
8 do that at this stage of the proceeding. I don't intend to
9 allow cumulative testimony in this case on either side.
10 I'll have to hear what these people have to say, and if
11 they're offering cumulative evidence or offering hearsay
12 evidence you'll certainly be given the right to object, and
13 if your objection is well taken I'll sustain it. You request
14 that I exclude three Murray police persons from testifying in
15 this case on the theory that you only talked with Detective
16 Alex Huggard. Not knowing what they're going to say, not
17 knowing whether it has anything to do with something they may
18 know about, it's premature and it's denied. I've already
19 ruled on the knife. That's argument number two.

20 MR. RUDOLPH: So you're going to let the knife
21 into court?

22 THE COURT: I don't know if I'm going to let it
23 in or not, but I'm certainly not going to exclude it at this
24 point in time.

25 MR. RUDOLPH: Well, what are we here for?

1 that they may believe would affect a person or affect a
2 person's credibility who happens to be a member of a minority
3 race, black race, Latino, whatever, Asian, then I will
4 inquire of them. So you need to think about whether you want
5 to do that. There's two theories of thought in that regard.
6 One is if there are any prejudices or biases that may be held
7 by any prospective jurors against you because of your skin
8 color, for example, we want to ferret that out. However, the
9 other side for consideration is that hopefully it's not an
10 issue. I suspect based on what you've said here that you
11 don't feel this way. Hopefully it's not an issue that needs
12 to be addressed, but I certainly will if you'd like me to do
13 that. If there's any bias or prejudice on the part of any
14 prospective juror because of your race I want to ferret that
15 out. That's something you need to think about. Have you
16 discussed that with Mr. Rudolph, Mr. Sanders?

17 MR. SANDERS: Yes, Your Honor, and I would like
18 to note for the record I've also expressed to him my
19 concerns. We have an unfortunate juxtaposition in that case
20 with a more nationally recognized case. My client is black,
21 his wife was white. This is a situation of alleged violence
22 with a knife involved, and even at the time of my client's
23 arrest there was the statement by the victim and some of the
24 police officers that this is another O.J. Simpson case, and
25 because of that I told him that my advice would be to wait

1 for awhile to try this case or to at least ask for a
2 continuance. Mr. Rudolph does not wish to do that, but I am
3 going to be submitting some questions for the judge's
4 consideration that relate to that issue, and I wish the judge
5 also to perhaps consider that particular issue.

6 THE COURT: And I will. I hadn't really thought
7 about it in terms of the Simpson matter pending in
8 California, but now that you mention it the allegations of
9 this offense have some similar allegations of that offense.

10 MR. SANDERS: Exactly.

11 THE COURT: I'm going to call additional jurors.
12 Glad you mentioned that, Mr. Sanders. I don't know what
13 prospective jurors may respond. It would be an unusual
14 person who has not been exposed to some publicity regarding
15 the Simpson matter, but obviously this is not the Simpson
16 matter. I don't know what happened in the Simpson matter and
17 I don't know what happened in this case yet. By Wednesday
18 next we'll know what happened, but we don't know now, and so
19 to the extent that it's possible to eliminate what actually
20 occurred from evidence. In any event, the long and short of
21 it, that's something you need to inquire into, so your
22 feeling in that regard would be helpful. Mr. Behrens, the
23 state needs to look at that as well so we're sure we're
24 getting a panel that hasn't been in any way tainted one way
25 or the other through Simpson media coverage, and then beyond

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evidence."

1 that I think it would be advisable to inquire as to whether
2 there are persons on the jury who may have bias or prejudice
3 for or against Mr. Rudolph merely because he's black.

4 MR. SANDERS: Or against the institution of
5 marriage between a white and black person.

6 THE COURT: Yes, interracial relationships.

7 Now, do I understand that the alleged victim in this case,
8 Ms. Oates, and Mr. Rudolph were in fact married?

9 MR. SANDERS: Yes, sir.

10 THE COURT: I believe there's a child, as I read
11 through this. Okay, yeah, we need to think about that as
12 well. It's probably more likely, trying to rely upon my own
13 experience here with regard to what people have said and how
14 I perceive people may react to certain things, it's probably
15 more likely that there's a possibility of prejudice on the
16 part of the person whether they're white or black in an
17 interracial relationship, as opposed to just saying I don't
18 like that person because they're white or black. That needs
19 to be explored I think. So I will call more jurors. I'll
20 call 40 jurors as opposed to the usual 25.

21 MR. SANDERS: May I address the prosecutor?

22 THE COURT: Certainly.

23 MR. BEHRENS: Judge, I think there's a couple of
24 things we need to bring up. May I make a phone call? I have
25 some witnesses pertaining to this case that are supposed to

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1 meet me at 2:30, and I don't want them to leave before I get
2 back. Sorry.

3 THE COURT: Use Ms. Thompson's phone here. Do
4 we need to go in recess?

5 MR. BEHRENS: No.

6 (Off the record.)

7 THE COURT: Mr. Behrens, is there anything else
8 we need to address?

9 MR. BEHRENS: In my conversations with Ms.
10 Oates, Your Honor, she's expressed frankly some fear about
11 Mr. Rudolph approaching her since he's representing himself
12 in court, and I think given the history of the relationship
13 that's perhaps expected. What I would suggest, at least with
14 regard to handling Ms. Oates as a witness, is that perhaps
15 both of us be restricted to the podium and not be allowed to
16 approach the witness and perhaps handling of exhibits and
17 things of that matter could be done in another fashion.

*page 11
1/12/72*

18 THE COURT: I think the request is appropriate,
19 but I don't think it ought to just pertain to Ms. Oates. I
20 don't want to draw any undue emphasis to that particular
21 witness. For the purpose of this trial neither the state's
22 counsel, to the extent you're involved, Mr. Sanders, as
23 standby counsel, or Mr. Rudolph representing yourself will be
24 allowed to approach any witness. All witnesses will be
25 examined from the podium and no witness may be approached.

1 If there is anything that needs to be handed to a witness
2 what I want you to do is ask that they hand it to the
3 witness. I'll advise the bailiff at this point in time if
4 there is anything that needs to be handed to a witness he'll
5 take it from either Mr. Rudolph or Mr. Behrens and hand it to
6 the witness, and we'll handle it that way and then no one is
7 going to feel uncomfortable in any situation, whether it be a
8 witness or whether it be Mr. Rudolph or anybody else. That's
9 an appropriate request. Is the state going to designate some
10 person to sit at counsel table?

11 MR. BEHRENS: I didn't intend to. Would it be
12 possible if we pre-mark our exhibits and set them up there
13 just to have the witness pick them up and look at them,
14 rather than have Jack running back and forth? I'm going to
15 have some pictures and other things that might get cumbersome
16 to do that.

17 THE COURT: You can mark all your exhibits today
18 if you want or come early and have Ms. Thompson mark them the
19 morning of the trial. Perhaps that's the best. Ms. Thompson
20 can mark them. I'll ask Ms. Thompson to do her best to see
21 that all the -- sometimes they get carried around by counsel,
22 but I will have her keep all the exhibits in close proximity
23 to the witness so that between Ms. Thompson and the court
24 reporter we can make sure the witness has the right exhibit
25 in their hand to look at if they're asked to refer to an

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THIS IS TO CERTIFY that the Motion Hearing in the foregoing action named, was taken before me, Jackie Foulger a Certified Shorthand Reporter and Notary Public in and for the State of Utah, residing in Salt Lake County.

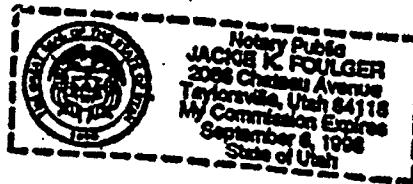
That the Motion Hearing was reported by me in Stenotype and thereafter caused by me to be transcribed into typewriting, and that a true and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages numbered from 1 to 47, inclusive.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 15th day of March, 1995.

Jackie Foulger
JACKIE FOULGER, RPR,
Utah License No. 285

My commission expires:
September 6, 1998.



HENRY L. RUDOLPH
3020 HOMESTEAD
CHEYENNE, WYOMING 82001
(307) 220-0078

UNITED STATES SUPREME COURT

HENRY LEE RUDOLPH

Plaintiff

v.

TIMOTHY R. HANSON et. al

Defendant

Petition for Extraordinary Writ of Prohibition and
mandamus A Judgment And Mandate
procured by Fraud upon the
Court in violation of Rule
60(b)3 FRCP, 18 U.S.C. § 4,
§ 1001 (false statements
(inter alia), and the 5th
6th, 8th, 13th and 14th
Amendments of the U.S.
Constitution. Case 17-416
USCA (10th) : U.S. DIST.
COURT OF UTAH. 8883

Pursuant to Rule 10(a) a United States Court of Appeals has entered arbitrary and capricious decisions with absolutely no review of the transcript which the Utah Supreme Court falsely said were "destroyed." That decision is included with this motion as is their docket which states the Court granted the motion to supplement the record on 2/25. The 4/7/97 entry states this in a composite record that includes the "lost" transcripts. See also 1/25 Ex parte submission of a fraudulent document.

(Appendix D/4) This is an important federal question that has been and is eroding federal policy because these acts of obfuscation are obstructing this Court's view.

The Courts in this circuit have so far departed from the accepted and usual course of judicial proceedings and sanctioned such extreme departure of firmly established law as to call for an exercise of this Courts supervisory power! The Court has a general duty to apply the correct law. Empire Life Insurance Co. v. Yabka, 468 F.2d 330 (1972) 5th Cir. See also 28 U.S.C. § 1361 (a duty owed to plaintiff).

Under Rule 60(b) 3 (b) ... Fraud, etc. On motion and upon terms that are just, the Court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (F.R.C.P. 60(b))

(3) Fraud (whether heretofore denominated intrinsic or extrinsic), the motion shall be made not more than one (1) year after judgment, order, or proceeding was entered or taken (Sept. 2018). This rule does not limit the power of a Court to entertain an independent action, or to set aside a judgment for fraud upon the court.

In 2005, this court denied certiorari and had the wool pulled over your eyes" by "Rambo" lawyers and colleagues that are violating R.R.C.O. § 18 U.S.C. § 1951 - § 1962 and have been doing so for years!

Your Court recently made a nunc pro tunc decision which speculated in violation of Sullivan v. La., about what certain persons may have thought in 1982. No. 92-5129, dec. June 1, 1993. At that time this court said "It is self evident, we think, that the fifth amendment requirement of proof beyond a reasonable doubt and the Sixth Amendment requirement

of a jury verdict are interrelated. It would not satisfy the Sixth Amendment to determine that the defendant is probably guilty and leave it up to the judge to determine (as Winship requires) whether he is guilty beyond a reasonable doubt.

This court in Sullivan said specifically, explicitly and definitely that 'Although most Constitutional errors have been held amenable to harmless error analysis, see Arizona v. Fulminante, 499 U.S. ___, (1991) slip op. at 5) (opinion of P. Rehnquist, C.J. for the Court) (collecting examples), some will always invalidate the conviction. I.d. at ___ (slip op. at 8) (citing inter alia. Gideon v. Wainwright, 372 U.S. 335 (1963) (total deprivation of the right to counsel)). At trial two (2) Mr. Rudolph was denied counsel (standby). Turney v. Ohio, 293 U.S. 510 (1927) (trial by a biased Judge) (Judge Pat Brian recused himself and continued to preside in violation of P. § 455, 60 ALR 3d 176 UCA); McLaskie v. Wiggins, 465 U.S. 168 (1984) (right to self representation). I.d. Your court has stated explicitly "That the Constitution does not impose counsel on a defendant." Iowa v. Tovar 541 U.S. 77, 129 S.Ct. 1379, 158 L.Ed.2d 209, 2004 U.S. Lexis 1832. See Notarized Judicial Conduct Complaint. E10 and E9. This is evidence to the contrary which proves the Utah Supreme Court made numerous false material representations. These are criminal acts. See their docket at 2/9/96 and 2/12/96; hearings with recused judge and no defendant. In Rushey v. Spain this court stated "A defendant has the right to be in attendance at any proceeding that has

pendix E/7] evidence to the contrary which proves the Utah Supreme Court made numerous false material representations. These are criminal acts. See their docket at 2/9/96 and 2/12/96; hearings with recused judge and no defendant. In Rushey v. Spain this court stated "A defendant has the right to be in attendance at any proceeding that has

abearing on the trial." 464 U.S. 114, 104 S.Ct. 453, 78 L.Ed.2d 262 (1983).

The Utah Supreme Court docket included with this motion clearly shows hearings were had with the recused judge and the public defenders on 2-9-96 and 2-12-96 appearance entered without Mr. Rudolph's consent nor presence. The included judicial conduct complaints a proof that counsel was imposed.

In the included decision of the Utah Supreme Court in (Appendix B/2) Rudolph v. Galefka, 939 Utah Adv. Rep. 8 (2002), a per curiam Court falsely stated Mr. Rudolph requested counsel and that he did not provide transcripts. These false writings violate 18 U.S.C. § 1001, i.e. false statements. At the docket on 2/28/96, the Court granted the motion to supplement the record. On 4/7/96, the docket clearly states this is a composite record which includes the last transcripts.

The Utah Supreme Court has for years used this trick, scheme and device to justify malicious, un-Constitutional prosecutions and obfuscate their violations via bad faith, deceit and collusion. See docket at 1/28/97, i.e. ex parte submission of fraudulent document.

The Court has recently indicated the transcripts have been legally "destroyed". Compare Medina v. Barnes, Nos. 94-4222, 2544006, Decided Dec. 5, 1995 (8th Cir.) which stated "In habeas cases, a federal court defers to

the state court's findings of disputed issues of historical fact, see e.g. *Smith v. Secretary of N.M. Dept. of Corrections*, 50 F.3d 801, 806 n. (10th Cir.) cert. denied, 516 U.S. 925, 116 S.Ct. 272, 133 L.Ed.2d 193 (1995), absent reason to doubt the adequacy or accuracy of the fact finding proceeding. See 28 U.S.C. § 2254(d). We have attempted to obtain a transcript of the state court hearing. We made inquiry not only of the district court but of the Utah Supreme Court. We were told they transmitted to us everything that they have. Thus, the hearing was lost or not transcribed. *Id.*

In State v. Dunn, in which the Attorney General's Office destroyed the indexed and paginated record as a matter of course due to the passage of time after the initial appeal, 850 P.2d 1201 (1993). Same "story" told in Lockett supra.

In State v. Verikokides, 925 P.2d 1255 (1996), the State of Utah successfully used this pattern. The Utah Supreme Court in Verikokides' case¹⁰² said that (the) Defendant contends this court should vacate his convictions and order a new trial because the record of his original trial was lost during a seven-year gap between conviction and sentencing due to his fugitive status. *Id.* at the opening paragraph.

This Court stated in Quarles v. U.S. made the decision to depart from the common law and made the *nunc pro tunc* decision which speculated and arbitrarily rewrote the firmly established common law. Case No. 17-1778, S.Ct. (2019).

In Gamble v. U.S., 587 U.S. ___ (2019) The U.S. Supreme Court made a decision about double jeopardy and an exception to double jeopardy, which allowed both state and federal prosecution of the same crime. Both the Utah Supreme Court and the USCA (10th Cir.) are enacting federal policy in that, in State v. Randolph, Three (3) trials notwithstanding double jeopardy were allowed by the state of Utah in spite being acquitted of the *actus reus*, i.e. the predicate offense of alleged aggravated sexual assault. The Court arbitrarily allowed conviction on mens rea only. Randolph was acquitted of the act but convicted of the intent ~~to commit~~ what he was acquitted of. This is outrageous and violates the Constitution.

The Court's used legal fictions, made up facts and false material misrepresentations to justify a decision without any review of the transcripts which were falsely said to be "destroyed".

Wherefore I, Henry Lee Randolph, pro se respectfully ask his Court to curtail these lawless Kangaroo courts and take a real look at what they have done and are doing. I am submitting clear and convincing evidence of fraud by submitting transcripts, their decisions, the dockets and evidence of intentional wrongdoing. See e.g. the 11/22/94 transcript which was falsely ~~submitted~~ and the "intentional" w/ P.C. I. I. I. D. ~~submitted~~

Note: I have included the Motion to recall the mandate to demonstrate how the lower Courts have ignored the law and made up their own.

Dated and signed This 1st day of September
2014.

George L. Rueloffs, Pro Se

There is no statute of limitations for fraud. See, Abdur Rahman v. Bell Your Court determined [that] the jurisdictional bar in 2294(b)(3) does not apply to 60(b) motions. U.S. Sup. Court No 01-9044 (Dec. 2002). See also Gonzales v. Crosby, 366 F.3d 1253 a case in which the Supreme Court determined that a 60(b) motion was not to be considered a successive petition. The USCA (10) in 09-4117 wrongly applied the law to justify no review of the transcripts.

In Bethel v. U.S., fraud was described by the tenth Court of appeals in this way. Fraud upon the court is fraud which is directed to the judicial machinery itself and is not fraud between the parties or fraudulent documents, false statements or perjury. It is where the court or a member is corrupted or influence is attempted or the judge has not performed his judicial function. Thus, the impartial functions of the Court have been directly corrupted." 760 F.2d 1115, 1121 (10th Cir. 1985).

Ex parte Young's primary holding is if governmental officials attempt to enforce an unconstitutional law, sovereign immunity does not prevent people the law

harm from suing. 209 U.S. 123 (1908).

The attempt of a state officer to enforce an unconstitutional statute without authority of, and does not affect the state in its sovereign governmental capacity, and is an illegal act, and the officer is stripped of his official character and is subjected to the consequences of his individual conduct; the state has no power to impart to its officer immunity from the supreme authority of the U.S. See also Scheuer v. Rhodes, No. 82-914 decided April 13 1974. U.S. Supreme Court; accord Butz v. Economou, 438 U.S. 478 (1978), and Childs Advocate v. Lindgren, 296 F.Supp.2d 178 (D.R.I. 2004).

Appendix A] In case 17-4168 at page 2 - 2d paragraph it [states] "also Plaintiffs claims arise out of his prosecution and conviction Appendix C3 for aggravated burglary and violation of a protective order. His first trial was in August 1991 and he was eventually convicted in 1996. He unsuccessfully pursued postconvict relief in state and federal court, with his last claims dismissed by this court in 2009 (i.e. 09-4117). He was paroled by the Utah Board of pardons in 2014. This suit was filed Dec 2, 2014. Id at 2 of page 2. Fraud vitiates everything.

This recitation of facts omits a number of facts and historical events. In State v. Rudolph, 970 P.2d 1221 (Utah 1998). The Utah Supreme Court stated "The state charged Rudolph with aggravated burglary, aggravated sexual assault and violation of a protective order.

He appeared pro se with the assistance of standby counsel. Following a jury trial in late 1994, he was convicted of aggravated burglary and violation of a protective order, but was acquitted on the charge of aggravated sexual assault.

Rudolph appealed his conviction to this court. Because significant portions of the trial transcript were incomplete due to technical problems with the court reporters machinery.

[NOTE: only Mr. Rudolph's testimony and defensive actions were "lost"] We summarily reversed his conviction and remanded to the trial court for a new trial on the aggravated burglary and violation of a protective order charges. On remand the trial judge, Timothy R. Hanson recused himself and the case was remanded to Judge Pat B. Brian.

"In Feb. 1996 Rudolph's new trial began and he again appeared pro se." NOTE: Mr. Rudolph was totally deprived of counsel in violation of Gideon v. Wainwright, 373 U.S. 335 (1963), see also Sullivan v. Louisiana, 508 U.S. 275 (1993).

The Utah Supreme Court then [continued] "However during redirect examination of the state's first witness, the court granted Rudolph's motion for mistrial. He also moved to recuse Judge Brian from further proceedings in the case - although Judge Brian apparently granted the motion, he continued to preside over Rudolph's Third (3d) trial.

NOTE: This act was in violation of Emery v. Ohio, 273 U.S. 510, as well as the U.S. Supreme Court's

holding in Litky v. U.S., 114 S.Ct. 1147, 1162 (1994), which [states] Disqualification is required if an objective observer would entertain reasonable questions about the judges impartiality. If a judges attitude or state of mind leads a detached observer to conclude that a fair ~~trial~~ and impartial hearing is unlikely the judge must be disqualified." *id.*

WHEREFORE, I respectfully request this Court to review the evidence and make a determination regarding what has been hidden from your Court!
Dated Sept. 1, 2019. Henry L. Rudolph Prose.

The relief sought is not available from any other Court as demonstrated by the documents contained with these pleadings. Fraud is an extraordinary circumstance. See Rule 10(a) and page one of this motion. See also Rule 10(c) a state court and a United States Court of appeals has decided a number of federal questions that directly conflict with relevant decisions of their own and certainly the decisions of your Court and the United States Constitution
Dated Sept. 1, 2019. Henry L. Rudolph Prose.

Rule 20 To justify the granting of an extraordinary writ, the petition must show that the writ will be of aid of the Court's appellate jurisdiction... relief cannot be obtained in any other form in any other Court.



State of Utah
JUDICIAL CONDUCT COMMISSION

Steven H. Stewart
Executive Director

645 South 200 East #104
Salt Lake City, Utah 84111
801/533-3200
FAX 801/533-3208

December 12, 1996

Mr. Henry L. Rudolph
450 South 300 East
Salt Lake City, UT 84111

RE: Case No. 96-3D-071, Hon. Timothy R. Hanson, Patrick B. Brian, Henry L. Rudolph,
Complainant

Dear Mr. Rudolph:

After considering the record in this case, the Judicial Conduct Commission found insufficient evidence of judicial misconduct and dismissed the complaint.

The Commission appreciates your interest in the Utah judiciary. Please remember that this matter remains confidential under the provisions of the Utah Constitution and applicable statutes.

Sincerely,

JUDICIAL CONDUCT COMMISSION

Steven H. Stewart
Executive Director





State of Utah

JUDICIAL CONDUCT COMMISSION

Steven H. Stewart
Executive Director

645 South 200 East #104
Salt Lake City, Utah 84111
801/533-3200
Fax 801/533-3208

January 29, 2001

PERSONAL AND CONFIDENTIAL

Henry L. Rudolph
Inmate Number 23534
Cedar 3 310 T
Central Utah Correctional Facility
P.O. Box 560
255 East 300 North
Gunnison, UT 84634

RE: 96-3D-071, Hon Timothy Hanson, Hon. Pat Brian, Henry L. Rudolph,
Complainant

Dear Mr. Rudolph:

In an undated letter which we received January 26, 2001, you said you had never received a letter from the Judicial Conduct Commission informing you that your complaint against Judges Timothy Hanson and Pat Brian had been dismissed. A review of our files revealed that on December 12, 1996, we sent a dismissal letter to you at 450 South 300 East, Salt Lake City, Utah, 84111. The letter was returned to our office marked "return to sender--prisoner released."

Enclosed is the original December 12, 1996 letter.

Sincerely,

JUDICIAL CONDUCT COMMISSION

Steven H. Stewart
Executive Director

Enclosure





State of Utah

JUDICIAL CONDUCT COMMISSION

Steve H. Stewart
Executive Director

645 South 200 East #104
Salt Lake City, Utah 84111
801 533-3200
FAX 801 533-3208

Henry L. Rudolph

Name

450 1st. 305 East

Address

Salt Lake City, Utah

City/State/Zip Code

Telephone Number

REQUEST FOR INVESTIGATION OF COMPLAINT

TO: JUDICIAL CONDUCT COMMISSION

I request that the Utah Judicial Conduct Commission undertake an investigation of

Timothy R. Hanson, a member of the judiciary of the State of Utah.

(Please provide a full factual statement upon which the complaint is based, together with the title of the case and case number, if known. Also, include the names, addresses and telephone numbers of other persons who can substantiate your complaint. If the complaint is documented or if you have documents supporting your contention you should supply copies of these documents to us with your complaint.) From Sept. 9, 1994 to Oct. 6, 1995, Judge Timothy R. Hanson was a judge over proceedings involving Henry L. Rudolph. The case number was 941901206 at the lower court. The case was summarily reversed at the Supreme Court of Utah on Sept. 24, 1995. The case no. at that court was 950057. Judge Timothy R. Hanson violated a number of Court rules and essentially orchestrated an illegal conviction by advocating (on record) tampering with evidence, perjury and by allowance of inadmissible evidence. The Hon. Judge made racial remarks and prejudicial comments, as well as, telling the prosecutor "To the extent + its possible to eliminate what actually occurred from the evidence. See trial transcript of 11-22-94 page 39. He subsequently allowed/advocated a criminal fraud by allowing the prosecutor to introduce a fraudulent document and numerous ethical violations with respect to Rules 3.3, 3.4, 3.8, 4.1 and 8.4. The Rules of professional conduct. The Judge initiated and engaged in a number of ex parte communications with the prosecutor violating judicial canons number 7. I've included copies of Court Reporter Certified transcripts which support my allegations of overtly inappropriate conduct. Participation in an illegal act "kills" an absolute immunity defense.

Judicial Conduct Commission
645 South 200 East, Suite 104
Salt Lake City, UT 84111

RETURN TO SENDER
 UNAUTHORIZED PERSON
 PRISONER RELEASED

Mr. Henry L. Rudolph
450 South 300 East
Salt Lake City, UT 84111

84111/3207



06-10-372-291

State of Utah

JUDICIAL CONDUCT COMMISSION

Steven H. Stewart
Executive Director

645 South 200 East #104
Salt Lake City, Utah 84111
801/533-3200
FAX 801/533-3208

Henry L. Rudolph
Name

450 5th. 300 East
Address

Salt Lake City, Utah
City/State/Zip Code

Telephone Number

REQUEST FOR INVESTIGATION OF COMPLAINT

TO: JUDICIAL CONDUCT COMMISSION

I request that the Utah Judicial Conduct Commission undertake an investigation of

Patrick R. Brian, a member of the judiciary of the State of Utah.

(Please provide a full factual statement upon which the complaint is based, together with the title of the case and case number, if known. Also, include the names, addresses and telephone numbers of other persons who can substantiate your complaint. If the complaint is documented or if you have documents supporting your contention you should supply copies of these documents to us with your complaint.)

Judge Brian issued an order to hold Henry L. Rudolph October 13, 1995 or thereabouts that stated Mr. Rudolph was to be held without bail. This con with the most recent Order of Jan. 5, 1996. Mr. Rudolph had been representing himself since the original proceedings of 10-19-94 up and until Feb. 5, 1996, at which time Mr. Rudolph was compelled because of judicial abuse of discretion and prosecutorial misconduct, to make for a mistrial which was granted.

On 11-17-95, Judge Brian gave Mr. Rudolph the ultimatum to accept representation the Salt Lake LDA or go to Utah State Hospital for a 60 day evaluation. (1). The comp evaluation was diametrically antithetical to pre-existing Utah law as per Drobel v. Kakalou. Drobel v. Kakalou was twice as long as is customary. Additionally, legal competency & psychological competency, PLEASE COMPLETE YOUR COMPLAINT ON REVERSE SIDE different.

Jan. 5, 1996 Mr. Rudolph was determined competent to proceed by psychiatrists at the Court delivered Frampton Cologuy. Mr. Rudolph for 2nd time was refused transcripts.

Jan. 19, 1996 at pre-Trial hearing Mr. Rudolph argued a number of points and made a request for nullings, pre-trial order and a number of things.

Jan. 21, 1996 Mr. Rudolph requested and was granted mistrial in Dr. Cologuy.

at the pretrial hearing # 147-76.

Subsequently, Mr. Rudolph requested Judge Brian recuse himself - the Judge agreed. Later, because of inability to access transcripts, Rudolph contacted DOA who got an order from the Judge for the transcripts. Rudolph had been requesting since November of 1995. The spectre of impropriety looms over these proceedings as essentially Judge Brian has superseded his authority and imposed his wills to the manner of Mr. Rudolph's representation. This is being done in spite of the fact that Mr. Rudolph never filed nor requested on written or oral record a re-appointment of counsel.

On 4/3/96 Judge Brian presided over a pretrial hearing and denied a number of motions by the defense including double jeopardy which is immediately appealable. The appearance of impropriety is apparent as the Judge agreed to recuse himself 2/5/96 and has refused to grant defendant access to transcripts of prior proceedings. He has only recently allowed Mr. Rudolph access to a bill of particulars and ruled that the prosecution shall not reformulate a new ~~plan~~ theory after 2 previous trials. This has been reversed by the Utah Supreme Court Sept. 21, 1995. The case no. was 950081 at that court. The case no. at the lower court was 94191206 at the lower court. There are indications that he has engaged in Ex parte communications with the prosecutor Katherine Bernards Goodman, as well as not granting Mr. Rudolph a bond in over 7 months. It is the Defendant's position that Judge fat Brian is a racist!

merely wants his Constitutionally guaranteed rights to Due Process and EQUAL PROTECTION - Enforce.

(If space is not sufficient, you should attach additional pages. Also attach any Exhibits you wish us to consider.) This man adamantly refuses to honor established law, and considers himself to be a law unto himself. He is not. The United States Constitution is the supreme law of the land: 4/3/96

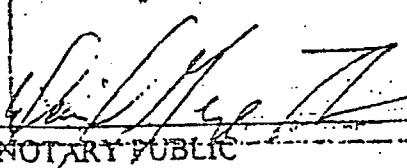
Wayne L. Rudolph
Complainant

STATE OF UTAH

County of Salt Lake

On the 5th day of April, 1996 personally appeared before me Wayne Rudolph the signer of the above document, who being first duly sworn did say that the matters and things stated therein are true to the best of his/her knowledge, information and belief.

	NOTARY PUBLIC DAVID GEORGE HANSON 437 South 200 East Salt Lake City, UT 84111 My Commission Expires April 1, 1997 STATE: UTAH
---	---


NOTARY PUBLIC

My commission expires:

4-1-97



06-88-372-27 F

State of Utah

JUDICIAL CONDUCT COMMISSION

Steven H Stewart
Executive Director

645 South 200 East #104
Salt Lake City, Utah 84111
801/533-3200
FAX 801/533-3208

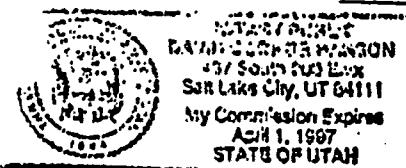
RELEASE

WHEREAS, I have filed a complaint with the Judicial Conduct Commission of the State of Utah, against a member of the Judiciary, and

WHEREAS, it will be necessary in the investigation of said matter, by the Commission or its Investigator, that the Judge be provided information concerning the complaint and/or a copy of that complaint,

NOW THEREFORE, I do hereby authorize the Judicial Conduct Commission to communicate my complaint to the Judge of whom I have complained, and to exhibit said written complaint to said Judge, and to discuss the same with the Judge or other court personnel, or other persons having knowledge of the matter.

DATED this 13th day of March, 1996.



SUBSCRIBED AND SWEARN TO BEFORE ME

Henry L. Randolph
Signature of Complainant

THIS 13th DAY OF March, 1996.

Henry L. Randolph
Please type or print name in full

Ron L. Cook
Witness