

1-27-2011

Burghart v. Carlin Clerk's Record Dckt. 38137

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IN THE SUPREME COURT OF THE STATE OF IDAHO

RANDOLF L. BURGHART,)	
)	
Petitioner-Appellant,)	SUPREME COURT NO. 38137
)	
v.)	
)	
TEREMA CARLIN, Warden PROBATION)	
AND PAROLE,)	
)	
Respondents-Respondents)	
On Appeal.)	

CLERK'S RECORD

Appeal from the District Court of the Second Judicial District
of the State of Idaho, in and for the County of Clearwater

BEFORE THE HONORABLE JOHN BRADBURY, DISTRICT JUDGE

Counsel for Respondents

Mr. Lawrence G. Wasden
Attorney General
Post Office Box 83720
Boise, Idaho 83720-0188

Counsel for Appellant

Mr. Randolph Burghart #55288
ICI-O
381 West Hospital Dr
Orofino, ID 83544

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

RANDOLF L. BURGHART,)	
)	
Petitioner-Appellant,)	SUPREME COURT NO. 38137
)	
v.)	TABLE OF CONTENTS
)	
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)	
Respondents-Respondents On Appeal.)	

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

RANDOLF L. BURGHART,)	
)	
Petitioner-Appellant,)	SUPREME COURT NO. 38137
)	
v.)	INDEX
)	
TEREMA CARLIN, Warden, PROBATION)	
AND PAROLE,)	
)	
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On Appeal.)	

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Case Number Result Page

Clearwater

1 Cases Found.

In The Matter Of The Application For A Writ Of Habeas Corpus On Behalf Of Randolph L Burghart

Case: **CV-2009-0000362 District** Filed: **09/14/2009** Subtype: **Habeas Corpus** Judge: **John H. Bradbury** Status: **Inactive 09/09/2010**

Subjects: **Burghart, Randolph L**

Other Parties: **Carlin, Trema Idaho Commission of Pardons and Parole**

Disposition: Date	Judgment Type	Disposition Date	Disposition Type	Parties	In Favor Of
06/01/2010	Dismissal With Prej	06/01/2010	Dismissed	Burghart, Randolph L (Subject), Carlin, Trema (Other Party), Idaho Commission of Pardons and Parole (Other Party)	Dismissed

Comment: MEMORANDUM DECISION AND ORDER

Register of actions:

- 09/14/2009 New Case Filed - Habeas Corpus
- 09/14/2009 Filing: A10 - Habeas Corpus by prisoner Paid by: Burghart, Randolph L (subject) Receipt number: 0007958 Dated: 10/1/2009 Amount: \$.00 (Cash) For: Burghart, Randolph L (subject)
- 09/14/2009 Motion To Proceed In Forma Pauperis
- 09/14/2009 Motion And Affidavit In Support For Appointment Of Counsel
- 11/03/2009 Hearing Scheduled (Motion For Fee Waiver 11/30/2009 02:00 PM)
- 11/03/2009 Notice Of Hearing
- 11/30/2009 Hearing result for Motion for Fee Waiver held on 11/30/2009 11:00 AM: Hearing Held 2084763655 ext . 250
- 11/30/2009 Court Minutes
- 12/01/2009 Order Re: Partial Payment of Court Fees (Prisoner)
- 12/23/2009 Petition for writ of habeas corpus
- 12/29/2009 Hearing Scheduled (Telephonic Scheduling Conference 03/22/2010 11:00 AM)
- 12/30/2009 Order Granting Leave to Prceed in Foma Pauperis
- 12/30/2009 Order Directing Response and Notice of Hearing
- 02/17/2010 Response
- 02/17/2010 Motion To Dismiss
- 02/17/2010 Other party: Carlin, Trema Appearance Krista L Howard
- 02/17/2010 Other party: Idaho Commission of Pardons and Parole Appearance Krista L Howard
- 03/01/2010 Reply to Respondents' Answer and Motion to Dismiss Habeas Corpus
- 03/22/2010 Hearing result for Telephonic Scheduling Conference held on 03/22/2010 11:00 AM: Hearing Held
- 03/24/2010 Hearing Scheduled (Motion to Dismiss 04/02/2010 01:00 PM)
- 03/24/2010 Notice Of Hearing
- 04/02/2010 Hearing result for Motion to Dismiss held on 04/02/2010 01:00 PM: District Court Hearing Held Court Reporter: Keith Evans Number of Transcript Pages for hearing estimated: LESS THAN 100
- 04/02/2010 Court Minutes

REGISTER OF ACTIONS

- 04/07/2010 Supplemental Attachment
- 04/12/2010 Response To Motion To Dismiss
MEMORANDUM DECISION AND ORDER Civil Disposition
entered for: Carlin, Trema, Other Party; Idaho Commission of
Pardons and Parole, Other Party; Burghart, Randolph L, Subject.
Filing date: 6/1/2010
- 06/01/2010
- 06/11/2010 Motion For Reconsideration
- 06/11/2010 Motion to Leave to Amend Petition
- 07/16/2010 Objection to Motion to Reconsider and Motion to File Amended
Petition
- 08/16/2010 Memorandum Decision And Order
- 09/09/2010 Motion & affidavit for permission to proceed on partial payment of
court fees
- 09/09/2010 Appealed To The Supreme Court
- 09/09/2010 NOTICE OF APPEAL
- 09/09/2010 Appealed To The Supreme Court
- 10/18/2010 Order RE: Partial Payment of Court fees
- 10/25/2010 Request For Status Or Conference

Connection: Secure

2009 SEP 14 A 9:13

CASE NO. CW2009-362

BY JS DEPUTY

Randolf L Burghart
Full Name of Party Filing This Document
Idaho Corrections - Orofino
Mailing Address (Street or Post Office Box)
Hospital Drive N #23
City, State and Zip Code
Orofino Idaho 83544
Telephone Number

IN THE DISTRICT COURT OF THE Second JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Clearwater

Randolf L Burghart
Plaintiff,
vs.
Terema Carlin Warden
Commissioner Pardons and Parole
Defendant.

Case No.: CW2009-362
MOTION AND AFFIDAVIT FOR
PERMISSION TO PROCEED ON PARTIAL
PAYMENT OF COURT FEES (PRISONER)

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

STATE OF IDAHO)
County of Clearwater) ss.

Plaintiff Defendant asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) Habeas Corpus. I believe I'm entitled to get what I am asking for.

2. I have not previously brought this claim against the same party or a claim based on the same operative facts in any state or federal court. I have filed this claim against the same party or a claim based on the same operative facts in a state or federal court.

3. I am unable to pay all the court costs now. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less.

4. I understand I will be required to pay an initial partial filing fee in the amount of 20% of the greater of: (a) the average monthly deposits to my inmate account or (b) the average monthly balance in my inmate account for the last six (6) months. I also understand that I must pay the remainder of the filing fee by making monthly payments of 20% of the preceding month's income in my inmate account until the fee is paid in full.

5. I verify that the statements made in this affidavit are true. I understand that a false statement in this affidavit is perjury and I could be sent to prison for an additional fourteen (14) years.

Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.

IDENTIFICATION AND RESIDENCE:

Name: Randolf Burghart Other name(s) I have used: _____

Address: _____

How long at that address? 6 months Phone: _____

Date and place of birth: 8-26-1961 Ashland Oregon

DEPENDENTS:

I am single married. If married, you must provide the following information:

Name of spouse: _____

My other dependents (including minor children) are: _____

INCOME:

Amount of my income: \$ _____ per [] week [] month

Other than my inmate account I have outside money from: _____

My spouse's income: \$ _____ per [] week [] month.

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Your Address	City	State	Legal Description	Value	Equity
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

List all other property owned by you and state its value.

Description (provide description for each item)	Value
Cash	_____
Notes and Receivables	_____
Vehicles:	_____
Bank/Credit Union/Savings/Checking Accounts	_____
Stocks/Bonds/Investments/Certificates of Deposit	_____
Trust Funds	_____
Retirement Accounts/IRAs/401(k)s	_____
Cash Value Insurance	_____
Motorcycles/Boats/RVs/Snowmobiles:	_____
Furniture/Appliances	_____
Jewelry/Antiques/Collectibles	_____

Description (provide description for each item)	Value
TVs/Stereos/Computers/Electronics	—
Tools/Equipment	—
Sporting Goods/Guns	—
Horses/Livestock/Tack	—
Other (describe)	—

EXPENSES: List all of your monthly expenses.

Expense	Average Monthly Payment
Rent/House Payment	—
Vehicle Payment(s)	—
Credit Cards: (list each account number)	—
	—
Loans: (name of lender and reason for loan)	—
	—
Electricity/Natural Gas	—
Water/Sewer/Trash	—
Phone	—
Groceries	—
Clothing	—
Auto Fuel	—
Auto Maintenance	—
Cosmetics/Haircuts/Salons	—
Entertainment/Books/Magazines	—
Home Insurance	—

6

Expense	Average Monthly Payment
Auto Insurance	-
Life Insurance	-
Medical Insurance	-
Medical Expense	-
Other	

MISCELLANEOUS:

How much can you borrow? \$ - From whom? -

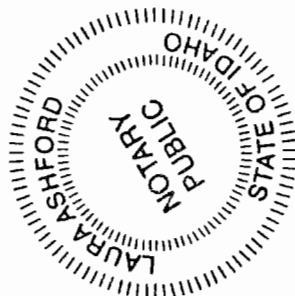
When did you file your last income tax return? 1990's Amount of refund: \$

PERSONAL REFERENCES: (These persons must be able to verify information provided)

Name	Address	Phone	Years Known

Rand Burghart
 Signature
Randolf L Burghart
 Typed or Printed Name

2009 SUBSCRIBED AND SWORN TO before me this 10 day of September



Laura Ashford
 Notary Public for Idaho
 Residing at Lewisdon
 My Commission expires July 26 2011

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 09/10/2009 =

Doc No: 55288 Name: BURGHART, RANDOLF L
 Account: CHK Status: ACTIVE

ICIO/A2 PRES FACIL
 TIER-1 CELL-19

Transaction Dates: 09/10/2008-09/10/2009

Beginning Balance	Total Charges	Total Payments	Current Balance
50.78	737.12	750.07	63.73

===== TRANSACTIONS =====

Date	Batch	Description	Ref Doc	Amount	Balance
09/23/2008	IC0432473-195	099-COMM SPL		44.22DB	6.56
10/07/2008	IC0434184-173	099-COMM SPL		2.93DB	3.63
10/10/2008	HQ0434829-026	011-RCPT MO/CC	SEPT PAY	50.00	53.63
10/14/2008	IC0434912-241	099-COMM SPL		49.21DB	4.42
10/22/2008	HQ0436035-001	011-RCPT MO/CC	0582	60.00	64.42
10/28/2008	IC0436490-193	099-COMM SPL		46.38DB	18.04
10/29/2008	HQ0436737-007	022-PHONE TIME	42302	13.60DB	4.44
11/04/2008	IC0437297-159	099-COMM SPL		4.09DB	0.35
11/05/2008	HQ0437569-011	011-RCPT MO/CC	OCT PAY	50.00	50.35
11/12/2008	IC0438256-231	099-COMM SPL		40.83DB	9.52
11/18/2008	IC0438932-207	099-COMM SPL		6.71DB	2.81
12/08/2008	HQ0441213-006	011-RCPT MO/CC	NOV PAY	50.00	52.81
12/15/2008	IC0442069-006	078-MET MAIL	48471	7.45DB	45.36
12/16/2008	IC0442123-229	099-COMM SPL		35.35DB	10.01
12/23/2008	IC0442773-197	099-COMM SPL		8.44DB	1.57
12/23/2008	HQ0442907-007	011-RCPT MO/CC	493298	50.00	51.57
12/31/2008	IC0443771-175	099-COMM SPL		50.33DB	1.24
12/31/2008	IC0443774-013	100-CR INM CMM		2.49	3.73
01/06/2009	NI0444365-003	100-CR INM CMM		50.33	54.06
01/06/2009	HQ0444564-012	011-RCPT MO/CC	DEC PAY	50.00	104.06
01/12/2009	HQ0445158-003	011-RCPT MO/CC		80.00	184.06
01/12/2009	NI0445193-019	099-COMM SPL		28.09DB	155.97
01/16/2009	NI0445767-007	071-MED CO-PAY	260095	5.00DB	150.97
01/19/2009	NI0445845-022	099-COMM SPL		24.49DB	126.48
01/26/2009	NI0446562-022	099-COMM SPL		43.96DB	82.52
01/27/2009	NI0446683-001	072-METER MAIL	40267/DUE	1.51DB	81.01
02/02/2009	NI0447248-016	099-COMM SPL		20.75DB	60.26
02/09/2009	HQ0448184-016	011-RCPT MO/CC	JAN PAY	25.00	85.26
02/16/2009	NI0448850-024	099-COMM SPL		15.16DB	70.10
02/16/2009	NI0448850-025	099-COMM SPL		12.96DB	57.14
02/18/2009	IC0449210-010	078-MET MAIL	50996	26.35DB	30.79
02/23/2009	HQ0449556-011	011-RCPT MO/CC		100.00	130.79
02/23/2009	NI0449579-022	099-COMM SPL		29.61DB	101.18
03/02/2009	NI0450271-029	099-COMM SPL		35.82DB	65.36
03/02/2009	NI0450271-030	099-COMM SPL		17.00DB	48.36
03/09/2009	NI0451232-028	099-COMM SPL		22.95DB	25.41
03/23/2009	NI0452677-034	099-COMM SPL		16.91DB	8.50
03/30/2009	NI0453416-029	099-COMM SPL		7.37DB	1.13
04/07/2009	HQ0454436-005	011-RCPT MO/CC		60.00	61.13

STATE OF ILLINOIS
 Illinois Department of Corrections
 I hereby certify that the foregoing is a full, true, and correct copy of all information as the same now remains on file and is correct in my office.
 WITNESS my hand hereunto affixed this 10th day of September A.D. 2009
[Signature]

MOTION AND AFFIDAVIT FOR PERMISSION TO
 PROCEED ON PARTIAL PAYMENT OF COURT FEES

= IDOC TRUST ===== OFFENDER BANK BALANCES ===== 09/10/2009 =

Doc No: 55288 Name: BURGHART, RANDOLF L
Account: CHK Status: ACTIVE

ICIO/A2 PRES FACIL
TIER-1 CELL-19

Transaction Dates: 09/10/2008-09/10/2009

Beginning	Total	Total	Current
Balance	Charges	Payments	Balance
50.78	737.12	750.07	63.73

===== TRANSACTIONS =====

Date	Batch	Description	Ref Doc	Amount	Balance
04/13/2009	NI0455049-001	072-METER MAIL	12217	2.02DB	59.11
04/13/2009	NI0455074-029	099-COMM SPL		20.19DB	38.92
04/15/2009	NI0455384-001	070-PHOTO COPY	12225	0.20DB	38.72
04/15/2009	HQ0455410-001	061-CK INMATE	12207	14.35DB	24.37
04/20/2009	NI0455800-006	072-METER MAIL	12260	1.51DB	22.86
04/27/2009	NI0456520-027	099-COMM SPL		12.30DB	10.56
04/30/2009	NI0456963-001	070-PHOTO COPY	12277	0.20DB	10.36
05/05/2009	NI0457515-002	215-MAINTENANC	MAINTENANC	3.35	13.71
05/11/2009	NI0458194-034	099-COMM SPL		6.47DB	7.24
05/18/2009	NI0458897-034	099-COMM SPL		2.49DB	4.75
05/26/2009	NI0459624-028	099-COMM SPL		3.71DB	1.04
06/03/2009	NI0460575-001	070-PHOTO COPY	10212	0.20DB	0.84
06/11/2009	HQ0461706-005	011-RCPT MO/CC		50.00	50.84
06/12/2009	NI0461890-001	215-MAINTENANC	LABOR DETA	6.05	56.89
06/15/2009	NI0461991-033	099-COMM SPL		6.19DB	50.70
06/29/2009	NI0463276-028	099-COMM SPL		6.58DB	44.12
07/01/2009	NI0463618-007	071-MED CO-PAY	245093	4.00DB	40.12
07/01/2009	NI0463673-001	070-PHOTO COPY	10288	0.10DB	40.02
07/07/2009	NI0464382-002	215-MAINTENANC	ILD CREW	2.85	42.87
07/14/2009	NI0465194-032	099-COMM SPL		5.57DB	37.30
07/27/2009	NI0466383-039	099-COMM SPL		5.30DB	32.00
08/05/2009	NI0467593-013	071-MED CO-PAY	293055	2.00DB	30.00
08/17/2009	IO0468862-116	099-COMM SPL		12.36DB	17.64
08/19/2009	IO0469165-009	072-METER MAIL	27369	2.53DB	15.11
08/24/2009	IO0469476-096	099-COMM SPL		5.30DB	9.81
09/01/2009	IO0470313-008	072-METER MAIL	26132	0.44DB	9.37
09/04/2009	HQ0470913-009	011-RCPT MO/CC		60.00	69.37
09/08/2009	IO0471066-131	099-COMM SPL		5.64DB	63.73

STATE OF IDAHO

State Department of Correction

I hereby certify that the foregoing is a full, true, and correct copy of an instrument as the same now remains on file and on record in my office.

WITNESS my hand hereto affixed this 10th

day of September, A.D., 2009

MOTION AND AFFIDAVIT FOR PERMISSION TO PROCEED ON PARTIAL PAYMENT OF COURT FEES

CARRIE WIND
CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

Inmate name Randolf L Burghart #55288
IDOC No. Idaho Corrections - Orofino
Address Hospital Drive N # 23
Orofino Idaho 83544

2009 SEP 14 A 9:14

CASE NO. CW09-362

Petitioner

IN THE DISTRICT COURT OF THE Second BY WS JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Clearwater

Randolf L Burghart,)
)
Petitioner,)
)
vs.)
)
Terema Carlin, Warden,)
Commission Parole Dismissal)
Respondent.)

Case No. CW2009-362

MOTION AND AFFIDAVIT IN
SUPPORT FOR
APPOINTMENT OF
COUNSEL

COMES NOW, Randolf L Burghart, Petitioner in the above
entitled matter and moves this Honorable Court to grant Petitioner's Motion for Appointment of
Counsel for the reasons more fully set forth herein and in the Affidavit in Support of Motion for
Appointment of Counsel.

1. Petitioner is currently incarcerated within the Idaho Department of Corrections
under the direct care, custody and control of Warden Terema Carlin,
of the ICI - Orofino.

2. The issues to be presented in this case may become to complex for the Petitioner
to properly pursue. Petitioner lacks the knowledge and skill needed to represent him/herself.

3. Petitioner required assistance completing these pleadings, as he/she was unable to
do it him/herself.

MOTION AND AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL - 1
Revised: 10/14/05

4. Other: _____

DATED this 10 day of September, 2009

Randolph L Burghart
Petitioner - Randolph L Burghart

AFFIDAVIT IN SUPPORT FOR APPOINTMENT OF COUNSEL

STATE OF IDAHO)
) ss
County of Clearwater)

Randolph L Burghart, Petitioner, after first being duly sworn upon his/her oath, deposes and says as follows:

1. I am the Affiant in the above-entitled case;
2. I am currently residing at the Idaho Corrections - Orofino,
under the care, custody and control of Warden Terna Carlin.
3. I am indigent and do not have any funds to hire private counsel;
4. I am without bank accounts, stocks, bonds, real estate or any other form of real property;
5. I am unable to provide any other form of security;
6. I am untrained in the law;
7. If I am forced to proceed without counsel being appointed I will be unfairly handicapped in competing with trained and competent counsel of the State;

Further your affiant sayeth naught.

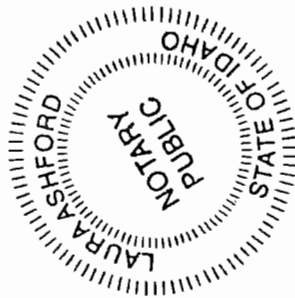
WHEREFORE, Petitioner respectfully prays that this Honorable Court issue its Order granting Petitioner's Motion for Appointment of Counsel to represent his/her interest, or in the alternative grant any such relief to which it may appear the Petitioner is entitled to.

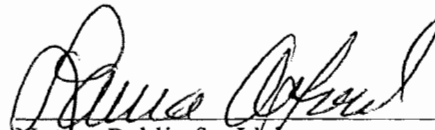
DATED This 10 day of September, 2009.


Petitioner - Randolph L. Burghart

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 10 day
of September, 2009.

(SEAL)




Notary Public for Idaho
Commission expires: July 26 2011

FILED CW09-362 AM 11:43
 NOV 30 2009
 Clerk Dist. Court
 Clearwater County, Idaho

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

Randolph L. Burghart,)
)
 Petitioner,)
 vs.)
Tarema Carlton Warden,)
)
 Respondent.)

CASE NO. CW09-362
 COURT MINUTES
 DATE: 11/30/09
 TAPE: CD382-2
 TIME: 11:37

The Honorable Judge Robinson Presiding.
 Presiding Telephonically.

FOOT:

11:37 Mr. Burghart present by phone.
11:38 Court reviews financials.
11:41 Court advises the filing fee is \$88.00
 Court determines Petitioner must pay \$3.96
 within 30 days. If not paid within 30 days
 the case will be dismissed. Once paid,
 petition will be filed and the state will be
 served.
11:43 Recess.

COURT MINUTES - page 1 of 1
C. Hwang - Deputy Clerk

Full Name of Party Submitting This Document
Mailing Address (Street or Post Office Box)
City, State and Zip Code
Telephone Number

2009 DEC -1 P 1:47
CASE NO. CV09-362
BY *CF* DEPT

IN THE DISTRICT COURT OF THE Second JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Clearwater

Randolf L. Burghart
Plaintiff,
vs.
Terema Carlin
Pardons & Parole
Defendant.

Case No.: CV 2009-362

ORDER RE: PARTIAL PAYMENT OF
COURT FEES (PRISONER)

Having reviewed the [] Plaintiff's [] Defendant's Motion and Affidavit for Partial
Payment of Court Fees,

THIS COURT FINDS AND ORDERS:

[] The average monthly deposits in the prisoner's inmate account total \$ 19.82, the
average monthly balance in the prisoner's inmate account during the last six months has been
\$ _____; 20% of the greater of these amounts is \$ _____ and must be paid as a
partial initial fee at the time of filing. The prisoner shall make monthly payments of not less than
20% of the preceding month's income credited to the prisoner's inmate account until the
remainder of the court filing fees in the amount of \$ 88.00 are paid in full. The agency or
entity having custody of the prisoner shall forward payments from the prisoner's inmate account
to the clerk of the court each time the amount in the prisoner's inmate account exceeds ten
dollars (\$10.00) until the full amount is paid. This case shall be dismissed if the initial payment
of \$ 3.96 is not paid within 30 days (30) of this Order

or [] The prisoner has no assets and need not pay any fee at this time. The prisoner shall
make monthly payments of not less than 20% of the preceding month's income credited to the
prisoner's inmate account until the court filing fees in the amount of \$ _____ are paid in
full. The agency or entity having custody of the prisoner shall forward payments from the

prisoner's inmate account to the clerk of the court each time the amount in the prisoner's inmate account exceeds ten dollars (\$10.00) until the full amount is paid.

or THIS COURT DENIES the motion because

the prisoner did not comply with all the requirements of Idaho Code §31-3220A , or

the Court finds the prisoner has the ability to pay the full filing fee at this time.

Date: 12-1-09 Randall W. Rubin
Judge

CLERK'S CERTIFICATE OF SERVICE

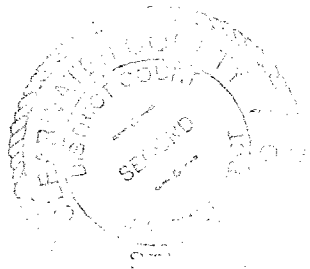
I certify that a copy was served:

To Prisoner: Randolf L. Burghart #55288 Hand-delivery
Name: 1010 Hospital Drive North #23 Mailing
Address: Drofino, ID . 83544 Fax to (number) _____
City, State, Zip:

To counsel for the county sheriff the department of correction or the private correctional facility:

Name: _____ Hand-delivery
Address: _____ Mailing
City, State, Zip: _____ Fax to (number) _____

Date: 12/1/09 Christy L. Hering
Deputy Clerk



FACTS

(See Idaho Rule of Civil Procedure 8(a)(1) – a short and plain statement of the facts/claim showing the pleader is entitled to relief – focus on the facts giving rise to a federal or state constitutional violation – include the information required by I.C. § 19-4205(4) use extra sheets if needed).

Petitioner was convicted in 1998 and sentenced to 5 years fixed not to exceed 20 years
and besides minor disciplinary problems in 1999 "bartering and tobacco" he has never had
institutional violence, and in 2002 the board extended his sentence another 7 years. And
in 2009 he volunteered for sex offender cotton-wood program. And while in the program
the board gave him another 6 years with no new evidence than for what the judge
originally sentenced petitioner on. But being on limited education and no law
experience didn't pursue this matter. Now 11 1/2 years into the sentence, found as a
prisoner have a liberty interest under SASS vs. California, a 9th Circuit Court
of Appeals case that like California Section 3041 is like Idaho's Statute 20-223(c)
and the 9th Circuit is still supreme and Hill vs. Superintendent "some evidence"
rule is US Supreme Court applies to parole hearings. Now magistrate
Robinson is familiar with SASS and Hill, and is known to dislike prisoners
and institutionalized persons, and hope you'll apply the law to this case and
not personal bias. At the initial hearing it will be explained in more
detail of how "Liberty Interest" and "Some Evidence" must apply in the parole
context. it is your duty. And in the interest of comity and economics
please hear reasons the commission must change their arbitrary ways.

PETITION FOR WRIT OF HABEAS CORPUS - 2

Revised: 10/14/05

ALLEGATIONS

(See Idaho Rule of Civil Procedure 8(a)(1) – a short and plain statement of the federal or state constitutional provisions you assert have been violated showing the pleader is entitled to relief - do not include unnecessarily huge amounts of argument or case cites - use additional sheets if needed.)

1) Given the statutory language "shall" in statute under *SASS vs Cal-Par Bd* 461 F3d 1123 and *Martin vs. Marshall* 448 FSupp2nd 1143 petitioner has a liberty interest in Parole 5th & 14th Amendment.

2) The parole board showed no evidence under the "some evidence" rule guaranteed to prisoners in a disciplinary, which under *Hill vs Superintendent*, some evidence applies to the parole context.

3) State parole board would satisfy due process requirements in acting on petitioner's application when board conducts hearings, considers inmate's circumstances, prior record, institutional record, future plans and advising their reason denying application.

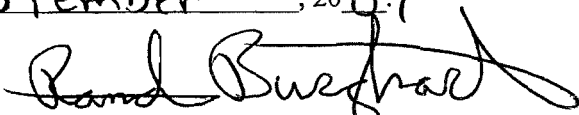
4) The commission is arbitrary, capricious and unconstitutional in their activities is why the Corrections budget went from \$25 million in 1985 when Olivia Craven became director to \$200 million now, because the parole board has went unchecked.

PRAYER FOR RELIEF

(See generally Idaho Code §§ 19-4213 through 19-4217 - tell the Court *exactly* what you want the Court to do for you or to award you from the Respondent)

Petitioner is entitled to parole. The judge had all the information when sentenced. There were no evidence to justify their decision. To be arbitrary and not give petitioner a chance at parole having now appeared to wasted the numerous programs and classes taken to better himself.

DATED this 10 day of September, 2009


Petitioner - Randolf L Burghart

State of Idaho)
) ss
County of Clearwater)

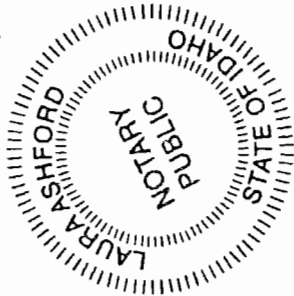
Petitioner, Randolf L Burghart, being duly sworn upon his/her oath,
deposes and states that the party is the Petitioner in the above-entitled appeal and that all statements
in this PETITION FOR WRIT OF HABEAS CORPUS are true and correct to the best of his or her
knowledge and belief.

DATED this 10 day of September, 2009.

Randolf L Burghart
Petitioner - Randolf L Burghart

SUBSCRIBED AND SWORN AND AFFIRMED to before me this 10 day of
September, 2009.

(SEAL)



Laura Ashford
Notary Public for Idaho
Commission expires July 26 2011

CARRIE BIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2009 DEC 29 AM 9 11

CASE NO. CV09-362

BY SJS DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

RANDOLF L. BURGHART,)
)
Petitioner,)
vs.)
)
TEREMA CARLIN WARDEN,)
PARDONS AND PAROLE,)
)
Respondents.)
_____)

CASE NO. CV2009-362
ORDER DIRECTING RESPONSE
AND NOTICE OF HEARING

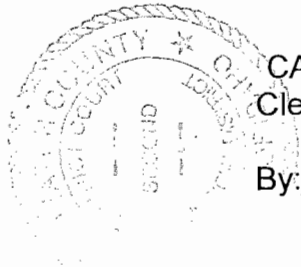
On December 23, 2009 the petitioner filed a Petition for Writ of Habeas Corpus.

The Respondents are directed to file a response to the petition within 60 days of this order. A copy of the petition and attachments are provided with this order.

IT IS HEREBY ORDERED that a telephonic scheduling conference be held on the 22nd day of March, 2010, at 11:00 a.m., Pacific Time. The Attorney General's Office is ordered to initiate the call.

BY ORDER OF THE COURT.

DATED this 29th day of December, 2009.



CARRIE BIRD
Clerk of the District Court

By: Sue K. Summerton
Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Order Directing Response was mailed, postage pre-paid, on the 29th day of December 2009 to:

Randolf L. Burghart, #55288
ICI-O
Hospital Drive North #23
Orofino, ID 83544

State of Idaho, Office of the Attorney General
Department of Corrections
1299 N Orchard, Suite 110
Boise, ID 83720-0018

CARRIE BIRD
Clerk of the District Court

By: Sue K. Summerton
Deputy Clerk

CARRIE BIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2009 DEC 30 PM 2 45

CASE NO. CV09-362

BY SKS DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

Randolph L. Burghart,

Plaintiff,

v.

Terema Carlin Warden

Parsons and Parole
Defendant.

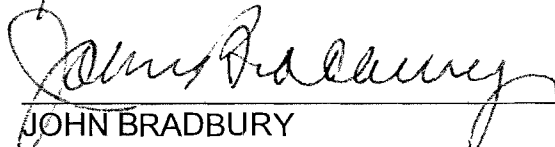
CASE NO. CV09-362

ORDER GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS

It appears from this file that the plaintiff is an indigent person.

THEREFORE, IT IS HEREBY ORDERED that the plaintiff is allowed to proceed with filing of this action without prepayment of filing fees. It is further ordered that the petitioner may proceed without prepayment for issuance of service and process.

Dated this 30 day of Dec, 2009.



JOHN BRADBURY
District Judge

ORDER GRANTING LEAVE TO
PROCEED IN FORMA PAUPERIS 1

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Order Granting Leave to Proceed In forma Pauperis was mailed, postage pre-paid, on the 30th day of December, 2009, to:

Randolf L. Burghart
ICI-0
Hospital Drive North #23
Orofino, ID 83544

State of Idaho, Office of the Attorney General
Department of Corrections
1299 N Orchard, Suite 110
Boise, ID 83720-0018

CARRIE BIRD
Clerk of the District Court

By: See K. Summerton
Deputy Clerk

LAWRENCE G. WASDEN
ATTORNEY GENERAL OF IDAHO

PAUL R. PANTHER, ISB #3981
Lead Deputy Attorney General
Idaho Department of Correction

KRISTA L. HOWARD, ISB #5987
Deputy Attorney General
Idaho Department of Correction
1299 North Orchard St., Suite 110
Boise, Idaho 83706
Telephone (208) 658-2097
Facsimile (208) 327-7485
Email: khoward@idoc.idaho.gov

Attorney for Respondents

CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2010 FEB 17 PM 3 10 ✓

CASE NO. CV2009-362

BY CG DEPUTY

FILED VIA FAX
UNDER RULE 5(e)(2)

DATE 2/17/10

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

RANDOLF L. BURGHART,)
)
Petitioner,)
)
vs.)
)
TEREMA CARLIN WARDEN)
PARDONS AND PAROLE,)
)
Respondents.)

CASE NO. CV2009-362

RESPONSE AND MOTION TO
DISMISS

COMES NOW the Respondents Terema Carlin and the Commission of Pardon's and Parole (hereinafter "Commission"), by and through the undersigned counsel, and hereby submits this Response and Motion to Dismiss for the Petitioner's failure to state a claim and failure to exhaust his administrative remedies.

INTRODUCTION

The Plaintiff has filed a Petition for Writ of Habeas Corpus (hereinafter "Petition") claiming that the Commission has extended his sentence by denying him parole after having served the fixed portion of his sentence. *Petition*, p.2. The Petitioner claims that he has a liberty interest in parole and that the Commission actions are "arbitrary and capricious." *Id.* The Petitioner relies on *Vitton v. Murphy*, *Greenholtz v. Nebraska* and *Hill v. Superintendent* as a basis for which parole should be granted. *Id.* at pp.3-7. The Petition should be dismissed for the Petitioner's failure to state a claim against the Respondents and his failure to exhaust his administrative remedies with regard to Respondent Carlin.

APPLICABLE LEGAL STANDARD

I. STANDARD FOR HABEAS CORPUS CASES

In reviewing a petition for writ of habeas corpus to decide if the writ should issue and an evidentiary hearing be held the court must treat all allegations contained in the petition as true. *Mahaffey v. State*, 87 Idaho 228, 392 P.2d 279 (1964). In order for a court to have jurisdiction to grant a writ of habeas corpus, it must appear a violation of constitutional rights has occurred. If, after treating the allegations as true, the court finds that they do not state a constitutional claim, the court must dismiss the petition without further hearing. *Mitchell v. Agents of the State*, 105 Idaho 419, 670 P.2d 520 (1983). Although a petition for writ of habeas corpus differs somewhat from a typical civil complaint, the Idaho Rules of Civil Procedure do apply to habeas corpus proceedings. *Sivak v. Ada County*, 118 Idaho 193, 795 P.2 898 (Ct. App. 1990). On that basis, Respondents move to dismiss the Petition pursuant to I.R.C.P. 12(b)(6).

II. STANDARD FOR MOTIONS TO DISMISS

I.R.C.P. 12(b)(6) provides that a party may raise as a defense the failure of the opposing party to state a claim upon which relief can be granted. A court may grant a motion to dismiss based on I.R.C.P. 12(b)(6) for failure to state a claim upon which relief can be granted when it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. I.R.C.P. 12(b)(6); *Yoakum v. Hartford Fire Insurance Co.*, 129 Idaho 171, 923 P.2d 416, 420 (1996); *Orthman v. Idaho Power Co.*, 126 Idaho 960, 962, (1995). Under this standard, the non-moving party is entitled to have all inferences from the record viewed in its favor. *Id.* As to the proper standard to be applied to 12(b) motions, the Idaho Supreme Court held that:

On a motion to dismiss, the court looks only at the pleadings, and all inferences are viewed in favor of the non-moving party. *Young v. City of Ketchum*, 137 Idaho 102, 104 44 P.3d 1157, 1159 (2002) (regarding 12(b)(6) motions); *Osborn v. United States*, 918 F.2d 724, 729, n. 6 (8th Cir. 1990) (regarding 12(b)(1) motions raising facial challenges to jurisdiction. "[T]he question then is whether the non-movant has alleged sufficient facts in support of his claim which, if true, would entitle him to relief." *Rincover v. State*, 128 Idaho 653, 656, 917 P.2d 1293, 1296 (1996) (regarding 12(b)(6) motions); *Serv. Emp. Intern. v. Idaho Dept. of H. & W.*, 106 Idaho 756, 758, 683 P.2d 404, 406 (1984) (regarding 12(b) challenges generally; *Osborn*, 918 F.2d at 729, n. 6 (regarding 12(b)(1) facial challenges): "[E]very reasonable intendment will be made to sustain a complaint against a motion to dismiss for failure to state a claim." *Idaho Comm'n on Human Rights v. Campbell*, 95 Idaho 215, 217, 506 P.2d 112, 114 (1973). "the issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims. *Young*, 137 Idaho at 104, 44 P.3d at 1159.

Owsley v. Idaho Industrial Commission, 141 Idaho 129, 106 P.3d 455, 459 (2005).

Here, the Court should look to draw all inferences in favor of Petitioner and seek to determine whether he has alleged sufficient facts in support of his claim; which, if true, would

RESPONSE AND MOTION TO DISMISS --3

entitle him to relief, and whether he is entitled to offer evidence in support of his claims. As the following discussion will illustrate, even when all inferences are drawn in Petitioner's favor, his claims shall be dismissed.

ARGUMENT AND ANALYSIS

I. THE PETITIONER HAS FAILED TO STATE A CLAIM AGAINST THE RESPONDENTS FOR RELIEF UNDER THE HABEAS CORPUS AND INSTITUTIONAL LITIGATION AND PROCEDURES ACT

The Idaho Habeas statutes set forth certain requirements of the Petitioner when filing a Petition. Idaho Code §19-4205(4)(a) states that the Petition shall specify "the identity and address of the person or officer whom the prisoner believes is responsible for the alleged state or federal constitutional violations, and shall name the persons identified individually as respondents." Idaho Code § 19-4205(4)(d) also states that the petition shall specify "a short and plain statement of the facts underlying the alleged state or federal constitutional violation." Idaho Code § 19-4209(1)(c) grants the court authority to dismiss a petition, if the court finds "the petition fails to state a claim of constitutional violation upon which relief may be granted."

The Petitioner has made no specific allegations against Respondent Carlin in his Petition. The only mention of Respondent Carlin is that she is the Warden of ICIO. *Petition*, p.1. The Petitioner has failed to meet the requirements of the Habeas act.

The Petitioner has named the Commission as a Respondent. The Petitioner alleges that the Commission is the entity that violated the Petitioner's state and federal constitutional rights. I.C. § 19-4205(4)(a) provides that a petition for writ of habeas corpus "shall" specify "the identity and address of the person or officer whom the prisoner believes is responsible for the alleged state or federal constitutional violations, and shall name the persons identified individually as respondents." (Emphasis added.) Thus, not just any person or entity may be

named as a respondent, but only a person or officer whom a petitioner actually "believes is responsible for the alleged state or federal constitutional violations." The Commission is not the persons or officers responsible for the alleged constitutional violations against Petitioner. Therefore, the Petitioner has failed to state a claim against the Commission and any and all claims herein regarding the Commission must be dismissed.

Likewise, Idaho Code §19-4205(5) states that "[n]either the state of Idaho, any of its political subdivisions, or any of its agencies ... shall be named as respondents in a prisoner petition for writ of habeas corpus." The Parole Commission is part of the IDOC, a state agency. See Idaho Code § 20-201. Therefore, the Commission is entitled to dismissal of the Petition.

II. THE PETITIONER HAS FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES

Pursuant to the Prison Litigation Reform Act ("PLRA"), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). In *Porter v. Nussle*, 534 U.S. 516 (2002), the United States Supreme Court expressly stated that "the PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Id.* at 532. The Supreme Court has also held that where an inmate seeks money damages for a prison conditions claim, he or she must complete the prison administrative process for the claims, even if the process does not provide for money damages. *Booth v. Churner*, 532

U.S. 731 (2001). The prison administrative process is sufficient if it “could provide some sort of relief on the complaint.” *Id.* at 734.

An inmate must exhaust his administrative remedies prior to filing suit; exhaustion cannot be accomplished during a suit or after a suit has been filed. *See McKinney v. Carey*, 311 F.3d 1198 (9th Cir. 2002) (suit dismissed without prejudice where prisoner attempted to exhaust administrative remedies during pendency of suit.) “A stay of the suit pending exhaustion does not satisfy the plain language of the statute.” *Mubarak v. California Dept. of Corrections*, 315 F. Supp.2d 1057, 1060 (S.D. Cal. 2004). Additionally, “[a] grievance obviously cannot exhaust administrative remedies for claims based on events that have not yet occurred. Nor does a grievance exhaust administrative remedies for all future complaints of the same general type.” *Ross v. County of Bernalillo*, 365 F.3d 1181, 1188 (10th Cir. 2004).

The United States Supreme Court decided two “exhaustion” cases, which are relevant to this case. In *Woodford v. Ngo*, 126 S. Ct. 2378 (2006), the Supreme Court reiterated that proper exhaustion of the grievance process is required under the PLRA. *Woodford v. Ngo*, 126 S. Ct. 2378 (2006). As explained by the Court: “The benefits to exhaustion can be realized only if the prison grievance system is given a fair opportunity to consider the grievance. The prison grievance system will not have such an opportunity unless the grievant complies with the system’s critical procedural rules.” *Id.* at 2388. The Supreme Court specifically rejected any notion that prisoners get to decide whether or not to follow the grievance process.

For example, a prisoner wishing to bypass the available administrative remedies could simply file a late grievance without providing any reason for failing to file on time. If the prison then rejects the grievance as untimely, the prisoner could proceed directly to federal court. . . . We are confident that the PLRA did not create such a toothless scheme.

RESPONSE AND MOTION TO DISMISS -6

Id.

In *Jones v. Bock*, 127 S. Ct. 910 (2007), the Supreme Court addressed several issues. Specifically, the Court reemphasized that “[t]here is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought.” *Id.* at 918-19 (citing *Porter v. Nussle*, 534 U.S. at 524). The Court also confirmed “that failure to exhaust is an affirmative defense under the PLRA.” *Jones*, 127 S. Ct. at 921. The Supreme Court further clarified that “[t]he level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison’s requirements, and not the PLRA, that define the boundaries of proper exhaustion.” *Jones*, 127 S. Ct. at 923 (emphasis added).

To the extent that the Petitioner claims that Respondent Carlin has violated his rights, he is required pursuant to the PLRA to exhaust his administrative remedies with regard to his claims against Respondent Carlin. The Petitioner does claim in his Petition that he has submitted copies of documentation demonstrating that he has exhausted his administrative remedies but no documents were attached to the Petition. *Petition*, p. 4. The Petitioner has failed to meet the requirements set forth in Idaho Code Section 19-4206(2) in submitting copies of documentation that he has exhausted his administrative remedies with regards to any claims he has against Respondent Carlin, if any. Therefore, the Petitioner’s Petition should be dismissed against Respondent Carlin for failure to exhaust pursuant to the PLRA and I.C. § 19-4206.

III. THE PETITIONER DOES NOT HAVE A RIGHT TO PAROLE UNDER IDAHO LAW

The Petitioner alleges that he has a liberty interest in parole under Idaho law. Therefore, according to him, the failure of the Commission to grant him parole violates his right to due process. As explained below, however, this claim fails as a matter of law.

RESPONSE AND MOTION TO DISMISS --7

The United States Supreme Court has clearly stated “[t]here is no constitutional or inherent right of a convicted person to be conditionally released before the expiration of a valid sentence.” *Greenholtz v. Nebraska Penal Inmates*, 442 U.S. 1, 7 (1979). Idaho courts have consistently held there is no right to parole. *Izatt v. State*, 104 Idaho 597, 661 P.2d 763 (Ct. App. 1983); *Hays v. Craven*, 131 Idaho 761, 963 P.2d 1198 (Ct. App. 1998). “The Idaho Supreme Court has concluded that Idaho statutes do not provide a legitimate expectation of parole, but merely the possibility thereof.” *Hays*, 131 Idaho at 764 (citing *Izatt*, 104 Idaho at 600). Furthermore, “Idaho’s statutory parole scheme allows for parole only in the discretion of the Commission for Pardons and Parole.” *Vittone v. State*, 114 Idaho 618, 619, 759 P.2d 909 (Ct. App. 1988); Idaho Code § 20-223(c) (“A parole shall be ordered when, in the discretion of the commission, it is in the best interests of society, and the commission believes the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.”) “[I]t has long been settled—that the possibility of parole is not protected by due process and that inmates have no constitutional right to due process in parole hearings.” *Drennon v. Craven*, 141 Idaho 34, 36, 105 P.3d 694 (Ct. App. 2004). Because Idaho law does not give Petitioner a liberty interest in parole, he is precluded from asserting a due process claim challenging the Parole Commission’s decision denying him parole.

Petitioner attempts to argue around this clearly established law by relying on *Sass v. California Board of Prison Terms*, 461 F.3d 1123 (9th Cir. 2006). In *Sass*, the Ninth Circuit Court of Appeals explained that whether the denial of parole violates a prisoner’s due process rights depends on whether the relevant state statute governing parole creates a liberty interest by using mandatory language. *Id.* at 1127. As clarified by the court, if state law does not create a

liberty interest in parole, then a due process challenge is not allowed. *Id.* Because Idaho law does not create a liberty interest in parole, Petitioner's reliance on *Sass* is misplaced.

Recently, the United States District Court for the District of Idaho decided a series of cases addressing the same issue as raised by Petitioner. As explained by the court in *Fox v. Craven*, 2007 WL 2782071 (D. Idaho 2007):

It remains the law that an inmate can bring a procedural due process challenge to a parole decision only where there is a state-created liberty interest in parole. *See Board of Pardons v. Allen*, 482 U.S. 369, 380-81 (1987); *Sass v. California Board of Prison Terms*, 461 F.3d 1123, 1127 (9th Cir.2006). ... Therefore, before an inmate may bring a due process claim arising from a parole denial, he must show that there is a state-created liberty interest in parole.

Id. at *4. The court then reviewed Idaho's parole statutes and related cases before concluding:

In *Sass*, the Ninth Circuit Court of Appeals relied on the principle that "a State's highest court is the final judicial arbiter of the meaning of state statutes" to determine whether a state parole statute was mandatory or permissive. 461 F.3d at 1127. Because the Idaho Supreme Court has spoken on this issue, this Court is bound to follow its interpretation of state law. Parole is not mandatory in Idaho, resulting in no liberty interest in parole. This conclusion, in turn, prevents an inmate from pursuing due process claims arising from a denial of parole.

Id. at *5. The court applied the same analysis in *Abbott v. Craven*, 2007 WL 2684817, *5 (D. Idaho 2007) and *Muraco v. Sandy*, 2007 WL 1381795, *7 (D. Idaho 2007). Based on the foregoing analysis, Petitioner's reliance on *Sass* is without merit.

REQUEST FOR FRIVOLOUS DETERMINATION

Pursuant to Idaho Code § 12-122: "In all habeas corpus actions which result in a denial or dismissal of a writ of habeas corpus, the court shall make a specific finding whether or not the habeas corpus action was brought frivolously by the petitioner." It is clear that Petitioner's claims fail as a matter of law and have been squarely rejected by Idaho state and federal courts.

RESPONSE AND MOTION TO DISMISS --9

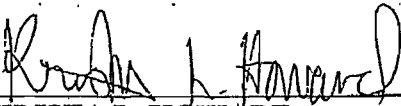
As such, the Petition is frivolous. Accordingly, Respondents respectfully request that the Court find that the Petition was brought frivolously.

CONCLUSION

Based upon the foregoing, the Respondents respectfully request that the Petitioner's Petition for Writ of Habeas Corpus herein be dismissed with prejudice.

Respectfully submitted this 17 day of February, 2010.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL




KRISTA L. HOWARD
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 17 day of February, 2010, I caused to be served a true and correct copy of the foregoing RESPONSE AND MOTION TO DISMISS on:

Randolf L. Burghart #55288
ICIO
Hospital North Drive #23
Orofino, Idaho 83544

Via U.S. Postal mail system



KRISTA L. HOWARD

CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2010 MAR 1 AM 8 57

CASE NO. W09-362

BY SKS DEPUTY

Randolf L Burghart # 55258
Full Name/Prisoner Name

Idaho Corrections - Orofino
Hospital Drive N #23
Orofino Idaho 83544
Complete Mailing Address

(circle one)

In the District Court of Second Judicial
District of Idaho in and for Clearwater County

Randolf L Burghart)
)
(Full name and prisoner number.)

vs.)

Terena Carlin Warden)
Commission Probation and Parole)

(Full name(s). Do not use et. al.))

CASE NO. CV2009-362

Reply to Respondents'
Answer and Motion to
Dismiss Habeas Corpus

COMES NOW, Randolf L Burghart petitioner in the above-entitled

action, files a Reply to Respondents' Answer and Motion
to Dismiss Petitioner's habeas Corpus, and request this court
to address the numerous claims not addressed by the
respondents, to include rational basis in denying parole,
'Some evidence' standard, the Commission being arbitrary and

Reply Answer/Motion Dismiss -pg. 1

Revised 10/24/05

capricious, the unconstitutionally vague statute that gives the parole board dictatorial powers. And since the respondents only address failure to state a claim and liberty interest in their response, then everything else is deemed true if not denied or addressed by respondents, but the petitioner will address all his issues in this Reply.

A case in point is Harper vs Harper 8:35 P2d at 1346 "Every reasonable inference will be made to sustain complaint against motion to dismiss for failure to state a claim. That if the court can ascertain that some relief may be granted, even if it does not appear particular relief is requested... is a question of the law to be renewed de novo." It is undisputed that petitioner is incarcerated past his fixed judicial set. It is undisputed that petitioner fulfills the core requirements under IC 20-223(c). Through petitioner's claim to liberty interest is disputed, through the US Supreme Court has said liberty interest is not created upon parole of a person but upon incarceration of that person. But the respondents do not address or dispute that "Some evidence" rules do apply, as in Matthews vs Terema Carlin CV2009-14, at page 6 where the magistrate in his order denying Matthews habeas Corpus relief after 'remand'

Reply Answer / Motion Dismiss -pg. 2

Revised 10/24/05

said "Even if 'some evidence' rule was applied, the Commission's decision denying petitioner more than meets the standard." And here, the Commission in their answer did not address this issue. Remember that everything stated in the habeas Corpus is deemed true unless otherwise disputed. In fact, everything in the petition is deemed true since respondents failed to address numerous issues.

A motion to dismiss under PC 12 (b)(6) for failure to state a claim must be read in conjunction with Rule (8) a, which sets forth the requirements for pleading a claim and calls for "a short and plain statement of the claim showing that the pleader is entitled to relief." And the petitioner contends he is post his fixed, had met the requirements under IC 20-223 (c) has a liberty interest in parole, that there is no evidence under 'some evidence' to deny petitioner parole, that the board acted in an arbitrary and capricious manner. Also whenever anyone argues his sentence on appeal, the court deem the fixed portion as the time considered in dealing with sentencing issues. But now argues indeterminate is considered in sentencing. A double standard that respondents use to fit the situation. Remember the fixed portion is set by a judge with all information available.

Reply Answer/Motion Dismiss -pg. 3

and unless more information is available, the board cannot extend sentence,
As with a motion under Rule 8(a), every reasonable inferences
will be made to sustain a complaint against Rule 12(b)(6) motion to dismiss,
especially when it appears beyond a reasonable doubt the petitioner can
prove no set of facts in support of the claim would entitle to relief.
It appears the court can ascertain that some relief may be granted.

Respectfully submitted this 26th day of February, 2010.

Randolph L. Burghart
Petitioner - Randolph L. Burghart

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 26 day of February, 2010, I
mailed a true and correct copy of the Reply to Respondents Answer/Motion Dismiss via
prison mail system for processing to the U.S. mail system to:

Department of Corrections Attorney General
1299 N Orchard Street #110
Boise, Idaho 83706

Randolph L. Burghart
Petitioner - Randolph L. Burghart

Reply Answer/Motion Dismiss -pg. 4

Revised 10/24/05

CV2009-362
APRIL 2 2010
CARRIS BIRD

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, AND FOR THE COUNTY OF CLEARWATER

RANDOLF L. BURGHART,	)	CASE NO. CV2009-362
)	
Plaintiff,	)	COURT MINUTES
)	
vs.)	
)	
TEREMA CARLIN, et al)	
)	
Defendant.)	

John H. Bradbury, District Judge
 Randolph Burghart, Pro Se
 Krista Howard, Deputy Attorney General
 Keith Evans, Reporter
 Date: 4/02/10 Tape: CD411-1 Time: 1:08 p.m.
 Subject of Proceeding: Motion to Dismiss

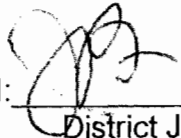
=====

FOOTAGE:

- 1:08 Court will take up the matter of 5 Habeas Corpus cases: Steven Davis CV09-456, Randolph Burghart CV09-362, Matthew Davidson CV09-458 and Robert Williams CV09-447, Terrence Matthews CV09-163.
- 1:09 Court notes each Plaintiff is appearing on their own behalf as Idaho law does not provide for them to have counsel and the State is represented by Krista Howard for 4 of the cases and also on behalf of Deputy AG, William Loomis, on the Terry Matthews case CV09-163.
- 1:10 Court takes up matter in CV09-163 Terrence Matthews
- 1:15 Court takes up matter of CV09-447 Robert Williams.
- 1:22 Court takes up matter of CV09-456 Steven L. Davis.
- 1:25 Court takes up matter of CV09-458 Matthew C. Davidson
- 1:27 Court takes up matter of CV09-362 Randolph L. Burghart
- 1:27 Mr. Burghart advises same issues: #1 Liberty issue; #2 Evidence issue; #3 Irrational basis to deny parole.

- 1:28 Court will incorporate those as if actually argued. Court will hear anything else Mr. Burghart would like to add.
- 1:28 Mr. Burghart does not have anything else to add.
- 1:28 Ms. Howard advises defendants are allowed to have addresses as far as the institution or central office, not sure about the Attorney General's office. Stands on her motion as previously argued.
- 1:29 Court notes that Mr. Davidson and Mr. Burghart had checked the box saying they had exhausted the administrative remedies but they didn't include the paperwork. Will allow each of them 10 days if they wish to supplement it with any paperwork that indicates an exhaustion of remedies. Court allows State 10 days to respond. Will consider all of these cases submitted 20 days from today's date.
- 1:29 Court in recess.

Deputy Clerk – Christy Gering
COURT MINUTES

Approved: 
District Judge

CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROTHID, IDAHO

LAWRENCE G. WARDEN
ATTORNEY GENERAL OF IDAHO

2010 APR 12 AM 9:28

PAUL R. PANTHER, ISB #3981
Lead Deputy Attorney General
Idaho Department of Correction

✓ CASE NO. CV 2009-362

BY ny DEPUTY

KRISTA L. HOWARD, ISB #5987
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1299 North Orchard St., Suite 110
Boise, Idaho 83706
Telephone (208) 658-2097
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Attorney for Respondents

FILED VIA FAX
UNDER RULE 5(e)(2)

DATE 4/12/2010

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

RANDOLF L. BURGHART,)
)
Petitioner,)
)
vs.)
)
TEREMA CARLIN WARDEN)
PARDONS AND PAROLE,)
)
Respondents.)

CASE NO. CV2009-362
SUPPLEMENTAL RESPONSE TO
MOTION TO DISMISS

COMES NOW the Respondents Terema Carlin and the Commission of Pardon's and Parole (hereinafter "Commission"), by and through the undersigned counsel, and hereby submits this Supplemental Response to Respondents' Motion to Dismiss. Oral Argument was heard on the Respondents' motion to dismiss on April 2, 2010. The Court granted the Petitioner

additional time to provide a supplemental response to the issue raised that he failed to exhaust his claims against Terema Carlin.

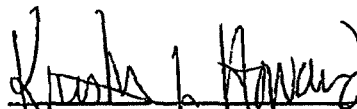
The Petitioner provided a supplemental response in which he attached a Notice of Action Taken for a regular parole hearing on August 6, 2009 before the Commission. This supplemental document does not provide evidence that the Petitioner has exhausted his claims against Terema Carlin. Pursuant to the Prison Litigation Reform Act ("PLRA"), "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). The Petitioner has failed to demonstrate that he has exhausted his administrative remedies for his claims against Terema Carlin and his claims should be dismissed for failing to meet the requirements of the PLRA.

CONCLUSION

Based upon the foregoing, the Respondents respectfully request that the Petitioner's Petition for Writ of Habeas Corpus herein be dismissed with prejudice.

Respectfully submitted this 12 day of April, 2010.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL


KRISTA L. HOWARD
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12 day of April, 2010, I caused to be served a true and correct copy of the foregoing SUPPLEMENTAL RESPONSE TO MOTION TO DISMISS on:

Randolf L. Burghart #55288

ICIO

~~Hospital North Drive #23~~

Orofino, Idaho 83544

Via U.S. Postal mail system


KRISTA L. HOWARD

CARRIE BIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2010 JUN 1 PM 1 11

CASE NO. CW2009-362

BY K DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

RANDOLF L. BURGHART,)	
	)	Case No: CV 2009-362
Plaintiff,)	
	)	MEMORANDUM DECISION AND
v.	)	ORDER
)	
TEREMA CARLIN, Warden, and)	
COMMISSION OF PARDONS AND)	
PAROLE,)	
)	
Defendants.)	
_____)	

This matter comes before me on the State's motion to dismiss Randolph Burghart's petition for writ of habeas corpus.

I. FACTS

Randolf Burghart is incarcerated by the Idaho Department of Corrections at Orofino (IDOC-O) for a fixed sentence of five years and "not to exceed 20 years".¹ He had some minor disciplinary problems in 1999 but has otherwise served his time well, including voluntary participation in a sex offender program. His sentence was extended by the parole commission, and he has now been incarcerated for eleven-and-a-half years.

¹ Virtually all of the facts of this case have been drawn from the petition for writ of habeas corpus. There are no affidavits provided by either party and I have very little information about the underlying conviction.

He filed a petition for writ of habeas corpus on December 23, 2009. In his petition Mr. Burghart checked a box asserting that he had exhausted the prison's administrative remedies and was attaching documents to prove so, but failed to provide documentation. The State moved to dismiss on February 17, 2010 but failed to give a detailed factual basis for its motion. At a hearing on April 2, 2010, I informed Mr. Burghart of the need to provide documentation of exhaustion and gave him until April 12, 2010 to provide such documents. On April 7, 2010 he filed a "Supplemental Attachment (Exhaustion)" in which he stated "attached [is] a denial of parole past his minimum fixed". The attached document is from his parole hearing, not from any administrative appeal.

II. CONTENTIONS

Mr. Burghart contends: 1) He has a liberty interest in parole under Idaho Code 22-223 and there must be some evidence to support denial of parole; 2) the commission's decision is arbitrary and contrary to the interests of comity and economics; 3) the board is required to conduct hearings and consider the inmates' circumstances in greater detail before they can deny parole; 4) that lack of oversight of the parole board has caused an increase in public expenditure of \$175 million.

The State contends: 1) that Mr. Burghart failed to state a claim from which relief can be granted under Idaho Rule of Civil Procedure 12(b)(6) because he has failed to allege sufficient facts to support his claim; 2) that the petition is improper because he names both Terema Carlin and the Commission of Pardons and Parole as defendants, rather than one person or officer; 3) that the claim is not properly before the court because Mr. Burghart has not exhausted his administrative remedies; 4) that Mr. Burghart

had no liberty interest in parole, and therefore does not have a constitutionally protected right to due process at parole hearings. The State requests that all of Mr. Burghart's arguments be found frivolous.

III. DISCUSSION

A. Mr. Burghart has failed to exhaust the IDOC-O's administrative remedies.

Idaho law requires any prisoner bringing an action concerning the conditions of his confinement to file documentation establishing that he has exhausted any available administrative remedies. I.C. 19-4206. Failure to do so mandates dismissal without prejudice. *Id.* The IDOC-O has a three-part administrative appeal process, including a "Concern Form" and "Grievance Form", which are to be filled out by the inmate.

In the present case, Mr. Burghart checked a box asserting that he had exhausted the prison's administrative remedies and was attaching documents to prove so but no such documents were filed. When I notified him of this shortcoming and gave him additional time to rectify it, he produced only one document relating to the original decision to deny his parole. It does not pertain to the exhaustion of remedies. Therefore, I am obliged to dismiss his entire petition without prejudice. For reasons stated below, part of his claim is dismissed with prejudice.

B. Mr. Burghart has failed to state a claim that would allow me to find that denial of parole is a violation of his constitutional rights.

The standard of review for a motion to dismiss under Idaho Rule of Civil Procedure 12(b)(6) for failure to state a claim on which relief can be granted is whether the non-moving party has alleged sufficient facts that, if his allegations are presumed to be true, he would be entitled to relief. *Owsley v. Idaho Industrial Com'n*, 141 Idaho 129, 133 (2005). If so, dismissal is inappropriate. *Id.* More specifically under Idaho Code 19-

4209(1), “[t]he court may dismiss with prejudice a petition for writ of habeas corpus under this section, in whole or in part, prior to service of the petition on the respondent, [...] if the court finds: [...] (c) the petition fails to state a claim of constitutional violation upon which relief can be granted;”.

The possibility of parole is not a protected liberty interest and does not give rise to a constitutional right to due process. *Drennon v. Craven*, 141 Idaho 34, 35-36 (Ct. App. 2004). Rather, what process is required at parole hearings depends upon the state statute governing such hearings. *Izatt v. State*, 104 Idaho 597, 599-600 (1983). The relevant Idaho statute, Idaho Code 20-223, leaves the decision of whether to grant parole to the discretion of the parole commission, and “does not place any substantive limitations” on that discretion. *Vittone v. State*, 114 Idaho 618, 620 (Ct. App. 1988); *see also* I.C. 20-223(c). In Idaho, the decision of whether to grant or deny parole is admittedly a subjective one:

[T]he decision whether to release a prisoner on parole depends on an amalgam of elements, some of which are factual but many of which are purely subjective appraisals by the decision-making body, based upon the members' experience with the difficult and sensitive task of evaluating the advisability of parole release. (citation omitted) The parole determination may be made for a variety of reasons and often involves no more than informed predictions as to what would best serve correctional purposes. (citation omitted) The decision turns on a “discretionary assessment of multiplicity of imponderables, entailing primarily what a man is and what he may become rather than simply what he has done.” (citation omitted)

Freeman v. State, Com'n of Pardons and Paroles, 119 Idaho 692, 696 (Ct. App. 1991).

It is difficult to determine what circumstances would constitute an abuse of the parole board's discretion. Indeed, the commission is not required to give a written statement of the reasons for denying parole, *Izatt*, 104 Idaho at 600, or even required to inform a prisoner of the reasons his parole has been denied. *Freeman*, 119 Idaho at 696. If reasons are given, a reviewing court will limit its inquiry to whether there is a rational basis for any conclusions made by the parole commission. *Drennon v. Craven*, 141 Idaho at 35-36.

In the present case, Mr. Burghart has provided insufficient facts to support his allegations, even if those allegations are assumed to be true. Similarly, he has failed to allege conduct that would constitute a violation of his constitutional rights. Mr. Burghart's reliance on *Greenholtz v. Nebraska Penal and Correctional Complex* is misplaced because that case dealt with a Nebraska parole statute that provided greater process than does the Idaho statute. 442 U.S. 1, 16 (1979). For the similar reasons, *Sass v. Cal. Bd. of Prison Terms*, 461 F.3d 1123 (9th Cir 2006), *Biggs v. Terhune*, 334 F.3d 910 (2003 9th Cir.), *Martin v. Marshall*, 448 F.Supp.2d 1143 (N.D. Cal. 2006), and *Walpole v. Hill*, 472 U.S. 445 (1985) are inapplicable.

C. The fact that Mr. Burghart named the Commission of Probation and Parole as one of the defendants in his petition does not contribute to my decision to dismiss.

The State argues that Mr. Burghart's petition for writ of habeas corpus is technically improper to the extent that it is brought against a division of the state government rather than against an individual, citing Idaho Code 19-4205. Section (4)(a) of that statute states that the petitioner shall specify "the person or officer" and "name the persons identified individually as respondents;". Also, section (5) provides that

“[n]either the state of Idaho, any of its political subdivisions, or any of its agencies, nor any private correctional facility shall be named as respondents in a prisoner petition for writ of habeas corpus.” The State concludes, relying only on this statute, that because Mr. Burghart names the commission as a defendant his petition must be dismissed.

I reject this argument on several grounds. First, the right to habeas corpus review is a constitutional one which generally cannot be infringed upon by the legislature. *Dopp v. Idaho Com'n of Pardons and Parole*, 139 Idaho 657, 660 (Ct. App. 2004). Perhaps for that reason, proceedings on a petition for writ of habeas corpus are not treated in the same hyper-technical manner as other types of civil pleadings, and minor deficiencies in the petition do not mandate dismissal. *See Cole v. Cole*, 68 Idaho 561 (1948)(non-prisoner was issued habeas writ even though jurisdiction was not properly pleaded), *and Sivak v. State*, 130 Idaho 885, 888 (Ct. App. 1997)(“It is well settled that a court may dispose of a petition for a writ of habeas corpus ‘as the justice of the case may require.’”). Moreover, the construction of petitions for writs of habeas corpus is particularly liberal when the petitioner is appearing pro se and does not have the benefit of formal legal training. *Goff v. State*, 91 Idaho 36, 37 (1966), *citing Johnson v. State*, 85 Idaho 123 (1962). On a more practical note, *Dopp* reached the merits of a petition naming the commission as the defendant and alleging that it had violated due process at a parole hearing. 139 Idaho at 660. However, *Dopp* did not explicitly rule on whether it was proper to name the commission as a defendant. 139 Idaho *passim*.

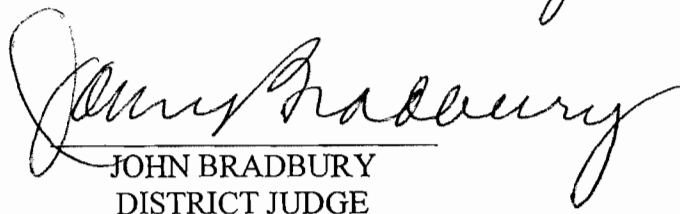
In the present case, Mr. Burghart is appearing pro se and has named both the warden of his prison and the commission that denied his parole as defendants. The State is correct that most of Mr. Burghart’s grievances seem to be directed at the commission,

and he has failed to name individual members of the commission or allege that the warden is in some way responsible for the actions of the commission. However, I refuse to hold that my ability to examine whether Mr. Burghart is wrongfully imprisoned is nullified because he listed the commission as a defendant. The interests of justice require that a pro se prisoner's only means of notifying the court of possible violations of his constitutional rights not be unduly impeded by technicalities. In addition, while Idaho Code 19-4205(4)(a) does require that the "person or officer whom the prisoner believes is responsible" be named "as respondents", I am unconvinced that the requirement is jurisdictional.

IV. CONCLUSION

Mr. Burghart has failed to exhaust the administrative remedies provided by the Idaho Department of Corrections, so his petition is DISMISSED under Idaho Code 19-4206. Assuming that he had complied with Idaho Code 19-4206 and all of his allegations were true, he has failed to state a claim upon which relief can be granted so his petition would still be DISMISSED under Idaho Code 19-4209. Because it is settled law in Idaho that there is no liberty interest in parole the dismissal is WITH PREJUDICE under Idaho Code 19-4209(1) as to that issue. As to Mr. Burghart's other claims, he must exhaust the administrative appeal process and provide a factual basis before they can be assessed. I do not find Mr. Burghart's petition to be frivolous at this time.

IT IS SO ORDERED, this the 1 day of June, 2010


JOHN BRADBURY
DISTRICT JUDGE

CERTIFICATE OF DELIVERY

I, the undersigned, a Deputy Clerk of the above entitled Court, do hereby certify that a copy of this document was mailed or delivered on the 1 day of JUNE, 2010 to the following persons:

Krista L. Howard
P.O. Box 83720
1299 N. Orchard St. Suite 110
Boise, ID 83720-0018

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

Randolf L. Burghart #55258
ICIO Hospital Drive North #23
Orofino, ID 83544

U.S. Mail
 Overnight Mail
 Fax
 Hand Delivery

CARRIE BIRD, CLERK

By: Deby J. Edmanson
Deputy Clerk

CARRIE J. JONES
CLERK - DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2010 JUN 11 PM 2 44

CASE NO. CV09-362

BY [Signature] DEPUTY

Randolf L Burghart # 55288
Idaho Corrections - Orofino
Hospital Drive N #23
Orofino Idaho 83544

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO IN AND FOR CLEARWATER

Randolf L Burghart #55288
petitioner

Case # CV09-362

vs

Motion for Reconsideration

Tarena Carlin Warden, Pardons
and Parole
defendants

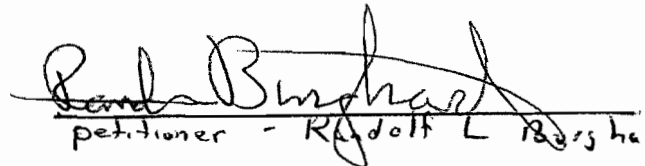
Petition, Motions this Court to Reconsider
it ruling on "Exhaustion" in that under Grievance
and Informal Resolution Procedure for Offenders, page
3 and 4 (Attached to this motion) at 3. "What

Motion for Reconsideration

Problems Can and Cannot be Grieved... The following issues cannot be grieved... • Commission of Pardons and Parole... must be resolved with the court or by the Commission of Pardons and Parole.

That liberty interest has not been accepted and is understood, but 'some evidence' applies in the parole context which needs to be addressed and should be considered in whether to grant or deny the petitioner's writ of habeas Corpus

Dated this 9th day of June, 2010


petitioner - Randolph L. Bershard

Motion for Reconsideration

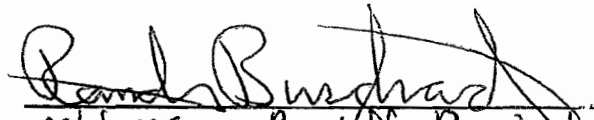
2

Certificate of Mailing

I hereby certify a true and correct copy of Motion to Reconsider with Grievance Procedure attached was mailed to:

Krista Howard
Deputy attorney General
Department of Corrections
1259 N Orchard #110
Boise Idaho 83544

Dated this 9th day of June, 2010


petitioner - Rand D Burghard

Motion for Reconsideration 3

Control Number: 316.02.01.001	Version: 3.0	Title: Grievance and Informal Resolution Procedure for Offenders	Page Number: 3 of 13
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GENERAL REQUIREMENTS

1. Grievance Process Overview

An offender grievance is a written complaint regarding a problem or action that affects either an offender or the offender population as a whole. An offender must write and file his own *Offender Concern* or *Grievance/Appeal Form* unless he is unable to write a grievance due to illiteracy, the inability to write the English language, or is physically unable to complete it. (Note: Under these circumstances, an offender is allowed to write a grievance on another offender's behalf.)

The offender problem solving procedure has three (3) components:

- Concerns (Using Appendix A, *Offender Concern Form*)
- Grievances (Using Appendix C, *Grievance/Appeal Form*)
- Grievance Appeals (Using Appendix A, *Offender Concern Form* and Appendix C, *Grievance/Appeal Form*)

2. General Information

Problem solving should occur at the lowest appropriate level. First, offenders should discuss issues with staff before using an *Offender Concern Form*. Second, offenders must try to solve the problem informally using Appendix A, *Offender Concern Form*. If the problem cannot be solved after using a concern form, the offender can then file a grievance.

Note: The DAGs are not a part of the concern or grievance process, and offenders must not be allowed to file concerns or grievances with the DAGs.

It is important that offenders understand that IDOC staff members are prohibited from reprisal or retaliation against anyone for any reason for filing a grievance or participating in the grievance procedure; this includes the use of concern forms. Offenders can file a grievance against any employee who uses reprisal or retaliation.

3. What Problems Can and Cannot Be Grieved

Most things that affect offenders during incarceration can be grieved. A list can be seen in section 8, Handling Requirements and Grievance Categories.

The following issues **cannot** be grieved:

Disciplinary Offense Reports (DORs)

- DOR hearing process including findings and sanctions. There is a separate process for the disciplinary procedure review or appeal process, which can be found in SOP 318.02.01.001, Disciplinary Procedures.

Alternative Sanctions

- Alternative sanctions that an offender agreed to

Sentence

- Length of sentence

Control Number: 316.02.01.001	Version: 3.0	Title: Grievance and Informal Resolution Procedure for Offenders	Page Number: 4 of 13
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- Commission of Pardons and Parole and court decisions. Sentencing and parole decisions must be resolved with the court or by the Commission of Pardons and Parole. (**Note:** Offenders can use an *Offender Concern Form* and grievance procedure regarding problems with IDOC's calculation of their sentence.)

Previously Grieved Issues

- After an issue has been reviewed at the appellate level, the administrative remedies available to offenders have been exhausted. Additional grievances forms on previously grieved and appealed issues will be rejected.

Outside Problems

- Problems that are beyond the control of the IDOC

4. Information for Offenders

Offender Concern Forms

A description of the problem must be written within the appropriate area on the *Offender Concern Form* (no attachments). If staff decides it is necessary to obtain more information, a staff member may interview the offender or request additional explanation.

Offenders must deliver *Offender Concern Forms* to the unit officer. The unit officer will sign the concern form and hand the bottom copy to the offender.

Note: Addressing the concern form to the appropriate staff member is essential (i.e., sending a concern form that should go to a property officer to a warden or deputy warden will only delay the process).

Staff members should respond to *Offender Concern Forms* within seven (7) days. If a staff member does not respond within seven (7) days, the offender can elect to send another *Offender Concern Form* to another staff member or use the grievance process. If the offender decides to use the grievance process, he must write "no response" in the staff response section of the offender's copy of the concern form and attach it to the *Grievance/Appeal Form* (Appendix C).

Note: Issues that are confidential such as unethical staff behavior can be reported directly to the warden by sealing the *Offender Concern Form* or letter in an envelope and placing the envelope in the grievance lock box. The offender must place his name and living unit information in the upper left-hand corner of the envelope. Additional reporting options can be found in SOP 325.02.01.001, Prison Rape Elimination.

Grievance Forms

All offenders can use the grievance process regardless of their classification or housing status.

Offenders must avoid using grievances for problems that should be resolved informally. Overloading the grievance system slows the process and reduces staff members' ability to consider the problems being grieved.

The following guidelines must be followed or the grievance will be rejected:

- A copy of the *Offender Concern Form* with the staff response that shows the offender's attempt to resolve the issue informally must be attached. (**Note:** If the staff

CARRIE BIRD
CLERK-DISTRICT COURT
CLEARWATER COUNTY
OROFINO, IDAHO

2010 JUN 11 PM 2 44
CASE NO. W09-36D
BY (D) DEPUTY

Randolf L Burshurt # 55288
Idaho Corrections - Orofino
Hospital Drive n #23
Orofino Idaho 83544

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
FOR THE STATE OF IDAHO IN AND FOR CLEARWATER

Randolf L Burshurt
petitioner

vs

Terens Carlin, Warden
Parsons and Parole
defendants

Case No

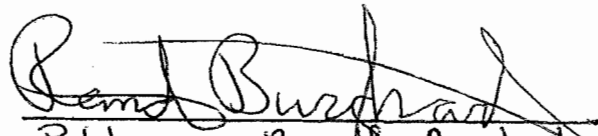
Motion to Leave to
Amend Petition

Petitioner Motions this Court to leave to Amend
Petition as shown in lined out and added information
which does not take away from the arguments presented

Motion to leave to Amend

in this document; liberty interest which is not accepted but 'some evidence' that must be addressed. Besides arbitrary and capricious activities of the respondents

Dated this 9th day of June, 2010.

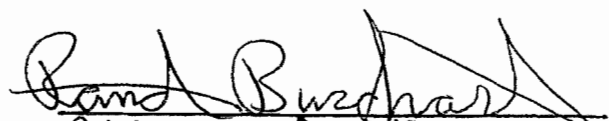

Petitioner - Randolph Burghart

Certificate of Mailing

I hereby certified I mailed a copy to counsel my motion to leave to Amend Petition at:

Krista Howard
Deputy Attorney General
1299 N Orchard #110
Boise Idaho 83706

Dated this 9th day of June 2010


Petitioner - Randolph Burghart

Motion to Leave to Amend

2

LAWRENCE G. WASDEN
ATTORNEY GENERAL OF IDAHO

PAUL R. PANTHER, ISB #3981
Lead Deputy Attorney General
Idaho Department of Correction

KRISTA L. HOWARD, ISB #5987
Deputy Attorney General
Idaho Department of Correction
1299 North Orchard St., Suite 110
Boise, Idaho 83706
Telephone (208) 658-2097
Facsimile (208) 327-7485
Email: khoward@idoc.idaho.gov

Attorney for Respondents

CARRIE BIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
GRANDIDA, IDAHO

2010 JUL 16 PM 12:03

CASE NO. CV2009-362

BY K DEPUTY

FILED VIA FAX
UNDER RULE 5(e)(2)

DATE 7/13/2010

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER**

RANDOLF L. BURGHART,)
)
) Petitioner,)
)
 vs.)
)
)
)
 TEREMA CARLIN WARDEN)
 PARDONS AND PAROLE,)
)
) Respondents.)

CASE NO. CV2009-362

**OBJECTION TO MOTION TO
RECONSIDER AND MOTION TO FILE
AMENDED PETITION**

COMES NOW the Respondents Terema Carlin and the Commission of Pardons and Parole (hereinafter "Commission"), by and through the undersigned counsel, and hereby submits this Objection to Motion to Reconsider and Motion to File Amended Petition.

**OBJECTION TO MOTION TO RECONSIDER AND MOTION TO FILE AMENDED
PETITION -1**

ORIGINAL

LED

INTRODUCTION

The Petitioner filed a Petition for Writ of Habeas Corpus. The Respondents filed a motion to dismiss for failure to state a claim and failure to exhaust administrative remedies. The Court granted the motion to dismiss on the grounds that the Petitioner failed to exhaust his administrative remedies. *Memorandum Decision and Order*, pp.3,7. The Court also granted the motion to dismiss with prejudice for failure to state a claim with regard to his claim that denial of parole is a constitutional violation. *Id.* at pp.3-5, 7. Finally the Court stated that the Petitioner's other claims, must be exhausted and provide a factual basis before they can be assessed. *Id.* at p.7.

ARGUMENT

I. PETITIONER'S MOTION TO RECONSIDER SHOULD BE DENIED

The Petitioner cites no authority for his motion to reconsider. A motion to reconsider can be brought pursuant to Rule 11, Rule 59(e) and Rule 60(b) of the Idaho Rules of Civil Procedure. The Petitioner has not met any of the standards set forth in the Idaho Rules of Civil Procedure in seeking his motion to reconsider. This Court did not abuse its discretion in granting the Respondents' motion to dismiss and therefore the Petitioner's motion should be denied.

A. Rule 11(a)(2)(B)

Idaho Rule of Civil Procedure 11(a)(2)(B) provides for motions for reconsideration. A motion for reconsideration is brought before the court to shed light on a former ruling with new facts. "When considering a motion of this type, the trial court should take into account any new facts presented by the moving party that bear on the correctness of the interlocutory order. The burden is on the moving party to bring the trial court's attention to new facts." *Coeur D'Alene*

OBJECTION TO MOTION TO RECONSIDER AND MOTION TO FILE AMENDED PETITION -2

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Mining Co. v. First National Bank, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990). A party seeking reconsideration is required to submit affidavits, depositions or admissions bringing to the district court's attention new facts bearing on the correctness of the prior decision. *Devil Creek Ranch, Inc. v. Cedar Mesa Reservoir Canal Co.*, 126 Idaho 202, 879 P.2d 1135 (1994).

The Petitioner has not submitted an affidavit in support of his motion. The Petitioner attached to his motion a portion of what appears to be part of the IDOC Grievance SOP in support of his claim that he does not have to exhaust his administrative remedies with regard to his claims against the Parole Commission. The Petition presents no new evidence in support of the claims that are set forth in the Petition for Writ of Habeas Corpus. The Court dismissed the claims against Terema Carlin for failure to exhaust not the Parole Commission. The Petitioner presents no affidavit with new facts or evidence in support of the claims set forth in his Petition for Writ of Habeas Corpus.

B. Rule 59(e)

Rule 59(e) of the Idaho Rules of Civil Procedure states that a motion to alter or amend a judgment shall be served no later than fourteen (14) days after entry of the judgment. A Rule 59(e) motion to alter or amend a judgment is addressed to the discretion of the court. *Lowe v. Lynn*, 103 Idaho 259, 263 (Ct. App. 1983). A Rule 59(e) motion affords the trial court the opportunity to correct both errors of fact or law, which occurred in its proceedings. *Id.* A Rule 59(e) motion must be directed to the status of the case as it existed when the court rendered the decision upon which the judgment is based. *Id.*

The Petitioner has presented no evidence that the Court's decision to dismiss was based on any errors of fact or law. The Petitioner does not offer any evidence or any argument that the

OBJECTION TO MOTION TO RECONSIDER AND MOTION TO FILE AMENDED PETITION -3

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Court's decision was based on errors of fact or law, which would warrant the Court exercising its discretion in altering its judgment.

C. Rule 60(b)

If a motion for "reconsideration" raises new issues, or presents new information, not addressed to the trial court prior to the decision, which resulted in the judgment, the proper analysis is the same as a motion for relief from judgment under Rule 60(b). That rule requires a showing of good cause and specifies particular grounds upon which relief may be afforded. *See, Hendrickson v. Sun Valley Corporation, Inc.*, 98 Idaho 133, 559 P.2d 749 (1977). As with Rule 59(e) proceedings, the right to grant, or deny, relief under Rule 60(b) is a discretionary one. *See, Johnston v. Pascoe*, 100 Idaho 414, 599 P.2d 985 (1979). The right to grant relief under Rule 60(b) is discretionary with the court. *Id.* Idaho Rule of Civil Procedure 60(b) states in part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

The Petitioner does not present the Court with any evidence that that Court's decision was based on mistake, inadvertence, surprise, excusable neglect or that there has been any newly discovered evidence. There has been no showing that the Court's decision was based on fraud, misrepresentation or misconduct of the adverse party. There is no evidence that the Court's decision is void, has been reversed or vacated or is no longer equitable.

**OBJECTION TO MOTION TO RECONSIDER AND MOTION TO FILE AMENDED
PETITION -4**

The Petitioner's basis for reconsideration is that his claims against the Parole Commission cannot be exhausted as set forth in the IDOC Grievance Policy. Although this may be true, the issue of exhaustion was specifically related to the claims against Terema Carlin. The Petitioner has failed to provide any evidence that he exhausted his administrative remedies with regard to his claims against Terema Carlin. At no time did the Respondents argue that the Petitioner must exhaust his administrative remedies against the Parole Commission. Therefore the Petitioner's motion to reconsider is without merit and the Petitioner has not presented any evidence to meet the Rule 60(b) standard. The Respondents contend that no new facts or evidence or circumstances have changed that have been presented that would support the Petitioner's motion to reconsider.

II. PETITIONER'S MOTION TO AMEND SHOULD BE DENIED

The Petitioner seeks to amend his original Petition for Writ of Habeas Corpus. It appears this motion is based on the Petitioner's Motion to Reconsider claiming that he does not have to exhaust his administrative remedies for his claims against the Parole Commission. Even assuming that the Petitioner did not have to exhaust his administrative remedies against the Parole Commission, the Petitioner has still failed to state a claim for relief against the Parole Commission and nothing in his motion changes the Court's holding on this issue. The Petitioner still has not provided a factual basis for his claims set forth in the Petition for Writ of Habeas Corpus. The Petition was dismissed with prejudice with regard to his claims against the Parole Commission for failing to state a claim for relief. It is irrelevant and immaterial whether or not the Petitioner exhausted his administrative remedies against the Parole Commission because he

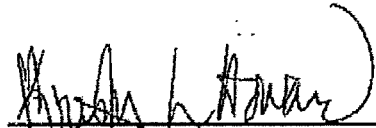
still fails to state a claim for relief. The Petitioner has presented no basis or good cause for amending the Petition for Writ of Habeas Corpus.

CONCLUSION

Based upon the foregoing, the Respondents respectfully request that the Petitioner's Motion to Reconsider and Motion to Amend herein be denied.

Respectfully submitted this 13 day of July, 2010.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL



KRISTA L. HOWARD
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of July, 2010, I caused to be served a true and correct copy of the foregoing OBJECTION TO MOTION TO RECONSIDER AND MOTION TO FILE AMENDED PETITION on:

Randolf L. Burghart #55288
ICIO
Hospital North Drive #23
Orofino, Idaho 83544

Via U.S. Postal mail system



KRISTA L. HOWARD

CALVIN BIRD
CLERK - DISTRICT COURT
CLEARWATER COUNTY
GRANDVIEW, IDAHO

2010 AUG 16 PM 4 40

CASE NO. CV 2009-362

BY lee

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

RANDOLPH L. BURGHART,)	
	)	Case No: CR 2009-362
Petitioner,)	
	)	MEMORANDUM DECISION AND
v.	)	ORDER
)	
TEREMA CARLIN, Warden,)	
PARDONS AND PAROLE)	
)	
Respondents.)	
_____)	

This case comes before me on Mr. Burghart's Motion for Reconsideration and Motion for Leave to Amend.

I. FACTS

Mr. Burghart initially filed a Petition for Writ of Habeas Corpus on December 23, 2009, alleging that he was improperly denied parole. To form the basis of this allegation he contended that he has a constitutional liberty interest in parole, and that the Commission of Pardons and Parole must meet a "some evidence" standard in support of a decision to deny parole. On June 1, 2010 I issued an order dismissing without prejudice due to Mr. Burghart's failure to exhaust his administrative remedies against Terema Carlin, and I additionally dismissed with prejudice, as to both Ms. Carlin and the Commission, for failure to state a claim on which relief could be granted. In that decision I held that, under current Idaho precedent, Mr. Burghart has no liberty interest in parole,

MEMORANDUM DECISION AND ORDER

lee

and that the Commission can only be held to a “rational basis” standard of review when it denies parole and actually provides a basis for its denial. Mr. Burghart now moves for me to reconsider my dismissal based on his failure to exhaust administrative remedies, and for leave to amend his petition.

II. CONTENTIONS

Mr. Burghart contends that he should be granted leave to amend his Petition for Writ of Habeas Corpus because he no longer asserts that he has a liberty interest in parole, but only that the Commission must meet the “some evidence” standard. Mr. Burghart also contends that I should reconsider my prior decision to dismiss without prejudice because he does not have any administrative remedies to exhaust against the Commission.

Ms. Carlin and the Commission contend that Mr. Burghart’s Motion for Leave to Amend should be denied because his proposed amended petition still fails to assert a claim on which relief can be granted. The Commission also contends that Mr. Burghart’s Motion to Reconsider should be denied because the motion asks for reconsideration of something that this court never ordered: that Mr. Burghart must exhaust his administrative remedies against the Commission.

III. DISCUSSION

A. Motion for Leave to Amend

In his Motion for Leave to Amend Petition Mr. Burghart asks for leave to amend his prior petition for writ of habeas corpus by dropping his contention that he has a liberty interest in parole, while still contending that the decision of the Commission, to deny him parole, should be reviewed by a “some evidence” standard. This proposed amendment

thus does not claim anything new, it simply does not claim as much. And, in my decision on Mr. Burghart's initial Petition for Writ of Habeas Corpus I fully considered the issue still claimed, and specifically rejected the "some evidence" standard in light of current Idaho case-law. As I am still convinced that under current Idaho precedent Mr. Burghart fails to state a claim on which relief can be granted, even when only claiming that the "some evidence" standard should be applied, his Motion for Leave to Amend Petition is denied. *See Hoots v. Craven*, 146 Idaho 271, 275-76 (Ct. App. 2008) (holding that a denial of a Motion for Leave to Amend a Petition for Writ of Habeas Corpus was not an abuse of discretion when it was based on a finding by the district court that the amended petition failed to state claim on which relief could be granted).

B. Motion to Reconsider

Although it is not entirely clear from Mr. Burghart's Motion to Reconsider, it appears to me that Mr. Burghart wishes that I reconsider my prior ruling of dismissal without prejudice, which he believes was based on a failure to exhaust administrative remedies against the Commission. However, although my prior decision did not clearly state whom Mr. Burghart must exhaust his administrative remedies against, because only Ms. Carlin, not the Commission, argued prior to that ruling that administrative remedies must be exhausted against her alone, not the Commission, my prior ruling can only be considered to hold that Mr. Burghart must exhaust his administrative remedies against Ms. Carlin. As Mr. Burghart's Motion to Reconsider apparently does not ask me to reconsider that ruling as to Ms. Carlin, but only as to the Commission, Mr. Burghart in effect does not ask me to reconsider anything at all, and his Motion to Reconsider is denied.

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Furthermore, as I have also ordered that Mr. Burghart's Motion for Leave to Amend Petition is denied, my previous order dismissing with prejudice, for failure to state a claim on which relief can be granted, is still in full effect, and thus makes moot the issue of whether my dismissal without prejudice was proper.

IV. CONCLUSION

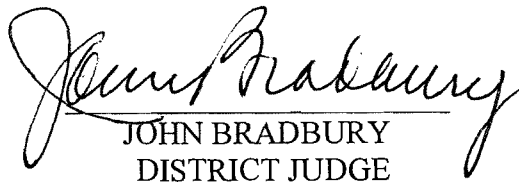
Because Mr. Burghart asserts nothing new in his Motion for Leave to Amend Petition, and because I still hold that Mr. Burghart's assertions fail to assert a claim on which relief can be granted, Mr. Burghart's Motion for Leave to Amend Petition should be denied.

Because Mr. Burghart asks this court to reconsider something it has not in fact previously ordered, and because dismissal with prejudice makes the dismissal without prejudice a moot point, Mr. Burghart's Motion for Reconsideration should be denied.

V. ORDER

Mr. Burghart's Motion for Leave to Amend Petition is DENIED. Mr. Burghart's Motion for Reconsideration is DENIED.

IT IS SO ORDERED, this the 16 day of Aug, 2010.


JOHN BRADBURY
DISTRICT JUDGE

CERTIFICATE OF MAILING

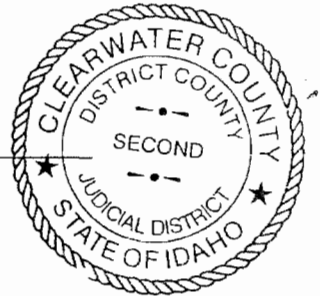
I hereby certify that a true and correct copy of the foregoing Memorandum Decision and Order was mailed; postage pre-paid, on the 20th day of August, 2010, to:

Krista L. Howard
Deputy Attorney General
Idaho Department of Correction
1299 North Orchard St., Suite 110
Boise, ID 83706
Facsimile: (208) 658-2097

Randolf L. Burghart #55288
ICIO
Hospital Drive North #23
Orofino, ID 83544

CARRIE BIRD
Clerk of the District Court

By: Cardynny
Deputy Clerk



CAROL B. BROWN
CLERK - DISTRICT COURT
CLEARWATER COUNTY
IDAHO

2010 SEP 9 AM 11:09

REC'D. W09-362

Slc

Randolph L Burghart # 55288

Full Name of Party Filing This Document

Idaho Corrections - orosh

Mailing Address (Street or Post Office Box)

Hospital Drive # 23

City, State and Zip Code

Orshas Idaho 83544

Telephone Number

IN THE DISTRICT COURT OF THE Second JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF Clearwater

Randolph L Burghart

Plaintiff,

vs.

Terema Carlin, Warden

Pardons and Parole

Defendant.

Case No.: W/2009-362

MOTION AND AFFIDAVIT FOR
PERMISSION TO PROCEED ON PARTIAL
PAYMENT OF COURT FEES (PRISONER)

Dist Case No. CV 2009-362

IMPORTANT NOTICE: Idaho Code § 31-3220A requires that you serve upon counsel for the county sheriff, the department of correction or the private correctional facility, whichever may apply, a copy of this motion and affidavit and any other documents filed in connection with this request. You must file proof of such service with the court when you file this document.

STATE OF IDAHO)
County of Clearwater) ss.

Plaintiff Defendant asks to start or defend this case on partial payment of court fees, and swears under oath

1. This is an action for (type of case) Appeal to Court of Appeals. I believe I'm entitled to get what I am asking for.

2. I have not previously brought this claim against the same party or a claim based on the same operative facts in any state or federal court. I have filed this claim against the same party or a claim based on the same operative facts in a state or federal court.

3. I am unable to pay all the court costs now. I have attached to this affidavit a current statement of my inmate account, certified by a custodian of inmate accounts, that reflects the activity of the account over my period of incarceration or for the last twelve (12) months, whichever is less.

4. I understand I will be required to pay an initial partial filing fee in the amount of 20% of the greater of: (a) the average monthly deposits to my inmate account or (b) the average monthly balance in my inmate account for the last six (6) months. I also understand that I must pay the remainder of the filing fee by making monthly payments of 20% of the preceding month's income in my inmate account until the fee is paid in full.

5. I verify that the statements made in this affidavit are true. I understand that a false statement in this affidavit is perjury and I could be sent to prison for an additional fourteen (14) years.

Do not leave any items blank. If any item does not apply, write "N/A". Attach additional pages if more space is needed for any response.

IDENTIFICATION AND RESIDENCE:

Name: Rundolf L Burghart Other name(s) I have used: _____

Address: 1010 Hospital Dr N #23 Osofino Idaho 83544

How long at that address? 13 mos. Phone: _____

Date and place of birth: _____

DEPENDENTS:

I am single married. If married, you must provide the following information:

Name of spouse: _____

My other dependents (including minor children) are: _____

INCOME:

Amount of my income: \$ — 0 per [] week [] month

Other than my inmate account I have outside money from: _____

My spouse's income: \$ _____ per [] week [] month.

ASSETS:

List all real property (land and buildings) owned or being purchased by you.

Your Address	City	State	Legal Description	Value	Equity
<u>None</u>					

List all other property owned by you and state its value.

Description (provide description for each item)	Value
<u>Cash</u>	<u>— 0</u>
<u>Notes and Receivables</u>	<u>— 0</u>
<u>Vehicles:</u>	<u>— 0</u>
<u>Bank/Credit Union/Savings/Checking Accounts</u>	<u>— 0</u>
<u>Stocks/Bonds/Investments/Certificates of Deposit</u>	<u>— 0</u>
<u>Trust Funds</u>	<u>— 0</u>
<u>Retirement Accounts/IRAs/401(k)s</u>	<u>— 0</u>
<u>Cash Value Insurance</u>	<u>— 0</u>
<u>Motorcycles/Boats/RVs/Snowmobiles:</u>	<u>— 0</u>
<u>Furniture/Appliances</u>	<u>— 0</u>
<u>Jewelry/Antiques/Collectibles</u>	<u>— 0</u>

Description (provide description for each item)	Value
TVs/Stereos/Computers/Electronics	50
Tools/Equipment	0
Sporting Goods/Guns	0
Horses/Livestock/Tack	0
Other (describe)	

EXPENSES: List all of your monthly expenses.

Expense	Average Monthly Payment
Rent/House Payment	0
Vehicle Payment(s)	0
Credit Cards: (list each account number)	
none	
Loans: (name of lender and reason for loan)	
none	
Electricity/Natural Gas	0
Water/Sewer/Trash	0
Phone	0
Groceries	0
Clothing	0
Auto Fuel	0
Auto Maintenance	0
Cosmetics/Haircuts/Salons	0
Entertainment/Books/Magazines	0
Home Insurance	0

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Expense	Average Monthly Payment
Auto Insurance	-0
Life Insurance	-0
Medical Insurance	-0
Medical Expense	-0
Other	

MISCELLANEOUS:

How much can you borrow? \$ -0 From whom? nobody
 When did you file your last income tax return? 80's Amount of refund: \$ 7

PERSONAL REFERENCES: (These persons must be able to verify information provided)

Name	Address	Phone	Years Known
Lawrence Burghard	33492 Berg Rd #22	Warren OR (503) 397-1958	Life

Randolph H. Burghard
 Signature
Randolph H. Burghard
 Typed or Printed Name

SUBSCRIBED AND SWORN TO before me this 7th day of September, 2010.

Laura Ashford
 Notary Public for Idaho
 Residing at Warren
 My Commission expires July 26 2011



- IDOC TRUST ===== OFFENDER BANK BALANCES ===== 09/07/2010 -

Doc No: 55288 Name: BURGHART, RANDOLF L
 Account: CHK Status: ACTIVE

ICIO/C2 PRES FACIL
 TIER-B CELL-1

Transaction Dates: 09/07/2009-09/07/2010

Beginning Balance	Total Charges	Total Payments	Current Balance
69.37	238.82	170.00	0.55

===== TRANSACTIONS =====					
Date	Batch	Description	Ref Doc	Amount	Balance
09/08/2009	IO0471066-131	099-COMM SPL		5.64DB	63.73
09/11/2009	IO0471783-001	070-PHOTO COPY	26141	3.60DB	60.13
09/11/2009	IO0471788-002	072-METER MAIL	26142	1.90DB	58.23
09/14/2009	IO0471917-100	099-COMM SPL		13.25DB	44.98
09/21/2009	IO0472683-073	099-COMM SPL		5.99DB	38.99
10/05/2009	IO0474167-081	099-COMM SPL		28.72DB	10.27
10/16/2009	IO0475649-003	071-MED CO-PAY	311613	5.00DB	5.27
10/19/2009	IO0475759-091	099-COMM SPL		3.44DB	1.83
10/26/2009	IO0476495-078	099-COMM SPL		1.43DB	0.40
11/17/2009	HQ0479230-017	011-RCPT MO/CC		75.00	75.40
11/23/2009	IO0479829-105	099-COMM SPL		21.00DB	54.40
11/30/2009	IO0480334-079	099-COMM SPL		33.18DB	21.22
11/30/2009	IO0480334-080	099-COMM SPL		3.18DB	18.04
12/07/2009	IO0481396-124	099-COMM SPL		10.12DB	7.92
12/09/2009	HQ0481942-003	061-CK INMATE	25901	3.96DB	3.96
12/21/2009	IO0483198-103	099-COMM SPL		1.48DB	2.48
12/28/2009	IO0483859-106	099-COMM SPL		0.69DB	1.79
01/04/2010	IO0484527-112	099-COMM SPL		1.75DB	0.04
01/08/2010	IO0485368-008	071-MED CO-PAY	336583	4.00DB	3.96DB
05/17/2010	HQ0500047-006	011-RCPT MO/CC		35.00	31.04
05/18/2010	IO0500193-086	099-COMM SPL		22.36DB	8.68
06/01/2010	IO0501523-081	099-COMM SPL		3.13DB	5.55
06/10/2010	IO0503022-004	070-PHOTO COPY	35498	4.20DB	1.35
06/10/2010	IO0503024-010	072-METER MAIL	35497	2.34DB	0.99DB
07/09/2010	IO0506289-002	071-MED CO-PAY	376522	2.00DB	2.99DB
08/24/2010	HQ0511943-016	011-RCPT MO/CC		60.00	57.01
08/30/2010	IO0512628-087	099-COMM SPL		12.67DB	44.34
08/30/2010	IO0512628-088	099-COMM SPL		25.50DB	18.84
09/07/2010	IO0513485-129	099-COMM SPL		2.12DB	16.72
09/07/2010	IO0513485-130	099-COMM SPL		16.17DB	0.55

STATE OF ILLINOIS

State Department of Correction

I hereby certify that the foregoing is a full, true, and correct copy of an instrument as the same now remains on file and of record in my office.

WITNESS my hand hereto affixed this 7th

day of September 2010

MOTION AND AFFIDAVIT FOR PERMISSION TO PROCEED ON PARTIAL PAYMENT OF FINES

Inmate name Randolf L Burghart # 55288
Address Idaho Corrections - Orofino
Hospital Drive N #23
Orofino Idaho 83247

FILED AM 11:09
CV 09-362 PM
SEP 09 2010
Clerk Dist. Court
Clerk County, Idaho

/Appellant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLERK WATER

Randolf L Burghart,)
Appellant,)
vs.)
Terene Carlin Warden,)
Commissioner Pardons and Parole)
Respondent.)

Docket # CV2009-362
NOTICE OF APPEAL
To Court of Appeals of Idaho
district case CV2009-362

TO: THE ABOVE RESPONDENTS, Terene Carlin and Parole Commission,
AND THE PARTY'S ATTORNEYS, Kriste Howard
AND THE CLERK OF THE ABOVE ENTITLED
COURT:

NOTICE IS HEREBY GIVEN THAT

1. The above named Appellant(s) Randolf L. Burghart
appeal(s) against the above named respondent(s) to the Idaho Supreme Court from (the final
judgment or order, (describe it) Memorandum Decision and Order
date Aug 16, 2010

entered in the above-entitled action (proceeding) on the 16 day of August,
20 10, Honorable Judge John Bradbury presiding.

NOTICE OF APPEAL - 1
Revised: 10/14/05

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or orders described in paragraph 1 above are appealable orders under and pursuant to Rule _____ [e.g. (11(c)(1)), or (12(a))] I.A.R.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

(1) Idaho Statute "shall" gives Appellant liberty interest in parole.

(2) "Some Evidence" must apply to deny parole.

(3) Parole Commission cannot be grieved so SIPR denial is considered exhaustion.

(4) Parole Commission even under "Rational" reason to deny parole must state that rational reason to deny parole.

(5) Appellant did state a claim for relief.

4.(a) Is a reporter's transcript requested? Yes.

(b) The appellant requests the preparation of the following portions of the reporter's transcript:

The entire reporter's standard transcript as defined in Rule 25(a), I.A.R.

The entire reporter's transcript supplemented by the following:

Voir Dire examination of jury

Closing arguments of counsel

The following reporter's partial transcript: _____

The testimony of witness(es) ALL Hearings on
State's motion to dismiss

Conferences on requested instructions

Instructions verbally given by court

5. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

All requested and given jury instructions

The deposition of: _____

Plaintiff's motion for continuance of trial

6. I certify:

(a) That a copy of this notice of appeal has been served on the reporter.

(b)(1) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) That the appellant is exempt from paying the estimated transcript fee because

Appellant is indigent!

(c)(1) That the estimated fee for preparation of the clerk or agency's record has been paid.

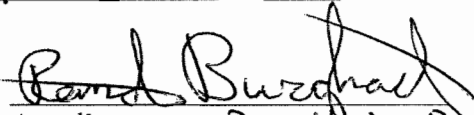
(2) That the appellant is exempt from paying the estimated fee for the preparation of the record because he is indigent

(d)(1) That the appellate filing fee has been paid.

(2) That appellate is exempt from paying the appellate filing fee because _____

(e) That service has been made upon all parties required to be served pursuant to Rule 20, and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

DATED THIS 7th day of September, 2010.


Appellant - Randolph L Burchart

STATE OF IDAHO)
) ss
County of Clearwater)

Randolph L Burchart, being sworn, deposes and says:

That the party is the appellant in the above-entitled appeal and that all statements in this notice of appeal are true and correct to the best of his or her knowledge and belief.

Randolph L. Burghart
Appellant - Randolph L. Burghart

SUBSCRIBED AND SWORN to before me this 7th day of September, 20 10.

(SEAL)



[Signature]
Notary Public for Idaho
Commission expires: July 26 2011

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on the 7th day of September, 20 10, I mailed a true and correct copy of the NOTICE OF APPEAL via prison mail system for processing to the U.S. mail system to:

Krista Howard
Deputy Attorney General
1299 N Orchard #110
Boise Idaho 83706

Randolph L. Burghart
Appellant - Randolph L. Burghart

CLERK DISTRICT COURT
CLERK DISTRICT COURT
CLERK DISTRICT COURT

2010 OCT 18 AM 10:44

CASE NO. CV09-362
BY SLC DEPUTY

Randolf L Burghart # 55288
Full Name of Party Submitting This Document
Idaho Corrections - Orofino
Mailing Address (Street or Post Office Box)
Hospital Drive N #23
City, State and Zip Code
Orofino Idaho
Telephone Number

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLARWATER

Randolf L Burghart
Plaintiff,
vs.
Terema Carlin, Warden
Commissioner Prisons and Parole
Defendant.

Case No.: CV09-362
ORDER RE: PARTIAL PAYMENT OF
COURT FEES (PRISONER)
District Case # CV2009-362

Having reviewed the [] Plaintiff's [] Defendant's Motion and Affidavit for Partial Payment of Court Fees,

THIS COURT FINDS AND ORDERS:

[] The average monthly deposits in the prisoner's inmate account total \$ _____, the average monthly balance in the prisoner's inmate account during the last six months has been \$ _____; 20% of the greater of these amounts is \$ _____ and must be paid as a partial initial fee at the time of filing. The prisoner shall make monthly payments of not less than 20% of the preceding month's income credited to the prisoner's inmate account until the remainder of the court filing fees in the amount of \$ _____ are paid in full. The agency or entity having custody of the prisoner shall forward payments from the prisoner's inmate account to the clerk of the court each time the amount in the prisoner's inmate account exceeds ten dollars (\$10.00) until the full amount is paid

or [] The prisoner has no assets and need not pay any fee at this time. The prisoner shall make monthly payments of not less than 20% of the preceding month's income credited to the prisoner's inmate account until the court filing fees in the amount of \$ _____ are paid in

full. The agency or entity having custody of the prisoner shall forward payments from the prisoner's inmate account to the clerk of the court each time the amount in the prisoner's inmate account exceeds ten dollars (\$10.00) until the full amount is paid.

or THIS COURT DENIES the motion because

the prisoner did not comply with all the requirements of Idaho Code §31-3220A , or

the Court finds the prisoner has the ability to pay the full filing fee at this time.

Date: 10/18/10

James Robaux
Judge

CLERK'S CERTIFICATE OF SERVICE

I certify that a copy was served:

To Prisoner:

Name: Randy Burghart #55288

Hand-delivery

Address: ICI-O Hospital Dr. N. #23

Mailing

City, State, Zip: Drofino ID 83544

Fax to (number) _____

To counsel for the county sheriff the department of correction or the private correctional facility:

Name: Krista Howard Deputy A.G.

Hand-delivery

Address: IDOC 1295 N. Orchard St.

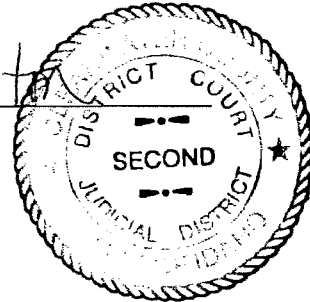
Mailing

City, State, Zip: Boise ID 83706

Fax to (number) _____

Date: 10/20/10

Sue K. Summerton
Deputy Clerk



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

RANDOLF L. BURGHART,)	
)	
Petitioner-Appellant,	)	SUPREME COURT NO. 38137
)	
v.)	
	)	CLERK'S CERTIFICATE
)	
TEREMA CARLIN, Warden, PROBATION)	
AND PAROLE,)	
)	
Respondents-Respondents)	
On Appeal.)	

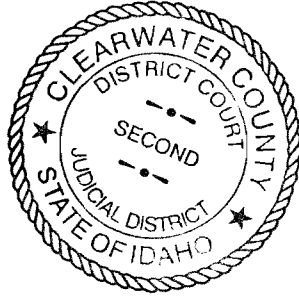
I, Courtney Stifanick, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

I further certify:

1. That no exhibits were marked for identification or admitted into evidence during the course of this action.

RD

IN WITNESS WHEREOF I have hereunto set my hand and affixed
the seal of said court this 20th day of January 2011.



CARRIE BIRD, Clerk

By

Carney Styrud
Deputy Clerk

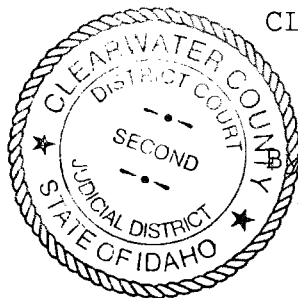
IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CLEARWATER

RANDOLF L. BURGHART,)	
)	
	)	SUPREME COURT NO. 38137
Petitioner-Appellant,)	
)	
)	
v.	)	CLERK'S CERTIFICATE
)	
)	
TEREMA CARLIN, Warden, PROBATION)	
AND PAROLE,)	
)	
Respondents-Respondents)	
On Appeal.)	

I, Courtney Stifanick, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Clearwater, do hereby certify that copies of the Clerk's Record were placed in the United States mail and addressed to Lawrence G. Wasden, Attorney General, P. O. Box 83720, Boise, Idaho 83720-0188 and Randolph Burghart #55288, ICI-0, 381 West Hospital Dr., Orofino, ID 83544 this 27 day of January 2011.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 27 day of January 2011.

CARRIE BIRD
CLERK OF THE DISTRICT COURT



Courtney Stifanick
Deputy Clerk