

IN THE UTAH COURT OF APPEALS

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Robert Dale,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Petitioner and Appellant,	)		
	)	Case No. 20091043-CA	
v.	)		
	)		
Alfred Bigelow, Warden; and	)	F I L E D	
Board of Pardons and Parole,	)	(April 22, 2010)	
	)		
Respondents and Appellees.	)	<table border="1"><tr><td>2010 UT App 101</td></tr></table>	2010 UT App 101
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Third District, Salt Lake Department, 080923662  
The Honorable Tyrone E. Medley

Attorneys: Robert Dale, Gunnison, Appellant Pro Se  
Mark L. Shurtleff, Nancy L. Kemp, and Michelle M.  
Young, Salt Lake City, for Appellees

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Before Judges Orme, Thorne, and Roth.

PER CURIAM:

Robert Dale appeals the district court's order dismissing his petition for extraordinary relief. This matter is before the court on Appellees' motion for summary disposition.

Dale argues that the district court improperly dismissed his claim against Alfred Bigelow. The district court dismissed the claim because Dale failed to set forth any allegations or any specific claims for relief against Bigelow in his petition for extraordinary relief. The only allegations Dale ever made against Bigelow were contained in his opposition to the State's motion to dismiss. Dale never attempted to amend his petition to include such allegations. Therefore, because the petition did not state any claim for relief against Bigelow, the district court correctly dismissed the petition as to him. See Utah R. Civ. P. 12(b)(6).

Dale next argues that the district court erred in dismissing his claim against the Board of Pardons and Parole (the Board). Dale originally asserted that his due process rights were violated when the Board provided him with an oral summary of letters submitted to the Board by members of the community

instead of the actual letters themselves or a written summary of those letters. Dale later acknowledged that the Board is allowed to provide a summary of material information to be reviewed in a parole hearing when there is a safety or security concern. See Utah Admin. Code R671-303-1; see also Neel v. Holden, 886 P.2d 1097, 1102 (Utah 1994) (stating that "due process does not require the disclosure of confidential information when disclosure might lead to harm of a third person"). However, Dale alleges that the Board violated its own rules by failing to provide him with a written summary of the letters. See Utah Admin. Code R671-303-1. The Board asserts that it had insufficient time to prepare a written summary of the letters because two of the letters were received within only a few days of the hearing. As a result, the Board provided Dale with the following verbal summary of the letters: "Received 3 separate letters from concerned citizens all requesting that because of your violent history you do a [m]inimum of 10 years in the Utah prison, not to include your federal time. They all feel that you are a threat to society."

Dale fails to demonstrate how he was prejudiced in any way by receiving a verbal summary of the letters, as opposed to a written summary of those same letters. The Utah Supreme Court has stated that due process in parole hearings "requires that the inmate know what information the Board will be considering at the hearing and that the inmate know soon enough in advance to have a reasonable opportunity to prepare responses and rebuttal of inaccuracies." Labrum v. Utah State Bd. of Pardons, 870 P.2d 902, 909 (Utah 1993). In arguing that the oral summary was insufficient, Dale does not assert that the Board failed to give him information upon which the Board would base its decision, nor does he assert that he was not given a reasonable opportunity to rebut any information contained in the letters. Dale merely argues he was not afforded due process because the Board did not comply with its own rule. The district court correctly recognized that "[p]rocess is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement." Olim v. Wakinekona, 461 U.S. 238, 250. Here, the Board's actions satisfied Dale's rights by providing him with information that would be considered at the hearing in sufficient time to allow Dale to rebut any such information contained in the letters. Because Dale failed to allege that the verbal summary of the letters, as opposed to a written summary with the exact same information, deprived him of the ability to adequately respond to

the information, the district court properly dismissed Dale's claim against the Board.

Affirmed.

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Gregory K. Orme, Judge

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William A. Thorne Jr., Judge

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Stephen L. Roth, Judge