

PUBLIC

In the Supreme Court of the State of Utah

State of Utah, Plaintiff / Appellee	Case No. 20200917-SC
v.	
Stephen Rippey, Defendant / Appellant	

Brief of Appellant

Appeal from Final Judgment Entered in the Third District Court,
In and For Salt Lake County, State of Utah,
the Honorable Douglas Hogan presiding, Case No. 081402174

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Oral Argument Requested *** Defendant is Incarcerated

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Brief of Appellant

INTRODUCTION

The interaction between Utah’s Plea Withdrawal Statute (“PWS”) and Utah’s Post-Conviction Remedies Act (“PCRA”) presents serious constitutional problems for criminal defendants like Mr. Rippey – problems that this Court, in last year’s *Brown III* case, characterized as “meaty constitutional questions that deserve our attention.” *State v. Brown*, 2021 UT 11, ¶9, 489 P.3d 152 (“*Brown III*”).

These questions reach the very core of the criminal justice system, implicating a number of fundamental federal and state constitutional rights. Mr. Rippey’s tortured journey through the PCRA process, as mandated by the PWS, also perfectly demonstrates the constitutional and practical problems inherent in the broken status quo, and why post-conviction proceedings cannot serve as an

“alternative procedural route” and substitute for direct appeal. *See Gailey v. State*, 2016 UT 35, ¶3, 379 P.3d 1278. Simply, the PCRA is a minefield of procedural rules and statutory bars that incarcerated and mostly pro se individuals are required to navigate without legal knowledge, resources, the aid of counsel, and necessary documentation or information about their cases; and where they are also required to meet “higher” pleading standards while they contend with the legal expertise and substantial resources of opposing state counsel.

Although this Court recognized the practical importance of addressing these issues, it declined to reach them in *Brown III*. *See* 2021 UT 11, ¶¶8, 27. In doing so, this Court implied that these issues would have been properly before it if Mr. Brown had raised them in a timely first appeal of right. *Id.* ¶18. Mr. Rippey’s procedural posture presents such a case as his direct appeal has been reinstated.

The issues are ripe. Mr. Rippey urges this Court to use this opportunity to finally address the merits of these challenges that have been percolating for many years and address head-on the constitutional issues raised here.

STATEMENT OF ISSUES¹

1. Utah's PWS is unconstitutional both on-its-face and as-applied where criminal defendants, like Mr. Rippey, who enter pleas but do not seek to withdraw them prior to sentencing, are denied their right to appeal any non-sentencing claims with the commensurate right to effective assistance of counsel.

Standard of Review: The constitutionality of a statute is a question of law reviewed for correctness. *E.g., Gailey*, 2016 UT 35, ¶8.

Preservation: This issue, and the related constitutional issues, were raised in Rippey's Motion to Reinstate Appeal. *Generally*, TR281-306 (including argument related to right to appeal or first review by an appellate court, TR296-97,305-06; to effective assistance of counsel on appeal, TR298,305; to due process, TR297,299; to equal protection and uniform operation of law, TR300; and to open courts, TR302). Rippey also asserted as a ground in his PCRA petition that he was denied the right to appeal, and that ground was summarily dismissed. *See* PR12-13 (Petition Ground (q)); PR141 (summary dismissal of Ground 17). Rippey also alleged in various filings that he was being denied his right

¹ The trial court record in case no. 081402174 is cited as "TR[record page #]". The post-conviction record in case no. 100403251 is cited as "PR[record page #]".

to counsel, due process, equal protection, and meaningful access to the courts. *E.g.*, PR148-149; PR314-322.

Insofar as this Court finds these issues are not “preserved”, this Court should review them under the “exceptional circumstances” exception to the preservation requirement.²

² Rippey believes his Motion to Reinstate Appeal preserved all three of the issues raised herein, as did his pro se pleadings during the PCRA proceedings. In determining the motion to reinstate the appeal, however, the district court did not rule on the PWS constitutionality issues because the courts and litigants were awaiting a decision in *Brown III*. *E.g.*, TR331,335,337. Nevertheless, the district court granted Rippey’s motion to reinstate his appeal as to his sentence. Because Rippey is now on direct appeal, and is still precluded by the PWS from raising any other challenges, the issues raised herein are ripe. If this Court finds them not to be “preserved”, this Court should consider them under the “exceptional circumstances” exception to the preservation requirement.

Exceptional circumstances exist where a rare procedural anomaly precludes an argument being raised in a trial court or excuses a failure to raise it. *See State v. Johnson*, 2017 UT 76, ¶29, 416 P.3d 443; *also State v. Van Huizen*, 2019 UT 01, ¶27, 435 P.3d 202 (exceptional circumstances apply when defendant unable to object at earlier or “proper” time). For instance, the exception has been applied when an error first arises in a final order or judgment and leaves no opportunity to object. *Johnson*, 2017 UT 76, ¶35. It has also been applied when a statute functions in such a way as to avoid review in the trial court. *See Salt Lake City v. Ohms*, 881 P.2d 844, 847 (Utah 1994). The PWS, and particularly the way it restricts the arguments that can be made both in the trial court and on direct appeal, functions in just such a way as to evade review.

Beyond the showing of a rare procedural anomaly, the Court considers additional factors to determine whether the Court should reach the issue. *See Johnson*, 2017 UT 76, ¶29. The additional factors include: whether the failure to consider an issue would result in

2. Subsection (2)(b) of Utah’s PWS is an unconstitutional assumption of the Court’s exclusive rule-making power.

Standard of Review: See Standard of Review for Issue #1.

Preservation: This issue was raised in Rippey’s Motion to Reinstate Appeal. *Generally* TR281-306 (including argument related to separation of powers, TR303). Insofar as this Court finds this issue not preserved, this Court should consider it under the “exceptional circumstances” exception. *See* n.2, *supra*.

3. If this Court finds Utah’s PWS unconstitutional, this Court should fashion an appropriate remedy or procedural mechanism that affords Rippey his rights to challenge his conviction to an appellate court with the right to effective assistance of state-paid counsel.

Standard of Review: The Court has authority and a mandate to fashion procedural remedies necessary to vindicate constitutional rights. *E.g., Manning v. State*, 2005 UT 61, ¶26, 122 P.3d 628, *superseded by rule* as stated in *Brown III*, 2021 UT 11.

Preservation: This issue was raised in Rippey’s Motion to Reinstate Appeal. TR305-306. Insofar as this Court finds this issue not

manifest injustice; whether a significant constitutional right or liberty interest is at stake; and judicial economy. *See id.* ¶37. The “precise contours” of the exceptional circumstances exception requires case-by-case assessment. *See id.* ¶38. These factors speak to the Court reaching the issues here since the failure to consider them would result in manifest injustice, as both liberty interests and significant constitutional rights are implicated.

preserved, this Court should consider it under the “exceptional circumstances” exception. *See* n.2, *supra*.

STATEMENT OF THE CASE

Plea, Sentence, and Ignored Request for Appeal

On November 12, 2008, Rippey pled guilty to two felony sex offenses involving a child. Rippey maintains that preceding and during the plea process, he received ineffective assistance of trial counsel and suffered from cognitive problems. PR2-16. In entering the pleas, Rippey was never informed that he was effectively waiving his rights to appeal with the assistance of counsel any non-sentencing issues he may have, nor was he informed of the PCRA process or relevant deadlines, burdens, and other requirements.

Rippey did not file a motion to withdraw his pleas prior to sentencing, which he asserts was again due to mental health issues and ineffective assistance of trial counsel. TR284.

On February 5, 2009, Rippey was sentenced to two indeterminate terms of 15-life, ordered to run concurrently. TR54-55. Shortly after sentencing, and well within the period to file an appeal, Rippey wrote to his attorney and asked her to “[a]ppel if possible.” No appeal was filed. TR284-85.

Pro Se PCRA Petition and First Request For Counsel

On February 4, 2010, Rippey filed a pro se PCRA petition setting forth 17 grounds for relief, with a contemporaneous motion to appoint counsel. PR2-16 (PCRA petition); PR31 (first motion to appoint).

During the “frivolity review” required by Utah Rule of Civil Procedure 65C (“Rule 65C”), the post-conviction court summarily dismissed 8 of the 17 grounds, one dismissed ground being that Rippey was denied his right to appeal. PR140-141,143. The court did not address Rippey’s motion to appoint counsel.

On May 7, 2010, the post-conviction court issued an order directing the clerk to serve the petition and its attachments upon the respondent State of Utah, and for the Attorney General to respond to the remaining claims within 30 days. (“Order to Respond”). PR143-144. According to the certificate of service, the Order to Respond was served on this same date. PR145.

Receiving No State Response Within the Ordered Time Frame, Rippey Tries to Advance His Case and Again Requests Counsel

On June 28, 2010,³ 52 days after the State was ordered to respond (and did not), Rippey filed a “Motion for Summary Judgment.”

³ Though received and docketed June 28, 2010, Rippey signed the motion on June 23, 2010. This delay of several days appears to be

PR147-150. Therein, Rippey asked that counsel be appointed for the second time, arguing that the claims in his petition were complex and that appointment of counsel was necessary to give him meaningful access to the courts. PR148-149.

This motion was construed by both the court and the State as one for default judgment. PR151; PR158. No action was taken on Rippey's motion to appoint counsel.

Accepting the State's Misstatements, the Post-Conviction Court Grants the State's Request for Additional Time

On July 19, 2010, the State filed a Motion for Enlargement of Time to Respond to Petition and to Deny Petitioner's Motion for Default Judgment. PR151-157. Therein, the State asserted it had never received either the Order to Respond, or the petition and attachments. PR152-54. Directly contrary to this assertion, and in a separate motion filed by the State *the very same day* in the underlying criminal case, the State acknowledged that the Order to Respond was received in the appellate division of the Attorney General's Office on June 30, 2010, TR73, and the record verifies that the Order to Respond was stamped as received on June 30, 2010. PR264. Further, a receipt from the

typical with mail from the Utah State Prison facilities, as reflected in most of Rippey's filings. Some of the delays were much longer and led to procedural confusion in several instances.

prison's mail office establishes that Rippey paid to mail his original petition to the Attorney General's Office on February 4, 2010, and that it was sent February 10, 2010. PR202-03.⁴

The post-conviction court granted the State's motion the next day – July 20th – concluding that Rippey “did not receive permission to file the motion [for default judgment], and the motion is premature.”

PR212. And evidently accepting the State's assertion that it never received the Order to Respond or the original petition, the court ordered the State to respond within 45 days of receipt of the petition.

PR158.

In the meantime, Rippey attempted to object, not knowing that

⁴ The State's Motion for Enlargement of Time listed Rippey as the Petitioner, the correct court, and the correct assigned judge, but the State filed it under the wrong case number. *See* PR210 (notation on re-submitted motion); PR151 (original motion with correct case number added). However, the State's motion made it into the correct file and to the correct judge, as an order granting the motion was signed the next day. *See* PR158-159.

Apparently realizing it had filed its Motion for Enlargement of Time under the wrong case number, the State refiled it on July 28, 2010, though it was not docketed until August 11, 2010. *Compare* PR204 *with* PR210. The court then issued another identical order granting the State's Motion on August 11, 2010, without addressing Rippey's objection or the proof of service he proffered. PR211-12.

the court had already granted the State's motion.⁵ Around the same time, the post-conviction court also granted the State's motion to release the record and all transcripts in the underlying criminal case and directed the court clerk to mail the record to the Attorney General's Office. TR76-77.

According to the docket in the PCRA case, the Attorney General's Office called the court on August 11, 2010 to request a copy of the PCRA petition, and a court clerk noted they would "re-mail the petition to the AG's office." PR284.

*Rippey's Case Languishes Another 6 Months without Response;
Both Rippey and His Brother Try to Move the Case Along*

Inexplicably, another 103 days pass without responsive pleading or further movement in the case.

In November of 2010, Keith Rippey wrote to the court, desperate to help his brother Stephen keep his case moving somehow. *See* PR224.

Keith asked if the Attorney General had yet found his brother's

⁵ Rippey signed his objection on July 26, 2010, PR199, and it was received by the court on August 3, 2010, PR161, but for some reason was not docketed until August 11, 2010. PR170. Therein, Rippey demonstrated he had served his petition and all required attachments on the Attorney General when he originally filed it in February 2010. PR172, PR202. The post-conviction court never addressed or even acknowledged Rippey's objections until a minute order detailing the procedural history of the case roughly eight months later, in March of 2011, as explained below.

“misplaced” file, whether they had yet been served with the petition, and what he could do to help. *Id.* The letter was simply placed in the court file without being brought to the court’s attention. PR307.

Another 80 days pass.

On February 11, 2011, Rippey filed a document styled as a “Request to Submit for Decision.” PR234-244. Therein, Rippey set forth the procedural history of the case, argued that he had made a prima facie showing warranting relief, and argued that he was entitled to summary judgment. *Id.* Rippey also, for the third time, requested the appointment of counsel. *Id. Also* PR307.

The Court Forgives the State’s Missed Deadlines as “Excusable”

On March 9, 2011, the State moved for leave to file an untimely objection to Rippey’s “request to submit,” along with a proffered objection. PR251-260; PR308. The State’s motion admitted it missed the deadline to file a response to Rippey’s “request to submit”, but asked for an exception due to “excusable neglect.” PR252. In this objection, and contrary to the State’s previous misstatements claiming to have never received the May 7th Order to Respond, the State admitted the order was received on June 30, 2010, PR256, and acknowledged the docket entries noting the court clerks communicated with them and “remailed” the petition in August 2010. PR257. The

State also claimed that the record from the underlying criminal case, which the court ordered released to them on August 5, 2010, was not actually sent until seven months later on March 2, 2011. PR258.

The State then argued that Rippey's Request to Submit was "premature" because the "*Respondent State of Utah has not yet filed any answer or response.*" *Id.* (emphasis added). The State further argued Rippey's request to have his petition granted was "not appropriate" under the PCRA. PR259.

On March 16, 2011, Rippey objected and requested the appointment of counsel for the fourth time. PR293-297. For some reason, Rippey's objection "was not brought to the Court's attention." PR388.

On March 17, 2011, having received notice that his case had an "order to show cause hold" placed on it and not having any concept of what such a hold meant, Rippey moved to dismiss the order to show cause hold. PR300-303.

In an order signed March 18, 2011 (but not docketed until March 29, 2011), the post-conviction court gave an accounting of the case's procedural history to date. PR304-310. Despite the facts in the record, the court stated that the State "apparently never received a copy of the order to respond to the petition" and "apparently first learned of the

existence of Mr. Rippey’s Petition from this motion [for summary judgment].” PR305.⁶ The court also stated it only granted the State’s motion for enlargement of time after receiving Rippey’s August 11 objection. PR305.⁷

The Court Finally Addresses Rippey’s Requests for Counsel: State Requests Another Extension while Complaining that Appointing Counsel Would “Add to the Delay”

In its March 18th order, the post-conviction court finally acknowledged Rippey’s numerous requests for counsel for the first time and asked the State to respond. PR307, 309. The court also justified that the numerous delays that had thus far occurred were caused by inadvertent mistakes in the clerk’s office and “inadvertent mistakes” on the State’s part and gave the State yet another 45 days to respond. PR310.

⁶ The Court did not address either the State’s acknowledgement that it received the Order to Respond on June 30, 2010, or Rippey’s assertion and evidence that he served the State his original petition and attachments in February 2010.

⁷ The record demonstrates the post-conviction court granted the State’s Motion for Enlargement of Time the day after it was filed, July 20, 2010. The court’s reference to its August 11th order granting the enlargement of time appears to be a reference only to the court’s reissuance of a duplicate order after the State refiled the original motion with a corrected case number. The court’s original order granting the State’s Motion on July 20th could not have occurred *after* reviewing Rippey’s Objection, which was not received by the court until August 2010.

On April 12, 2011, Rippey filed a response to the minute order. PR314-322. In it, he notes that the prison's mailroom is always closed from Thursday morning until Monday morning, which hampered his legal efforts. He also noted that he had no way of knowing if his pleadings were filed or even received by the courts. He asserted that the unnecessary delays in the case reflect how he had been denied equal protection, due process, and meaningful access to the Courts. And he again requested counsel.

On April 15, 2011, approximately 435 days after Rippey filed his petition and certified having sent it to the Attorney General's Office, and approximately 289 days after the State, by their own admission, received the Order to Respond requiring a response within 30 days, the State requested *another* extension. PR324-325.

Also, despite this history, and without a trace of irony, in its contemporaneously filed opposition to the appointment of counsel, the State complained that appointing counsel "*will almost certainly necessitate additional delays.*" PR330 (emphasis added). The State also suggested Rippey should not be afforded counsel because counsel might file an amended petition "rather than relying on pleadings drafted by a non-lawyer" (as if the assistance of counsel was itself the problem to be avoided). *See id.* And, the State claimed appointing counsel was

unnecessary because the legal and factual issues “are fairly straightforward and do not require an evidentiary hearing.” PR328.

The State (Finally) Responds to Rippey’s Petition with a Motion to Dismiss; The Post-Conviction Court Denies Counsel Because an Evidentiary Hearing “May Not Be Necessary” and the Factual Issues “Do Not Appear Complicated”

On April 20, 2011, the State moved to dismiss Rippey’s Petition. PR342-382. In its 24-page motion, the State argued that Rippey “could have raised claims challenging the validity of his plea at the trial level,” PR347; that his plea was knowing and voluntary, PR350; that he could not show trial counsel’s performance was deficient or prejudicial, PR354; and that he could not show his attorney misadvised him. PR362.⁸

On May 2, 2011, Rippey moved for an enlargement of time to

⁸ The State’s motion did not state under which provision it was seeking dismissal – whether it be dismissal on the pleadings under Utah Rule of Civil Procedure 12(b), or a motion for summary judgment under Utah Rule of Civil Procedure 56. *See* PR342.

Because the State’s motion asserted “facts”, relied on information outside the pleadings, and argued the merits, the State’s motion was more akin to a motion for summary judgment. *E.g.*, PR342-347. The motion was not handled under those standards applicable to summary judgment, however.

And, even if construed under Rule 12(b)(6), Rippey’s petition, “construed liberally to do substantial justice, contain[ed] all of the facts that form the basis of the petitioner’s claim to relief.” *McNair v. State*, 2014 UT App 127, ¶13, 328 P.3d 874 (internal quotations omitted).

respond, and asked for counsel for the sixth time. PR384-86. Rippey noted – again emphasizing the slowness of the prison mail system and the effect it had on his legal efforts – that he did not receive the State’s April 15th motion until April 27, and because he was without legal counsel, without a law library, and was experiencing other incarceration-related issues, he did not know how long he had to respond to the State’s Motion to Dismiss. PR384-386

On May 12, 2011, the post-conviction court issued a minute entry responding to Rippey’s objection and requests. PR387-91. Among other things, the court denied counsel saying it was not yet apparent that an evidentiary hearing would be necessary, that the State had filed a motion to dismiss “based on the adequacy of the pleadings and on the statutory procedural bar”, and that “there do not appear to be complicated issues of fact in question at this stage of the proceedings.” PR390.

*Rippey’s “Last Legal Resource” Is Confiscated While He
Tries to Respond to State’s Motion to Dismiss;
Court Again Denies Counsel and Sets Oral Argument*

On May 13, 2011, Rippey filed his seventh Motion to Appoint Counsel, pointing out he had no computer, printer, or internet access, no law library, and “there is no legal assistance at the prison.” PR397-406. He also pointed out he had no phone privileges, and incoming and

outgoing mail was often delayed. PR401-03. Rippey explained the State's motion to dismiss was "very detailed and complicated" and prepared by an experienced attorney, and therefore, he should be afforded the opportunity to have the motion reviewed by an equally competent attorney. R403,405. Rippey also asserted there was additional evidence that could only be obtained with the assistance of counsel. R403.

On May 25, 2011, Rippey filed his eighth request for counsel, explaining that his "last legal resource" – a legal dictionary – had been confiscated by the prison due to "no proof of ownership." PR407-12. He also noted that he was serving a 20-day "PI sentence" resulting in the loss of all privileges, including access to legal materials. PR411. Rippey was concerned he may overlook a procedure resulting in dismissal of his petition. PR412. He noted (accurately, as it turned out) that this was "his last opportunity" for relief. *Id. Also* PR405 (same).

On June 13, 2011, the post-conviction court again denied counsel. PR413-416. It reasoned that because the State had filed a motion to dismiss alleging that Rippey's direct challenges were procedurally barred, and that since an evidentiary hearing may not be necessary, there did not appear to be "complicated issues of law or fact at this stage." PR414-15.

On June 15, 2011, Rippey filed his Objection to the State's Motion to Dismiss, asserting among other things, that he should be granted his right to counsel to assist him and to ensure all available evidence is brought forth, PR420; the reason he did not move to withdraw his plea was due to ineffective counsel and his own diminished capacity, PR422-23; and that he did attempt to appeal, PR423.

On July 1, 2011, Rippey filed a further pleading which contained a "reminder" that in considering a motion to dismiss, a pro se litigant should be held to less strict standards than a motion drafted by a lawyer, PR435. Rippey also quoted what appears to be a statement from an order in a different proceeding that "Mr. Rippey is disabled from conducting an investigation and gathering facts by virtue of his incarceration." PR436.

On August 18, 2011, the post-conviction court filed a minute order setting "Summary Dismissal". PR438. Rippey (understandably) thought this meant his case had already been dismissed, and on July 27, 2011, filed his ninth request to appoint counsel, assuming he now needed to "appeal" the summary dismissal of his petition. PR441-445. Therein, Rippey contested the court's previous statement that he had a "good grasp" of the legal issues, and explained he didn't draft the PCRA

petition and memorandum but relied on the assistance of another inmate who had been transferred and could no longer help him. PR443.

After the post-conviction court issued another minute order stating the case had not yet been dismissed, PR446-447, Rippey filed a “memorandum of law” which was a list of cases with one-and-two-sentence summaries of each case. R451-461. Rippey again asked for the appointment of counsel (for the tenth time). PR461.

*Court Holds Oral Argument and Dismisses All Claims
Based on Procedural Bar or Lack of Evidence*

At the oral argument on August 18, 2011, the parties and the court seemed to think Rippey would be required to attend by phone since he lacked the “financing” to appear in person. PR505-06.

Ultimately, Rippey was provided transport at the last minute and forced to represent himself as best he could. PR506.

During argument, the State reiterated its position that because Rippey did not move to withdraw his pleas before sentencing, all his claims except IAC were procedurally barred under the PCRA. PR509-510. The State also asserted that IAC claims cognizable under the PCRA had to be “focused on the guilty plea process and ha[d] to somehow sabotage the knowingness and voluntariness of the . . . guilty plea.” R509. And, relying solely on statements made during the plea

colloquy, the State argued Rippey entered a knowing and voluntary plea. R509-510,521.

Rippey responded that he had relevant evidence that could be presented at an evidentiary hearing, pleading: “All I’m asking for is a chance to present evidence.” PR513. The court asked Rippey to proffer the evidence he wanted to present, and though he asked for more time because he “couldn’t remember all of it” on the spot, PR517, Rippey proffered several potentially relevant lines of inquiry including the alleged victim’s therapy records (to undercut her potential testimony), as well as his own therapy records (to show his own psychological state and mental health problems during both the timeframe of the offense and during the plea process). PR513-14. Rippey asserted that his mental health records would show he was incompetent at the time of entering the plea, and it would also prove IAC. PR514. Rippey also wanted to present evidence that his trial counsel failed to investigate. PR517-519.

The court discounted Rippey’s evidence as generally irrelevant that “wouldn’t come in,” PR51-517; and denied Rippey’s further request to cite “some case law.” PR520. Despite Rippey’s pleas for more time, the court stated “both sides have had an opportunity to present all of

the evidence they choose,” PR522, and granted the State’s motion to dismiss all of Rippey’s claims with prejudice. PR525; *also*, PR474-482.

Rippey is Appointed Counsel for Appeal from the PCRA proceeding; Counsel Attempts to Argue (Complicated) Procedural Bar Issue but Court of Appeals Finds Issue Not Preserved

Counsel was appointed to represent Rippey for the first time during the appeal of the dismissal of his post-conviction petition. *E.g.*, PR485,489,496.

On appeal, appellate counsel attempted to argue that Rippey’s challenges were not procedurally barred due to any failure to raise them in a motion to withdraw his plea because the PWS specifically directs defendants to the PCRA to raise such claims *not* raised in a motion to withdraw. *See Rippey v. State*, 2014 UT App 240, ¶7, 337 P.3d 1071; *also*, PR537-545. However, the Court of Appeals declined to address the argument, finding it had not been preserved (by Rippey himself, acting pro se in the trial court). *Id.* ¶9. Notably, this PCRA procedural bar issue is one that the post-conviction court had deemed “not complicated” enough to warrant appointing counsel. *See* PR414-15.

The Court of Appeals also upheld the dismissal of Rippey’s IAC

claims,⁹ finding that Rippey failed to meet the “somewhat higher” pleading standards by failing to plead facts in his petition showing how a rejection of the plea deal would have been rational under the circumstances. *See Rippey*, 2014 UT App 240, ¶16.

*With Counsel’s Aid, Motion to Reinstate
Time to Appeal Sentence is Granted*

Rippey then filed a pro se motion to reinstate his time to file a direct appeal, which the trial court summarily denied on January 28, 2020. TR232-234. He appealed that denial. TR.236-238. On March 27, 2020, the Court of Appeals summarily reversed because Rippey was unrepresented for his motion to reinstate. TR249.

On August 28, 2020, this time with counsel, Rippey filed another motion to reinstate his time for appeal. TR281-306. This motion was granted November 14, 2020, TR312; and the notice of appeal timely filed. TR314.

SUMMARY OF THE ARGUMENT

Under the current regime created by the interplay between the PWS and the PCRA, the tedious process described above was Rippey’s

⁹ The Court of Appeals found that “the State moved to dismiss Rippey’s PCRA petition pursuant to rule 12(b)(6) of the Utah Rules of Civil Procedure.” *Rippey*, 2014 UT App 240, ¶11. As noted in n.8, *supra*, the State’s motion was more akin to a motion for summary judgment.

only meaningful opportunity to have any court “review” his challenges on the merits –

A process where Rippey’s increasingly desperate attempts to move his case along were dismissed as “premature” and the State’s late responses were forgiven as “excusable”;

A process where the State repeatedly requested extensions of time for their own legal work, but complained that allowing Rippey the assistance of counsel would “delay” the case;

A process where Rippey repeatedly explained that he relied on the help of other inmates to draft his pleadings, that he lacked legal assistance, a law library, or access to the internet in order to do basic legal research, and that his last legal resource of any kind, a simple legal dictionary, was confiscated;

A process where the post-conviction court first addressed Rippey’s repeated pleas for counsel over a year into the case, only to deny appointment because it wasn’t “clear that an evidentiary hearing would be necessary” and the claims were “not complicated”;

And a process where the court ultimately dismissed all of Rippey’s claims based, in part, on a procedural bar in the PCRA that his appellate counsel would argue did not apply, but that the Court of

Appeals would not consider because it had not been “preserved” by this unwilling pro se petitioner.

This process was Mr. Rippey’s “first review” that should have been, under the law, the functional equivalent of an appeal. This process, however, was no review at all – it was a travesty.

ARGUMENT

I. UTAH’S PLEA WITHDRAWAL STATUTE: A BRIEF HISTORY

Codified in Utah Code § 77-13-6, the PWS has always caused a little constitutional mischief in Utah’s criminal justice system.

Originally enacted in 1980 without time restriction, the statute was amended in 1989 to require a criminal defendant to request withdrawal of their plea “within 30 days after the entry.”¹⁰ This thirty-day “after entry” time limitation was initially interpreted to mean “from the date of the plea colloquy.” *State v. Price*, 837 P.2d 578, 582-84 (Utah Ct. App. 1992).

After this time limitation was deemed to be a jurisdictional

¹⁰ Utah Code § 77-13-6(2)(b) (1989).

prerequisite to further review,¹¹ this Court interpreted the language “within 30 days after entry of the plea” to mean 30 days after entry of the final judgment – or, after sentencing. *See State v. Ostler*, 2001 UT 68, ¶11, 31 P.3d 528. This interpretation recognized the “absurdity” it would be for a defendant to have their appeal rights cut-off before the defendant had even been finally convicted of the underlying offense. *Id.* ¶10. This Court also noted “[a]side from being absurd, such a result might pose constitutional problems.” *Id.* ¶11.

Multiple cases thereafter affirmed that this 30-day limit was a bar to plea withdrawals and appeals from guilty pleas. The 30-day-after-sentencing scheme also stood up to additional constitutional attacks, including due process, equal protection, and open courts challenges. *See State v. Merrill*, 2005 UT 34, 114 P.3d 585.¹²

¹¹ *E.g.*, *State v. Johnson*, 856 P.2d 1064, 1067 (Utah 1993).

¹² Of note, although Rippey and *Merrill* both raise challenges under some of the same constitutional provisions, the specific claims Rippey raises are different. Of particular note, the 1999 version of the PWS at issue in *Merrill* required a motion to withdraw a plea for “good cause” and within 30 days after entry of judgment, thus running in tandem with the right to file a notice of appeal and at a time where the right to counsel still attached. *See Merrill*, 2005 UT 34, ¶¶ 13,46. The differing versions of the PWS at issue, and therefore, the differences in the attachment of the right to counsel and defense resources, is one overarching distinguishing feature between Rippey’s constitutional claims and *Merrill*’s. *See also* n.13, *infra*.

The current version of the PWS came about through statutory amendments that occurred in 2003, providing in relevant part:

(2)(a) A plea of guilty or no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made.

(b) A request to withdraw a plea of guilty or no contest . . . shall be made by motion before sentence is announced. Sentence may not be announced unless the motion is denied . . .

(c) Any challenge to a guilty plea not made within the time period specified in Subsection (2)(b) shall be pursued under Title 78B, Chapter 9, Postconviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure.

Utah Code § 77-13-6(2).¹³ Since then, this Court has issued a series of opinions solidifying the PWS’s broad reach and strict burdens.

¹³ Three major changes were made to the PWS in 2003. *First*, the long-established burden to show “good cause” to withdraw a plea was changed to the more onerous showing that the plea was not “knowingly or voluntarily made.” Under the former “good cause” standard, courts were guided to “liberally grant” motions to withdraw pleas when filed prior to sentencing due to the numerous constitutional rights a defendant was giving up. *E.g.*, *State v. Gallegos*, 738 P.2d 1040, 1042 (Utah 1987). Judges also had “broad discretion to determine the scope of circumstances that constituted ‘good cause’ [which] warranted withdrawal of a plea.” *State v. Ruiz*, 2012 UT 29, ¶31, 282 P.3d 998. Consequently, the amendment limited both the grounds that could be raised in a motion to withdraw, as well as the trial court’s discretion to grant them.

Second, the thirty-day deadline to file a motion “after entry” (as interpreted to mean after sentencing) was removed and amended to require a motion be made “before sentence is announced.”

Forgetting the “absurdity” and probable constitutional problems created when a defendant’s appeal rights are cut-off before final judgment, the jurisdictional nature of the current statute’s “before sentencing” requirement has been consistently reaffirmed. The nail in the proverbial coffin came in 2007 when this Court held that even ineffective assistance of counsel claims were jurisdictionally barred from review on direct appeal if not raised prior to sentencing through a motion to withdraw the plea. *See State v. Rhinehart*, 2007 UT 61, ¶14, 167 P.3d 1046.

In 2016, in *Gailey v. State*, this Court was asked to reconsider its precedent in light of the United States Supreme Court’s recognition of the critical nature of the plea bargaining process and the guarantee to effective assistance of counsel during this critical phase of criminal proceedings.¹⁴ This Court also faced the question whether post-conviction remedies satisfy not only Utah’s constitutional “right to an appeal”, but the right to counsel on appeal because, unlike a direct

Third, for those who wish to challenge their plea but who do not file a motion prior to the imposition of the sentence, the statute required that any challenge be pursued through Utah’s Post-Conviction Remedies Act and the applicable rules of civil procedure.

¹⁴ *See Missouri v. Frye*, 566 U.S. 134, 144 (2012); *Lafler v. Cooper*, 566 U.S. 156, 170 (2012).

appeal, Utah’s post-conviction process does not guarantee counsel to indigent defendants. In partial answer to these questions, this Court held that, on-its-face, the PWS does not violate the constitutional “right to appeal”, but “simply dictates the procedural mechanism for pursuing a claim.” *Gailey*, 2016 UT 35, ¶23. This Court did not determine whether the rights to state-paid counsel and effective assistance on appeal were violated, finding the claims were not yet ripe. *Id.*

In a line of cases thereafter, this Court answered some of the questions left open in *Gailey*.

In 2017, this Court reiterated in *State v. Rettig* that non-compliance with the time strictures in the PWS forecloses review of plea challenges even for plain error and ineffective assistance of counsel. *See* 2017 UT 83, ¶42, 416 P.3d 520, *cert. denied*, 138 S. Ct. 1563 (2018). The Court also confirmed *Gailey’s* “holding and threshold premise” that the PWS did not, on-its-face, violate the constitutional right to appeal, “but only narrows the issues that may be raised on appeal.” *Id.* ¶¶15,22. And although the Court stated it was “reach[ing] the question left unanswered in *Gailey*,” i.e., whether the PWS could be applied in a manner infringing upon the constitutional right to an appeal and the “core element” of the right to assistance of counsel on appeal, *id.* ¶17, the Court did not actually do so and engaged in no

reasoned analysis discussing why the failure to afford counsel to aid defendants in raising their claims before a reviewing court did not violate the right to counsel.

In 2020, the Court issued two companion cases — *State v. Flora*, 2020 UT 211, 459 P.3d 975 and *State v. Badikyan*, 2020 UT 3, 459 P.3d 967. In both, the Court interpreted the PWS’s phrase “any challenge to a guilty plea” in subsection (2)(c) to jurisdictionally prohibit appellate courts from considering any “unpreserved arguments” not raised “as part of an appeal from the denial of a timely plea withdrawal motion.” *Badikyan*, 2020 UT 3, ¶1 (emphasis added). In doing so, the Court effectively and incorrectly extended the PWS’s jurisdictional bar to direct appellate review of *any challenge when a plea has been entered* and not just the limited challenges a defendant can bring in a motion to withdraw, which must be focused on the knowing and voluntary nature of the plea.

In 2021, many litigants, attorneys, and courts – including the very parties in this case – were anxiously awaiting this Court’s determination of issues that had been percolating for some time and which had been raised in *Brown III*. Unfortunately, this Court found it was without jurisdiction to decide these “deserving matters.” 2021 UT 11, ¶28.

This Court’s most recent opinion on the topic – *State v. Thurman*, 2022 UT 16, 508 P.3d 128 – held that the PWS requires even a prosecutor’s breach of a plea agreement be raised in post-conviction proceedings, as the PCRA “allows for claims that a conviction was obtained unconstitutionally.” 2022 UT 16, ¶32. As demonstrated herein, however, the PCRA has been so manipulated that it *does not* allow for the bringing of such substantive constitutional claims, and worse, the promise of relief under the PCRA is illusory.

Overall, this Court’s prior cases have never explicitly answered the fundamental question deemed unripe in *Gailey* six years ago: Does requiring criminal defendants to pursue “appellate review” through the post-conviction process violate a defendant’s right to appeal with the commensurate right to effective assistance of counsel? Further, because the constitutional arguments raised in *Merrill* pertained to the 1999 version of the PWS, the due process, equal protection, and open courts implications have yet to be analyzed under the current provisions. No prior case has presented the contention that the constitutional “right to appeal” requires review by a “court with appellate jurisdiction,” which a district court (where a PCRA petition is filed) is not. And *Rettig* left open the question of whether Section 2(b) of the PWS violates Utah’s

separation of powers provisions. This case now presents all of these questions head-on.

II. UTAH'S CURRENT PLEA/APPEAL/POST-CONVICTION REGIME IS CONSTITUTIONALLY UNTENABLE

An understanding of three independent but symbiotic processes of the criminal justice system – the trial court process, the appellate court process, and the post-conviction process – is critical. At its most basic level, the constitutional dysfunction in reviewing the validity of plea-based convictions developed when courts began “substituting” one of these processes for another without also affording the same corresponding rights.

A picture is worth a thousand words and summarizes the problem in a nutshell:

CRIMINAL CASE IN UTAH STATE DISTRICT COURT

APPROX.
7%
TRIAL

POTENTIAL ISSUES ARISE IN ALL CASES

Competency • Pretrial Motions
Interpretation Law • Bail/Custody • IAC
Prosecutorial Misconduct • Judicial Error
Probable Cause Determination • Other

APPROX.
93%
PLEA

<1%*

DIRECT APPEAL

To Court with Appellate Jurisdiction:
Multiple-judge review; fresh eyes;
experienced with appeals

Can Raise:
IAC (Utah R. App P. 23B)
All Issues Appearing in Trial Court
(preserved or three exceptions to preservation)

Guarantee
Assistance of Counsel

State Funds
for Expert/Investigation if Indigent

Advised of Right to Appeal/Right to
Counsel/Time for Filing

No Filing Fee/Entitled to Appeal

***PLEA WITH PRE-SENTENCING
MOTION TO WITHDRAW PLEA**

PCRA

To Trial/Sentencing Court:
Single district court judge; usually already sat
on case; inexperienced with PCRA and process

Can Raise:
IAC Only
All Other Claims Procedurally Barred

No Guarantee
Assistance of Counsel

No State Funds
for Expert/Investigation if Indigent

Not Advised of PCRA Process
or Requirements

Filing Fee!
+
Most Incarcerated:
Lack access to transcripts and
necessary documents
Lack of legal resources/law library
Have incarceration issues (e.g., mail issues;
lock downs; confiscation of legal documents;
no access to tools/materials to draft petition)

A. The State and Federal Constitutions Unquestionably Guarantee Criminal Defendants the Right to a Direct Appeal with The Commensurate Right To Effective Assistance of Counsel; Denial of that Right is So Fundamental it Amounts to Structural Error

The Utah Constitution provides that “[i]n criminal prosecutions the accused shall have . . . the right to appeal in all cases.” Utah Const. art. 1, § 12. This right to appeal is violated when it is denied through no fault of the individual. *E.g.*, *Johnson v. State*, 2006 UT 21, ¶24, 134 P.3d 1133; *Manning*, 2005 UT 61, ¶31.

Due process is also implicated. *See* Utah Const. art. 1, § 7; U.S. Const. Amends. V, XIV. The failure to provide a direct appeal from a criminal case implicates due process under the Utah Constitution when a defendant has “been prevented in some meaningful way from proceeding” with a first appeal of right. *Manning*, 2005 UT 61, ¶26. Federal due process guarantees the “right not to be denied an appeal for arbitrary or capricious reasons.” *Griffin v. Illinois*, 351 U.S. 12, 37 (1956) (J. Harlan, dissenting).

The rights to effective assistance of counsel, and the attendant rights to state paid counsel and defense resources for the indigent, also attach to the right of first appeal. Specifically, the Sixth Amendment provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense.” U.S. Const.

Amend. VI. The Utah Constitution contains a similar protection. *See* Utah Const. art. 1, § 12. This right to counsel includes the right to the effective assistance of counsel, with the adjunct rights to state paid counsel and defense resources for indigent defendants. *E.g.*, *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985); *State v. Perez*, 2015 UT 13, ¶13, 345 P.3d 1150 (citing *Britt v. North Carolina*, 404 U.S. 226, 227 (1971)). These rights extend beyond the trial into a criminal defendant's first appeal of right. *E.g.*, *Douglas v. People of State of Cal.*, 372 U.S. 353, 357-58 (1963); *Gailey*, 2016 UT 35, ¶26.

In fact, the denial of counsel on appeal is one of those rights deemed so fundamental that its denial amounts to structural error. *See Penson v. Ohio*, 488 U.S. 75, 88 (1988). The United States Supreme Court explained in *Evitts v. Lucey*:

In bringing an appeal as of right from his conviction, a criminal defendant is attempting to demonstrate that the conviction, with its consequent drastic loss of liberty, is unlawful. To prosecute the appeal, a criminal appellant must face an adversary proceeding that—like a trial—is governed by intricate rules that to a layperson would be hopelessly forbidding. An unrepresented appellant—like an unrepresented defendant at trial—is unable to protect the vital interests at stake.

469 U.S. 387, 396 (1985).

Consequently, “the presumption of prejudice must extend as well to the denial of counsel on appeal.” *Penson*, 488 U.S. at 88.

B. Criminal Defendants Are Guaranteed Effective Assistance of Counsel Upon “First Review” of an Issue; Under the PWS, that First Review is Post-Conviction Proceedings

Since the right to appeal is one of the most “prized” and “sacrosanct” liberties, it must not be denied unless absolutely clear the right has been knowingly abandoned. *E.g., Manning v. State*, 2004 UT App 87, ¶9, 89 P.3d 196. In this same vein, because a criminal defendant is also entitled to the effective assistance of counsel on appeal, and an indigent defendant is entitled to such counsel and defense resources at state expense, those significant rights, too, may not be lightly or unknowingly forfeited.

With this in mind, the United States Supreme Court has recognized that the right to assistance of counsel attaches to the “first review” of an issue where that review is the equivalent of a direct appeal. *See Martinez v. Ryan*, 566 U.S. 1, 11 (2012); *Halbert v. Michigan*, 545 U.S. 605, 617 (2005). Even when a defendant enters a plea, that defendant does not relinquish all opportunity for “appellate” review. Therefore, due process and equal protection require the appointment of counsel for defendants who seek “first review” of their plea-based convictions. *See Halbert*, 545 U.S. at 609-10, 616-17 (applying *Douglas* precedent).

The *Halbert* Court explained:

Whether formally categorized as . . . an appeal or [some other disposal], the Court of Appeals' ruling on a plea-convicted defendant's claims provides the first, and likely the only, direct review the defendant's conviction and sentence will receive. Parties like [defendant], however, are disarmed in their endeavor . . .

Id. at 619.

It went on:

Navigating the [process] without a lawyer's assistance is a perilous endeavor for a layperson, and well beyond the competence of individuals, like [defendant], who have little education, learning disabilities, and mental impairments . . . Appeals by defendants convicted on their pleas may involve myriad and often complicated substantive issues . . . and may be no less complex than other appeals . . . One who pleads guilty or *nolo contendere* may still raise on appeal 'constitutional defects that are irrelevant to his factual guilt, double jeopardy claims requiring no further factual record, jurisdictional defects, challenges to the sufficiency of the evidence at the preliminary examination, preserved entrapment claims, mental competency claims, factual basis claims, claims that the state had no right to proceed in the first place, including claims that a defendant was charged under an inapplicable statute, and claims of ineffective assistance of counsel'. . .

Id. (cleaned up and citations omitted).

State post-conviction proceedings may similarly be described as a “perilous endeavor”, one where most petitioners are pro se. *See Garza v. Idaho*, 139 S. Ct. 738, 749 (2019). And “[a] prisoner's inability to present an ineffective-assistance claim is of particular concern because

the right to effective trial counsel is a bedrock principle in this Nation's justice system.” *Id.* at 1; *also, id.* at 12.

For these reasons, it is “unfair” and “ill-advised” to require a pro se defendant to demonstrate the merits of his own issues “before any advocate has ever reviewed the record . . . in search of potentially meritorious grounds.” *Garza*, 139 S. Ct. at 749. “Compounding the trouble, defendants [are] asked to make these showings in the face of the heightened standards and related hurdles that attend many postconviction proceedings.” *Id.* Indeed, Utah’s PCRA is a minefield of procedural bars, time deadlines, rules, and standards that are even more onerous than appeal. For these reasons, “[m]ost jurisdictions have in place procedures to ensure counsel is appointed for substantial ineffective-assistance claims.” *Martinez*, 566 U.S. at 14.

The critical point here – because Utah law has deemed post-conviction proceedings to be a substitute for appeal in certain cases when defendants enter a plea, due process and equal protection require the appointment of counsel for these defendants who are required to seek review of their plea-based convictions through this alternative avenue of appeal. *See Halbert*, 545 U.S. at 609-10, 616-17.

C. Application of the PWS Has Denied Rippey a Number of Fundamental Constitutional Rights

Because Rippey is required to bring his claims through the PCRA as a substitute vehicle of “appellate review”, the application of the PWS is unconstitutional both on-its-face and as-applied to Rippey and violates the following constitutional provisions:

- Right to Effective Assistance of Trial Counsel:
Utah Const. art. 1, § 12; U.S. Const. Amend VI

As noted, in all criminal prosecutions, the accused shall have the assistance of counsel for his defense – a right that includes the right to the effective assistance of counsel, as well as state-paid counsel and defense resources for the indigent. *E.g.*, *Ake*, 470 U.S. at 77; *Strickland*, 466 U.S. at 686.

Criminal defendants are specifically assured effective assistance of counsel during the plea bargaining and plea process. *E.g.*, *Lee v. United States*, 137 S. Ct. 1958, 1964 (2017); *Frye*, 566 U.S. at 144; *Lafler*, 566 U.S. at 169-70. The United States Supreme Court recognized years ago that “criminal defendants require effective counsel during plea negotiations. Anything less . . . might deny a defendant effective representation by counsel at the only stage when legal aid and advice would help him.” *Frye*, 566 U.S. at 144 (cleaned up). This is exactly what occurred here – Mr. Rippey was denied effective

representation at the only stage of proceedings when legal aid would help him. And, he has articulated substantive constitutional claims as well as claims of ineffective assistance of counsel at the trial court level which have never been reviewed on their merits in a true “appeal” process.¹⁵

Consequently, because the PWS actually prevents reviewing courts from remedying substantive constitutional violations that occurred in the trial court once a plea is entered, the PWS has denied Rippey his right to effective assistance of counsel during the plea negotiating and plea stages of criminal proceedings.

- Right to Appeal/“First Review” By a Court with Appellate Jurisdiction: Utah Const. art. 1, § 12; Utah Const. art. 8, § 5

Article 1, § 12 of the Utah Constitution guarantees “the right to appeal in all cases.” Article 8, § 5 further provides:

. . .The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court

¹⁵ *E.g.*, TR81-89 (pro se motion to appoint conflict-free counsel); TR121-22 (correspondence mentioning Rippey was unable to defend due to mental illness, compounded by conditions of confinement and IAC); PR2-16 (petition alleging that preceding and during plea process, Rippey received IAC and suffered from cognitive problems); TR284 (asserting motion to withdraw pleas not filed due to mental health issues and IAC).

of original jurisdiction to a court with appellate jurisdiction over the cause.

Jurisdiction over appeals from the final orders and judgments of a district court is given to the Utah Court of Appeals and the Utah Supreme Court. *See* Utah Code § 78A-3-102, § 78A-4-103. Under the PWS, however, Rippey is barred from bringing *any* non-sentencing claims on direct appeal or in a first review to either the Utah Court of Appeals or the Utah Supreme Court. Instead, Rippey's *only avenue* to challenge any error he believes occurred during the pre-sentencing phase of proceedings is through post-conviction proceedings.

This post-conviction avenue does not suffice as a substitute for a direct review, however, for two reasons: first, the challenges are not raised to a court with “appellate jurisdiction” and, second, Rippey is not able to raise *any challenge* he has for a true “review.” Instead, under the PCRA's terms and bars, the grounds that may be raised are strictly limited and require specialized pleading of ineffective assistance of counsel claims of which pro se petitioners are unaware. Critically, instead of a court with appellate jurisdiction, the PCRA requires that the claims be raised in the district court again – the same district court that imposed sentence and, in most cases, took the plea.

Accordingly, because Rippey is unable to raise all pre-sentencing errors due to the PCRA's strict terms and bars, and because the district court does not have "appellate jurisdiction" over the claims, the PWS does not accord with the constitutional right to an appeal to a court with appellate jurisdiction.

- Effective Assistance of State Paid Counsel and Defense Resources on Appeal: Utah Const. art. 1, § 12; U.S. Const. Amends. V, VI, and XIV

As discussed, the right to effective assistance of counsel, and the attendant rights to state-paid-counsel and defense resources for the indigent, are so critical to the criminal justice system that they attach to the first review of right, and if denied, structural error is found. *E.g.*, *Penson*, 488 U.S. at 88; *Halbert*, 545 U.S. at 617.

Rippey, however, was required to take an alternative procedural route into the post-conviction minefield as a substitute for his appeal – a process which does not afford these guaranteed rights to legal assistance and resources. Thus, Rippey's right to a first review with the commensurate right to effective assistance of counsel has been denied.

- Due Process of Law:
U.S. Const. Amends. V and XIV; Utah Const. art. 1, § 7

Both the federal and state due process clauses guarantee that no person "shall be deprived of life, liberty or property, without due

process of law.” Utah Const. art. 1, § 7; U.S. Const. amend. V.

“Most due process cases concern *procedural* requirements, notably notice and opportunity to be heard, which must be observed in order to have a valid proceeding affecting life, liberty, or property.” *Wells v. Children's Aid Soc. of Utah*, 681 P.2d 199, 204 (Utah 1984), *abrogated on different point* (emphasis in original). The purpose of procedural due process is to prevent fundamental unfairness and the test “is flexible and calls for such procedural protections as the particular situation demands.” *State v. Hegbloom*, 2014 UT App 213, ¶12, 362 P.3d 921. Procedural due process, at a minimum requires “timely and adequate notice and an opportunity to be heard in a meaningful way.” *Salt Lake City Corp. v. Jordan River Restoration Network*, 2012 UT 84, ¶50, 299 P.3d 990 (bracket removed) (citing authority). A procedural due process attack on a procedural bar argues that the bar “forecloses any meaningful opportunity for the plaintiff to protect its rights.” *In re Adoption of J.S.*, 2014 UT 51, ¶22, 358 P.3d 1009.

Substantive due process concerns the content of a provision proscribing when a right can be lost or impaired. A substantive attack on the fairness of a procedural bar argues that “the right foreclosed is

so fundamental or important that it is protected from extinguishment.”

Id.

Here, the interplay between the PWS and the PCRA implicate both procedural and substantive due process.

First, Rippey has been denied procedural due process by being forced unwittingly into the post-conviction proceeding itself. The record is devoid of any advisement to Rippey that one consequence of failing to move to withdraw his plea would be that he waived his right to an attorney to aid him in raising any future challenges. Rippey therefore did not execute a voluntary, knowing, and intelligent waiver of his right to counsel on appellate review.

Second, Rippey was likewise never advised as to the post-conviction process itself, or the time frames and “higher” burdens for filing his claims. So, just as the *Manning* remedy was fashioned for those defendants who had been improperly denied their right to appeal due to lack of notice, it should follow that due process is also violated when a defendant is effectively denied his right to appeal due to lack of notice as to the substitute appeal process.

Third, due process is also violated because this substitute for appeal is illusory. Although the PCRA is held out to be “the appeal” for those who enter pleas but do not move to withdraw them, it is really no

“appeal” at all. This is so because the provisions of the PWS and the PCRA fatally conflict leaving Rippey, and others like him, with no procedural mechanism for true appellate review of his claims.

To explain further: The PWS both requires and directs defendants to raise all challenges to a plea not raised before sentencing under the PCRA. Indeed, under the PWS, an appellate court actually lacks jurisdiction to address any challenge to a plea-based conviction not raised in the determination of a motion to withdraw the plea. *E.g.*, *Badikyan*, 2020 UT 3, ¶1, 34; *State v. Alvarez*, 2020 UT App 126, n.2 and ¶19, 473 P.3d 655.

But when defendants do as they must and pursue their claims in a PCRA petition, the State moves to dismiss, arguing that a petitioner is not entitled to relief upon any ground that “could have been but was not raised at trial.” Utah Code § 78B-9-106(c). Therefore, the State maintains that the plea challenges are procedurally barred because they could have been raised previously through a motion to withdraw the plea. The State’s argument is regularly accepted, and the post-conviction court finds the petitioner is “barred” from making the very challenges the PWS requires be raised in post-conviction proceedings.

That is what happened here, happens regularly in PCRA cases,¹⁶ and demonstrates that any “appeal” under the PCRA is illusory, at least in plea cases.

Although courts have “an obligation to harmonize alleged inconsistencies within and between statutes,” *Bd. of Educ. of Jordan Sch. Dist. v. Sandy City Corp.*, 2004 UT 37, ¶20, 94 P.3d 234, and to avoid or save statutes “from constitutional conflicts or infirmities,” *In re Marriage of Gonzalez*, 2000 UT 28, ¶23, 1 P.3d 1074, neither of those acts are possible here.

- Equal Protection and Uniform Operation of the Law:
U.S. Const. Amend. XIV; Utah Const. art. 1, § 24

The federal Equal Protection Clause prohibits a state from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, § 1; *also Grace United Methodist Church v. City of Cheyenne*, 451 F.3d 643, 659 (10th Cir.2006). “Equal protection ‘is essentially a direction that all persons similarly situated should be treated alike.’” *Id.* (quoting authority).

Article I, § 24 of the Utah Constitution guarantees “[a]ll laws of a general nature shall have uniform operation.” A law does not operate

¹⁶ *E.g.*, *Gutierrez v. State*, 2016 UT App 101, 372 P.3d 90; *Brown v. State*, 2015 UT App 254, ¶22, 361 P.3d 124.

uniformly, however, if persons similarly situated are not treated similarly. *E.g.*, *State v. Drej*, 2010 UT 35, ¶33, 233 P.3d 476.

Both provisions require that similarly situated individuals be treated alike under the law unless there is a constitutionally legitimate basis for treating them differently. *See Greenwood v. City of North Salt Lake*, 817 P.2d 816, 821 (Utah 1991); *Malan v. Lewis*, 693 P.2d 661, 670 (Utah 1984). “[W]hen persons are similarly situated, it is unconstitutional to single out one person or group of persons from among the larger class on the basis of a tenuous justification that has little or no merit.” *Gallivan v. Walker*, 2002 UT 89, ¶37, 54 P.3d 1069 (internal quotes and citations omitted).¹⁷

Here, the PWS has created two classes of similarly situated convicted criminal defendants. *One class*, to include Mr. Rippey, is made up of individuals who enter a plea in district court but who do not raise all possible challenges in a motion to withdraw the plea prior to

¹⁷ The Uniform Operation clause “is at least as exacting as its federal counterpart” and may, “in some circumstances, be more rigorous than the standard applied under the federal constitution.” *Drej*, 2010 UT 35, ¶33. In analyzing a statutory scheme under the Uniform Operation provision, courts engage in a three-part inquiry, first, determining “what, if any, classification is created under the statute”; second, inquiring “into whether the classification imposes on similarly situated persons disparate treatment”; and finally, analyzing “the scheme to determine if ‘the legislature had any reasonable objective that warrants the disparity.’” *Id.* ¶34.

sentencing, regardless of the reason for the failure, the actual validity of the plea, or ineffective assistance of counsel.¹⁸ This class is denied a “first review” or direct appeal of all issues with the commensurate rights to effective assistance of counsel and legal resources.

The second class is made up of all other convicted defendants (whether by plea or by trial). This class of convicted defendants is afforded their right to a direct appeal of *any issue* that arose during the criminal proceedings with the guaranteed right to effective assistance of counsel and state paid counsel and resources if indigent.

Indeed, criminal defendants who enter pleas *in the district court* have, alone, been singled out and denied any opportunity for relief from their judgment. *Every other litigant in the court system* is afforded some opportunity for relief from a final judgment, be it a motion for relief from a judgment or order in a civil case, *see* Utah R. Civ. P. 60; or a motion for new trial in the criminal realm. *See* Utah R. Crim. P. 24. Even defendants who are convicted by their pleas to criminal offenses

¹⁸ Between 2014 and 2019, at least 91% of criminal cases statewide were resolved by plea, with most of these years reaching above 93%. *See* Total Criminal Cases Resolved By Plea (2014-2019), attached in Addendum A. Once a plea is made, a motion to withdraw that plea is made prior to sentencing in less than 1% of cases. *See* Cases with a Motion to Withdraw Plea before Sentencing (2014-2019), attached in Addendum A.

in the justice court can obtain relief through the avenue of a direct appeal from justice court, a guaranteed trial de novo. *See* Utah Code § 78A-7-118.

This violates federal Equal Protection and state Uniform Operation of Law guarantees. Because there is no reasonable objective that warrants this disparity, the disparate treatment is arbitrary, and the statutory scheme is rendered constitutionally infirm.

- Open Courts and a “Remedy by Due Course of Law”:
Utah Const. art. 1, § 11

Article 1, § 11, of the Utah Constitution provides:

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered *without denial or unnecessary delay*; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Utah’s Open Courts Clause ensures “that citizens of Utah have a right to a remedy for an injury.” *Judd ex rel. Montgomery v. Drezga*, 2004 UT 91, ¶10, 103 P.3d 135. “To determine whether legislation violates the Open Courts provision, [the Court] first examine[s] whether the legislature has abrogated a cause of action.” *Amundsen v. Univ. of Utah*, 2019 UT 49, ¶43, 448 P.3d 1224. “If so, the legislation is invalid unless the legislature has provided an effective and reasonable

alternative remedy, or the abrogation is not an arbitrary or unreasonable means for eliminating a clear social or economic evil.” *Id.* The “benefit provided by the substitute must be substantially equal in value or other benefit to the remedy abrogated in providing essentially comparable substantive protection to one's person, property, or reputation, although the form of the substitute remedy may be different.” *Berry By & Through Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 680 (Utah 1985).

Here, and as detailed further in Point D, *infra*, the current state of Utah law and its application of the PWS and the PCRA has removed direct review to a court with appellate jurisdiction with the rights to effective assistance and appointed counsel fully intact. By doing so, Utah law fails to provide a reasonable alternative remedy of substantially equal value to the guaranteed right to appeal and all the rights that it entails.

D. The PCRA Is Not a Constitutionally Viable Alternative for a Direct Appeal

Utah Courts have thus far reasoned that the PWS does not actually deny an appeal, but simply forces certain defendants into an “alternative procedural route” for their constitutionally guaranteed first review. *E.g., Gailey*, 2016 UT 35, ¶3. But as Rippey’s case

demonstrates well, the PCRA is a hollow simulacrum of meaningful review and, in practice, looks almost nothing like the appeal process because it lacks the most important procedural safeguards, including appointed counsel.

What's more, over the years, the State, by means of the Attorney General's Office, has used its influence with the legislature and the "long view" that its institutional position affords it to gradually change the PCRA into a gauntlet of procedural hurdles intended to summarily dispose of cases rather than ever deal with their merits.¹⁹ As a notable example in this case, the State was forgiven its own missed deadlines for "excusable neglect." Yet Rippey would have been afforded no such forgiveness if he had been even one day late in filing his PCRA claims, though that one-day miss would hold literal life-long consequences. That is because the legislature, at the urging of the Utah Attorney General's Office, amended the PCRA in 2008 to prevent a court from

¹⁹ See Margioni, Nathan (2013) *"Unrepresented and Untimely: The PCRA's Disservice to Indigent Prisoners,"* Utah OnLaw: The Utah Law Review Online Supplement: Vol. 2013, Article 7 at 4, and n.1 (herein "Margioni") (available at: <https://dc.law.utah.edu/onlaw/vol2013/iss1/7>) (Utah Attorney General's Office, dissatisfied with Court's habeas jurisprudence, convinced legislature to usurp control of writ by passing the PCRA in 1996; initial PCRA based on draft prepared by Attorney General's Office).

applying traditional common-law exceptions to the PCRA’s procedural bars – exceptions such as fundamental unfairness or good faith mistake. *See Carter v. State*, 2012 UT 69, ¶23, 289 P.3d 542; Senate Floor Testimony of Senator Bell, sponsor of S.B. 277, 2008 (PCRA amendments) (“ . . . the Attorney General’s Office has come forward and asked us to run this [bill]”).²⁰

Many of Rippey’s claims were in fact dismissed with prejudice because of one such procedural bar: the finding that the claim “could have been brought before” through a motion to withdraw his plea. PR477, ¶4. Rippey’s claims were dismissed even though the failure to file a motion to withdraw the plea was the trigger that required him to raise the claims under the PCRA in the first place. Whether this PCRA bar was properly applied to Rippey’s claims is very arguable, but as a pro se petitioner, Rippey was certainly not prepared to make such an argument, the post-conviction court’s finding that the legal arguments were “not overly complicated” notwithstanding. PR414-15.

The varied procedural bars in the PCRA are difficult and convoluted concepts even for experienced practitioners, so they are employed by the State with especially great success against the (vast

²⁰ available at: <https://le.utah.gov/av/floorArchive.jsp?markerID=56654>

majority) of petitioners, like Rippey, who are forced to file their petitions pro se. *See, generally, Margioni, supra* n.19, at 4; *also Adams v. State*, 2005 UT 62, ¶23, 123 P.3d 400 (noting “it is nearly impossible for even the most conscientious prisoner to discover possibly valid legal claims of error and pursue them completely [while incarcerated without the assistance of counsel]”); *Currier v. Holden*, 862 P.2d 1357, 1375 (1993) (Orme, J., concurring) (“PCRA’s failure to extend any sort of exception to prisoners in these circumstances essentially renders all claims for ineffective assistance of counsel time-barred, as a practical matter.”).

The data bear out that Rippey’s situation is not an anomaly. Of the 318 PCRA cases filed between early 2016 and late 2021, only 37 were granted. *See* PCRA Data.²¹ Most telling, of the 205 petitions filed without the assistance of an attorney, *none* were granted. In fact, *none* of the pro se petitioners even reached an evidentiary hearing. *Id.*²²

²¹ The Administrative Office of the Courts compiled data as to PCRA cases filed between January 2016 to November 2021. Undersigned counsel supplemented the information by retrieving publicly available case pleadings from the Utah Courts’ Xchange system. The resulting spreadsheets are attached cumulatively in Addendum B. (“PCRA Data”).

²² Of the 114 pro se petitioners who requested an attorney, *only 15* had counsel appointed. *See* PCRA Data.

And these are the cases where pro se petitioners manage to get their petitions filed at all. Of course, many pro se defendants – even those who have demonstrated their desire to challenge their plea-based convictions – never even get their PCRA petitions filed.²³ Especially where there is no requirement for courts or counsel to explain what the post-conviction procedures are, or the time limits and burdens for compliance. These defendants (and the countless others in their position) simply fade away. Or, to put it more accurately, their legal challenges fade away. The defendants themselves sit in prison, or get deported, or otherwise serve out their sentences — some of them

²³ As but a few examples:

Ms. Gailey’s desire to challenge the PWS and its effective denial of the right to the assistance of counsel was demonstrated in her direct appeal. *Gailey*, 2016 UT 35, ¶21. Yet she never filed a PCRA petition. At least as far as can be determined from public records.

Paul Flora had a brain injury, and, during his DUI plea colloquy, rambled about “these guys that bend all the telescopes to understand astronomy and physics.” *Flora*, 2020 UT 211, ¶5. He timely moved to withdraw his plea, *see id.* ¶1, and with the assistance of counsel, attempted to litigate his claims through direct appeal, but was rejected for jurisdiction and told he “must pursue such challenge under the PCRA,” *see id.* ¶26. He never did so.

Stepan Badikyan, an Armenian who speaks very little English, argued that his trial attorney unduly pressured him to enter a plea, and did not explain to him the immigration consequences it had. *See Badikyan*, 2020 UT 3, ¶¶4,6. He also filed a timely motion to withdraw his plea and, with the assistance of counsel, litigated his claims through the appellate process. *See id.* ¶5. But, like Mr. Flora, he was told he must pursue his other claims through the PCRA. *Id.* ¶33. He did not do so.

justifiably, no doubt, but at least some of them after entering unknowing or involuntary pleas, or after receiving woefully inadequate assistance of counsel on the trial court level.

III. SUBSECTION (2)(B) OF UTAH'S PWS IS AN UNCONSTITUTIONAL ASSUMPTION OF THE COURT'S EXCLUSIVE POWER TO ADOPT PROCEDURAL RULES

The PWS also violates the separation of power dictates of art. 8, § 4, and art. 5, § 1, of the Utah Constitution.

A. Utah's Constitution Vests the Supreme Court with the Exclusive Purview to Adopt "Purely Procedural" Rules; the Legislature May Only "Amend" Extant Rules and Must Do So Explicitly

The Utah Constitution provides:

The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state and shall by rule manage the appellate process. The legislature may amend the Rules of Procedure and Evidence adopted by the Supreme Court upon a vote of two-thirds of all members of both houses of the Legislature...

Utah Const. art. 8, § 4.

Under the plain language of art. 8, § 4, "adopting" rules of procedure is the province of the Supreme Court; the legislature may only "amend" those rules of procedure. *Brown v. Cox*, 2017 UT 3, ¶17, 387 P.3d 1040. The important initial distinction under art. 8, § 4, then, is whether the statutory provision in question is best classified as

“procedural” or “substantive”. *See Rettig*, 2017 UT 83, ¶¶52-60; ¶¶119-121 (J. Durham, concurring in result). If “procedural”, the relevant provision may nonetheless be a constitutional exercise of legislative authority if it is “so intertwined with a substantive right that the court must view it as substantive.” *Id.* ¶120 (*citing Drej*, 2010 UT 35).

Those “purely procedural” provisions are unconstitutional unless they are themselves amendments of Supreme Court rules passed by a super-majority. Utah Const. art. 8, § 4; art. 5, § 1 (separation of powers provision). Moreover, the legislature is entitled to no presumption that “purely procedural” statutory provisions passed by a super-majority are amendments of Supreme Court rules. *Cox*, 2017 UT 3, ¶23. It must be explicit. *Id.* ¶¶18-20; *Rettig*, 2017 UT 83, ¶120 (J. Durham, concurring in result). Specifically, the amendment must be made by joint resolution or other mechanism containing “a clear expression of the Legislature’s intent to modify our rules.” *Cox*, 2017 UT 3, ¶20.

B. The 1989 and 2003 Amendments to the PWS Are Both Unconstitutional Legislative Adoptions of Purely Procedural Rules, Not Explicit Amendments of Supreme Court Rules

1. The 1989 Amendment

As noted, the original PWS enacted in 1980 “did not include a time limitation for withdrawing a guilty plea.” *Gailey*, 2016 UT 35, ¶12.

Correspondingly, this Court allowed a defendant to withdraw a guilty plea approximately *three years* after sentencing. *Id.* (citing *State v. Abeyta*, 852 P.2d 993, 994-96 (1993)). Obviously, this Court had adopted no procedural rules limiting that plea-withdrawal time frame.

“But in 1989 the legislature amended the statute and created a thirty-day filing limitation on the defendant's right to withdraw a guilty plea.” *Gailey*, 2016 UT 35, ¶13 (citing Utah Code § 77-13-6(2)(b)). In reviewing the legislative history behind this addition, this Court found that “the purpose of the statute was to *set guidelines* to prevent defendants from filing motions to withdraw guilty pleas many months or even years after final disposition of the case.” *Ostler*, 2001 UT 68, ¶9 (emphasis added). That is, with the 1989 amendment, the legislature created a *procedural rule* where none had existed before. *See* Sec. II(B)(ii), *infra*. (arguing that timing deadlines are procedural (in the context of the 2003 amendments)).

The title of Senate Bill 81, enacting the 1989 amendment, is also illuminating:

An act relating to criminal law; *providing procedures* for withdrawal of certain pleas; establishing a time limit for filing a motion to withdraw those pleas; providing appeals from orders denying or granting motions to withdraw pleas; and amending certain rules of evidence if passed by two-thirds vote.

Laws of Utah, 1989, Ch. 65. (emphasis added).

Further, though the act does not actually address any *rules of evidence* (as referenced in the last clause of its introduction), it does include, in its text, an ultimate section that provides:

This act includes amendments of rules of procedure adopted by the Supreme Court. Passage of the sections of this act that amend the rules of procedure requires a vote of two-thirds of the members of both houses of the Legislature, as required by Article VIII, Sec. 4, Utah Constitution.

Section 4, Laws of Utah, 1989, Ch. 65.

So, the legislature does seem to have explicitly invoked its authority to amend existing Supreme Court rules of procedure with *some* sections of the act, but it does not specify which sections. As the act contains modifications of Utah Code § 77-35-11 and § 77-35-26, as well as § 77-13-6 (the PWS), it stands to reason that the legislature was referencing its modifications to Chapter 35 of Title 77, which *were*, at the time, Rules of Criminal Procedure adopted by the Court. *See* Compiler's Notes to Chapter 35 of Title 77, 1989.²⁴

²⁴ Citing this Court's per curiam order of January 13, 1987, which held:

Pursuant to the provisions of article VIII, section 4 of the Constitution of Utah, as amended, and rule 11-101(3)(E) of the Code of Judicial Administration, the Court adopts all existing statutory rules of procedure and evidence

The language of Section 4, therefore, does not satisfy the requirement for a joint resolution or another clear expression of legislative intent to amend the PWS found in Chapter 13 of Title 77 specifically, and so the modification is unconstitutional on that basis.

Further, if Section 4 of the act were read to include the addition of the time guidelines in the PWS within the “amendments” contemplated, Section 4 *would not be accurate*. That is, the additional timelines added to Title 77, Chapter 13 (the PWS) *were not* “amendments” of rules “adopted” by the Supreme Court, as there was no extant Supreme Court rule on the subject to amend. *Cox*, 2017 UT 3, ¶¶21-22 (citing dictionary definitions of “adopt” and “amend,” and pointing out that “amendments do not occur in a vacuum”); *see also* Laws of Utah 1980, Ch. 15 (enacting Utah Code 77-13-6).²⁵

The 1989 addition of filing deadlines to the statute is therefore best characterized as just that: an amendment to a *statute*, rather than

contained in Utah Code Ann. §§ 77-35-1 to -33 (with certain exceptions not applicable here).

²⁵ As art. 8, §4 of the Utah Constitution did not exist until 1984, *see Drej*, 2010 UT 35, ¶25, the enacting language did not include a provision asserting the legislature’s authority to modify a Supreme Court rule, but that does not change the fact that the PWS, as it existed in 1989, was unquestionably a statute rather than a codification of Supreme Court rule.

an amendment to a Supreme Court *rule*. *See State v. Walker*, 2015 UT App 213, ¶15, 358 P.3d 1120 (*citing Allred v. Saunders*, 2014 UT 43, ¶3, 342 P.3d 204); *also Cox*, 2017 UT 3, ¶24 (concluding that Legislature passed relevant section as a bill amending a statute and not a joint resolution amending a rule of procedure, and striking it down as unconstitutional). It is therefore unconstitutional on this basis as well.

2. The 2003 Amendment

In 2003, the legislature removed the 30-day filing deadline from the PWS, and required instead that a motion to withdraw a plea be made “before sentence is announced.” *Gailey*, 2016 UT 35, ¶15 (*citing* Utah Code § 77-13-6(2)(b)).

Relevantly, the 2003 Bill was not a joint resolution, and it contains no “resolving clause” nor any other “clear expression of the Legislature’s intent to modify [Supreme Court] rules.” *See* H.B. 238, enrolled (2003); *Cox*, 2017 UT 3, ¶20; *see also id.* ¶19 (noting that current legislative rules require that proposals “to amend the Utah Supreme Court’s Rules of Procedure or Rules of Evidence must include” a specific resolving clause) (*citing* Joint Rule 4-1-301(4)).²⁶

²⁶ This lack of a resolving clause or expression of legislative intent also reinforces the interpretation of Section 4 of the 1989 amendment made above: that the legislature considers Chapter 13 of Title 77 a typical

Like the 30-day deadline that preceded it, the “before sentence” deadline in subsection (2)(b) “is quintessentially procedural” because it “prescribes the manner and means of raising a particular issue in court proceedings.” *Rettig*, 2017 UT 83, ¶¶58-60. “You can’t get much more procedural than a filing deadline.” *Id.* ¶58.

Though this language is technically dicta, as *Rettig* himself did not question the constitutionality of subsection 2(b), *id.* ¶59, the non-dicta reasoning behind the holding also counsels for such a result. In finding that the PWS does not actually foreclose an appeal, this Court noted that “it simply establishes a *rule* of preservation or waiver.” *Id.* ¶17 (emphasis added). The Court also compared the PWS to Rule 12 of the Rules of Criminal Procedure, *id.* ¶20, that is, to *procedural rules adopted by this Court*.

Addressing the concurrence’s suggestion that Subsection 2(b) could be read as “inextricably intertwined” with the substantive provisions of the statute, the *Rettig* majority declined to “forecast an answer” but noted that:

It is troubling to suggest that a time deadline for filing in the trial court could be a matter within the legislature's power if it merely "cut[s] off substantive rights." Most time

“statute” rather than a codified Supreme Court rule. If it were otherwise, the legislature would have included the resolving language of Section 4 in the 2003 Amendment as well.

deadlines, if missed, can extinguish a substantive right. If that characterization is enough to give the legislature the power to promulgate a rule then the limitation in article VIII, section 4 may easily be erased.

Id. ¶56 n.11 (internal citations to concurrence omitted).

As mentioned above, Rippey disagrees with the Court's analysis of the PWS in *Rettig*, because the statute violates his right to appeal and a plethora of associated rights. However, this Court's likening the PWS to a rule of preservation and waiver mandates a finding that the filing deadline in Subsection 2(b) is unconstitutional under the Utah Constitution's separation of powers provisions.

IV. PURSUANT TO ITS CONSTITUTIONAL RULE-MAKING AUTHORITY, THIS COURT SHOULD FASHION A PROCEDURAL REMEDY CONSISTENT WITH MR. RIPPEY'S FEDERAL AND STATE CONSTITUTIONAL RIGHTS

The Court should find the PWS unconstitutional in its current form both on-its-face and in application to Mr. Rippey, for any one of the host of reasons described above.

Upon finding the PWS unconstitutional, the Court should fashion a rule that affords defendants who enter pleas the opportunity to seek withdrawal in a specified time period *after sentencing* but before appeal and with the assistance of counsel. The timeframe for filing a notice of appeal should necessarily be tolled if such motion is filed. In

essence, returning to the *Ostler*-era time frame would effectively solve the majority of the problem. *See Ostler*, 2001 UT 68, ¶11 (interpreting PWS time limitation to be 30-days after entry of the final judgment at sentencing). Alternatively, a newly fashioned rule could make the filing of a motion to withdraw the plea discretionary, which would in turn allow defendants the opportunity to raise plea issues on appeal like any other issue (whether preserved or under an exception to preservation).

The caveat to any remedy which still *requires* the filing of a motion to withdraw the plea is that the courts must truly recognize that, under the current PWS, only narrow grounds serve as a basis for withdrawal – specifically, whether the plea was knowingly and voluntarily made. For all other “challenges” that a defendant might seek to raise in a case where a plea has been entered, those issues, including any ineffective assistance or prosecutorial misconduct claims evident in the proceedings by the time of appeal, should be addressable on appeal in accordance with the preservation doctrine and the exceptions to it.

Finally, to address those cases where, as here, the application of the PWS has already resulted in the constitutional violations detailed herein, this Court should fashion a procedural mechanism that will afford Rippey his thus-far-denied appellate rights, as the Court did in

Manning v. State and relying on coram nobis principles. *See Manning*, 2005 UT 61, ¶16.

It is true that affording remedy will take additional time and resources, but constitutional rights simply may not be sacrificed in the name of judicial economy. *See State v. Gibbons*, 740 P.2d 1309, 1314 (Utah 1987). The U.S. Supreme Court addressed a similar concern when it clarified the application of the Sixth Amendment guarantee of effective assistance of counsel to informing a defendant of collateral consequences during the plea-bargaining process. *See Padilla v. Kentucky*, 559 U.S. 356 (2010). That Court noted:

[A]lthough we must be especially careful about recognizing new grounds for attacking the validity of guilty pleas, in the 25 years since we first applied *Strickland* to claims of ineffective assistance at the plea stage, practice has shown that pleas are less frequently the subject of collateral challenges than convictions obtained after a trial. Pleas account for nearly 95% of all criminal convictions. But they account for only approximately 30% of the habeas petitions filed. The nature of relief secured by a successful collateral challenge to a guilty plea — an opportunity to withdraw the plea and proceed to trial — imposes its own significant limiting principle: Those who collaterally attack their guilty pleas lose the benefit of the bargain obtained as a result of the plea.

Id. at 372-73 (internal citations omitted).

In short, any argument must be soundly rejected which suggests that constitutional rights should be “discarded in perpetuity” rather

than asking the State to reevaluate and, perhaps, retry “a slice of their prior criminal cases.” *Ramos v. Louisiana*, 140 S.Ct. 1390, 1408 (2020). “Whether that slice turns out to be large or small, it cannot outweigh the interest we all share in the preservation of our constitutionally promised liberties.” *Id.* There can be no justice in “perpetuat[ing] something we all know to be wrong only because we fear the consequences of being right.” *Id.*

CONCLUSION

This Court should find the PWS unconstitutional in its current form and application, and fashion a remedy that provides Mr. Rippey the ability to seek appellate review of challenges to his criminal conviction with the aid of effective assistance of counsel.

Respectfully submitted this 31st day of October, 2022.

/s/ Ann Marie Taliaferro
Ann Marie Taliaferro, #8776
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CLAIM FOR ATTORNEYS' FEES

There are no claims for attorneys' fees.

CERTIFICATES OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I, Dain Smoland, certify that this brief contains 13,963 words, excluding the table of contents, table of authorities, addenda, and certificates of compliance and delivery.

In compliance with the typeface requirements of Utah R. App. P. 27(b), I also certify that this brief has been prepared in a proportionally spaced font using Microsoft Word v.15.31 in Century font, 13-point.

I also certify that this brief contains no non-public information in compliance with the non-public information requirements of Utah R. App. P. 21(h).

/s/ Ann Marie Taliaferro
ANN M. TALIAFERRO
Co-Counsel for Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October 2022, a true and correct copy of the foregoing Opening Brief of Appellant was mailed, postage prepaid, emailed, or hand-delivered to:

Assistant Solicitor General
Criminal Appeals Division
160 East 300 South, 6th Floor,
Salt Lake City, Utah 84111

/s/ Ann Marie Taliaferro
ANN M. TALIAFERRO
Co-Counsel for Appellant

AMT/P/7351-1

ADDENDA

ADDENDUM A

TOTAL CRIMINAL CASES RESOLVED BY PLEA

Year	Filed Criminal Cases*	Disposed Criminal Cases*	Cases with a Plea	Cases Resolved by a Plea	% of Filed Criminal Cases Resolved by a Plea	% of Disposed Criminal Cases Resolved by a Plea	% of Cases with a Plea Resolved by a Plea
2014	41,244	39,867	34,192	31,871	77.27	79.94	93.21
2015	41,320	39,006	32,164	30,004	72.61	76.92	93.28
2016	42,591	46,522	33,306	30,919	72.60	66.46	92.83
2017	45,129	42,534	35,426	33,214	73.60	78.09	93.76
2018	45,604	43,576	36,947	34,492	75.63	79.15	93.36
2019	45,138	42,683	36,660	33,423	74.05	78.31	91.17

* Criminal cases include the following case types: State Felony, Infraction, Misdemeanor DUI, Other Misdemeanor, and Not Applicable

Data compiled by the Administrative Office of the Courts, (received Apr. 3, 2020).

Cases with a Motion to Withdraw Plea before Sentencing

Year	Cases with a Plea	Cases with a Motion to Withdraw Plea before Sentencing	% Cases with a Motion to Withdraw Plea before Sentencing
2014	34,192	86	0.25
2015	32,164	67	0.21
2016	33,306	74	0.22
2017	35,426	91	0.26
2018	36,947	72	0.19
2019	36,660	57	0.16

* Criminal cases include the following case types: State Felony, Infraction, Misdemeanor DUI, Other Misdemeanor, and Not Applicable

Data compiled by the Administrative Office of the Courts, (received Apr. 3, 2020).

CASES WITH A PLEA AND SENTENCING ON THE SAME DATE

Year	Cases with a Plea	Cases with Plea and Sentence on Same Date	% Cases with Plea and Sentence on Same Date
2014	34,192	16,627	48.63
2015	32,164	11,904	37.01
2016	33,306	14,205	42.65
2017	35,426	14,501	40.93
2018	36,947	14,407	38.99
2019	36,660	14,102	38.47

* Criminal cases include the following case types: State Felony, Infraction, Misdemeanor DUI, Other Misdemeanor, and Not Applicable

Data compiled by the Administrative Office of the Courts, (received Apr. 3, 2020).

ADDENDUM B

PCRA DATA

Note: The data provided in columns 1-8 of the spreadsheet (case number - filing year) were provided directly from the Administrative Office of the Courts.

Both the initial summary chart and columns 9-14 of the spreadsheet are data compiled by counsel based on additional information gathered by reviewing the publicly available court dockets and filings.

total filed	318
Pro se at time of filing	205
Atty filed petition	112
pro se who asked for atty	114
pro se who was appointed atty	15
cases stayed/still open	42
Withdrawn Cases	9
Dismissed cases	230
<u>Dismissed Stage</u>	
State's motion for summary judgment	83
Frivolity Review	44
Failure to pay fee	37
Court's motion to dismiss on procedure	18
Failure to serve defendant	9
incomplete application	6
Withdrawn	5
Unclear	5
Petitioner died/missing	3
Moot	3
Inactivity/failure to prosecute	3
state's motion for dismissal on procedural bar:	2
Petitioner's motion to dismiss on procedure	2
filed in wrong court	2
Evidentiary Hearing	2
Stipulated	1
Granted Cases	37
Cases Granted Where Petitioner Pro Se	0
<u>Granted Stage</u>	
stipulated	29
State's Failure to Respond	4
Evidentiary Hearing	3
Unclear	1
Relief Granted	37
Conviction	27
Sentence	7
unclear	1
Counties with Highest Dismissal for	
failure to pay fee	
Salt Lake	21
Ogden	11
Provo	2
Court's motion to dismiss on procedure	
Provo	3
Logan	3
Ogden	3
Salt Lake	2

case_num	locn_desc	case_type_desc	filng_date	disp_date	disposition	filng_type	filng_year	Who filed?	Requested Atty?	Appointed atty?	Disposition	Dismissed-at stage	Granted-at stage
165700008	Filmorn District	Post Conv Rel NonCap	Mar 22, 2016	May 27, 2016	Dismissed	Manual	2016	pro se			dismissed		
167011113	Farmington District	Post Conv Rel NonCap	Oct 28, 2016	Jan 2, 2018	Denied	E-filed	2016	atty	Y	Y	dismissed	state's summary judgment	
160600070	Moabi District	Post Conv Rel NonCap	Dec 7, 2016	Jun 15, 2017	Granted	E-filed	2016	atty			granted	state's summary judgment	stipulated
169907360	Ogden District	Post Conv Rel NonCap	Dec 12, 2016	May 8, 2017	Granted	E-filed	2016	atty			granted		stipulated
170900070	Salt Lake City District	Post Conv Rel NonCap	Jan 4, 2017	Feb 29, 2017	Dismissed	E-filed	2017	atty			dismissed	frivolity review	
170903027	Salt Lake City District	Post Conv Rel NonCap	May 9, 2017	Mar 16, 2018	Dismissed	Manual	2017	pro se	Y	N	dismissed	state's summary judgment	
170401366	Provo District	Post Conv Rel NonCap	Sep 22, 2017	Dec 1, 2017	Denied	E-filed	2017	atty			dismissed	state's summary judgment	
170906938	Salt Lake City District	Post Conv Rel NonCap	Nov 1, 2017	Jan 17, 2018	Dismissed w/o prejudice	Manual	2017	pro se	Y	N	dismissed	state's summary judgment	
170906169	Salt Lake City District	Post Conv Rel NonCap	Dec 27, 2017	Jul 1, 2019	Granted	Manual	2017	pro se	Y	N	granted	state's summary judgment	
180100331	Bingham City District	Post Conv Rel NonCap	Feb 20, 2018	Feb 15, 2019	Dismissed	Manual	2018	pro se	Y	N	dismissed	state's summary judgment	
180704653	Farmington District	Post Conv Rel NonCap	May 15, 2018			E-filed	2018	atty			dismissed		
180100178	Logan District	Post Conv Rel NonCap	May 16, 2018	Jul 26, 2018	Granted	E-filed	2018	atty			still open		
180907264	Salt Lake City District	Post Conv Rel NonCap	Sep 28, 2018	Jan 17, 2019	Dismissed	Manual	2018	atty			granted		stipulated
180700042	Moabi District	Post Conv Rel NonCap	Nov 9, 2018	Feb 26, 2019	Dismissed	Manual	2018	pro se	Y	N	dismissed	frivolity review	
180800136	Verona District	Post Conv Rel NonCap	Dec 5, 2018	Jun 6, 2019	Dismissed w/o prejudice	Manual	2018	pro se	Y	Y	dismissed	motion	
190901321	Ogden District	Post Conv Rel NonCap	Mar 1, 2019	Oct 4, 2019	Dismissed w/o prejudice	Manual	2019	pro se	Y	Y	dismissed	failure to serve defendant	
190901936	Ogden District	Post Conv Rel NonCap	Mar 20, 2019	Aug 12, 2019	Dismissed	Manual	2019	pro se	Y	Y	dismissed	frivolity review	
180078222	Salt Lake City District	Post Conv Rel NonCap	Apr 5, 2019	Dec 31, 2019	Judgment	E-filed	2019	atty			dismissed	state's summary judgment	
200700026	Castle Dale District	Post Conv Rel NonCap	Nov 25, 2020	Mar 3, 2021	Dismissed	Manual	2020	pro se	Y	N	dismissed	court's motion to dismiss based on procedure	
190300055	Spanish Fork District	Post Conv Rel NonCap	Apr 12, 2018	May 20, 2019	Granted	E-filed	2019	atty			granted		stipulated
190902544	Ogden District	Post Conv Rel NonCap	Apr 26, 2019	Apr 30, 2019	Denied	E-filed	2019	atty			dismissed	petitioner's motion to dismiss on procedure	
210500028	Cotton City District	Post Conv Rel NonCap	Sep 27, 2021			Manual	2021	pro se	Y		dismissed	court's motion to dismiss based on procedure	
190904244	Ogden District	Post Conv Rel NonCap	Jul 18, 2019	Jul 22, 2019	Dismissed	Manual	2019	pro se	Y	N	dismissed	frivolity review	
190908596	Salt Lake City District	Post Conv Rel NonCap	Oct 30, 2019			Manual	2019	pro se	Y	N	dismissed	frivolity review	
190907374	Ogden District	Post Conv Rel NonCap	Dec 20, 2019	Jan 16, 2020	Dismissed w/o prejudice	Manual	2019	pro se	Y	N	dismissed	frivolity review	
200900058	Salt Lake City District	Post Conv Rel NonCap	Jan 6, 2020	Mar 24, 2021	Dismissed w/o prejudice	Manual	2020	pro se	Y	N	dismissed	incomplete application	
200901200	Salt Lake City District	Post Conv Rel NonCap	Feb 12, 2020	Jul 15, 2021	Dismissed w/o prejudice	Manual	2020	pro se	Y	N	dismissed	state's summary judgment	
200903369	Salt Lake City District	Post Conv Rel NonCap	May 15, 2020			E-filed	2020	atty			dismissed	state's summary judgment	
200401503	Provo District	Post Conv Rel NonCap	Oct 16, 2020			Manual	2020	pro se	Y	N	dismissed	frivolity review	
200401582	Provo District	Post Conv Rel NonCap	Oct 30, 2020			Transferred	2020	pro se	Y	N	dismissed	frivolity review	
210903619	Salt Lake City District	Post Conv Rel NonCap	Jul 8, 2021			E-filed	2021	atty			granted		stipulated
210904227	Salt Lake City District	Post Conv Rel NonCap	Aug 11, 2021	Oct 19, 2021	Dismissed	Manual	2021	pro se	Y	N	dismissed		
210900048	Duchesne District	Post Conv Rel NonCap	Oct 13, 2021		Denied	Manual	2021	pro se	Y	N	still open		
210905799	Salt Lake City District	Post Conv Rel NonCap	Oct 27, 2021			Manual	2021	pro se	Y	N	still open		
160904190	Salt Lake City District	Post Conv Rel NonCap	Jul 1, 2016			Manual	2016	pro se	Y	Y	still open		
160904619	Ogden District	Post Conv Rel NonCap	Aug 19, 2016	Sep 29, 2016	Dismissed	Manual	2016	pro se	Y	Y	dismissed	frivolity review	
160905391	Salt Lake City District	Post Conv Rel NonCap	Aug 29, 2016	Jan 30, 2017	Dismissed	Manual	2016	pro se	Y	N	dismissed	withdrawn	
180401827	Provo District	Post Conv Rel NonCap	Dec 7, 2016	Nov 17, 2017	Granted	E-filed	2016	atty	Y	N	granted	failure to pay fee	stipulated
180500025	Beaver District	Post Conv Rel NonCap	Oct 12, 2018	Jan 28, 2019	Dismissed	Manual	2018	pro se	Y	Y	dismissed	motion	
180500146	St. George District	Post Conv Rel NonCap	Mar 22, 2018	Nov 29, 2018	Dismissed	Manual	2018	pro se	Y	Y	dismissed	unclear	
180902211	Salt Lake City District	Post Conv Rel NonCap	Mar 29, 2018	Aug 8, 2019	Dismissed	Manual	2018	pro se	Y	Y	dismissed	court's motion to dismiss based on procedure	
180700756	Farmington District	Post Conv Rel NonCap	Jul 27, 2018	Dec 11, 2018	Dismissed	Manual	2018	pro se	Y	N	dismissed	failure to pay fee	
190100107	Logan District	Post Conv Rel NonCap	Mar 27, 2019	Oct 7, 2019	Dismissed w/o prejudice	Manual	2019	pro se	Y	N	dismissed		
180904751	Ogden District	Post Conv Rel NonCap	Aug 6, 2018			E-filed	2018	atty			still open		
190600001	Low District	Post Conv Rel NonCap	Jan 28, 2019	Apr 10, 2019	Granted	E-filed	2019	atty			granted		stipulated
190700236	Farmington District	Post Conv Rel NonCap	Mar 18, 2019	Jul 18, 2019	Dismissed	E-filed	2019	atty			dismissed	state's summary judgment	
190700311	Farmington District	Post Conv Rel NonCap	Apr 5, 2019	Apr 12, 2019	Dismissed	E-filed	2019	atty			dismissed		
190400709	Provo District	Post Conv Rel NonCap	May 6, 2019	May 6, 2019	Dismissed	Manual	2019	pro se	N		dismissed	incomplete application	
190903768	Salt Lake City District	Post Conv Rel NonCap	May 10, 2019	Jun 2, 2020	Denied	Manual	2019	pro se	N		dismissed	state's summary judgment	
190401992	West Jordan District	Post Conv Rel NonCap	Jun 11, 2019	Oct 21, 2020	Denied	Manual	2019	pro se	Y	Y	dismissed	evidentiary hearing	
190100213	Logan District	Post Conv Rel NonCap	Jun 19, 2019			E-filed	2019	atty			slayed		
190500589	St. George District	Post Conv Rel NonCap	Oct 30, 2019			Manual	2019	atty			dismissed	filed in wrong court	
190701124	Farmington District	Post Conv Rel NonCap	Nov 6, 2019	Dec 11, 2019	Dismissed	E-filed	2019	pro se	N		dismissed	frivolity review	
190609202	Salt Lake City District	Post Conv Rel NonCap	Nov 25, 2019	Jul 9, 2020	Dismissed w/o prejudice	Manual	2019	pro se	Y		dismissed	state's summary judgment	
200902334	Salt Lake City District	Post Conv Rel NonCap	Mar 24, 2020			E-filed	2020	atty			still open		
200301038	Tooele District	Post Conv Rel NonCap	Aug 3, 2020	Jun 3, 2021	Dismissed w/o prejudice	E-filed	2020	atty			dismissed	unclear	

200904860	Salt Lake City District	Post Conv Rel NonCap	Aug 5, 2020	Nov 20, 2020	Dismiss w/ prejudice	E-Filed	2020													
200100106	Bingham City District	Post Conv Rel NonCap	Oct 9, 2020			Manual	2020	atty											dismissed	withdrawn
210900977	Salt Lake City District	Post Conv Rel NonCap	Feb 19, 2021			Transferred	2021	pro se	Y										stayed	
210500434	St. George District	Post Conv Rel NonCap	May 19, 2021			Manual	2021	pro se	Y										stayed	
160500119	St. George District	Post Conv Rel NonCap	Feb 26, 2016	Oct 24, 2016	Judgment	Manual	2016	pro se											dismissed	state's summary judgment
160901505	Salt Lake City District	Post Conv Rel NonCap	Feb 29, 2016	Jun 27, 2016	Granted	Manual	2016	pro se											dismissed	state's summary judgment
160000001	Manitou District	Post Conv Rel NonCap	May 11, 2016	Nov 10, 2016	Dismissed	Manual	2016	pro se											dismissed	state's summary judgment
160700733	Farmington District	Post Conv Rel NonCap	Jul 18, 2016	Oct 13, 2016	Dismissed	E-Filed	2016	atty											dismissed	frivolity review
160905824	Salt Lake City District	Post Conv Rel NonCap	Sep 16, 2016	Feb 5, 2018	Dismissed w/o prejudice	E-Filed	2016	atty											dismissed	failure to serve defendant
160506759	Salt Lake City District	Post Conv Rel NonCap	Oct 31, 2016	Apr 27, 2017	Dismissed	E-Filed	2016	atty											granted	
160900034	Nephis District	Post Conv Rel NonCap	Nov 4, 2016	Jul 7, 2017	Dismissed	E-Filed	2016												granted	evadatory hearing
160401927	Provo District	Post Conv Rel NonCap	Dec 22, 2016	Aug 21, 2017	Judgment	Manual	2016	atty											dismissed	state's motion to dismiss on procedure
170700163	Farmington District	Post Conv Rel NonCap	Feb 14, 2017	Aug 21, 2018	Dismiss w/o prejudice	E-Filed	2017	pro se	Y										dismissed	state's summary judgment
170901032	Ogden District	Post Conv Rel NonCap	Feb 16, 2017	Aug 15, 2017	Dismiss w/o prejudice	E-Filed	2017	atty											dismissed	state's summary judgment
170902039	Salt Lake City District	Post Conv Rel NonCap	Mar 29, 2017			E-Filed	2017												dismissed	state's summary judgment
170902188	Salt Lake City District	Post Conv Rel NonCap	Apr 5, 2017	Mar 23, 2018	Dismiss w/o prejudice	Transferred	2017	atty											stayed	
170902318	Salt Lake City District	Post Conv Rel NonCap	Apr 11, 2017	Aug 1, 2018	Judgment	Manual	2017	pro se	Y										dismissed	petitioner died/misuing
170903033	Nephis District	Post Conv Rel NonCap	Sep 25, 2017	Jan 10, 2018	Granted	E-Filed	2017	atty											dismissed	state's summary judgment
190600955	Kaneb District	Post Conv Rel NonCap	Jul 16, 2019	Aug 14, 2019	Dismissed	Manual	2019	pro se											granted	stipulated
190605318	Salt Lake City District	Post Conv Rel NonCap	Jul 25, 2018	Oct 31, 2018	Granted	E-Filed	2018	atty											dismissed	court's motion to dismiss based on procedure
200100261	Logan District	Post Conv Rel NonCap	Oct 1, 2020			Manual	2020												granted	granted
																				state failed to respon
190500009	St. George District	Post Conv Rel NonCap	Jan 4, 2019	Aug 26, 2019	Dismiss w/o prejudice	E-Filed	2019	pro se	Y										dismissed	court's motion to dismiss based on procedure
190602443	Salt Lake City District	Post Conv Rel NonCap	Mar 24, 2019			E-Filed	2019	atty											dismissed	failure to serve defendant
190700499	Farmington District	Post Conv Rel NonCap	May 24, 2019			Manual	2019	atty											still open	
190605453	Salt Lake City District	Post Conv Rel NonCap	Jul 10, 2019	Mar 5, 2020	Denied	E-Filed	2019	pro se	Y										stayed	
210100211	Logan District	Post Conv Rel NonCap	Jul 21, 2021	Jul 26, 2021	Dismissed	Manual	2021	atty											dismissed	petitioner's motion to dismiss on procedure
190906152	Salt Lake City District	Post Conv Rel NonCap	Aug 7, 2019	Dec 5, 2019	Granted	E-Filed	2019	pro se	Y										dismissed	court's motion to dismiss based on procedure
190907173	Salt Lake City District	Post Conv Rel NonCap	Sep 13, 2019	Aug 20, 2020	Dismiss w/ prejudice	Manual	2019	atty											granted	not clear
190909104	Salt Lake City District	Post Conv Rel NonCap	Nov 18, 2019	Mar 20, 2020	Dismiss w/o prejudice	Manual	2019	pro se											dismissed	state's summary judgment
190701210	Farmington District	Post Conv Rel NonCap	Nov 25, 2019	Jan 22, 2020	Denied	Manual	2019	pro se	Y										dismissed	incomplete application
190609404	Salt Lake City District	Post Conv Rel NonCap	Dec 2, 2019			Manual	2019	pro se											dismissed	state's summary judgment
200400117	Provo District	Post Conv Rel NonCap	Jan 21, 2020	Jan 22, 2020	Transferred	E-Filed	2020												still open	
200500042	Cedar City District	Post Conv Rel NonCap	Mar 11, 2020	Mar 16, 2020	Granted	E-Filed	2020	pro se											granted	stipulated
200802278	Salt Lake City District	Post Conv Rel NonCap	Mar 20, 2020	Apr 28, 2021	Dismiss w/o prejudice	Transferred	2020	atty											granted	stipulated
200500052	Cedar City District	Post Conv Rel NonCap	Mar 24, 2020	Jun 1, 2020	Dismissed	Manual	2020	pro se											still open	
200903636	Salt Lake City District	Post Conv Rel NonCap	Jun 2, 2020			Manual	2020	pro se	Y										dismissed	unclear
200905335	Salt Lake City District	Post Conv Rel NonCap	Aug 18, 2020			Manual	2020	pro se	Y										dismissed	state's summary judgment
190100361	Logan District	Post Conv Rel NonCap	Oct 15, 2019	May 20, 2020	Dismissed	E-Filed	2019	atty											dismissed	frivolity review
200401504	Provo District	Post Conv Rel NonCap	Oct 16, 2020			Manual	2020	atty											dismissed	court's motion to dismiss based on procedure
180903686	Ogden District	Post Conv Rel NonCap	Jan 18, 2018	Jul 27, 2018	Dismissed	Manual	2018	pro se	Y										dismissed	frivolity review
180901126	Ogden District	Post Conv Rel NonCap	Feb 22, 2016	Aug 30, 2016	Dismissed	Manual	2016	pro se	N										dismissed	failure to pay fee
180901043	Ogden District	Post Conv Rel NonCap	Feb 16, 2016	May 23, 2018	Dismiss w/o prejudice	Manual	2016												dismissed	court's motion to dismiss based on procedure
210500017	St. George District	Post Conv Rel NonCap	Aug 2, 2021	Aug 4, 2021	Granted	E-Filed	2021	atty											dismissed	court's motion to dismiss based on procedure
180600004	Manitou District	Post Conv Relief-Cap	Jan 16, 2018	Sep 4, 2018	Dismiss w/ prejudice	E-Filed	2018	atty											granted	stipulated
160901180	Salt Lake City District	Post Conv Rel NonCap	Feb 18, 2016	Aug 30, 2016	Denied	Manual	2016	pro se											dismissed	state's summary judgment
210900912	Ogden District	Post Conv Rel NonCap	Feb 18, 2021	May 11, 2021	Dismissed	Manual	2021	pro se	Y										dismissed	state's summary judgment
160902218	Salt Lake City District	Post Conv Rel NonCap	Apr 28, 2016	Jan 17, 2018	Dismiss w/ prejudice	Manual	2016	pro se	Y										dismissed	court's motion to dismiss based on procedure
160500449	St. George District	Post Conv Rel NonCap	Apr 28, 2016	Jan 13, 2016	Granted	E-Filed	2016	atty											dismissed	state's summary judgment
160401232	Provo District	Post Conv Rel NonCap	Aug 11, 2016	Dec 20, 2016	Dismissed	E-Filed	2016	atty											granted	stipulated
160600050	Manitou District	Post Conv Rel NonCap	Sep 1, 2016	Oct 12, 2016	Denied	Manual	2016	pro se	Y										dismissed	withdrawn
																			dismissed	frivolity review

160905589	Salt Lake City District	Post Conv Rel NonCap	Sep 7, 2016	Apr 27, 2018	Dismissed	E-Filed	2016		atty				dismissed	state's motion to dismiss on the merits
160600049	Richfield District	Post Conv Rel NonCap	Sep 12, 2016	Feb 13, 2017	Denied	E-Filed	2016		atty				dismissed	evidentiary hearing
160906009	Ogden District	Post Conv Rel NonCap	Oct 11, 2016	Apr 6, 2017	Dismissed w/o prejudice	Manual	2016		pro se				dismissed	state's summary judgment
160700031	Farmington District	Post Conv Rel NonCap	Oct 28, 2016	Nov 2, 2016	Dismissed	Manual	2016		pro se	Y	N		dismissed	frivolity review
170902160	Ogden District	Post Conv Rel NonCap	Apr 12, 2017	May 17, 2017	Dismissed w/o prejudice	Manual	2017		pro se				dismissed	frivolity review
170903850	Salt Lake City District	Post Conv Rel NonCap	Jun 15, 2017	Aug 14, 2018	Dismissed	Manual	2017		pro se				dismissed	incomplete application
170909670	Salt Lake City District	Post Conv Rel NonCap	Oct 18, 2017			Manual	2017		pro se				dismissed	state's summary judgment
170100191	American Fork District	Post Conv Rel NonCap	Oct 26, 2017	Dec 14, 2017	Denied	Manual	2017		pro se				dismissed	state's summary judgment
170906995	Salt Lake City District	Post Conv Rel NonCap	Nov 7, 2017	Apr 17, 2018	Dismissed w/o prejudice	E-Filed	2017		pro se				dismissed	unclear
180902759	Ogden District	Post Conv Rel NonCap	May 7, 2018	Jul 9, 2018	Dismissed	Manual	2018		atty				dismissed	state's summary judgment
180600012	Panguitch District	Post Conv Rel NonCap	Apr 29, 2018	Dec 11, 2018	Denied	Manual	2018		pro se				dismissed	failure to pay fee
180904667	Ogden District	Post Conv Rel NonCap	Aug 1, 2018	Nov 5, 2018	Dismissed	Manual	2018		pro se				dismissed	frivolity review
180401438	Provo District	Post Conv Rel NonCap	Sep 7, 2018	Apr 30, 2021	Dismissed w/o prejudice	Manual	2018		pro se				dismissed	failure to pay fee
180909291	Salt Lake City District	Post Conv Rel NonCap	Nov 2, 2018	Nov 13, 2018	Dismissed	E-Filed	2018		pro se				dismissed	state's summary judgment
180400635	Provo District	Post Conv Rel NonCap	Apr 17, 2019	May 1, 2019	Dismissed	Manual	2019		atty				granted	frivolity review
190309069	Spanish Fork District	Post Conv Rel NonCap	Apr 26, 2019	Apr 26, 2019	Dismissed	Transferred	2019		pro se				dismissed	frivolity review
180908642	Ogden District	Post Conv Rel NonCap	Nov 30, 2020	Jan 29, 2021	Dismissed w/o prejudice	Manual	2020		pro se				dismissed	failure to pay fee
190903227	Ogden District	Post Conv Rel NonCap	May 30, 2019	Jun 28, 2019	Dismissed	Manual	2019		pro se				dismissed	state's summary judgment
190906447	Salt Lake City District	Post Conv Rel NonCap	Aug 15, 2019			Manual	2019		pro se	Y			dismissed	state's summary judgment
160901994	Ogden District	Post Conv Rel NonCap	Mar 28, 2016	Jul 7, 2016	Dismissed	Manual	2016		pro se	Y	Y		still open	failure to pay fee
190907354	Ogden District	Post Conv Rel NonCap	Dec 19, 2019	Mar 2, 2020	Dismissed w/o prejudice	Manual	2019		pro se	Y	N		dismissed	failure to pay fee
200602994	Salt Lake City District	Post Conv Rel NonCap	Apr 28, 2020			E-Filed	2020		pro se	Y			dismissed	failure to pay fee
200903712	Salt Lake City District	Post Conv Rel NonCap	Jan 5, 2020	Jun 29, 2021	Dismissed	Manual	2020		atty				granted	stipulated
200906738	Salt Lake City District	Post Conv Rel NonCap	Oct 26, 2020			Transferred	2020		pro se	Y	N		dismissed	withdrawing
200904204	Ogden District	Post Conv Rel NonCap	Jul 28, 2020	Oct 12, 2020	Dismissed w/o prejudice	Manual	2020		pro se	Y	N		still open	state's summary judgment
190400528	Provo District	Post Conv Rel NonCap	Apr 4, 2019	Nov 21, 2019	Dismissed w/o prejudice	Manual	2019		pro se	Y	N		dismissed	failure to pay fee
210901880	Salt Lake City District	Post Conv Rel NonCap	Apr 8, 2021			E-Filed	2021		pro se				dismissed	court's motion to dismiss based on procedure
160900311	Salt Lake City District	Post Conv Rel NonCap	Jan 14, 2016	Jun 27, 2018	Denied	Manual	2016		pro se				dismissed	state's summary judgment
160901178	Salt Lake City District	Post Conv Rel NonCap	Feb 18, 2016	Aug 30, 2016	Denied	Manual	2016		pro se				dismissed	state's summary judgment
160902840	Salt Lake City District	Post Conv Rel NonCap	May 3, 2016	Aug 31, 2016	Granted	E-Filed	2016		atty				granted	stipulated
160700549	Farmington District	Post Conv Rel NonCap	Jun 2, 2016			Manual	2016		atty				granted	stipulated
160909602	Salt Lake City District	Post Conv Rel NonCap	Nov 7, 2016	Apr 13, 2017	Granted	E-Filed	2016		atty				still open	stipulated
160100195	Bingham City District	Post Conv Rel NonCap	Dec 21, 2016	Aug 17, 2017	Granted	E-Filed	2016		atty				granted	stipulated
170700228	Farmington District	Post Conv Rel NonCap	Mar 1, 2017	Jul 10, 2017	Granted	E-Filed	2017		atty				granted	stipulated
200904456	Ogden District	Post Conv Rel NonCap	Aug 4, 2020	Oct 6, 2020	Dismissed w/o prejudice	Manual	2020		pro se	Y	N		granted	stipulated
170900036	Richfield District	Post Conv Rel NonCap	Jun 6, 2017	Apr 2, 2018	Denied	Manual	2017		pro se	Y	N		dismissed	failure to pay fee
170909707	Salt Lake City District	Post Conv Rel NonCap	Sep 8, 2017	Feb 28, 2018	Granted	E-Filed	2017		pro se	Y	N		dismissed	state's summary judgment
170701032	Farmington District	Post Conv Rel NonCap	Sep 14, 2017	Nov 8, 2017	Granted	Manual	2017		atty				granted	evidentiary hearing
190401195	Provo District	Post Conv Rel NonCap	Jul 15, 2019	Apr 27, 2021	Dismissed w/o prejudice	Manual	2019		pro se	Y	N		granted	stipulated
180901457	Salt Lake City District	Post Conv Rel NonCap	Feb 27, 2018	Mar 29, 2019	Dismissed	Manual	2018		pro se	Y	N		dismissed	court's motion to dismiss based on procedure
180906112	Salt Lake City District	Post Conv Rel NonCap	Aug 22, 2018	Nov 4, 2021	Dismissed	Transferred	2018		pro se	Y	N		dismissed	state's summary judgment
160905339	Ogden District	Post Conv Rel NonCap	Sep 12, 2016	Dec 21, 2016	Dismissed w/o prejudice	Manual	2016		pro se	Y	N		dismissed	state's summary judgment
190600020	Nephi District	Post Conv Rel NonCap	Aug 12, 2019	Aug 24, 2020	Granted	Manual	2019		pro se	Y	N		dismissed	failure to pay fee
180903850	Ogden District	Post Conv Rel NonCap	Jul 1, 2019	Aug 9, 2019	Dismissed	Manual	2019		pro se	Y	N		granted	frivolity review
190907188	Salt Lake City District	Post Conv Rel NonCap	Sep 13, 2019			Manual	2019		pro se	Y	N		dismissed	frivolity review
190907637	Salt Lake City District	Post Conv Rel NonCap	Sep 27, 2019	Jan 12, 2021	Dismissed w/o prejudice	E-Filed	2019		pro se	Y	N		dismissed	failure to prosecute
200700005	Moab District	Post Conv Rel NonCap	Feb 7, 2020	Apr 8, 2020	Dismissed	Manual	2020		atty				dismissed	state's summary judgment
200400542	Provo District	Post Conv Rel NonCap	Apr 6, 2020	Jun 30, 2021	Dismissed	Manual	2020		pro se	Y	N		dismissed	frivolity review
200903481	Salt Lake City District	Post Conv Rel NonCap	May 22, 2020	Aug 23, 2021	Granted	E-Filed	2020		atty				granted	state's motion to dismiss
200100127	Logan District	Post Conv Rel NonCap	Nov 16, 2020	Mar 15, 2021	No Cause of Action	Manual	2020		pro se	Y	N		dismissed	state failed to respond
180902558	Ogden District	Post Conv Rel NonCap	Apr 24, 2018	Jul 9, 2018	Dismissed	Manual	2018		pro se	Y	N		dismissed	unclear failure to pay fee

180902566	Ogden District	Post Conv Rel NonCap	Apr 24, 2018	Jul 9, 2018	Dismissed	Manual	2018	pro se					dismissed	failure to pay fee
210901021	Salt Lake City District	Post Conv Rel NonCap	Feb 22, 2021			E-Filed	2021	atty					dismissed	still open
210901485	Ogden District	Post Conv Rel NonCap	Mar 16, 2021	Jun 3, 2021	Dismissed	Manual	2021	pro se					dismissed	frivolous review
210401489	Provo District	Post Conv Rel NonCap	Oct 29, 2021			E-Filed	2021	atty					dismissed	still open
169901321	Ogden District	Post Conv Rel NonCap	Mar 2, 2016	Jan 1, 2016	Dismissed	E-Filed	2016	atty					dismissed	frivolous review
200700077	Provo District	Post Conv Rel NonCap	Nov 16, 2020	Mar 16, 2021	Dismissed w/o prejudice	Manual	2020	pro se	Y				dismissed	failure to pay fee
200400416	Provo District	Post Conv Rel NonCap	Mar 16, 2020	Nov 6, 2020	Dismissed	Manual	2016	pro se	Y				dismissed	failure to pay fee
169902706	Salt Lake City District	Post Conv Rel NonCap	Apr 28, 2016	Oct 4, 2017	Judgment	Manual	2016	pro se	Y		N		dismissed	state's summary judgment
180901620	Salt Lake City District	Post Conv Rel NonCap	Mar 6, 2018	Sep 13, 2018	Dismissed	Manual	2018	pro se	Y				dismissed	failure to pay fee
160905844	Salt Lake City District	Post Conv Rel NonCap	Sep 20, 2016	Jul 19, 2017	Dismissed	Manual	2016	pro se	Y		N		dismissed	failure to pay fee
160906825	Ogden District	Post Conv Rel NonCap	Nov 16, 2016	Dec 11, 2017	Dismissed	Manual	2016	pro se	Y		N		dismissed	state's summary judgment
170600035	Richfield District	Post Conv Rel NonCap	Jan 5, 2017	Apr 2, 2018	Denied	Manual	2017	pro se	Y		N		dismissed	withdrawn
170905706	Ogden District	Post Conv Rel NonCap	Sep 5, 2017	Sep 20, 2018	Dismissed w/o prejudice	E-Filed	2017	atty					dismissed	state's summary judgment
170600101	Salt Lake City District	Post Conv Rel NonCap	Sep 25, 2017	Feb 16, 2018	Dismissed	E-Filed	2017	atty					dismissed	state's summary judgment
170900669	Ogden District	Post Conv Rel NonCap	Dec 21, 2017	Mar 29, 2018	Dismissed	Manual	2017	pro se					dismissed	frivolous review
180903363	Salt Lake City District	Post Conv Rel NonCap	May 16, 2018	Nov 17, 2021	Dismissed w/o prejudice	E-Filed	2018	atty					dismissed	frivolous review
180603583	Salt Lake City District	Post Conv Rel NonCap	May 25, 2018	Jan 4, 2018	Dismissed	E-Filed	2018	atty					dismissed	stipulated
180700028	Moab District	Post Conv Rel NonCap	Sep 13, 2018	Nov 21, 2018	Dismissed	Manual	2018	pro se					dismissed	frivolous review
190700000	Moab District	Post Conv Rel NonCap	Feb 4, 2019	Jan 3, 2020	Dismissed w/o prejudice	Manual	2019	pro se	Y		N		dismissed	frivolous review
190903515	Salt Lake City District	Post Conv Rel NonCap	May 1, 2019	Feb 8, 2021	Dismissed w/o prejudice	E-Filed	2019	atty					dismissed	state's summary judgment
190903964	Salt Lake City District	Post Conv Rel NonCap	May 16, 2019			Manual	2019	pro se	Y		N		dismissed	still open
190904086	Salt Lake City District	Post Conv Rel NonCap	May 21, 2019	Sep 9, 2019	Dismissed w/o prejudice	Manual	2019	pro se	Y				dismissed	failure to pay fee
190907911	Salt Lake City District	Post Conv Rel NonCap	Oct 8, 2019	Jan 25, 2020	Dismissed	Manual	2019	pro se					dismissed	state's summary judgment
190909444	Salt Lake City District	Post Conv Rel NonCap	Jan 22, 2020	Feb 16, 2021	Dismissed	Manual	2019	pro se					dismissed	failure to pay fee
200900551	Salt Lake City District	Post Conv Rel NonCap	May 4, 2017	Sep 8, 2017	Dismissed w/o prejudice	Manual	2020	pro se	Y		N		dismissed	still open
170902910	Salt Lake City District	Post Conv Rel NonCap	May 4, 2017	Sep 8, 2017	Dismissed w/o prejudice	Manual	2017	pro se					dismissed	failure to pay fee
200907524	Salt Lake City District	Post Conv Rel NonCap	Dec 8, 2020			E-Filed	2020	atty					dismissed	failure to pay fee
200400465	Provo District	Post Conv Rel NonCap	Mar 31, 2020	Jan 13, 2021	Dismissed w/o prejudice	E-Filed	2020	atty					dismissed	state's motion to dismiss on procedure
210901315	Salt Lake City District	Post Conv Rel NonCap	Mar 9, 2021			Manual	2021	pro se	Y				dismissed	court's motion to dismiss based on procedure
210902143	Ogden District	Post Conv Rel NonCap	Apr 21, 2021			E-Filed	2021	atty					dismissed	still open
210900014	North District	Post Conv Rel NonCap	May 4, 2021	May 7, 2021	Dismissed	Manual	2021	pro se					dismissed	frivolous review
210400954	Provo District	Post Conv Rel NonCap	Jul 21, 2021	Jul 27, 2021	Dismissed	Manual	2021	pro se					dismissed	frivolous review
210100096	Brigham City District	Post Conv Rel NonCap	Jul 21, 2021	Jul 27, 2021	Dismissed	Manual	2021	pro se					dismissed	frivolous review
210904634	Salt Lake City District	Post Conv Rel NonCap	Sep 1, 2021			Manual	2021	pro se					dismissed	still open
210100162	Brigham City District	Post Conv Rel NonCap	Nov 12, 2021			E-Filed	2021	atty					dismissed	still open
170901236	Salt Lake City District	Post Conv Rel NonCap	Feb 27, 2017	Nov 29, 2017	Dismissed w/o prejudice	Manual	2017	pro se	Y		N		dismissed	failure to serve defendant
170901385	Salt Lake City District	Post Conv Rel NonCap	Mar 2, 2017	Oct 4, 2017	Denied	Manual	2017	pro se	Y		N		dismissed	state's summary judgment
170903948	Salt Lake City District	Post Conv Rel NonCap	May 23, 2017	Jan 29, 2018	Denied	E-Filed	2017	atty					dismissed	state's summary judgment
170400932	Provo District	Post Conv Rel NonCap	Jun 30, 2017	Mar 27, 2019	Dismissed w/o prejudice	Manual	2017	pro se	Y		N		dismissed	state's summary judgment
180908841	Salt Lake City District	Post Conv Rel NonCap	Nov 21, 2018	Mar 11, 2019	Dismissed w/o prejudice	Manual	2018	pro se	Y		N		dismissed	state's summary judgment
170401038	Provo District	Post Conv Rel NonCap	Nov 1, 2017	Jun 19, 2018	Dismissed w/o prejudice	Manual	2017	pro se	Y		N		dismissed	failure to pay fee
170100369	Logan District	Post Conv Rel NonCap	Dec 11, 2017	Oct 18, 2018	Set aside/Withdrawn	E-Filed	2017	pro se	Y		Y		dismissed	state's summary judgment
180500005	Beaver District	Post Conv Rel NonCap	Jan 25, 2018	Nov 2, 2018	Dismissed	Manual	2018	pro se					dismissed	withdrawn
180400572	Provo District	Post Conv Rel NonCap	Apr 6, 2018	Jan 23, 2020	Dismissed w/o prejudice	E-Filed	2018	pro se					dismissed	frivolous review
180904856	Ogden District	Post Conv Rel NonCap	Jul 30, 2018	Apr 16, 2019	Dismissed	Manual	2018	pro se	Y		N		dismissed	state's summary judgment
180100163	Brigham City District	Post Conv Rel NonCap	Aug 10, 2018	Nov 8, 2019	Dismissed	Manual	2018	pro se					dismissed	frivolous review
200907808	Salt Lake City District	Post Conv Rel NonCap	Dec 23, 2020			Transferred	2020	pro se					dismissed	failure to pay fee
180903448	Salt Lake City District	Post Conv Rel NonCap	May 22, 2018	Jan 29, 2019	Dismissed w/o prejudice	E-Filed	2018	atty					dismissed	court's motion to dismiss based on procedure
200100016	American Fork District	Post Conv Rel NonCap	Jan 22, 2020	Feb 3, 2020	Granted	Transferred	2020	atty					dismissed	granted
200901012	Salt Lake City District	Post Conv Rel NonCap	Feb 6, 2020	Sep 30, 2020	Dismissed	Manual	2020	pro se					dismissed	state's summary judgment
210903325	Salt Lake City District	Post Conv Rel NonCap	Jan 19, 2021	Apr 21, 2021	Dismissed	Manual	2021	pro se	Y		N		dismissed	failure to pay fee
180901060	Salt Lake City District	Post Conv Rel NonCap	Mar 17, 2016	Sep 13, 2016	Dismissed w/o prejudice	Manual	2016	pro se	Y				dismissed	failure to pay fee
210905224	Salt Lake City District	Post Conv Rel NonCap	Jan 27, 2021	Jul 16, 2021	Dismissed	E-Filed	2021	atty					dismissed	state's summary judgment
210900005	Fillmore District	Post Conv Rel NonCap	Feb 16, 2021	Mar 1, 2021	Dismissed	Manual	2021	atty					dismissed	state's summary judgment
210902120	Salt Lake City District	Post Conv Rel NonCap	Apr 20, 2021			Manual	2021	pro se	Y				dismissed	frivolous review
210700014	Castle Dale District	Post Conv Rel NonCap	Apr 20, 2021			E-Filed	2021	atty			N		dismissed	state's summary judgment
210100210	Logan District	Post Conv Rel NonCap	Jul 19, 2021			Manual	2021	pro se					dismissed	state's summary judgment
180401624	Provo District	Post Conv Rel NonCap	Oct 21, 2016	Jan 9, 2018	Dismissed w/o prejudice	Manual	2016	pro se	Y		N		dismissed	state's summary judgment
180800145	Vernal District	Post Conv Rel NonCap	Nov 22, 2016	Dec 20, 2017	Judgment	E-Filed	2016	atty					dismissed	state's summary judgment
170901725	Ogden District	Post Conv Rel NonCap	Mar 22, 2017	Feb 23, 2018	Dismissed w/o prejudice	E-Filed	2017	atty					dismissed	state's summary judgment
170600037	Richfield District	Post Conv Rel NonCap	Jun 6, 2017	Apr 2, 2018	Denied	Manual	2017	pro se	Y		N		dismissed	withdrawn
													dismissed	state's summary judgment

170100180	Logan District	Post Conv Rel NonCap	Jan 15, 2017	Apr 5, 2018	Dismissed	Manual	2017	pro se	Y	N	withdrawn	
180700001	Fillmore District	Post Conv Rel NonCap	Jan 5, 2018	Jun 18, 2018	Dismissed w/o prejudice	Manual	2018	pro se	Y	N	disbanded	failure to serve defendant
180900573	Salt Lake City District	Post Conv Rel NonCap	Jan 18, 2018	Jun 11, 2018	Dismissed	E-filed	2018	pro se			withdrawn	
180600011	Kanab District	Post Conv Rel NonCap	Feb 9, 2018	Aug 28, 2018	Dismissed	Manual	2018	pro se	Y	N	dismissed	state's summary judgment
180901523	Salt Lake City District	Post Conv Rel NonCap	Mar 1, 2018	Apr 22, 2020	Dismissed	Manual	2018	pro se	Y	N	dismissed	state's summary judgment
180500199	Silver Summit District	Post Conv Rel NonCap	May 1, 2018	Jun 13, 2018	Granted	E-filed	2018	pro se				
180100324	Logan District	Post Conv Rel NonCap	Aug 15, 2018	Oct 24, 2018	Dismissed	Manual	2018	pro se	Y	N	granted	stipulated
190400216	Provo District	Post Conv Rel NonCap	Jan 28, 2019	Feb 26, 2019	Dismissed	Manual	2019	pro se	Y	N	dismissed	frivolity review
200500157	St. George District	Post Conv Rel NonCap	Mar 13, 2020			Manual	2020	pro se	Y	N	dismissed	frivolity review
200400478	Provo District	Post Conv Rel NonCap	Mar 20, 2020	Oct 26, 2020	Dismissed	Manual	2020	pro se	Y	N	dismissed	motion
200907000	Salt Lake City District	Post Conv Rel NonCap	Nov 9, 2020			Manual	2020	pro se	Y	N	dismissed	state's motion to dismiss
210401486	Provo District	Post Conv Rel NonCap	Oct 29, 2021			E-filed	2021	pro se			still open	
170902631	Salt Lake City District	Post Conv Rel NonCap	Apr 24, 2017	Jan 3, 2018	Dismissed	Manual	2017	pro se			still open	
170100200	Brigham City District	Post Conv Rel NonCap	Dec 14, 2017	Apr 20, 2021	Judgment	Manual	2017	pro se			dismissed	incomplete application
160900211	Ogden District	Post Conv Rel NonCap	Jan 12, 2018	Oct 28, 2016	Denied	E-Med	2016	pro se			dismissed	state's summary judgment
160901179	Salt Lake City District	Post Conv Rel NonCap	Feb 18, 2018	Aug 24, 2016	Dismissed	Manual	2016	pro se			dismissed	state's summary judgment
160904404	Salt Lake City District	Post Conv Rel NonCap	Jul 14, 2016			Manual	2016	pro se			dismissed	state's summary judgment
160904936	Ogden District	Post Conv Rel NonCap	Aug 24, 2016	Sep 29, 2016	Dismissed	Manual	2016	pro se	Y	N	still open	
160701226	Farmington District	Post Conv Rel NonCap	Dec 5, 2016	Feb 10, 2017	Dismissed	Manual	2016	pro se			dismissed	frivolity review
170100002	Brigham City District	Post Conv Rel NonCap	Jan 4, 2017	May 25, 2017	Dismissed	Manual	2017	pro se			withdrawn	
170004005	Salt Lake City District	Post Conv Rel NonCap	Jan 22, 2017	Aug 7, 2019	Denied	Manual	2017	pro se	Y	N	dismissed	state's summary judgment
170900667	Salt Lake City District	Post Conv Rel NonCap	Oct 18, 2017			Manual	2017	pro se			dismissed	state's summary judgment
180700015	Moab District	Post Conv Rel NonCap	Jan 18, 2018	Jan 19, 2018	Dismissed	Manual	2018	pro se			dismissed	state's summary judgment
180100165	Brigham City District	Post Conv Rel NonCap	Aug 10, 2018	Nov 8, 2019	Dismissed	Manual	2018	pro se			dismissed	frivolity review
180700036	Fillmore District	Post Conv Rel NonCap	Aug 29, 2018	Feb 4, 2020	Dismissed w/o prejudice	Manual	2018	pro se	Y	N	dismissed	state's summary judgment
180907360	Salt Lake City District	Post Conv Rel NonCap	Oct 4, 2018			Transferred	2018	pro se	Y	N	dismissed	frivolity review
190900763	Salt Lake City District	Post Conv Rel NonCap	Jan 25, 2019	May 28, 2019	Dismissed	Manual	2019	pro se	Y	N	dismissed	frivolity review
160903246	Provo District	Post Conv Rel NonCap	May 17, 2018	Feb 14, 2019	Dismissed	Manual	2018	pro se	Y	N	dismissed	frivolity review
190400247	Provo District	Post Conv Rel NonCap	Feb 12, 2019	Sep 4, 2019	Dismissed	Manual	2019	pro se	Y	N	dismissed	failure to pay fee
190905498	Salt Lake City District	Post Conv Rel NonCap	Jul 8, 2019	Feb 4, 2021	Dismissed	Manual	2019	pro se	Y	N	dismissed	frivolity review
190905374	Salt Lake City District	Post Conv Rel NonCap	Jul 23, 2019			Transferred	2019	pro se	Y	N	dismissed	failure to pay fee
190905635	Salt Lake City District	Post Conv Rel NonCap	Jul 23, 2019			Manual	2019	pro se	Y	N	dismissed	state's summary judgment
190906701	Salt Lake City District	Post Conv Rel NonCap	Aug 28, 2019	Aug 11, 2021	Dismissed w/o prejudice	E-filed	2019	pro se			dismissed	state's summary judgment
190906706	Salt Lake City District	Post Conv Rel NonCap	Aug 26, 2019	Jul 31, 2020	Dismissed w/o prejudice	Manual	2019	pro se			granted	stipulated
190908112	Salt Lake City District	Post Conv Rel NonCap	Oct 15, 2019	Jan 13, 2020	Dismissed w/o prejudice	Manual	2019	pro se			dismissed	state's summary judgment
190401729	Provo District	Post Conv Rel NonCap	Nov 1, 2019			Manual	2019	pro se			dismissed	incomplete application
190900665	Salt Lake City District	Post Conv Rel NonCap	Nov 5, 2019	Jul 27, 2020	Dismissed	Manual	2019	pro se	Y	N	still open	
200100037	Brigham City District	Post Conv Rel NonCap	Apr 6, 2020	Feb 10, 2021	Dismissed	E-filed	2020	pro se			dismissed	petitioner died/missing
200700574	Farmington District	Post Conv Rel NonCap	Jul 17, 2020	Aug 4, 2021	Judgment	E-filed	2020	pro se			dismissed	state's summary judgment
200800037	Duchesne District	Post Conv Rel NonCap	Jul 22, 2020	Apr 29, 2021	Dismissed w/o prejudice	E-filed	2020	pro se			dismissed	state's summary judgment
200900514	St. George District	Post Conv Rel NonCap	Oct 15, 2020	Nov 11, 2020	Dismissed	Manual	2020	pro se			dismissed	failure to serve defendant
210500018	Cedar City District	Post Conv Rel NonCap	Jan 30, 2021			E-filed	2021	pro se	Y	N	still open	
210601902	Salt Lake City District	Post Conv Rel NonCap	Apr 9, 2021	Oct 29, 2021	Dismissed	Manual	2021	pro se			dismissed	state's motion to dismiss
210700348	Farmington District	Post Conv Rel NonCap	May 5, 2021	Aug 3, 2021	Dismissed w/o prejudice	E-filed	2021	pro se			dismissed	
210902591	Salt Lake City District	Post Conv Rel NonCap	May 13, 2021			E-filed	2021	pro se			withdrawn	
210301178	Isopole District	Post Conv Rel NonCap	Sep 10, 2021			E-filed	2021	pro se			still open	
160901037	Salt Lake City District	Post Conv Rel NonCap	Feb 11, 2016	Aug 19, 2016	Dismissed	E-filed	2016	pro se			still open	
160904535	Ogden District	Post Conv Rel NonCap	Aug 8, 2016	Oct 26, 2016	Dismissed w/o prejudice	Manual	2016	pro se			dismissed	state's motion to dismiss
160401301	Provo District	Post Conv Rel NonCap	Aug 16, 2016	Jul 23, 2019	Denied	Manual	2016	pro se			dismissed	frivolity review
170904354	Salt Lake City District	Post Conv Rel NonCap	Jul 10, 2017	May 16, 2019	Dismissed	Manual	2017	pro se	Y	N	dismissed	court's motion to dismiss based on procedure
160902317	Salt Lake City District	Post Conv Rel NonCap	Mar 20, 2019	Jul 12, 2019	Dismissed	Manual	2019	pro se	Y	N	dismissed	failure to pay fee

160906790	Salt Lake City District	Post Conv Rel NonCap	Oct 31, 2016	Apr 10, 2017	Granted	E-filed	2016	atty												
170700332	Farmington District	Post Conv Rel NonCap	Mar 30, 2017	Apr 18, 2018	Dismissed	E-filed	2017	atty											granted	state failed to respond
170604220	Ogden District	Post Conv Rel NonCap	Jun 28, 2017	Aug 2, 2017	Dismissed	Manual	2017	pro se											dismissed	state's summary judgment
170701002	Farmington District	Post Conv Rel NonCap	Sep 7, 2017	Oct 29, 2018	Dismissed	E-filed	2017	atty											granted	frivolity review
170708199	American Fork District	Post Conv Rel NonCap	Nov 3, 2017	Nov 8, 2018	Granted	Transferred	2017	atty											granted	stipulated
200904320	Salt Lake City District	Post Conv Rel NonCap	Jul 9, 2020			Manual	2020	pro se	Y	N									dismissed	failure to pay fee
170906139	Salt Lake City District	Post Conv Rel NonCap	Dec 22, 2017	Aug 23, 2018	Dismissed	Manual	2017	pro se											dismissed	failure to prosecute
180700148	Farmington District	Post Conv Rel NonCap	Feb 13, 2018	Jul 26, 2019	Dismissed w/o prejudice	E-filed	2018	atty											dismissed	failure to prosecute
180804158	Salt Lake City District	Post Conv Rel NonCap	May 23, 2018	Jun 4, 2020	Dismissed w/o prejudice	Manual	2018	pro se	Y	N									dismissed	failure to pay fee
180500115	St. George District	Post Conv Rel NonCap	Mar 20, 2019	Jun 26, 2019	Dismissed w/o prejudice	E-filed	2019	atty											dismissed	failure to pay fee
190400462	Provo District	Post Conv Rel NonCap	Aug 20, 2019	Jun 26, 2019	Dismissed w/o prejudice	Manual	2019	pro se											dismissed	failure to pay fee
180906554	Salt Lake City District	Post Conv Rel NonCap	Sep 16, 2016	Jun 6, 2017	Dismissed	Transferred	2016	pro se	Y	N									dismissed	failure to pay fee
160906025	Salt Lake City District	Post Conv Rel NonCap	Nov 7, 2019	Nov 16, 2019	Granted	E-filed	2019	atty											granted	failure to pay fee
190908741	Salt Lake City District	Post Conv Rel NonCap	Dec 15, 2019			E-filed	2019	atty											granted	stipulated
190909736	Salt Lake City District	Post Conv Rel NonCap	Oct 27, 2020	Nov 4, 2020	Granted	E-filed	2020	atty											granted	stipulated
200500546	St. George District	Post Conv Rel NonCap	Jan 5, 2021			Manual	2021	pro se	Y	N									dismissed	state's motion to dismiss
210400040	Provo District	Post Conv Rel NonCap	Dec 7, 2020	Apr 13, 2021	Dismissed	Manual	2020	pro se											dismissed	court's motion to dismiss based on procedure
200907511	Salt Lake City District	Post Conv Rel NonCap	Nov 29, 2017	Mar 21, 2018	Dismissed	Manual	2017	pro se	Y	N									dismissed	failure to pay fee
170907564	Provo District	Post Conv Rel NonCap	May 26, 2021	Oct 27, 2021	Dismissed	Manual	2021	pro se	Y	N									dismissed	frivolity review
210400741	Salt Lake City District	Post Conv Rel NonCap	Feb 11, 2016	Jul 31, 2016	Dismissed	E-filed	2016	atty											dismissed	state's summary judgment
160901019	Orderville District	Post Conv Rel NonCap	May 10, 2016	Mar 6, 2017	Dismissed w/o prejudice	E-filed	2016	atty											dismissed	failure to serve defendant
160500259	Orderville District	Post Conv Rel NonCap	Aug 31, 2016	Dec 7, 2016	Dismissed	Manual	2016	pro se											dismissed	state's motion to dismiss
160100129	Brigham City District	Post Conv Rel NonCap	Sep 19, 2019	Jan 21, 2020	Dismissed	E-filed	2019	pro se	Y	N									dismissed	failure to pay fee
190907360	Salt Lake City District	Post Conv Rel NonCap	May 12, 2017	Jun 20, 2017	Granted	E-filed	2017	atty											dismissed	stayed
170400676	Provo District	Post Conv Rel NonCap	Jun 20, 2017	Jul 26, 2017	Granted	E-filed	2017	atty											dismissed	stayed
170109117	American Fork District	Post Conv Rel NonCap	Jun 22, 2017	Dec 18, 2019	Granted	Transferred	2017	atty											granted	state failed to respond
170600053	Midvale District	Post Conv Rel NonCap	Aug 23, 2017	Sep 11, 2017	Granted	E-filed	2017	atty											granted	evidentiary hearing
170900085	Richfield District	Post Conv Rel NonCap	Dec 1, 2017	Feb 13, 2020	Dismissed	E-filed	2017	atty											granted	stipulated
210901322	Salt Lake City District	Post Conv Rel NonCap	Mar 9, 2021	Jun 23, 2021	Dismissed w/o prejudice	Manual	2021	pro se	Y	N									dismissed	failure to pay fee
160907152	Salt Lake City District	Post Conv Rel NonCap	Nov 17, 2016	Jan 31, 2017	Dismissed	Manual	2016	pro se											dismissed	failure to pay fee
180400195	Provo District	Post Conv Rel NonCap	Feb 1, 2019	Jan 7, 2020	Dismissed	E-filed	2019	atty											dismissed	state's summary judgment
190400474	Provo District	Post Conv Rel NonCap	Mar 25, 2019			Manual	2019	pro se	Y	Y									dismissed	still open
200903099	Salt Lake City District	Post Conv Rel NonCap	May 4, 2020			Manual	2020	pro se											dismissed	failure to pay fee
190700048	Provo District	Post Conv Rel NonCap	May 24, 2019	Dec 10, 2019	Dismissed	Manual	2019	pro se	Y	N									dismissed	state's summary judgment
180903642	Ogden District	Post Conv Rel NonCap	Jul 2, 2019	Aug 11, 2020	Dismissed	E-filed	2019	atty											dismissed	state's summary judgment
190500185	St. George District	Post Conv Rel NonCap	Apr 4, 2019	Mar 11, 2020	Dismissed w/o prejudice	Manual	2019	pro se	Y	N									dismissed	court's motion to dismiss based on procedure
180206394	Ogden District	Post Conv Rel NonCap	Oct 22, 2019	Mar 11, 2020	Dismissed	E-filed	2019	atty											dismissed	state's summary judgment
190009553	Salt Lake City District	Post Conv Rel NonCap	Nov 14, 2019	Dec 4, 2020	Dismissed w/o prejudice	E-filed	2019	atty											granted	state's summary judgment
200900971	Ogden District	Post Conv Rel NonCap	Feb 12, 2020	Mar 12, 2020	Dismissed	Manual	2020	pro se	Y	N									granted	stipulated
180200743	Tooele District	Post Conv Rel NonCap	May 18, 2018	Aug 6, 2019	Dismissed	Manual	2018	atty											dismissed	frivolity review
200905900	Salt Lake City District	Post Conv Rel NonCap	Sep 14, 2020	Feb 11, 2021	Dismissed	Manual	2020	pro se	Y	Y									dismissed	court's motion to dismiss based on procedure
200905649	Salt Lake City District	Post Conv Rel NonCap	Aug 31, 2020	Feb 1, 2021	Dismissed	E-filed	2020	atty											dismissed	failure to pay fee
180300205	Tooele District	Post Conv Rel NonCap	Jan 29, 2019	Mar 18, 2019	Dismissed	Manual	2019	pro se	Y	N									dismissed	state's summary judgment
200905500	Ogden District	Post Conv Rel NonCap	Sep 29, 2020	Nov 10, 2020	Dismissed	Manual	2020	pro se	Y	N									dismissed	failure to pay fee
210901955	Salt Lake City District	Post Conv Rel NonCap	Apr 13, 2021			Manual	2021	pro se	Y	Y									dismissed	frivolity review
210400349	Provo District	Post Conv Rel NonCap	Jun 29, 2021			Manual	2021	pro se	Y	Y									dismissed	stayed
210903613	Salt Lake City District	Post Conv Rel NonCap	Jul 9, 2021			E-filed	2021	atty											dismissed	failure to serve defendant
210905689	Salt Lake City District	Post Conv Rel NonCap	Oct 21, 2021			Manual	2021	pro se	Y	N									dismissed	state's summary judgment
						E-filed	2021	pro se	Y										dismissed	still open