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R. Paul Van Dam; Attorney General - State of Utah; Counsel for the Appellee.

Alvin Johnson; Pro Se.

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BRIEF

IN THE SUPREME COURT
OF THE
STATE OF UTAH

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ALVIN JOHNSON

Petitioner - Appellant

}
{

v.

Case No. 920075

M. ELDON BARNES, Warden

}
{

Respondent - Appellee

----- 00000000000 -----

REPLY BRIEF OF APPELLANT

----- 00000000000 -----

REPLY TO RESPONDENT'S CONTINUED ATTEMPT TO COVER UP THE TRIAL COURT'S "UNPRECEDENTED", INCREDIBLE, AND CONSTITUTIONALLY IMPERMISSIBLY IMPROVISING ITS VERY OWN PERSONAL CRITERIA FOR ADJUDICATING THE APPELLANT'S "GUILT" (i.e. DISPENSING WITH THE APPELLANT'S CONSTITUTIONALLY GUARANTEED "PRESUMPTION OF INNOCENCE" AND ADDITIONALLY DISPENSING WITH THE PROSECUTION'S "BURDEN OF PROOF BEYOND A REASONABLE DOUBT") AND THE TRIAL COURT SUBSTITUTED ITS UNCONSTITUTIONAL, INCREDIBLE AND "UNPRECEDENTED" MERE "READING OF THE PRELIMINARY EXAMINATION TRANSCRIPT BASING ITS ADJUDICATION OF GUILT WHOLLY AND EXCLUSIVELY UPON ITS ADMITTED "READING OF THE "PRELIMINARY HEARING TRANSCRIPT" AND THEREFROM UNCONSTITUTIONALLY DECLARED THE APPELLANT "GUILTY" OF "CAPITAL MURDER" AND TWO (2) "FIRST DEGREE FELONIES" TOTALLY WITHOUT ANY ASCERTAINABLE AUTHORITY UNDER THE CONSTITUTION, STATUTES, OR PRECEDENTS OF THE UTAH STATE COURTS OF APPEALS.

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ALVIN JOHNSON
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FILED

AUG 21 1992

CLERK SUPREME COURT,
UTAH

R. PAUL VAN DAM
Attorney General - State of Utah
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Salt Lake City, Utah 84114
Counsel For The Respondent - Appellee

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RESPONDENT , THROUGH DAVID BRYANT, Assistant Attorney General,
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DEFENDANT IN THE HISTORY OF THE STATE OF UTAH TO HAVE HIS
" PRESUMPTION OF INNOCENCE " AND THE PROSECUTION'S REQUIRED
" BURDEN OF PROOF - BEYOND A REASONABLE DOUBT" TOTALLY DESPENDED
WITH BY THE TRIAL COURT AND ADMITTEDLY SUBSTITUTED BY THE TRIAL
COURT WITH ITS " READING OF THE PRELIMINARY HEARING TRANSCRIPT"
AND ARBITRARILY DECLARING THE APPELLANT " GUILTY " OF CAPITAL
MURDER AND TWO (2) " FIRST DEGREE FELONIES " WHOLLY AND EXCLUSIVELY
UPON SAID TRIAL COURT'S " TRANSCRIPT-READING " AND THEREBY DENIED
THE APPELLANT HIS ARTICLE I, SECTION 12, CONSTITUTION OF UTAH ...
" RIGHT TO DEFEND HIMSELF " AND "RIGHT TO COMPEL THE ATTENDANCE OF
WITNESSES IN HIS BEHALF AND FOR SUCH SPECIFIC REASONS, THE
FACIALLY DEFECTIVE CONVICTIONS OF THE APPELLANT BY THE TRIAL
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IN THE SUPREME COURT
OF THE
STATE OF UTAH

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ALVIN JOHNSON

Petitioner - Appellant

}
{

v.

Case No. 920075

M. ELDON BARNES, Warden

}
{

Respondent - Appellee

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REPLY BRIEF OF APPELLANT

-oooooOooooo-----

JURISDICTION OF THE UTAH SUPREME COURT

The Jurisdiction of The Captioned Court Is Invoked Pursuant To The Provisions
of 78-2-2 (3)(1) U. C. A.

-oooooOooooo-----

STATEMENT OF ISSUES PRESENTED IN REPLY

POINT I.

AFTER REQUIRING THE PETITIONER-APPELLANT OVER TWO (2) YEARS (i.e. FROM
JULY 21, 1989 ...TO..JANUARY 10, 1992) TO RECEIVE A HEARING ON HIS " PETITION
FOR A WRIT OF HABEAS CORPUS " ; THE RESPONDENT, THROUGH DAVID BRYANT, Asst.Att.,
Gen., ENTERED INTO A CONSPIRATORIAL COLLUSIVE MANEUVER TO COVER -UP FOR THE
" UNPRECEDENTED " AND INCREDIBLE AND CONSTITUTIONALLY IMPERMISSIBLE EXTRA-JUDICIAL
ROLE OF THE " BENCH-TRIAL " COURT IN ITS IMPROVISING HIS VERY OWN "UNPRECEDENTED "
CRITERIA FOR ADJUDICATING GUILT AND THEREBY NOT ONLY CLEARLY DENIED THE APPELLANT
A CONSTITUTIONALLY GUARANTEED " FAIR TRIAL " BUT ALSO ENCREACHED INTO THE
EXCLUSIVE PROVINCE OF THE LEGISLATIVE BRANCH OF STATE GOVERNMENT IN VIOLATION OF
THE DOCTRINE OF "SEPERATION OF POWERS OF GOVERNMENT " AS SPELLED OUT UNDER THE
PROVISIONS OF ARTICLE V. SECTION I, CONSTITUTION OF UTAH AND FOR SUCH SPECIFIC
REASON, THE PETITIONER-APPELLANT'S CONVICTION SHOULD NOT BE ALLOWED TO STAND.

ARGUMENT

I.

THE "MOTION TO DISMISS" THE HABEAS PETITION THAT IS PRESENTLY BEFORE THIS
COURT WAS FILED BY AN EXPERIENCED BARBARA DEARSON AND ...

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BARBARA BEARNSON (3986)
Assistant Attorney General
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236 State Capitol
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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH

ALVIN JOHNSON :
Petitioner, : MOTION TO DISMISS
vs. :
ELDON BARNES, WARDEN, UTAH : Case No. 890904828
STATE PRISON, : Judge Timothy R. Hansen
Respondent.

The respondent, Eldon Barnes, by and through Barbara Bearnson, Assistant Attorney General, hereby moves this Court to dismiss petitioner's petition for writ of habeas corpus based upon the following:


1. Failure to state a claim upon which relief can be granted.

This motion is supported by an accompanying memorandum of points and authorities.

Further, respondent requests that the matter be decided without a hearing pursuant to Utah R. Civ. P. 65B(g) and CJA 4-501(8).


DATED this 25th day of August, 1989.

R. PAUL VAN DAM
Attorney General


BARBARA BEARNSON
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss was mailed, postage prepaid, to Alvin Johnson, pro se, at P.O. Box 250, Draper, Utah 84020, on this 25th day of August, 1989.



The Appellant respectfully submits that the foregoing AUGUST 25, 1989 " MOTION TO DISMISS " (By BARBARA BEARNSON) is ONE AND THE VERY SAME HABEAS MATTER that is presently PENDING BEFORE THIS HONORABLE COURT IN THE INSTANT APPEAL and relative thereto, The NOVICE-LIKE ATTEMPT OF DAVID BRYANT (Counsel For Respondent) TO FALSELY REPRESENT TO THIS COURT THAT The " UNPRECEDENTED , INCREDIBLE EXTRAJUDICIAL DISCRIMINARY ROLE OF THE " BENCH TRIAL COURT " WAS NOT RAISED IN THE HABEAS PETITION THAT BARBARA BEARNSON TRIED SO HARD TO GET DISMISSED " WITHOUT A HEARING " ... If any TRUTH AT ALL CAN BE ASCRIBED to such BASELESS ASSERTION BY DAVID BRYANT , WHY THEN DID BARBARA BEARNSON , DAVID BRYANT, AND THE OTHER MEMBERS OF THE UTAH ATTORNEY GENERAL'S STAFF ... TOTALLY

COULD THE ANSWER TO SUCH CRUCIAL QUESTION EXIST IN THE OBVIOUS AND INESCAPABLE TRUTHS
THAT THE FOLLOWING " UNPRECEDENTED " , AND INCREDIBLE AND UNCONSTITUTIONAL EXTRAJUDICIAL
" BENCH TRIAL " IS : (1.) INDEFENSIBLE AND (2.) PLAIN ERROR ?

** THE "BENCH TRIAL " TRANSCRIPT AT PAGE 9 - LINES 15-25 **

15 THE COURT: As I have previously indicated
16 the Court has gone over the transcript quite thoroughly as
17 far as the evidence which was adduced at the preliminary
18 hearing, and based on my reading of the transcript and from
19 that evidence the Court is ready at this time to give its
20 decision.

21 The Court does find that the defendant is guilty
22 of Count 1, criminal homicide, murder, first degree, a capital
23 offense.

24 The Court also finds the defendant is guilty of
25 Count 2, attempted criminal homicide, murder, first degree,

10

** "BENCH TRIAL TRANSCRIPT --PAGE 10)

1 a first degree felony.

2 The Court also finds the defendant is guilty of

3 Count 3, aggravated sexual assault, a first degree felony.

Surely The above "BENCH TRIAL " COURT'S LAWLESS AND UNCONSTITUTIONAL PERSONALLY
IMPROVISED FORM FOR ADJUDICATING "GUILT " FLIES INTO THE TEETH OF THE FOLLOWING UTAH
LEGISLATIVE COMMAND FOR ASCERTAINING GUILT OR RESOLVING THE CASE FAVORABLE TO THE ACCUSED

BURDEN OF PROOF

76-1-501. Presumption of innocence -- "Element of the offense" defined

(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In absence of such proof, the defendant shall be acquitted.

When , as occurred above, The TRIAL COURT rendered its JUDGEMENT without any KNOWN
JURISDICTION under The LAWS OF THE STATE OF UTAH, This Court has declared that such
Judgement " MUST BE DECLARED A NULLITY cf. STATE V. TEEBARD, 72 P.2d 626
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FURTHER, Because The Petitioner-Appellant is THE ONLY PERSON IN THE HISTORY OF THE STATE OF UTAH TO BE ACCORDED A " BENCH TRIAL " (In NAME ONLY) AND (1) NOT BE ALLOWED TO " DEFEND HIMSELF " NOR (2) " COMPEL THE ATTENDANCE OF WITNESSES IN HIS BEHALF" as expressly guaranteed Under ARTICLE I, SECTION 12, CONSTITUTION OF UTAH And was thereby made " A RECIPIENT OF INVIDIOUS DISCRIMINATION " which The Supreme Court has declared to occur:

" WHENEVER A PARTICULAR RACE (OR INDIVIDUAL IS SELECTED FOR OPPRESSIVE TREATMENTS ' TREATMENTS " -cf. SKINNER V. OKLAHOMA, 316 U. S. 535 (1942)

BECAUSE Phillip RIMMASCH of STATE v. RIMMASCH, 775 P.2d 388 (UTAH 1989) WAS ALSO given A " BENCH TRIAL " in the VERY SAME SALT LAKE COUNTY, THIRD DISTRICT COURT wherein The Appellant's " BENCH TRIAL " was conducted and The TRIAL COURT (a) DID NOT SUBJECT RIMMASCH TO THE " TRIAL BY ORDEAL " of MERELY "READING THE PRELIMINARY HEARING TRANSCRIPT" AND RIMMASCH'S " GUILT " DECLARED WHOLLY UPON SUCH " TRANSCRIPT-READING " BUT (b.) RIMMASCH was accorded WITNESSES FOR AND AGAINST HIM and thereby RECEIVED A DIFFERENT (A DIFFERENT) BRAND OF JUSTICE THAN WAS ACCORDED APPELLANT (ALVIN JOHNSON) IN THE INSTANT CASE And The Federal CONSTITUTIONAL GUARANTEE OF " EQUAL PROTECTION OF THE LAWS " under The 14th. AMENDMENT was then and there denied And also denied was The "UNIFORM OPERATION OF THE LAWS " That is guaranteed under ARTICLE I, SECTION 24, CONSTITUTION OF UTAH, SEE ALSO: FRANCIS v. RESWEBER, 329 U. S. 459 (1947) CLEBURNE CITY, TEXAS v. CLEBURNE LIVING CENTER, 473 U. S. 432 (1985) ; MCGOWAN V. MARYLAND, 366 U. S. 420 (1961) McLAUGHLIN V. FLORIDA, 379 U. S. 184 (1964) AND " RACE AND NATIONALITY SHOULD PLAY NO ADVERSE ROLE IN THE ADMINISTRATION OF JUSTICE " -SEE: BATSON V. KENTUCKY, 476 U. S. 79 (1986); TURNER V. MURRAY, 476 U. S. 28 (1986) ; ROSE V. CLARK, 478 U. S. 579 (1986)

AND, " FAIR PLAY " which has been declared to be " AT THE HEART OF DUE PROCESS OF LAW " (GALVAN V. PRESS, 347 U. S. 522 /1954/; BOLLING V. SHARPE, 347 U. S. 499/1954/) should suffice to effect an obviously WARRANTED " REVERSAL " in the instant case, IF, INDEED, " JUSTICE MUST SATISFY THE APPEARANCE OF JUSTICE ", ACCORD: OFFUTT V. UNITED STATES, 348 U. S. 11 (1955); IN RE MURCHISON, 349 U. S. 133 (1955) ; MARSHALL V. JERRICO, INC., 446 U. S. 38 (1980) ; MAYBERRY V. PENNSYLVANIA, 400 U. S. 455 (1971)

WHILE The Appellant was not entitled to " A PERFECT TRIAL " (LUTWAK V. UNITED STATES,

** CONCLUSION **

INASMUCH AS THERE IS NO ASCERTAINABLE UTAH LAW NO ANY RULING BY THIS COURT NOR THE UTAH COURT OF APPEALS which Authorizes A TRIAL COURT to ADJUDICATE "GUILT " wholly And EXCLUSIVELY upon its READING OF THE TRANSCRIPT of THE EX PARTE PROCEEDINGS known At ARTICLE I, SECTION 13, CONSTITUTION OF UTAH AS " A PRELIMINARY EXAMINATION ", THE TRIAL COURT ACTED WITHOUT ANY JURISDICTION WHATSOEVER AND ITS JUSGEMENT MUST BE "DECLARED A NULLITY" under This Court's majority decisions. in STATE V. TELFORD, 72 P.2d 626; SEE ALSO: ALBRECHT V. UNITED STATES ,273 U. S. 1(1927); BEDE V. POWERS, 268 U.S. 68 (1924) And " SUBJECT MATTER JURISDICTION CANNOT BE WAIVED NOR CONFERRED UPON THE COURTS BY STIPULATION, INACTION OR CONSENT OF THE PARTIES." cf. CALIFORNIA V. LARUE, 409 U. S. 109 (1973); SEE ALSO: UNITED STATES V. SIVIGLIA , 686 F.2d 832(10th.Cir.,1981)

And This Court has stated:

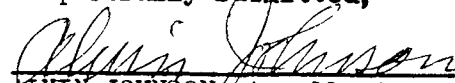
" THE QUESTION OF THE TRIAL COURT'S LACK OF JURISDICTION MAY BE RAISED AT ANY TIME "

cf. STATE V. MORREY, 23 UTAH 273, 16 P.764

WHEREFORE, The Petitioner-Appellant prays that based upon the foregoing, in addition to The APPELLANT'S BRIEF, The " UNPRECEDENTED " AND UNCONSTITUTIONAL PERSONALLY IMPROVISED "PRELIMINARY HEAR-TRANSCRIPT-READING " that was UNCONSTITUTIONALLY SUBSTITUTED FOR " PROOF BEYOND A REASONABLE DOUBT " (76-1-501 U. C. A.) , IN RE WINSHIP , 397 U. S. 358 (1970) WILL BE DECLARED TO BE REVERSIBLE ERROR AND THE conviction of The Appellant declared Fatally Defective in the interest of a fair administration of " EVEN-HANDED JUSTICE ".

Dated this 15th. day of August, 1992

Respectfully Submitted,


ALVIN JOHNSON, Appellant


** CERTIFICATE OF MAILING **

I, ALVIN JOHNSON, do hereby certify that an EXACT COPY of the foregoing REPLY BRIEF was placed in the UNITED STATES MAIL, Postage pre-paid and addressed to:

MR. R. PAUL VAN DAM, Attorney General
236 State Capitol Bldg.,
Salt Lake City, Utah 84114

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This  day of August 1992