

Appendix A

- 1pg. # 5 — State Habeas 20160429-SC
Direct filing in Utah Supreme Court - 5-24-2016
- 1pg. # 6 — Transferred to 5th Dist Court 6-2016 -
(★ converted by court to Extraordinary Relief)
Docketed in Criminal Case 991500552* improperly
- (See Exhibit V)
July 5, 2016 → Motion to Reuse Docketed in 080500231 improperly
★ No case # assigned until October 20, 2016
- 1pg. # 2 — Denied October 20, 2016
- 3pgs. # 4 — Ut. Ct. of Appeals Affirmance - 2-27-2017
- 1pg. # 1 — Ut. S.Ct. denied cert. - 10-27-2017

Exhibit → App. A - Exhibit #1

The Order of the Court is stated below

Dated: October 27, 2017

/s/ John A. Pearce

02:01:19 PM

Justice



IN THE SUPREME COURT OF THE STATE OF UTAH

----ooOoo----

State of Utah,
Respondent,

v.

William Henry Sherratt,
Petitioner.

ORDER

Supreme Court No. 20170265-SC

Court of Appeals No. 20160944-CA

Trial Court No. 991500552

----ooOoo----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on March 28, 2017.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End of Order - Signature at the Top of the First Page

Habens

Exhibit 2 -
Appendix A

Exhibit = 40
Exposition & overruling
request
3-12-17
FILED
UTAH APPELLATE COURTS
FEB 27 2017

IN THE UTAH COURT OF APPEALS

WILLIAM HENRY SHERRATT, Appellant, v. STATE OF UTAH, Appellee.	ORDER OF SUMMARY AFFIRMANCE Case No. 20160944-CA
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Before Judges Christiansen, Mortensen, and Pohlman.

William Sherratt filed a document in the Utah Supreme Court captioned as a petition for habeas corpus under rule 65C of the Utah Rules of Civil Procedure. The Supreme Court transferred the petition to the district court under rule 20 of the Utah Rules of Appellate Procedure. *See* Utah R. App. P. 20(a). The district court construed the petition as seeking extraordinary relief and denied it on the grounds that it failed to state a valid claim and was frivolous on its face. Sherratt appeals that decision. This appeal is before this court on a sua sponte motion for summary disposition.

The Post-Conviction Remedies Act (the Act) “establishes the sole remedy for any person who challenges a conviction or sentence for a criminal offense and who has exhausted all other legal remedies, including a direct appeal.” Utah Code Ann. § 78B-9-102(1) (LexisNexis2012). The only ground asserted in the petition that arguably sought post-conviction relief was a claim that the “conviction and sentence issued using facts barred by the statute of limitations.” Sherratt claimed that because the district court dismissed eight of the original ten counts after a preliminary hearing, any facts related to those claims were improperly admitted under rules 402 and 404 of the Utah Rules of Evidence. This court considered and rejected the same claim in Sherratt’s direct appeal. *See State v. Sherratt*, 2001 UT App 201U (mem.); *see also* Utah Code Ann. § 78B-9-106(1)(b) (LexisNexis 2016) (precluding any claim for post-conviction relief that was either raised or addressed on appeal). Sherratt’s claim that the appeal process was illegal and therefore the appeal as well as his conviction and sentence are void lacks merit.

Sherratt also claims that the petition was improperly characterized by the district court as an extraordinary writ petition under rule 65B of the Utah Rules of Civil Procedure rather than as a habeas corpus petition under rule 65C. However, the majority of the claims in the petition challenged actions of the Utah Board of Pardons and Parole (the Board) and therefore could only be considered under rule 65B. Furthermore, because Sherratt's challenges to the Board's actions do not involve "the legality of his detention, the conditions of his imprisonment, or a court-imposed sentence, the writ of habeas corpus is not available" and his "claims challenging actions taken by the Board of Pardons are reviewable only under [rule 65B(d)]."¹ *Padilla v. Utah Board of Pardons*, 947 P.2d 664, 667 (Utah 1997); see also Utah Code Ann. § 78B-9-102(2)(c) (stating that the Post-Conviction Remedies Act does not apply to actions taken by the Board). Rule 65B(d)(2)(D) provides for extraordinary relief "where the Board of Pardons and Parole has exceeded its jurisdiction or failed to perform an act required by constitutional or statutory law." In *Lancaster v. Utah Board of Pardons*, 869 P.2d 945, 948 (Utah 1994), the Utah Supreme Court concluded that because "[a] petition of any nature which fails to state a claim may be dismissed," a district court can dismiss a petition directed to the Board as frivolous on its face "despite the lack of direct authority to dismiss frivolous petitions" under the provisions of current rule 65B(d). The petition was appropriately considered as a petition seeking extraordinary relief and dismissed because it failed to state valid claims for relief.

Decisions on eligibility for parole are within the Board's discretion and are not subject to judicial review. See *Lancaster*, 869 P.2d at 947; see also Utah Code Ann. § 77-27-5(3) (LexisNexis 2012) ("Decisions of the board in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeiture are final and are not subject to judicial review.") Accordingly, a court reviews "the fairness of the process by which the Board undertakes its sentencing function, but [the court] does not sit as a panel of review on the result." *Lancaster*, 869 P.2d at 947. Viewed as a whole, the petition challenged the merits of the Board's substantive decisions on parole eligibility and restitution and failed to state a claim for relief regarding the fairness of the Board's process. In addition, the constitutionality of this aspect of Utah's sentencing process is settled. See *Padilla*, 947 P.2d at 669. Finally, the claim that cases from the United States Supreme Court have determined that Utah's sentencing process is unconstitutional lacks merit.

¹ The provisions of current rule 65B(d) previously appeared in rule 65B(e). See Utah R. App. P. 65(d).

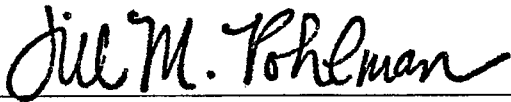
Sherratt further claims on appeal that the district court failed to address a motion to recuse before ruling on his petition. Shortly after the Supreme Court ordered the transfer of Sherratt's petition to the district court for resolution, he filed a purported motion under rule 63 of the Utah Rules of Civil Procedure that sought to disqualify all of the judges in the Fifth District from considering the petition based upon conclusory allegations of fraud. The motion was not "accompanied by a request to submit for decision," as required by the rule. *See* Utah R. Civ. P. 63(b). Because Sherratt did not properly invoke the procedures under rule 63, it was not error for the district court to not address his motion.

Sherratt also claims that because he served notices of claim in or about September 2013 directed to members of the Fifth District Court and the Utah Court of Appeals, neither court has any authority to act in this case. Sherratt's filing of notices of claim under the Governmental Immunity Act in connection with filing a civil suit did not operate to deprive this court or the district court of jurisdiction. *See* Utah Code Ann. § 63G-7-403 (LexisNexis 2016) (providing that a notice of claim is a prerequisite to filing a civil suit against a governmental entity). This court dismissed Sherratt's appeal of the dismissal of his complaint against members of the judiciary in *Sherratt v. State*, Case No. 20150313-CA. Based upon the foregoing,

IT IS HEREBY ORDERED that the ruling of the district court dismissing the petition for failure to state a valid claim and as frivolous on its face is affirmed.

Dated this ____ day of February, 2017.

FOR THE COURT:

A handwritten signature in black ink, reading "Jill M. Pohlman". The signature is written in a cursive, flowing style. The first name "Jill" is written in a larger, more prominent script, followed by "M." and "Pohlman". The signature is positioned above a horizontal line.

Jill M. Pohlman, Judge

IN THE UTAH COURT OF APPEALS

JAN 12 2017

STATE OF UTAH,
Appellee,
v.
WILLIAM HENRY SHERRATT,
Appellant.

SUA SPONTE MOTION FOR
SUMMARY DISPOSITION

Case No. 20160944-CA

TO THE ABOVE PARTIES AND/OR THEIR ATTORNEYS:

This appeal is being considered for summary disposition. *See* Utah R. App. P. 10. The appeal is taken from the dismissal of a purported habeas corpus petition, which was filed directly in the Utah Supreme Court and transferred to the district court. *See* Utah R. App. P. 20(a). The district court dismissed the petition because it failed to state a valid claim and was frivolous on its face. Appellant's convictions were affirmed on direct appeal. His claims have been addressed in successive petitions seeking either post-conviction relief or extraordinary relief. This appeal does not present any substantial issue for review by this court that has not been addressed in previous cases.

In lieu of a brief, both parties shall file a memorandum of not to exceed ten pages with the clerk of the Utah Court of Appeals **on or before January 30, 2017**. Copies of documents are no longer required. An emailed document can be signed electronically or by hand. The emailed copy will be considered the original. *See* Utah Supreme Court Standing Order No. 11. All risks associated with filing by email are borne by the sender. The email address for the Court of Appeals is courtofappeals@utcourts.gov. This court emails all documents to the email listed on the Utah State Bar website for attorneys or to the email address provided by self-represented parties. Failure of the appellant to file a memorandum shall result in granting of the sua sponte motion.

Dated this 12th day of January, 2017.

FOR THE COURT:



Gregory K. Orme, Judge

The Order of the Court is stated below:

Dated: October 20, 2016
01:53:16 PM/s/ KEITH C BARNES
District Court JudgeFIFTH DISTRICT COURT- CEDAR
IRON COUNTY, STATE OF UTAH

STATE OF UTAH,	:	RULING
Plaintiff,	:	RULING DISMISSING HABEAS CORPUS PETITION
	:	(5/23/16)
	:	
vs.	:	Case No: 991500552
WILLIAM HENRY SHERRATT,	:	Judge: BARNES, KEITH C
Defendant.	:	Date: October 20, 2016

Rule 65B of the Utah Rules of Civil Procedure governs petitions for extraordinary relief. That Rule provides, [o]n review of the petition, if it is apparent to the court that...any claim in the petition shall appear frivolous on its face, the court shall forthwith issue an order dismissing the claim. Utah R. Civ. P. 65B(b) (5). Having reviewed the petition filed herein, the Court finds that the petition fails to state a valid claim and is frivolous on its face. Therefore, Petitioner's claims are hereby dismissed and any proceedings shall terminate with the entry of this order.

End Of Order - Signature at the Top of the First Page

~~Exhibit~~ - exhibit #6
v. per state A -

FILED
UTAH APPELLATE COURT

JUN 13 2016

IN THE SUPREME COURT OF THE STATE OF UTAH

---oo0oo---

WILLIAM SHERRATT,
Petitioner,

ORDER

v.

Appellate Case No. 20160429-SC

UTAH BOARD OF PARDONS AND PAROLE;
UTAH STATE PRISON;
WARDEN ALFRED BIGELOW,
Respondents.

This matter is before the court on its own motion to transfer the appeal pursuant to Rule 20(a) of the Utah Rules of Appellate Procedure. The appeal is transferred to the Fifth District Court, Cedar City Department.

The State's motion to dismiss the petition for writ of habeas corpus, filed herein on June 1, 2016, is deemed moot.

FOR THE COURT:

June 13, 2016
Date

Andrea R. Martinez
Andrea R. Martinez
Clerk of Court

JUN 19 2014

2014 JUN 19 AM 9:27

CLERK ml

DISTRICT COURT, SANPETE COUNTY, UTAH

160 North Main Street, Room 303

P O Box 219

Manti, UT 84642

Telephone: 435-835-2121 Fax: 435-835-2134

WILLIAM SHERRATT,

Petitioner,

vs.

STATE OF UTAH,

Respondent.

ORDER OF GARNISHMENTCase No. **130600060**Assigned Judge: **Marvin D. Bagley**

THIS MATTER IS BEFORE THE COURT on Petitioner's Petition for Extraordinary Relief and payment of filing fees as required by Section 78A-2-305. Petitioner is an inmate at Central Utah Correctional Facility. In light of Petitioner's indigency, in a prior notice the Court assessed an initial partial filing fee in the amount of \$.24 according to the formula set forth in Section 78A-2-305(3). In that notice, Petitioner was informed that following the payment of the initial partial filing fee, the Court would continue each month to garnish Petitioner's inmate trust account until the entire filing fee of \$360 is paid in full. He was further informed that collection of the full filing fee would continue even if Petitioner's post-conviction action is ultimately dismissed.

ORDER

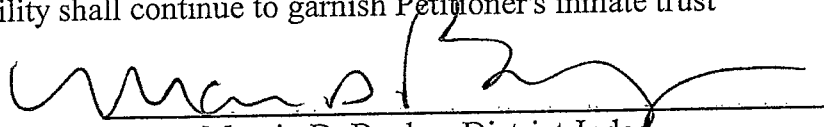
IT IS HEREBY ORDERED that Central Utah Correctional Facility, as the agency having custody of Petitioner, shall garnish Petitioner's inmate trust account each month in th amount of 20% of the preceding month's aggregate disposable income until the remaining \$359.76 of Petitioner's \$360 filing fee is paid in full.

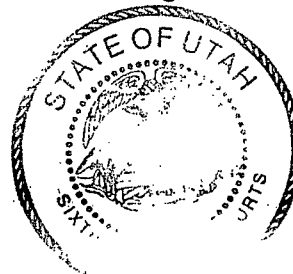
IT IS FURTHER ORDERED that the Central Utah Correctional Facility shall forward the garnished sums collected each time the garnished amount exceeds \$10 to the following address:

Sixth District Court, Sanpete Department
Clerk of Court
160 North Main, P.O. Box 219
Manti, Utah 84642

The Central Utah Correctional Facility shall continue to garnish Petitioner's inmate trust

Signed on June 18, 2014


Marvin D. Bagley, District Judge



~~Thomas M. Burton, esq.~~~~P.O. Box 1619~~~~S.L.C. # 84110~~~~801-918-1656 - cell~~

N/A w/.

RECEIVEDDate 6-27-14

6th District Court

Sanpete County

Clerk [Signature]**DISTRICT COURT, STATE OF UTAH
SANPETE COUNTY**Sanpete County Courthouse 160 North Main, Room 303, P.O. Box 219
Telephone: (435) 835-2121; Facsimile: (435) 835-2134**WILLIAM SHERRATT,**

Petitioner,

vs.

STATE OF UTAH,

Respondent.

**NOTICE AND OPPORTUNITY TO BE
HEARD**

Case No. 130600060

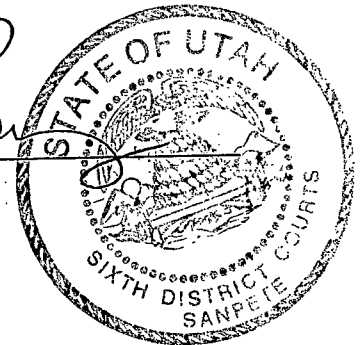
Assigned Judge: **Marvin D. Bagley**

The Court, on its own motion, raises the issue that Petitioner's petition may be barred by Utah Code Ann. § 78B-9-106(1) because his petition raises claims he raised in his various other prior petitions for post-conviction relief.

Petitioner is given 30 days to brief whether Petitioner's petition is barred.

Date June 27, 2014

[Signature]
Marvin D. Bagley
District Court Judge



CLERK OF DISTRICT COURT

2014 NOV -3 PM 5:07

CLERK R Brown**SIXTH DISTRICT COURT, STATE OF UTAH
SANPETE COUNTY**160 North Main, Room 303, P.O. Box 219
Telephone: (435) 835-2121; Facsimile: (435) 835-2134**WILLIAM SHERRATT,**

Petitioner,

vs.

STATE OF UTAH, et. al.,

Respondents.

**RULING ON MOTION FOR HEARING
AND MOTION FOR ORDER OF
CONTEMPT**

Case No. 130600060

Judge Marvin D. Bagley

BACKGROUND AND PROCEDURE

At the time of filing his Petition in this action Petitioner William Sherratt also filed an Affidavit and Application seeking to have his filing fee waived. In response to his motion this Court requested and obtained an accounting of Petitioner's inmate account. Thereafter, by order dated June 19, 2014, this Court ordered the Central Utah Correctional Facility (the Prison) to garnish Petitioner's inmate account each month for a portion of the filing fee; until paid in full. On or about August 20, 2014 Petitioner filed a motion seeking to hold the Prison in contempt of court for failing to garnish his inmate account in accordance with this Court's order. Despite having already appealed this Court's dismissal of this case, Petitioner on October 15, 2014 filed in this Court a Request to Submit; seeking a ruling and a hearing on his Motion to hold the Prison in contempt. This Court accordingly issues this ruling.

SHERRATT v. STATE OF UTAH, *et. al.*, Case No. 130600060

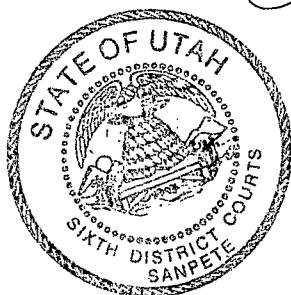
Ruling

Page 2

ANALYSIS

On a motion seeking contempt of a court's order, the moving party bears the burden of establishing grounds to support the motion. This Court's Order of Garnishment did not state a specific date for the garnishments to begin. To date, the Court has received fee payments garnished, in accordance with the Order, since September 2, 2014. As the moving party Petitioner bears the burden of proving a knowing violation of this Court's order. Petitioner has failed to carry his burden to demonstrate the Prison's delay in beginning fee payment garnishments was in fact in contempt of court; as opposed to administrative and procedural in nature.

In addition, Petitioner has failed to present evidence to establish that he was harmed in any way by the alleged delay. If the money was not timely garnished as alleged, the money is presumably still available in Petitioner's inmate account. If it means so much to Petitioner to have those payments made, Petitioner can simply pay those amounts himself and get the payments caught up. Of course, Petitioner could also have voluntarily made those payments himself, in advance. Because he chose not to do so, he cannot now claim to be prejudiced. For these reasons, Petitioner's motion and hearing request are DENIED.



Marvin D. Bagley, Sixth District Court Judge

signed on November 3, 2014

(1st Appeal held not a final order.)
Appendix B - # 4
Appellate Court
11-14-14
Docket
Revised Appendix B

2014 SEP -3 PM 3: 36

SIXTH DISTRICT COURT, STATE OF UTAH
SANPETE COUNTY

160 North Main, Room 303, P.O. Box 219
Telephone: (435) 835-2121; Facsimile: (435) 835-2134

H Brown

WILLIAM SHERRATT, Petitioner, vs. STATE OF UTAH, Respondent.	ORDER OF DISMISSAL Case No. 130600060 Judge Marvin D. Bagley
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Petitioner William Sherratt is an inmate at the Central Utah Correctional Facility in Gunnison, Sanpete County, Utah. On September 24, 2013 Petitioner filed his Petition in this court against the justices of the Utah Supreme Court, the judges of the Utah Court of Appeals, some district and justice court judges in the Fifth District, the Utah Attorney General, various assistant attorneys general, and the executive director of the Utah Judicial Conduct Commission.

The Petition alleges fraud, conspiracy and other wrongdoing by the various defendants in prior court cases to which petitioner was a party. Petitioner's Petition is 73 pages long with 36 exhibits totaling hundreds of pages. The Petition fails to comply with Rule 8(a) Utah Rules of Civil Procedure which requires pleadings to be "a short and plain: (1) statement of the claim showing that the party is entitled to relief; and (2) demand for judgment for specified relief." The Petition is also rambling, confusing and difficult to comprehend. The Petition appears to assert various claims which are governed by different statutes and rules.

The Court, on its own motion, raised the issue that the Petition may be barred by Utah Code Ann. §78B-9-106(1) because the Petition raises claims previously asserted in various other

petitions for post-conviction relief filed by Petitioner. On June 27, 2014 the Court served Petitioner with a Notice and Opportunity to be Heard giving Petitioner thirty days to brief whether or not the Petition is barred. Petitioner submitted a response brief and did not request a hearing. The matter is now ready for decision. The Court will address the different claims under the various provisions of applicable law.

I. UTAH POST-CONVICTION REMEDIES ACT

Utah's Post-Conviction Remedies Act, Utah Code Ann. §78B-9-101 et. seq. (the Act), allows convicted persons to seek post-conviction relief to vacate a sentence or conviction upon grounds "the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution." Utah Code Ann. §78B-9-104(1)(a). A convicted person, may not, however, obtain post-conviction relief under the Act on any grounds that:

- (a) may still be raised on direct appeal or by a post-trial motion;
- (b) was raised or addressed at trial or on appeal;
- (c) could have been but was not raised at trial or on appeal;
- (d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for post-conviction relief; or
- (e) is barred by the limitation period established in Section 78B-9-107.

Utah Code Ann. §78B-9-106(1). Proceedings under the Act are governed by Rule 65C of the Utah Rules of Civil Procedure. Under Rule 65C(c) a post-conviction relief petition must be brought "in the county in which the judgment of conviction was entered." The Act also requires that a petition be filed "within one year after the cause of action has accrued." Utah Code Ann. §78B-9-107. To the extent Petitioner requests reversal of the conviction or sentence in his

criminal case based on fraud or other wrongdoing under the United States or Utah Constitutions, his Petition is one for relief under the Act and is governed by Rule 65C, Utah Rules of Civil Procedure.

Petitioner claims in his Petition that several witnesses lied during his trial; and that another person confessed to the crimes for which he was convicted. Petitioner claims both the prosecuting and defense attorneys, had knowledge of the witnesses' false statements, and purposefully withheld exculpatory evidence. Petitioner claims this fraud tainted his conviction and sentence. He also claims the judges named in this action were co-conspirators to the fraud because they refused to overturn Petitioner's conviction.

By his own admission, Petitioner previously raised these claims in several post-conviction relief petitions and in prior appeals seeking to overturn his conviction. As such, Petitioner is barred from again raising those claims in this action. Utah Code Ann. §78B-9-106(1). In addition, the Sixth District Court does not have jurisdiction over Petitioner's Petition because this court does not sit in the county in which his conviction was entered. See Utah R. Civ. P. 65C(c). The convictions were entered in the Fifth District Court. Accordingly Petitioner's claims for post conviction relief under the Utah-Post Conviction Remedies Act and Rule 65C should be dismissed.

II. CLAIMS UNDER UTAH CODE §78B-6-601

The Utah Code authorizes suits against any judge “who wrongfully refuses to allow a writ of habeas corpus whenever proper application has been made...” Utah Code Ann. §78B-6-601 (formerly §78-35-1). However, when a petition is frivolous on its face pursuant to Utah Rule of Civil Procedure 65C(h), then no proper application has been made. *See Straley v. Halliday*, 2000 UT App 38, ¶13, fn. 7, 997 P.2d 338. “A claim is frivolous on its face when[,] [in relevant part,] the claim has no arguable basis in fact.” Utah R. Civ. P. 65C(h)(2)(B).

Petitioner asserts the various named judges wrongfully denied his various petitions for writs of habeas corpus. Petitioner alleges the existence of a lie that each judge knew, or should have known, was false. Petitioner asserts the Utah Court of Appeals, in appellate case number 20090413, fabricated the grounds on which the dismissal of Petitioner’s innocence petition was affirmed. The Court reasoned that Petitioner’s petition was improperly filed in his criminal case, number 991500552. The petition did in fact bear that case number. Petitioner maintains he submitted the petition with a blank space for the case number, as instructed by the lower court in the case; and that some court employee improperly assigned the petition to his criminal case.

Petitioner asserts in his Petition, just as he argued to the appellate court, that the lower court improperly assigned the wrong case number. Such alleged facts do not support a claim under §78B-6-601. There is no rational or arguable basis if fact to assert that the Court of Appeals fabricated the grounds that the petition was improperly filed in his criminal case; rather

than in a separate civil action, because it did bear the criminal case number. Petitioner's claims under §78B-6-601 should be dismissed as frivolous.

III. RULE 65B EXTRAORDINARY WRIT

Petitioner's Petition asserts the judge defendants all refused to exercise proper judicial authority and knowingly acted on a lie fabricated by the Utah Court of Appeals as explained in section II *supra*. Specifically, Petitioner claims the Utah Supreme Court, the Utah Court of Appeals, and judges of the Fifth District all had access to Petitioner's original innocence petition in case 991500552. He claims they all could see on the face of the document the petition was properly filed. He alleges such defendants nevertheless wrongly refused to grant him relief. Petitioner additionally claims the Judicial Conduct Commission refused to sanction or otherwise address the wrongful action of those judges; and that the Utah Attorney General defendants perpetuated the Court of Appeals' alleged lie to the Utah Supreme Court. Petitioner seeks an extraordinary writ to remedy his alleged wrongs.

Rule 65B(a) and (d) Utah Rules of Civil Procedure allows for issuance of an extraordinary writ when under the law and Rules of Civil Procedure "no other plain, speedy and adequate remedy is available...." Such extraordinary relief may be sought when the claim involves "wrongful use of judicial authority [or] failure to exercise such authority...."

Under Rule 65B(d)(2):

Appropriate relief may be granted: (A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; (B) where an inferior court, administrative agency,

corporation or person has failed to perform an act required by law as a duty of office, trust or station; (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled....

If no procedure is outlined in 65B, proceedings on petitions for extraordinary relief are governed by general procedures set forth under the Utah Rules of Civil Procedure; except for instances governed by Rule 65C. See Utah R. Civ. P. 65B(a). Therefore, summary dismissal based on frivolousness applies. Where the challenged proceedings are judicial in nature, the courts' review shall not extend further than to determine whether the Rule 65B(d)(4) respondent has regularly pursued his or her authority.

Based on the same reasons discussed in section II, *supra*, pertaining to frivolousness, Petitioner's claims for extraordinary relief against the judge defendants, the Judicial Conduct Commission, and the Utah Attorney General should be dismissed as frivolous. There is no rational or arguable basis in fact to assert that the Court of Appeals fabricated a lie that Petitioner's innocence petition was improperly filed in his criminal case; rather than in a separate civil action. That petition in fact did bear the criminal case number. Furthermore, there is no factual basis to assert that any of the respondents failed to act in their regular pursuit of authority in reaching the decisions they made; which is all the law requires.

IV. PROCEDURAL BAR UNDER 78B-9-106

Under Utah Code Ann. §78B-9-106 of the Utah Post-Conviction Remedies Act a court may raise on its own motion a procedural bar or time bar to petitions filed under the Act;

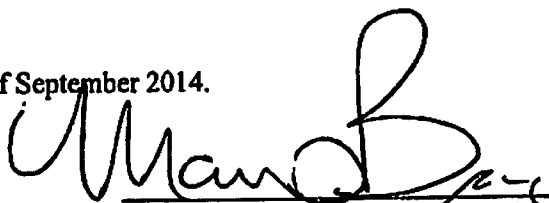
provided the court gives the petitioner notice and opportunity to be heard. This Court gave Petitioner such notice and opportunity by serving defendant with the Notice and Opportunity to be Heard on June 27, 2014. Petitioner filed his responsive brief on July 29, 2014.

The contents of Petitioner's brief essentially acknowledge the relief Petitioner seeks in his Petition is both procedurally and time barred. Petitioner acknowledges that he filed petitions for *habeas corpus* in 2002, 2003, 2005, 2008 and 2011. Petitioner's brief failed to establish why the grounds asserted in his current Petition could not have been asserted in any of those prior filings. Petitioner's brief also acknowledges the court rulings adverse to him were issued more than one year prior to the filing of his Petition in this case; as required by Utah Code Ann. §78B-9-107. Accordingly, Petitioner's Petition is both procedurally and time barred. The Petition should also be dismissed under Rule 65B(b)(5) Utah Rules of Civil Procedure because petitioner's "restraint has already been adjudicated in a prior proceeding" and because his claim is "frivolous on its face...."

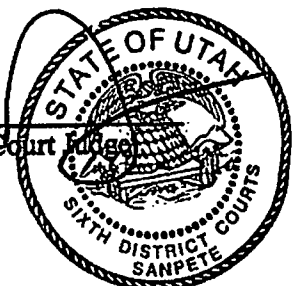
CONCLUSION AND ORDER

For the reasons discussed herein, Petitioner's Petition, and this case is DISMISSED with prejudice.

DATED this 3rd day of September 2014.



Marvin D. Bagley, Sixth District Court Judge



Appendix B- # 5

answered to Cr-9 App.

12-15-14

received 12-13-14

2014 DEC -9 PM 3:59

H. Brown

**SIXTH DISTRICT COURT, STATE OF UTAH
SANPETE COUNTY**

160 North Main, Room 303, P.O. Box 219
Telephone: (435) 835-2121; Facsimile: (435) 835-2134

WILLIAM SHERRATT,

Petitioner,

vs.

STATE OF UTAH,

Respondent.

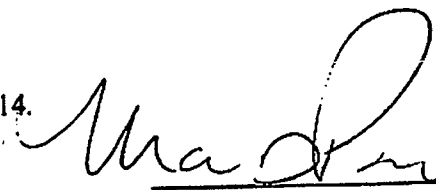
NOTICE

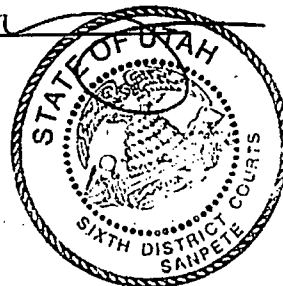
Case No. 130600060

Judge Marvin D. Bagley

On October 15, 2014 Petitioner filed a Request to Submit Motion for Hearing on Jurisdiction for Appeal. Petitioner questions whether the Court's September 3, 2014 Dismissal is a final ruling and seeks a hearing on the issue. This case was concluded pursuant to the Order of Dismissal issued on September 3, 2014; and no additional ruling, hearing, or action is necessary. Indeed Petitioner, himself, treated the Order as a final appealable order when he appealed from the Order.

DATED this 9th day of December 2014.


Marvin D. Bagley
District Court Judge



SIXTH DISTRICT COURT

2015 MAR 11 AM 8:40

CLERK ML

SIXTH DISTRICT COURT, STATE OF UTAH
SANPETE COUNTY
160 North Main, Room 303, P.O. Box 219
Telephone: (435) 835-2121; Facsimile: (435) 835-2134

WILLIAM SHERRATT,

Petitioner,

vs.

STATE OF UTAH,

Respondent.

AMENDED ORDER OF DISMISSAL

Case No. 130600060

Judge Marvin D. Bagley

Petitioner William Sherratt is an inmate at the Central Utah Correctional Facility in Gunnison, Sanpete County, Utah. On September 24, 2013 Petitioner filed his Petition in this court against the justices of the Utah Supreme Court, the judges of the Utah Court of Appeals, some district and justice court judges in the Fifth District, the Utah Attorney General, various assistant attorneys general, and the executive director of the Utah Judicial Conduct Commission.

The Petition alleges fraud, conspiracy and other wrongdoing by the various defendants in prior cases that petitioner was a party. Petitioner's Petition is 73 pages long with 36 exhibits totaling hundreds of pages. The Petition fails to comply with Rule 8(a) of the Utah Rules of Civil Procedure which requires pleadings to be "a short and plain: (1) statement of the claim showing that the party is entitled to relief; and (2) demand for judgment for specified relief." The Petition is also rambling, confusing and difficult to comprehend. The Petition appears to assert various claims which are governed by different statutes and rules.

This Court, on its own motion, raised the issue that Petitioner's petition may be barred by Utah Code Ann. §78B-9-106(1) because the Petition asserts claims Petitioner previously raised in various other petitions for post-conviction relief. On June 27, 2014 this Court served Petitioner with a Notice and Opportunity to be Heard giving Petitioner thirty days to brief whether or not the Petition is barred. Petitioner submitted a response brief and did not request a hearing. The matter is now ready for a decision. The Court will address the different claims under the various provisions of applicable law.

I. UTAH POST-CONVICTION REMEDIES ACT

Utah's Post-Conviction Remedies Act, Utah Code Ann. §78B-9-101 et. seq. (the Act), allows convicted persons to seek post-conviction relief to vacate a sentence or conviction upon grounds "the conviction was obtained or the sentence was imposed in violation of the United States Constitution or Utah Constitution." Utah Code Ann. §78B-9-104(1)(a). A convicted person, may not, however, obtain post-conviction relief under the Act on any grounds that:

- (a) may still be raised on direct appeal or by a post-trial motion;
- (b) was raised or addressed at trial or on appeal;
- (c) could have been but was not raised at trial or on appeal;
- (d) was raised or addressed in any previous request for post-conviction relief or could have been, but was not, raised in a previous request for post-conviction relief; or
- (e) is barred by the limitation period established in Section 78B-9-107.

Utah Code Ann. §78B-9-106(1). Proceedings under the Act are governed by Rule 65C of the Utah Rules of Civil Procedure. Under Rule 65C(c) a post-conviction relief petition must be brought "in the county in which the judgment of conviction was entered." The Act also requires that a petition be filed "within one year after the cause of action has accrued." Utah Code Ann. §78B-9-107. To the extent Petitioner requests reversal of the conviction or sentence in his

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criminal case based on fraud or other wrongdoing under the United States or Utah Constitutions, his Petition is one for relief under the Act and is governed by rule 65C, Utah Rules of Civil Procedure.

The Petition asserts that several witnesses lied during Petitioner's trial; and that another person confessed to the crimes for which he was convicted. Petitioner asserts that both the prosecuting and defense attorneys had knowledge of the witnesses' false statements; and purposefully withheld exculpatory evidence. Petitioner claims this fraud tainted his conviction and sentence. He also claims the named judges were co-conspirators to the fraud because they refused to overturn Petitioner's conviction.

By his own admission, Petitioner previously raised the claims he now asserts, in several other post-conviction relief petitions; and in prior appeals seeking to overturn his conviction. As such, Petitioner is barred from again raising those claims in this action. Utah Code Ann. §78B-9-106(1). In addition, the Sixth District Court does not have jurisdiction to hear Petitioner's Petition because this court does not sit in the county in which the conviction was entered. See Utah R. Civ. P. 65C(c). The convictions were entered in the Fifth District Court. Accordingly, Petitioner's claims for post-conviction relief under the Utah-Post Conviction Remedies Act and Rule 65C should be dismissed.

II. CLAIMS UNDER UTAH CODE §78B-6-601

The Utah Code authorizes suits against any judge "who wrongfully refuses to allow a writ of habeas corpus whenever proper application has been made..." Utah Code Ann. §78B-6-601 (formerly UT ST §78-35-1). However, when a petition is frivolous on its face pursuant to



Utah Rule of Civil Procedure 65C(h), then no proper application has been made. *See Straley v. Halliday*, 2000 UT App 38, ¶13, fn. 7, 997 P.2d 338. “A claim is frivolous on its face when[,] [in relevant part,] the claim has no arguable basis in fact.” Utah R. Civ. P. 65C(h)(2)(B).

Petitioner asserts the various named judges wrongfully denied his previous petitions for writs of habeas corpus. Petitioner alleges the existence of a lie that each judge knew, or should have known, was a lie. Petitioner asserts the Utah Court of Appeals, in appellate case number 20090413, fabricated the grounds it affirmed the dismissal of Petitioner’s innocence petition. The Court reasoned that Petitioner’s petition was improperly filed in his criminal case, number 991500552. The petition did in fact bear that case number. Petitioner maintains he submitted the petition with a blank space for the case number, as instructed by the lower court in the case; and that some court employee improperly assigned the petition to his criminal case.

Petitioner asserts in his Petition, just as he previously argued to the appellate court, that the lower court improperly assigned the wrong case number. Such alleged facts do not support a claim under §78B-6-601. There is no stated rational or arguable basis in fact to assert that the Court of Appeals fabricated the grounds that the petition was improperly filed in his criminal case. That petition did bear the criminal case number. Petitioner’s claims under §78B-6-601 should be dismissed as frivolous.

III. RULE 65B EXTRAORDINARY WRIT

Petitioner’s Petition asserts the judge defendants all refused to exercise proper judicial authority and knowingly acted on a lie fabricated by the Utah Court of Appeals as explained in Section II *supra*. Specifically, Petitioner claims the Utah Supreme Court, the Utah Court of

Appeals, and judges of the Fifth District all had access to Petitioner's original innocence petition in case 991500552. He claims they all could see from the face of the document the petition was properly filed. He alleges such defendants nevertheless wrongly refused to grant him relief. Petitioner additionally claims the Judicial Conduct Commission refused to impose sanctions, or address, the wrongful action of those judges; and that the Utah Attorney General defendants perpetuated the Court of Appeal's alleged lie to the Utah Supreme Court. Petitioner seeks an extraordinary writ to remedy his alleged wrongs.

Rule 65B(a) and (d) Utah Rules of Civil Procedure allows for issuance of an extraordinary writ when under the law and Rules of Civil Procedure "no other plain, speedy and adequate remedy is available..." Such extraordinary relief may be sought when the claim involves "wrongful use of judicial authority [or] failure to exercise such authority..."

Under Rule 65B(d)(2):

Appropriate relief may be granted: (A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; (B) where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled....

If no procedure is outlined in Rule 65B, proceedings on petitions for extraordinary relief are governed by the general procedures set forth under the Utah Rules of Civil Procedure; except for instances governed by Rule 65C. Utah R. Civ. P. 65B(a). Therefore, summary dismissal based on the frivolousness of the petition is applicable. Where the challenged proceedings are judicial in

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nature, the courts' review does not extend further than to determine whether the Rule 65B(d)(4) respondent has regularly pursued his or her authority.

For the same reasons stated in section II, *supra*, pertaining to frivolousness, Petitioner's claims for extraordinary relief against the judge defendants, the Judicial Conduct Commission, and the Utah Attorney General should also be dismissed as frivolous. There is no rational or arguable basis in fact to assert that the Utah Court of Appeals fabricated a lie; *i.e.* that Petitioner's innocence petition was improperly filed in his criminal case instead of in a separate civil action. The mere assertion of the allegation by Petitioner does not make such assertion a fact. The court found that the petition, as a matter of fact, did bear the criminal case number. Furthermore, there is no factual basis to assert that any of the respondents failed to act in their regular pursuit of authority in reaching the decisions they made. That is all the law requires.

IV. PROCEDURAL BAR UNDER 78B-9-106

Under Utah Code Ann. §78B-9-106 of the Utah Post-Conviction Remedies Act a court may raise on its own motion a procedural bar or time bar to petitions filed under the Act; provided the court gives the petitioner notice and opportunity to be heard. This Court specifically gave Petitioner notice and opportunity to be heard by serving defendant with the document titled Notice and Opportunity to be Heard on June 27, 2014. Petitioner filed his responsive brief on July 29, 2014. This Court read and considered Petitioner's brief.

The contents of Petitioner's responsive brief essentially acknowledge the relief Petitioner seeks in his Petition is both procedurally and time barred. Petitioner acknowledged he filed petitions for *habeas corpus* in 2002, 2003, 2005, 2008, and 2011. Petitioner's brief failed to

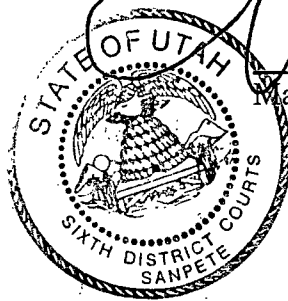
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establish why the grounds asserted in his instant Petition could not have been asserted in any of those prior filings. Petitioner's brief also acknowledges the court rulings adverse to him were issued more than one year prior to the filing of his Petition in this case; as required by Utah Code Ann. §78B-9-107. Accordingly, Petitioner's Petition is both procedurally and time barred. The petition should also be dismissed under Rule 65B(b)(5) Utah Rules of Civil Procedure because petitioner's "restraint has already been adjudicated in a prior proceeding" and because his claim is "frivolous on its face..."

CONCLUSION AND ORDER

For the reasons discussed herein, Petitioner's complaint is DISMISSED with prejudice. This order is final. No additional ruling, hearing, order, or action is necessary.

DATED this 10th day of March 2015.



Marvin D. Bagley
Marvin D. Bagley, Sixth District Court Judge

FILED
UTAH APPELLATE COURTS

IN THE UTAH COURT OF APPEALS

JAN 18 2017

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WILLIAM SHERRATT,
Appellant,
v.
STATE OF UTAH, ET AL
Appellees.

ORDER OF DISMISSAL

Case No. 20150313-CA

Before Judges Roth, Mortensen, and Pohlman.

William Sherratt appeals the district court's March 11, 2015 Amended Order of Dismissal of Sherratt's hybrid filing against numerous judges, the Utah Attorney General, various assistant attorneys general, and the executive director of the Utah Judicial Conduct Commission.

Sherratt filed a lengthy complaint against numerous members of judiciary alleging, among other things, fraud. The district court described the complaint as "rambling, confusing, and difficult to comprehend." Further, it appeared to the district court "to assert various claims which are governed by different statutes and rules." These claims included: (1) a claim seeking penalties against the judicial respondents pursuant to Utah Code section 78B-6-601; (2) claims requesting redress under the Utah Post-Conviction Remedies Act; and (3) claims seeking extraordinary relief.

The district court lacked jurisdiction over Sherratt's claims under Utah Code section 78B-6-601, which states that "[a]ny judge . . . who wrongfully and willfully refuses to allow a writ of habeas corpus whenever proper application has been made shall forfeit and pay a sum not exceeding \$5,000 to the aggrieved party." Utah Code Ann. § 78B-6-601 (LexisNexis 2012). The Utah Supreme Court has concluded that actions under this statute are barred unless the plaintiff demonstrates compliance with the notice of claims provisions in the Utah Governmental Immunity Act. *See Thomas v. Lewis*, 2001 UT 49, ¶ 14. 26 P.3d 217. Sherratt's complaint failed to demonstrate such

compliance. Sherratt's complaint does state on page 57 that "[n]otices of claim under Utah's Governmental Immunity Act have been mailed to all Defendants prior to this suit's filing." However, Sherratt did not state who specifically was served, the content of the notice of intent, or when the notices of intent were served. Thus, the face of the complaint was insufficient to demonstrate compliance with the act. In his reply brief Sherratt asserts that he mailed notices of claim to all but one defendant on September 7, 2013, then mailed his complaint from the prison to the district court on September 22, 2013. However, Utah Code section 63G-7-403 states that a claimant must allow the governmental entity 60 days to review the notice of intent before it either accepts or denies the claim. *Id.* 63G-7-403(1) (LexisNexis 2016). If the claim is denied the claimant then has one year from the denial to file a complaint. *Id.* 63G-7-403(2)(b). Thus, even if Sherratt's alleged notices of claim otherwise complied with the statute, by Sherratt's own admission, the district court lacked jurisdiction because the complaint was filed prematurely.¹ See *Hall v. Utah State Dept. Of Corrections*, 2001 UT 34 ¶ 22, 24 P.3d 958 ("Only after the state has had the opportunity to consider the claim for ninety days is suit against the government allowed."); *Heideman v. Washington City*, 2007 UT App 11 ¶ 12, 155 P.3d 900 ("Failure to strictly comply with [the Act's notice of intent] requirements results in a lack of jurisdiction.")

In regard to the other issues raised by Sherratt, they must be dismissed based on his failure to adequately brief the issues. Sherratt has provided an extensive brief containing significant legal research. However, Sherratt fails to address the specific holdings of the district court and demonstrate how those holdings were in error. "Since an appeal is a resort to a superior court to review the decision of a lower court, Utah appellate rules require the appellant to address reasons why the district court's dismissal of his petition should be overturned." *Allen v. Friel*, 2008 UT 56, ¶ 14, 194 P.3d 903. Accordingly, this failure to specifically address the district court's holdings amounts to failure to adequately brief the claims of error. See *id.*, 2008 UT 56, ¶ 18. Here, the district court dismissed certain claims that it determined were brought under the Utah Post-Convictions Remedies Act. Sherratt fails to specifically address the district court's reasoning in dismissing these claims. Likewise, Sherratt fails to address the district court's holding dismissing his claims that the court deemed as seeking extraordinary relief. Further, while Sherratt alleges in his issue section that the district

¹ The district court resolved Sherratt's claim under the statute on the merits, concluding that there was no factual basis to support the claim. The district court never considered the argument that the claim was barred under Utah's Governmental Immunity Act. However, this court may affirm on any ground apparent in the record. See *First Equity Fed., Inc. v. Phillips Dev., LC*, 2002 UT 56, ¶ 11, 52 P.3d 1137.

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court abused its discretion in requiring Sherratt to pay a filing fee, he presents no argument in his brief to support the claim. Accordingly, because Sherratt's brief does not address the holdings in the district court's order, and he essentially asks this court to examine his claims de novo, we dismiss his appeal for failure to follow the appellate rules.

IT IS HEREBY ORDERED that the appeal is dismissed.²

Dated this 18th day of January, 2017.

FOR THE COURT:

A handwritten signature in black ink, appearing to read "S.L. Roth", written over a horizontal line.

Stephen L. Roth, Judge

² Because our analysis resulted in the dismissal of this action, it is unnecessary to resolve Sherratt's pending motions to supplement the record and to take judicial notice of certain proceedings. Accordingly, all pending motions currently filed by Sherratt are denied.

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Case No. 20150313-CA

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Stephen L. Roth, Judge

The Order of the Court is stated below

Dated: October 27, 2017 /s/ John A. Pearce

02:01:33 PM

Justice



IN THE SUPREME COURT OF THE STATE OF UTAH

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William Sherratt,
Petitioner,

v.

State of Utah, et al.,
Respondent.

ORDER

Supreme Court No. 20170255-SC

Court of Appeals No. 20150313-CA

Trial Court No. 130600060

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This matter is before the Court upon a Petition for Writ of Certiorari, filed on March 4, 2017.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End of Order - Signature at the Top of the First Page

FRAND

**Additional material
from this filing is
available in the
Clerk's Office.**