

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Maurice Joseph Gelpi III,)	MEMORANDUM DECISION
)	(Not For Official Publication
Petitioner and Appellant,)	
)	Case No. 20050219-CA
v.)	
)	
Board of Pardons; Clint Friel;)	F I L E D
and David E. Yocom, Salt Lake)	(October 20, 2005)
City District Attorney,)	
)	2005 UT App 452
Respondents and Appellees.)	

Third District, Salt Lake Department, 040920604
The Honorable J. Dennis Frederick

Attorneys: Maurice Joseph Gelpi III, Draper, Appellant Pro Se
Mark L. Shurtleff and Eric D. Petersen, Salt Lake
City, for Appellees Board of Pardons and Clint Friel

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Maurice Joseph Gelpi III appeals the district court's order dismissing his petition for extraordinary relief. We affirm.

To the extent Gelpi argues that the Board of Pardons (Board) exceeded its authority when it issued a warrant for his arrest, this argument is without merit. The Board has express statutory authority to issue warrants to retake parolees into Board custody. See Utah Code Ann. § 77-27-11(3) (2003). In Jones v. Utah Bd. of Pardons and Parole, 2004 UT 53, 94 P.2d 283, the Utah Supreme Court expressly held that the issuance of warrants to retake parolees is constitutional. Id. at ¶¶36,42. "[T]he Board's power to issue retaking warrants falls well within the ambit of its legitimate plenary powers to 'grant parole.'" Id. at ¶35.

To the extent that Gelpi argues the Board lacked jurisdiction to reimprison him after a parole violation, this argument is also without merit. The Board "may revoke the parole of any person who is found to have violated any condition of his parole." Utah Code Ann. § 77-27-11(1). If a parolee violates

the conditions of parole, the Board may order the parolee to be "imprisoned again as determined by the Board, not to exceed the maximum term." Id. § 77-27-11(6). Under the plain language of the statute, the Board retains jurisdiction over parolees, and may reimprison them for parole violations, even without a new conviction.

Gelpi also argues that his due process rights were violated because a hearing was not provided immediately upon his return to Utah. However, upon his return to custody, Gelpi signed a "Time Waiver For Parole Revocation Hearing" (Time Waiver). The Time Waiver stated in relevant part:

I . . . know that I have a constitutional right to a timely parole revocation hearing and that under Board rules my hearing should be held within 30 days after detention or return to Utah custody. . . . I am also aware that I am the subject of criminal charges arising from the same conduct for which parole may be revoked. I believe it is in my best interest to postpone my parole revocation hearing until the disposition of criminal charges in a trial court. Therefore, I waive any time requirement under the above rule and agree that the Board may schedule my hearing after disposition of the criminal charges in a trial court. I understand that, if at all possible, the hearing will proceed promptly after that time. By signing this waiver, I acknowledge that I may be entitled to a parole revocation hearing within 30 days and that I have freely and voluntarily waived that right. I acknowledge I will notify the [Board] when the charges have been adjudicated.

Thus, Gelpi specifically waived any claim that he was denied procedural due process when the Board failed to hold parole revocation proceedings immediately upon his return to custody.

Finally, Gelpi argues for the first time on appeal that the waiver of extradition form was invalid. We decline to consider this claim. "As a general rule, appellate courts will not consider an issue, including a constitutional argument, raised for the first time on appeal unless the trial court committed plain error or the case involves exceptional circumstances." State v. Brown, 856 P.2d 358, 359 (Utah Ct. App. 1993). Gelpi argued below that he was not challenging the waiver of extradition form. Only after the district court issued its

ruling on summary judgment did Gelpi attempt to argue, in a postjudgment motion, that the waiver form was invalid. This motion was never ruled upon by the district court. See *Wilde v. Wilde*, 2001 UT App 318, ¶37 n.5, 35 P.3d 341 ("Raising an issue in a post-trial motion fails to preserve that issue for appeal without evidence that the trial court considered and ruled on the merits of the issue.").

We affirm the decision of the district court.

James Z. Davis, Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge