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FOR THE STATE OF NORTH DAKOTA

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Reuben Larson,

Plaintiff/Appellant,

vs.

Timothy Schuetzle, Warden,
N.D. State Penitentiary,

Defendant/Appellee.

STATE OF NORTH DAKOTA

APPEAL FROM ORDER DENYING CERTIORARI APPLICATION,
DISTRICT COURT OF BURLEIGH COUNTY

BRIEF OF APPELLANT

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STATEMENT OF THE ISSUE

Did the Warden produce facts showing he has jurisdiction?

STATEMENT OF THE CASE

Reuben Larson is a prisoner incarcerated in the Bismarck penitentiary.

On April 15, 2005, Larson filed his application for writ of certiorari, asking the Court to declare that the Warden exceeded his jurisdiction in taking Larson's property and in ordering him to take his U.S. flag off his cell wall. R.A.#1; App.P.2.

On May 10, 2005, the Warden responded with his Objection to Application for writ of certiorari, and the Affidavit of Timothy Schuetzle. R.A.#4-5; App.P.10 & 19.

On May 20, 2005, Larson responded with his Response to Warden's Objection and Request for Judgment. R.A.#7.

On May 31, 2005, the Warden responded with his Reply Brief and a second Affidavit of Timothy Schuetzle in an attempt to produce facts to show his jurisdiction. R.A.#9-10.

On June 28, 2005, Larson filed his Reply to the Warden's Reply Brief. R.A.#12.

On October 10, 2005, the District Court entered his Memorandum Opinion dismissing the certiorari application. R.A.#13; App.P.23.

On November 29, 2005, Larson filed his notice of appeal. R.A.#14; App.P.26.

No hearing was had, so there is no transcript.

STATEMENT OF THE FACTS

Larson is a prisoner in the custody of the Warden, Timothy Schuetzle, incarcerated in the Bismarck penitentiary. Schuetzle is a member of or officer of the Executive Branch of the State of North Dakota, whose duty is to execute the law and the will of the law.

Inmates John Adams and Dakota Alton gave Larson their religious magazines, which they received, and these magazines are: "The Word of Faith" magazine from the "Kenneth Hagin Ministries" in Tulsa, Oklahoma; "Enjoying Everyday Life" magazine from the "Joyce Meyer Ministries" in Fenton, Missouri; and "Believers Voice of Victory" magazine from the "Kenneth Copeland Ministries" in Forth Worth, Texas.

On January 18, 2005, prison officers Mike Huck and Steve Rogalla, and Steve Boelter also took part or was present, took Larson's magazines, the ones given to him by the two inmates; and they immediately destroyed them.

In the past, whenever an item was taken, the item was held until any and all dispute over it was resolved or ended before the property was destroyed.

On January 29, 2005, Larson filed a "Step-1 Grievance" on this January 18 taking. Prison official Case Manager Steve Heit denied the grievance, saying that "Subscription magazines belong only to the subscriber per property rules" and that "The "Policy to destroy items that are garbage is set by property which allows staff pulling items to

be garbage may be destroyed in the property office by the staff pulling the items". On February 10, 2005, Larson filed his "Step-2 Grievance" to the Warden. The Warden denied it, saying that the magazines were "considered contraband". On February 19, 2005, Larson filed his "Appeal of Step-2 Grievance Decision" to Elaine Little, Director of the Department of Corrections & Rehabilitation (DOC&R). She denied it, saying the staff "acted appropriately in this case". App.P.4-5, ¶10.

In the meantime, Larson was given more magazines. On February 8, 2005, officer Mike Huck took Larson's "Word of Faith" magazine given to him by Dakota Alton. Huck immediately destroyed the magazine.

On February 10, 2005, Larson filed his "Step-1 Grievance". Steve Heit denied it, saying to go through the prison Chaplain. Larson filed his "Step-2 Grievance". The Warden denied it, saying they need to keep the cell "free from clutter" "if we need to enter a cell for a cell extraction" or for fire reasons. On February 25, 2005, Larson filed his "Appeal of Step-2 Grievance Decision" to Elaine Little, DOC&R. She denied it, saying she agreed with the responses given her. App.P.5-6, ¶12.

On February 28, 2005, Larson's cell was searched, but they did not take his religious magazines which were laying on his desk in his cell. And again on March 14, and again on March 21, 2005, Larson's cell was searched, but they took nothing. Larson always left his magazines

laying on his desk top: "The Lutheran Ambassador", "Inside Journal", "BrothaMan", plus those given to him.

On April 6, 2005, officers Steve Boelter and Mike Huck took 4 religious magazines which were given to him after the February 8 taking.

On the same day, April 6, Larson filed his "Step-1 Grievance".

On the same day, April 6, after filing his Grievance, Larson was called in to the Office and was given a "Class B Infraction Report" and was given 5 days cell confinement by Officer Brian Taylor as punishment for having the religious magazines given to him by the other inmates. Officer Steve Boelter wrote and charged out the "Infraction Report", asking that Larson be punished. See the exhibit attached to Schuetzle's first Affidavit, R.A.#4.

The next day, April 7, Steve Heit denied the "Step-1", saying that because they had given Larson a "Class B Infraction Report", that Larson could not now grievance the taking, and thus Heit denied the Grievance, even the part about the U.S. flag, discussed below.

The next day, April 8, 2005, officer Daniel Eback, with officer Bryan Taylor sitting in, called Larson in to the office and informed him they reduced the "Class B Report" from 5 days cell confinement down to a written warning, but warning him that next time it will be cell confinement. App.P.7, ¶18.

On April 6, 2005, when officers Huck and Boelter took

Larson's magazines, they also ordered him to take his picture of the U.S. flag off his cell wall because it is contraband. See the April 6 inventory form attached as an exhibit to the Warden's first Affidavit, R.A.#4.

What occurred is that shortly after 9-11-'01, when the twin towers in New York City were crashed in to, newspapers printed a picture of the United States flag, with the slogan "United We Stand" printed below the flag, to have people cut the picture of the flag from the newspaper and display it. Larson had that flag with the slogan printed below it displayed on his cell wall since 9-11-'01. This is the flag picture officers Boelter and Huck now say, 3½ years later, is contraband and not to be displayed. This flag was hung on the part of the cell wall the prison allocates as space where inmates may hang pictures. For example, this is the space where inmates will display pictures of their family, Playboy type pictures of women, etc. Under the prison rules, if I had drawn a picture of the flag on a sheet of paper, I could have displayed it on the cell wall. But because I cut the picture of the flag out of the newspaper, that is illegal, contrary to prison rules. The rule says inmates can not alter property. If they do, it is contraband.

On April 8, 2005, during the hearing discussed in the bottom paragraph of page 4 above, Larson asked Eback: "What about my United States flag, I am not taking it down". Eback responded they are just following the rules. Larson

responded that "our British government told our forefathers they were just following the rules--our forefathers stood up to their government at the time, and I am going to stand up to my government." Eback responded: "Why don't you ask Case Manager Steve Heit for permission to waive the rule and be allowed to keep the picture of the U.S. flag on your cell wall." Larson responded that "I do not ask permission to do something you have no right to prohibit." Eback then told Larson that the hearing was over with and so Larson left the office. See page 5 of Larson's April 8, 2005 "Step-2 Grievance", attached as an exhibit to the Warden's first Affidavit, R.A.#4.

On April 8, 2005, Larson filed his "Step-2 Grievance" on the taking of his magazines and the threat to take his U.S. flag off his cell wall. On April 12, the Warden denied it, saying "Our rule is in place to prevent theft". On April 13, Larson filed his "Appeal of Step-2 Grievance Decision" to Elaine Little, Director, DOC&R. On May 17, 2005, she denied it.

Part II of the Warden's Objection, R.A.#5, App.P.13-18, argues and claims that if an inmate gives Larson a magazine, then there is a fire hazard. But if Larson subscribes to the magazine, then there is no fire hazard. The Warden argues and claims that if an inmate gives Larson a magazine, then there is more clutter in Larson's cell, causing more work for the guards and hindering cell searches. But if Larson subscribes to the magazine, then this will not occur.

The Warden argues and claims that if an inmate gives Larson a magazine, that Larson can hide escape plans in the magazine or there can be communication of escape plans or plans to have fights. But if Larson subscribes to the magazine, then this will not occur.

In addition to the above 'claims' of the Warden, wouldn't a normal person think that if the inmate keeps his magazine, does not share it or give it away, and if Larson subscribes to the magazine, then there is more paper in the prison because now two prisoners have the same magazine. There are now two cells with clutter in it, there are now two cells creating more work for guards, two cells hindering cell searches, two cells with paper in which to conceal those elaborate, complicated escape plans, as the Warden claims and exclaims. See page 7 of Larson's Response, R.A.#7.

The Warden's argument is that his rule forbidding gift giving will help prevent extortion or strong-arming, the extortioner will obey the law, will be scared to strong-arm. In truth, if Larson subscribes to the magazine, the strong-armed will have a choice of two people to steal from, he will have more opportunity and choices from whom to choose and pick his victim. The real effect of the Warden's rule authorizing his taking of inmate's property is to steal inmate's property. The Warden steals, all in the name of preventing extortion and strong-arming. See page 8 of R.A.#7.

Of course, commissary purchased items, snack items, are the items subject to strong-arming. The Warden does not try to identify this, unless there is a victim and the victim reports it. Nevertheless, the Warden is so concerned about giving magazines, which has the original owner's name tagged on it, and thus is traceable. When a magazine or property comes in, the prison property office puts a name tag on the item. See page 8 of R.A.#7. When the guards took Larson's magazines given to him, they did not even bother to go to the inmates who gave Larson the magazines, to see if he stole or strong-armed them. Larson was not charged with theft or extortion. See page 10 of R.A.#7.

In response to and in recognition that he presented no facts to show his authority with his first Affidavit, R.A.#4, the Warden submitted a second Affidavit, dated May 27, 2005. R.A.#9. This second Affidavit simply listed the number of various incident reports issued for violations of the prison rules. Again, this fails to state facts or a claim for an authority or jurisdiction to make rules forbidding gift giving and altering one's own property such as cutting a picture of a flag out of a newspaper. This Affidavit concludes with the claim that: "The property rules, while not eliminating these issues, help the staff manage and control the issues." This is a conclusory claim, no facts were shown how cutting a picture out of a newspaper and displaying it is contrary to the good order, security and safety of the prison, and likewise, how an inmate giving

a gift threatens an escape, a fight, or is otherwise contrary to the good order and peace of the prison. The Warden's statement of "while not eliminating these issues" is an admission his rules forbidding gift giving and altering one's property are superficial, a fraud on the prisoner.

The Warden does have rules which forbid and punish for theft, escape, assault, extortion and strong-arming, etc. The Warden's second Affidavit, R.A.#9, cites these rules.

The Warden says that his rule forbidding inmates from giving gifts is used to take inmate's property because the Warden presumes and assumes the inmate stole or strong-armed it. See page 6 of the Warden's May 27, Reply, R.A.#10.

The Warden also produced his rule that inmates can not sell or barter their property, and his rule against no tattooing, to justify his rule against no gift giving, and no altering of one's personal property or no cutting of pictures out of the newspaper. The first Affidavit of Schuetzle, R.A.#4, App.P.21; and his second Affidavit, ¶4, R.A.#9.

STANDARD OF REVIEW

Larson could find no case in which a standard of review was articulated for certiorari. However, cases dealing with special proceedings do use a standard of review.

Abuse of discretion is the standard of review on whether the writ should issue. Schneider v. Seaworth,

376 N.W.2d 49, 51 (N.D. 1985) (Writ of prohibition case); Wutzke v. Hoberg, 2004 ND 42, ¶3, 675 N.W.2d 179, 181 (writ of mandamus case); Edinger v. Governing Authority of Stutsman County Correctional Center and Law Enforcement Center, 2005 ND 79, ¶8, 695 N.W.2d 447, 450 (Mandamus case).

ARGUMENT

THE WARDEN FAILED TO STATE A CLAIM TO SHOW HIS JURISDICTION.

Inmates can give gifts to each other, and can alter their personal property. The Warden exceeds his jurisdiction with his rules forbidding this. He failed to produce facts showing he has jurisdiction to forbid gifts and altering of property.

The Warden says that inmates can not give gifts to each other, and thus he took Larson's religious magazines given to him by other inmates.

And the Warden says inmates can not alter their property. And thus he ordered Larson to take the picture of the U.S. flag, which had been cut out of a newspaper, off his cell wall.

The Warden submitted pages 9, 40 and 55 of the Inmate Handbook, showing the (illegal) rules at issue, as an exhibit to his return. R.A.#4.

Page 9 says it is contraband if the property has been altered, or has not been purchased from the commissary or approved by the prison.

Page 40 says magazines will be allowed only if they are received directly from the publisher, and are contraband

to be destroyed if found in the possession of an inmate who is not the subscriber.

Page 55 says inmates may not sell, barter or give their property to other inmates, and property can not be altered.

The Warden's rules can not conflict with the laws of the State of North Dakota, can not take property without due process of law. Article I, §12, North Dakota Constitution, and the Fourteenth Amendment of the U.S. Constitution. N.D.C.C. 12-47-12 states: "The warden, ... shall make rules not in conflict with the laws of this state and shall prescribe penalties for violation of the rules ...". This statute, and thus the rules of due process of law, limit and define the Warden's jurisdiction or authority to make a rule.

"Subject to conditions implicit in imprisonment, a prisoner may not be deprived of life, liberty, or property without due process of law." Ennis v. Schuetzle, 488 N.W.2d 867, 871 (N.D. 1992).

By definition of his employment status, the Warden's jurisdiction is limited to the rule of law, he can not exercise his own will, because he is a member of or officer of the Executive Branch of government, and thus his only power is to execute the law or the will of the law. Verry v. Trenbeath, 148 N.W.2d 567, 570 (N.D. 1967).

A second way of expressing that the Warden's power is limited, is that: "When a prison regulation impinges

on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." Turner v. Safley, 482 U.S. 78, 89, 107 S.Ct. 2254, 2261 (1987).

"Penological interest" simply means "prison order, security, and inmate rehabilitation". Shaw v. Murphy, 532 U.S. 223, 227, 121 S.Ct. 1474, 1478 (2001); Procunier v. Martinez, 416 U.S. 396, 412-413, 94 S.Ct. 1800, 1811 (1974).

A rule is not reasonable or is not legitimate if:

- (1) if the rule is remote to the asserted goal (of preventing theft, strong-arming, escape or assault), or where the rule is arbitrary or irrational; Turner v. Safley, *id.*, page 89-90, 2262;
- (2) if the objective is not legitimate; *Id.*, page 90, 2262;
- (3) if the Warden has a ready alternative to achieve his goal (of preventing theft, strong-arming, escape or assault), then his rule is an "exaggerated response" to his concern of preventing theft, escape, etc.; *Id.*, page 90, 2262; and further,
- (4) if the inmate can point to an alternative that fully accomodates the prisoner's rights at de minimis cost to the Warden's goal of preventing theft, escape, etc., or even that the workload of the prison staff will reduce, then this is

evidence that the rule is an exaggerated response and is not a reasonable rule to prevent theft, escape, etc. Id., page 91, 2262.

Larson will discuss the law under due process and §12-47-12, then under the penological interest basis.

To take property, (received as a gift), is theft or robbery. To do it under color of law or governmental office or authority is extortion. Black's Law Dictionary, Eighth Edition, defining extortion. The Warden's conduct is the antithesis of the goal of preventing theft or strong-arming.

By definition and fact, property which one has obtained via gift or purchase is not stolen property. To take this property in the name of preventing theft or strong-arming, etc., is arbitrary, unreasonable, illegal, not rational, not reasonable, contrary to due process of law. The Warden's reasoning is shockingly astounding!

The District Court found that the rules are valid because unrestricted exchanges, not of property in general, but only of magazines, would require extensive monitoring to assure the magazine was not stolen. So, rather than make inquiry of the person whose name is on the magazine, the Warden will simply steal the magazine to prevent theft. And the Warden justifies his theft or extortion because there is a possibility, only an assumed possibility, he is stealing it from a thief. He has no concern of returning the magazine to the victim. So, the solution to prevent

theft is to extort, steal! The cure is worse than the disease, the cure is to breed and inflict the disease.

The rule the Warden is subject to is §12-47-12 and due process of law. This means that Larson may possess property, he can not be deprived of it, subject to only the common law or due process rule that his possession, acquisition and use does not violate, harm or invade the Warden's rights,¹ that is, subject to only the order, security and housekeeping of the prison. The Warden's authority, jurisdiction or discretion to make a rule is subject to due process of law. §12-47-12.

Under due process of law and §12-47-12, the Warden, in order for him to state a claim or to show an authority, must show detriment, harm, or an invasion of his power to have the custody, care and control of prisoners. Cf. Iowa Coal Min. Co. v. Monroe County, 555 N.W.2d 418, 429 (Iowa 1996); Farmers Ins. Exchange v. Arlt, 61 N.W.2d 429, 434 (N.D. 1953).

The Warden's rules forbidding gifts or altering one's property are illegal because, by definition and fact, a gift, or altering one's property such as cutting a picture out of a newspaper, does not violate or harm the order, security or housekeeping of the prison. Spruytte v.

1. Actually, the Warden has no rights as that word is normally understood to mean. He has only power because his custody exists by force, by the sword. He has a power or jurisdiction over his charge/prisoner, not a right, as that term is ordinarily used. The Warden's power is limited to only that required to maintain his custody, care and control of his charge/prisoners.

Department of Corrections, 459 N.W.2d 52, 54-55 (Mich.App. 1990) (Possession, acquisition or use of property could not be deprived or forbidden unless it was specifically shown that the specific property violated the order, security or housekeeping of the prison.); Spruytte v. Walters, 753 F.2d 498, 506-508 (6th Cir. 1985) (same). The reason is because the Warden's discretion to make a rule is subject to the specific substantive predicate that the rule not conflict with the law, not conflict with due process of law. §12-47-12; Spruytte v. Department of Corrections, id.

The Warden ordered Larson to take the picture of the U.S. flag off his cell wall because it was cut from a newspaper, it was altered property. No determination was made the altered property was being used to facilitate an escape, assault, etc. (How could it!!)

The rules forbidding gifts, selling or bartering, and altering property, are illegal, contrary to due process of law. The rules exceed the Warden's jurisdiction to make. N.D.C.C. 12-47-12.

Looking at the Warden's rules under the penological interest analysis: His rules are arbitrary, unreasonable, remotely connected or not even remotely connected to the asserted goal of preventing theft, strong-arming, escape, assault, etc. It is the prison officials themselves committing extortion so as to prevent, control or manage theft or strong-arming, escape, assault, etc. They are

not legitimate. They punish that which is lawful and that which comes natural and ^{is} common sense to people when they have property they wish to sell or give and another wishes to buy or receive, disturbing the natural order of humanity and thus disturbing the good order of the prison. His rules are the antithesis of penological interest.

The Warden does have rules forbidding theft, extortion or strong-arming, assault, escape, and having a messy cell, etc. And thus he has an alternative to his rules forbidding gifts, selling or bartering, altering property to make escape tools or assault weapons, etc., these rules directly addressing preventing theft, escape, assault, etc. His rules are an exaggerated response.

The objective of preventing gifts, selling or bartering, and altering property, are illegal, are not legitimate. Thus, even though the claimed purpose is to prevent theft, escape, etc., since the objective of the rule itself is not legitimate, it is not a legitimate penological interest.

The District Court's finding of (conclusion of) fact is limited to magazines only, a consumable type item, generally of value today but having little or no value in the near future, its value expiring within a short period of time. The Court's finding was not extended to 'hardware' such as TV's, radios, hot pots, CD's, etc., because the prison in the past used to allow inmates to sell their hardware to other inmates. Recently, the prison now allows

inmates to sell only their TV's and fans to others. The prison does monitor, does record all hardware purchases.

The prison allows inmates to purchase and possess commissary items, snack items, consumable items. The prison does not monitor these items, does not record or keep an inventory of these items. That is, the prison is not concerned about whether one has stolen or strong-armed commissary items, except only when the victim reports it or it otherwise specifically comes to their attention.

But the prison is so (superficially) concerned about magazines. Yet, both magazines and commissary are consumable items, both are the responsibility of the inmate as far as security for them is concerned. (An inmate can purchase a padlock for his cabinet door.)

The Warden is creating a security problem out of something that is not a security problem because, of necessity, it is and must be the inmate's security problem. The Warden is making a mountain out of something smaller than a molehill. He is creating the appearance of a problem so as to hide the real reason for his rule, so as to camouflage the oppressiveness of the rule.

The Warden even forbids an inmate from taking a magazine or newspaper out of the trash can. Even when the item is garbage, the prison forbids the inmate from 'dumpster diving', all in the name of preventing theft, the Warden converting garbage in to a mountain, in to a horrendous problem of theft.

The Warden's claim and the District Court's finding of fact is not one of fact, but is conclusory only. No fact exists and was shown to exist why this is and should be the problem it is 'played out to be'. The Warden only hopes the reader will assume it to be his problem. The Warden's claim and the Court's finding infers only an assumption he has a valid security concern. The claim and finding are insufficient.

The Warden's claim is weakened or annulled due to the fact that inmates can have commissary purchased items. Crofton v. Roe, 170 F.3d 957, 960 (9th Cir. 1999) (Warden's claim of strong-arming on gift subscriptions of magazines sent to prisoners by family and friends was weakened by the Warden's allowance of family and friends to send a gift of money, but not a gift of a magazine subscription, because a prisoner might strong-arm a magazine subscription, but not money!). The Warden's claim is not a legitimate or reasonable penological interest or concern for the Warden.

The only basis the District Court found for justifying the rule about no gifts is one point only, that allowing gifts would require extensive monitoring, record keeping, to ensure that the magazine was not stolen or strong-armed, extorted.

Even assuming the Warden were correct in claiming this, under due process of law and §12-47-12, he would be required to do this monitoring because an inmate can

possess property unless the Warden can show it was stolen, etc. Spruytte v. Dept. of Corrections, id.

However, the Warden's extensive monitoring claim is actually a statement he does not want to do his job. Laziness is not a justification to steal property. Cf. Olson v. Maxwell, 259 N.W.2d 621, 632 (N.D. 1977); Ramos v. Lamm, 639 F.2d 559, 573 n. 19 (10th Cir. 1980) (Constitutional rights can not be made dependent upon any theory of cost (or of extra work).).

Note that no fact was claimed and no finding of fact was made that it would actually cost the Warden money or more money when he does his cell searches. His claim, and the Court's finding, is a conclusory claim and finding. It is a conclusion of fact. It is insufficient.

His rule is an exaggerated response and is not reasonable to prevent theft because there is no cost, (de minimis cost), to allow gifts.

Further, the Warden's claim of extensive monitoring would be offset if he did not have these (illegal) rules. The Warden reported there were 503 Class B-8 incident reports of inmates loaning or borrowing, and 286 Class B-9 and 40 Class B-13 reports for unauthorized transfers of property and possession of contraband. This means the guards had over 800 forms to fill out and 800 or more hearings to attend, not counting the second hearing for those who appeal the first hearing. These 800 Class B disciplinary reports represent about two thirds of the

workload relating to Class B reports, and about half of the Class A and Class B reports combined. If these illegal rules were removed, if the Warden would comply with due process of law, his workload would greatly reduce. His rules are an exaggerated response, are not reasonable rules to prevent theft, escape, etc.

The rules forbidding gifts, selling or bartering, and altering of property, and even the rule forbidding no tattooing the Warden used to attempt to justify his rules, and the facts presented by the Warden, or the facts not presented but which should have been presented, fit within the criteria, outlined on pages 12-13 of this brief, that they are not reasonably related to a legitimate penological interest.

The rules are oppressive and effectuate oppression. The whole gist of these rules is to make prisoners pay full price for a new item as opposed to being able to buy it used or second hand from an inmate, or if it is a gift, to deprive inmates of the property. It forces waste because a prisoner can not sell his used item, so he throws it away. If the prisoner is to spend money, he must spend it with the prison commissary or with outside vendors. That is ok. But it is not ok to spend less money with a fellow prisoner to purchase the item used from him, or to receive it free as a gift.

The District Court also made findings about the neutrality of the rule and the content of the magazines!

The issue here is unauthorized deprivation of property, not the content of the property.

Page 3 of the District Court's Opinion, App.P.25, says that the rules are legal "as argued". Not knowing what this means, but interpreting this, it appears the Court is saying that the Turner v. Safley, id. analysis gives a broader leeway to the Warden than due process of law and §12-47-12. As Larson understands "Turner", it is the same as due process of law and §12-47-12. But, if Larson misunderstands, then, of course, §12-47-12 and due process of law govern the Warden's jurisdiction, supercede the "Turner" criteria. Ennis v. Schuetzle, id, cited on page 11 of this brief; and Spruytte v. Department of Corrections, id., cited on page 14-15 of this brief. But all this lengthy discussion should not be needed and perhaps should not have been done. All that needs to be said can be summarized as it was summarized on page 1 of Larson's Response and Request for Judgement, R.A.#7. A gift does no wrong. Altering property, such as cutting a picture out of a newspaper, did no wrong. No theft occurred, and no escape or assault tool was made. Therefore, the Warden had no right to take the property. "Really, nothing else need be said or argued."--quoting from page 1, R.A.#7. The taking was a gross and violent and vicious and malicious and frivolous and prejudicial abuse of power on the part of the guards and the Warden and the Director of DOC&R.

The Warden also has a rule of destroying property immediately, not giving the inmate an opportunity to recover his property taken.

This is illegal, contrary to basic procedural due process of law. The State may not take and destroy property without first giving the owner an opportunity to reclaim it. Logan v. Zimmerman Brush Co., 455 U.S. 422, 433, 102 S.Ct. 1148, 1156-1157 (1982); Wolf v. McDonnell, 418 U.S. 539, 557-558, 94 S.Ct. 2963, 2975 (1974); Parratt v. Taylor, 451 U.S. 527, 540, 101 S.Ct. 1908, 1915 (1981).

The Warden's claim and the District Court's finding are insufficient. No facts showing authority were produced.

The District Court was without jurisdiction to render the judgment rendered. The Court's judgment is 'coram non judice', void.

The Warden exceeded his jurisdiction in making the rules at issue and in taking the property. The rules at issue are as stated on pages 9, 40 and 55 of the Inmate Handbook, discussed on pages 10-11 of this brief.

The Warden acted 'ultra vires' and 'ultra licitim', unauthorized, beyond the scope of power granted to him by his 'corporate' charter, the N.D. Constitution and §12-47-12, beyond what is permissible or legal. Black's Law Dictionary, Eighth Edition, defining 'ultra vires' and 'ultra licitim'.

CONCLUSION

Wherefore, Larson prays this Supreme Court to find and declare the rules and conduct of the Warden and the District Court to be in excess of their jurisdiction, declare that the Warden exceeded his jurisdiction in making the rules made and in taking Larson's property.

Dated this 30th day of December, 2005.



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CERTIFICATE OF NONCOMPLIANCE

I declare that this brief was typed on a typewriter. We have no computers in this prison. Thus, I can provide no diskette of this brief to this Court.

Dated this 30th day of December, 2005.



Reuben Larson
Reuben Larson