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Demar v. Blades Appellant's Brief Dckt. 41291

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Jason Demar, #95040
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Post Office Box 14
Boise, Idaho 83707

IN THE SUPREME COURT
OF THE STATE OF IDAHO

ON APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF ADA

Supreme Court No. 41291.

Jason Demar,
Appellant

VS:

State of Idaho
Respondent

For the Appellant

Jason Demar, Pro-Se
I.S.C.I., Unit 9
Post Office Box 14
Boise, Idaho 83707

For the Respondent

Mark Kubinski
Office of the Att. Gen.
Post Office Box 83720
Boise, Idaho 83720-0010

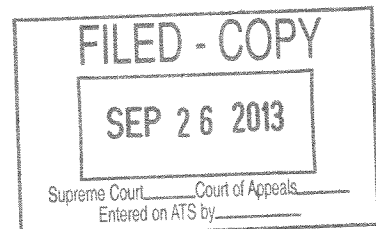


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ISSUES PRESENTED FOR REVIEW

- A). Did the District Court err when it dismissed the Petition for a Writ of Habeas Corpus Prior to service upon the Respondent?
- B). Does the Order of dismissal actually address the issues presented in the Petition for a Writ of Habeas Corpus?
- C). Has the Appellant been denied Due Process of Law?
- D). When a Class action has been filed can a member of the class assert standing for other members of the Class?

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STATEMENT OF THE CASE

The Appellant was incarcerated at what is known as the "Slaughter House". The Slaughter-House is a form of an inmate work release program, or a community work center, whereas inmates can obtain employment in the community.

While I was incarcerated I was injured. As a result of this injury I was placed on work restriction. On or about March 19th, 2013, I was informed by my Doctor that I could attempt to go to work on a trial basis.

On the 21st day of March, 2013, I had an appointment with my physical therapist. When I went to this appointment I had written permission from Idaho State Department of Corrections Staff to attend this appointment. My intentions as to going to this appointment was to go over my settlement and to inform the physical therapist as to my Doctor's recommendations.

Two days after attending this appointment, I was called into the Security Sgt's Office and questioned about why I went to an appointment that I knew I did not have. I informed the Security Sgt that I did have an appointment and that I even had proper authorization forms signed by not only my Doctor, but by the proper Security Staff of the Idaho State Department of Corrections.

I was eventually given a disciplinary Offense Report, (DOR), and I was found guilty of the offense of "Manipulation of Staff".

At the time I was found guilty of this offense, I had already been granted a release upon parole. I was scheduled to be released

on June 6th, 2013.

Because of the finding of guilty to the above offense, my release upon parole was "rescinded".

I filed an appeal of the finding of guilty, but that appeal was denied.

I filed a Petition for a Writ of Habeas Corpus in the Fourth Judicial District Court, in and for Ada County.

I paid the filing fee in full, and provided to that Court proof of exhaustion of my issues. Please see case number CV-HC-2013-10492.

The District Court, the Honorable Daniel Hurlbutt presiding, dismissed the pending Petition for a Writ of Habeas Corpus, prior to service upon the Respondent, and the Appellant filed a timely notice of appeal.

Wherefore, the Appellant now submits this Brief to this Court where in he states the following issues on appeal.

ARGUMENT OF LAW

Did the District Court err when it dismissed the Petition for a Writ of Habeas Corpus prior to service upon the Respondent?

Does the Order of Dismissal actually address the issues presented in the Petition for a Writ of Habeas Corpus?

Has the Appellant been denied Due Process of Law?

When a Class action has been filed can a member of that class assert standing for other class members?

If a State Statute "uses mandatory language, (Shall), to 'create a presumption that parole release will be granted' when the designated findings are made", the statute creates a liberty interest in parole. Board Of Pardons V. Allen, 482 U.S. 369, 377-378, 107 S.Ct. 2415, 96 L.Ed.2d 303, (1987); Quoting, Geenholtz V. Nebraska Penal and Correctional Complex, 442 U.S. 1, at 7, 99 S.Ct. 2100, 60 L.Ed.2d 668, (1979).

The Court's of the State of Idaho seem to have held that there is no liberty interest in being released upon parole in the State of Idaho. However, the Idaho Code, Title 20, Section 223, states:

"...A parole **SHALL** be ordered only for the best interests of society".

"..A prisoner **SHALL** be placed on parole only when..."

Because the Parole statute, (20-223), does in fact use the word **SHALL**, it does in fact create an expectation of being released upon parole when certain conditions are met.

In this case the Conditions were met, and I was scheduled to be released upon parole on June 6th, 2013.

My parole release date was taken from me for reasons that do not, or should not have effected my release into society.

I had permission to go to the Doctor. I had signed permission slips approving of this. There is a dispute as to whether or not my appointment was a form of staff manipulation. (This was the reason for the Disciplinary Offense Report being issued; However, even if

the D.O.R. was correct, which is in dispute), the policies and the procedures used to find me guilty do not meet the requirements of Due Process.

In short, nothing in the findings of the disciplinary hearing should have been able to effect my release, because my parole was granted to me under the facts that I was able and willing to abide by the laws of society; that my release was in the best interest of society, and that it was in the best interest of myself. As stated, nothing in the finding of the disciplinary hearing officer even remotely touched upon my release into society.

This is not to say that I agree that I was guilty of the offense as charged, because I certainly do not.

In the case of Superintendent V. Hill, 472 U.S. 445, at 454, 105 S.Ct. 2768, 86 L.Ed.2d 356, (1985), the United States Supreme Court has clearly held that, "...Revocation of good time does not comport with the minimum requirements of Due Process, (Procedural), unless the findings of the prison disciplinary hearing is supported by some evidence in the record". Citing Wolff V. McDonnell, 418 U.S. 539, 558, 94 S.Ct. 2963, 41 L.Ed.2d 935, (1974).

The cases as cited above both dealt with the loss of "good time" credits earned and forfeited by an inmate. But the Ninth Circuit Court of Appeals, in the case of Jancsek V. Oregon Board of Parole, 833 F.2d 1389, 1390, (9th. Cir. 1987), clearly held that the same "some evidence standard, applies in parole revocational hearings as well as any situation whereas there is a possibility of the loss of a liberty interest".

The United States Supreme Court has held that a liberty interest cannot be interfered with unless the requirements of due process are satisfied. Ky. Dep't of Corr., 490 U.S. 454, 109 S.Ct. 1904, 104 L.Ed.2d 506, (1989).

I am alleging that there was no due process given to me when I was informed that my parole release date had been taken from me. I am alleging that because the Idaho Statutory scheme for parole, 20-223, when it uses the term "SHALL" creates a liberty interest in procedural due process, and the expectation of being released upon parole when certain criteria are met, cannot be interfered with.

I am alleging that I met this criteria for parole release, and that this is proven by the fact that I was given such a parole release date. I am alleging that there was no form of procedural due process given to me when this date was taken. Furthermore, I am alleging that the disciplinary procedure, which was used to find me guilty of the offense in the D.O.R., does not comport to due process as there is no evidence submitted that I am infact guilty of the offense charged in the D.O.R.

I am alleging that I was not allowed to be present or to even have a hearing when my release date was taken from me. That I was never allowed to present any type of evidence at any type of hearing to refute the reasons to take from me my parole release date, which I have a liberty interest in having granted to me.

The Order of the District Court, which denied to the Appellant the relief he requested in the Petition for a Writ of Habeas Corpus, does not address the issue as to whether or not the Appellant was given any type of Due Process protections when his parole release date was taken from him.

The Petition for a Writ of Habeas Corpus makes it absolutely clear that one of the issues presented in that Writ is whether or not the Appellant was provided with any type of Due Process Protections by the Parole Board when the said same agency took from him his release date upon parole.

The District Court did not ever answer this issue, Instead, the District Court continuously seemed to believe that the Petition for a Writ of Habeas Corpus was challenging an initial Parole Board decision to not release the Appellant upon parole, instead of a parole rescission.

Proof that the Appellant exhausted his administrative remedies concerning the DOR, is attached as Exhibit A.

Proof that the Appellant had a tentative release date, (Upon Parole), is attached as Exhibit B.

Proof that the tentative Parole Release date was taken from the Appellant is attached as Exhibit C.

The District Court was in possession of all of this type of information. Instead of making a determination that the tentative release date was taken from the Appellant because of the DOR in question, the District Court stated as follows:

"...In Idaho there are a myriad of considerations for the Parole Commission to weigh in determining whether to grant parole"...Moreover an inmates record of disciplinary factors is only one of seven factors for the commission to weigh in rendering it's parole decision...In short, the Petitioner's assertions concerning the impact on his being released on parole appear to be simply too attenuated to invoke the procedural guarantees of the Due Process Clause".

Order dismissing Petition for Writ of Habeas Corpus, at page 3-4.

Because the Appellant had already been granted a parole, and because he had already been granted a parole, the Parole Board had already ordered that he met the criteria for Parole Release, he is entitled to the protections of the Due Process Clause when the parole is revoked.

Furthermore, the District Court erred when it stated that the Petitioner's contentions were too attenuated to invoke the Due Process Protections. It is perfectly clear from reading Exhibit C that the Appellant's parole was revoked for DOR # 130817. That is the DOR in question herein, and it removes any doubt as to why the Parole was revoked, therefore it was error for the District Court to hold otherwise.

The Appellant also alleged that pursuant to the case of Balla V. Idaho, CV-81-1165-BLW, As was filed in the United States District Court, that the Respondent was ordered or had agreed to have the Disciplinary process and procedures at the Idaho State Correctional Institution meet the Due Process requirements of Wolff V. McDonell, 418 U.S. 539, 94 S.Ct. 2963,

41 L.Ed.2d 935, (1974).

Also, in the case of Balla V. Idaho, Supra, the Court has found that the over-all conditions of confinement at the Idaho State Correctional Institution are Unconstitutional as to the unsafe conditions. The aforementioned case was ordered into a set number of compliance plans, which are still in effect today.

The Appellant argued that these conditions made it unsafe to be held in such confinement.

The District Court held that these were unexhausted issues and dismissed these claim as they related to the conditions of confinement at the Idaho State Correctional Institution.

The Appellant states that this was error on the part of the District Court because the District Court is obligated to follow the mandates of the United States District Court when it comes to conditions of confinement that violate the United States Constitution, which is what the case of Balla V. Idaho, Supra, is all about.

Furthermore, the Courts have all taken judicial notice of what has been called the "Stern Report", as was filed in the **Balla** case. (Filed on March 19th, 2012, and docketed as #822 in the **Balla** case).

It is based upon these facts that the District Court was in error when it dismissed the claims of the Appellant regarding the conditions of confinement at the Idaho State Correctional

Institution.

RELIEF REQUESTED

It is respectfully requested that this Court reverse the Order of the District Court dismissing the Petition for a Writ of Habeas Corpus, and order as follows:

- 1). Order that the Petitioner is to be released on Parole immediately; and
- 2). That the conditions of confinement, as depicted in Balla V. Idaho, (Stern report), are violative of the United States Constitution, Amendment Eight, and that such findings are to be binding on the Courts of Idaho; and
- 3). Order that the Disciplinary Process as used in this case violates Due Process.

OATH OF APPELLANT

Comes now, Jason Demar, after being duly sworn and placed upon his oath, who avers and states as follows:

I am the Appellant herein. I have read the enclosed Opening Brief of Appellant. I know the contents thereof and believe them to be true and correct to the best of my belief.




Jason Demar, Appellant Pro-Se

9-23-13
Dated

SWORN AND ATTESTED TO BEFORE ME THIS 24th day of September, 2013.





Notary Public in and for
the State of Idaho
residing at,
of IDAHO
My Commission Expires on,
07-16-2019

My Appeal

SICI WARDEN

FEB 11 2013

IDAHO DEPARTMENT OF CORRECTION
Disciplinary Appeal Form

Offender's Name: Jason Demar IDOC Number: 95040
Date: 1-9-13 Facility and unit: SICI North Basin Center
 Infraction Report or DOR and Number: Manipulating Staff class 3 1308 17

For Administrative Use

Facility: SICI Date Answer Sent: 2-11-13
Date Received: 2-11-13 Disciplinary Offense: B
Date Answer Due: _____

Offender Section

(Appeal information must be concise [limited to the space provided below], legible, and specific)

I'm positive I was not given return to work paper work by my doctor. He always saved my work status to the LWC. I did know I could return to work and called my boss from the Staff desk the same day. I had no intentions of not returning to work or following the staff guidelines. Next I called my workmans lamp and notified them my work status. She informed me of my possible settlement. I was very excited but had many questions. I thought of Doug being knowledgeable and decided to use my last appointment to ask him some questions. I turned in a trip slip, it was approved and I went to work. I should have thought it knew where I guess I was just lost in the thought of money. I had no intention of manipulating anyone. Not working in the kitchen was said out of Offender's signature: Jason Demar anger during my interview.

000029



IDAHO DEPARTMENT OF CORRECTION

Disciplinary Offense Report

Offender Name: DEMAR, JASON JEAN	Offender Number: 95040	DOR #: 130817
Offense Facility: CWC-SICI	Report Date: 01/25/2013	Reporting Staff: ZMUDA, KAPRI L #3371
Offense: MANIPULATING STAFF	Class: CLASS B	Enhancement: NONE
Date/Time of Offense: 01/25/2013 16:00	Place of Offense: OTHER	
Description of Offense: <p>On 01/25/13 I was made aware by staff that offender Jason Demar # 95040 on 01/22/13 was given paperwork for "Return to full duty" by a M.D. at Ada Orthopedic Clinic. Demar was on a workman's comp claim. Upon returning to the CWC Demar failed to advise staff that he had been released to work by his doctor. Demar was given paperwork to provide and notify the CWC, Workman's Comp, and his employer. Upon returning from his Dr's appointment, Demar did not provide the release to staff at the CWC. Demar then knowing he had been released from the Dr's care, submitted a "CWC Offender Trip Permit" to attend a physical therapy appointment that had been scheduled in advance but was no longer necessary. The St. Al's Stars physical therapy verified the appointment with CO Carlson. In an interview with Demar conducted by Sgt Brandner and myself, Demar was asked if he knew he was released why he went to St. Al's Stars physical therapy. Demar stated that he wanted to tell them in person that he was released, that he had developed a relationship with the physical therapist. Demar was also asked why he didn't tell staff he was released back to work or turn in his release. Demar stated that he didn't give the release to staff because he didn't want to have to do work in the kitchen. On 01/24/13 Demar checked in at Stars. There was no appointment (he got the receptionist to sign his trip slip showing he was there), but Demar said he saw Doug the physical therapist and told him he had been released, was there maybe 10 minutes. On 01/30/13 Sgt. Brandner informed me that he was able to reach Doug at St. Al's Stars and ask him about Demar's visit on 01/24/13. Doug told Sgt. Brandner that he was surprised to see Demar because on Demar's last appointment at Star's on 01/21/13, Doug had told him that he was released and was not suppose to see him again. Demar knew he had no further appointments. Demar manipulated CWC staff to go off site when there was no appt. Demar was removed from the CWC.</p>		
Description of Evidence: <p>Trip Slip for Physical Therapy Appointment on 01/24/13 and Dr.'s Return to Full Duty faxed to CWC on 01/25/13 by Ada Orthopedic Clinic.</p>		
Reviewing Supervisor: EILERS, JOEL ROBERT #7998	Date/Time Reviewed: 02/04/2013 12:05	
Delivering Staff: BEARD, JEREMY #3514	Date/Time Delivered: 02/04/2013 13:25	
Staff Hearing Assistant:	Assistance:	
Witness statements were received for this hearing:	Yes [] No []	
Scheduled Hearing Date: 02/07/2013	Final Hearing Date: 02/07/2013	Disciplinary Hearing Officer: MILESKI JASON #8365
Offense: MANIPULATING STAFF	Offender Plea: ADMIT	Finding: CONFIRM
Sanctions: DETENTION	Amount: 7 day(s)	End Date: 02/11/2013
Interventions: NO RECORDS FOUND	End/Due Date:	

Administrative Review Authority: JOHNSON, MICHAEL T #4291	Review Date: 02/08/2013	Review Finding: AFFIRM
--	----------------------------	---------------------------

Appellate Authority: LITTLE, STEVEN H #2249	Appeal Date: 02/11/2013	Finding Date: 02/11/2013	Appellate Finding: AFFIRM
--	----------------------------	-----------------------------	------------------------------

Offender Appeal Details:

I'm positive I was not given return to work paperwork by my doctor. He always faxed my work status to the CWC. I did not know I could return to work and called my boss from the staff desk the same day. I had no intentions of not returning to work or following the CWC guidelines. Next I called my workmans comp and notified them my work status. She informed me of my possible settlement. I was very excited but had many questions. I thought of Doug being knowledgeable and decided to use my last appointment to ask him some questions. I turned in a trip slip, it was approved and I went. I should have thought it threw more I guess I was just lost in the thought of money. I had no intention of manipulating anyone. Not working in the kitchen was said out of anger during my interviews.

*What I would know
I did know*

Appellate Comments:

The facts show that you were informed by the doctor. You knew that you could return to full duty. You failed to notify staff, as required. You knew that you had no further medical appointments, but went off site anyway. The information is very clear. The appeal is denied.

000031

IDAHO COMMISSION OF PARDONS AND PAROLE
NOTICE OF ACTION TAKEN

TO: **DEMAR, JASON JEAN**

95040 HEARING DATE: 11/30/2012

LOCATION: CWC-SICI, PRES FACIL POD 00/TIER 1/CELL 1/BUNK 18

TYPE OF HEARING: **REG PAROLE HRG**

DECISION OF COMMISSION: **TENTATIVE DATE SET** TENTATIVE PAROLE DATE: **06/07/2013**

PAROLE HEARING NOTES:

COMPLETE CSC, RELAPSE PREVENTION.

- 1) All parole release dates granted by the Commission are tentative. (Commission Rule 350.03.) We make every effort to release you on the Tentative Parole Date (TPD) granted, but many factors may inhibit this process.
 - a) Your parole plan must be investigated and returned as accepted within a reasonable time frame of your TPD. It is important that your plan has addressed treatment needs and a stable residence.
 - b) Disciplinary problems may be reviewed by the Commission. All DORs received after your hearing, or ones that were not known about, will be reviewed by the Executive Director and/or the Commission. The Commission may elect to void their previous decision.
 - c) If the Commission receives information that was not available at the time of the parole grant hearing, the Commission may review the information or may schedule another hearing, and the TPD may be voided.
- 2) Your case worker will assist you with your parole plan and can advise you if the plan has been submitted. Your parole plan must be investigated by field supervisory personnel and must be accepted; the only exception is if the Commission elected to waive this investigation.
- 3) If you are housed in a county jail or other facility outside of the state of Idaho, an IDOC representative will be in contact with you.
- 4) If you are paroling to a detainer, you will receive instructions along with your parole release document that you will be expected to follow.

SPECIAL CONDITIONS:

- 1) NO ALCOHOL
- 2) SUB ABUSE EVAL
- 3) PAY RESIST/FINE
- 4) THINK ERROR/CSC
- 5) NO ASSOC FELONS
- 6) NO RELATIONSHIP

TPD = Tentative Parole Date

DTNR = Detainer

INS = Immigration and Naturalization Services

CS = Consecutive Sentence

DOR = Disciplinary Offense Report

FTRD = Full Term Release Date

GTRD = Goodtime Release Date

***** INMATE COPY *****

IDAHO COMMISSION OF PARDONS AND PAROLE
NOTICE OF ACTION TAKEN

TO: DEMAR, JASON JEAN 95040 HEARING DATE: 03/19/2013

LOCATION: ISCI/UNT09, PRES FACIL POD 00/TIER A/CELL 7/BUNK B

TYPE OF HEARING: DOR REVIEW

DECISION OF COMMISSION: SCHEDULE HEARING SCHEDULED HEARING DATE:2014-03

PAROLE HEARING NOTES:

REVIEWED DOR #130817. VOIDED TPD OF 06/07/2013. SCHEDULED HEARING IN 03/2014.

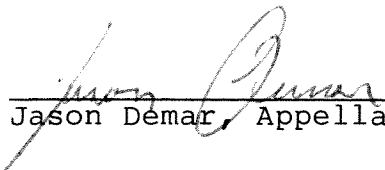
TPD = Tentative Parole Date
DTNR = Detainer
INS = Immigration and Naturalization Services
CS = Consecutive Sentence
DOR = Disciplinary Offense Report
FTRD = Full Term Release Date
GTRD = Goodtime Release Date

CERTIFICATE OF SERVICE

Comes now, Jason Demar, the Appellant herein, who Certifies that he has served a true and correct copy of the enclosed Brief upon the parties entitled to such service by depositing a copy of the said same in the United States Mail first class postage prepaid and addressed as follows:

Clerk of the Court
Idaho State Supreme Court
Post Office Box 83720
Boise, Idaho
83720-0101

Office of the Attorney General
Attention: Mark Kubinski
Post Office Box 83720
Boise, Idaho
83720-0010



Jason Demar, Appellant Pro-Se

9-23-13
Dated