

2009

State of Utah v. Leland Keith Williams : Brief of Appellee

Utah Court of Appeals

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Case No. 20090908-CA

IN THE
IN THE UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellant

vs.

LELAND KEITH WILLIAMS
Defendant/Appellee

Brief of Appellee

Appeal from a sentence imposed after conviction for failure to register as a sex offender, a class A misdemeanor, in the Fifth Judicial District Court of Utah, Washington County, The Honorable G. Rand Beacham presiding

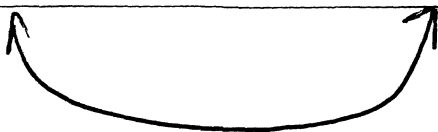
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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

STATEMENT OF JURISDICTION..... 1

STATEMENT OR THE ISSUE..... 1

CONSTITUTIONAL PROVISION, STATUTES, AND RULES..... 1

STATEMENT OF THE CASE..... 2

STATEMENT OF THE FACTS..... 2

SUMMARY OR ARGUMENT..... 2

ARGUMENT..... 3

 THE STATE DOES NOT HAVE A PROPER APPEAL UNDER UTAH RULE

 CRIMINAL PROCEDURE 22(e)..... 3

CONCLUSION 5

TABLE OF AUTHORITIES

STATE CASES

State v. Hollgate 10 P.3d 346. 3

State v. Rangle 866 P. 2d 607..... 3

State v. Bryant, 965 P.2d 539 3

State v. Garner UT App 32, 177 P3d 637 4,5

State v. Torkleson 84 P.3d 854 5

STATE STATUTES

UTAH CODE ANN. § 77-18a-1(3) (k)(2009) 1

UTAH CODE ANN. § 77-27-21.5 (West Supp. 2009)..... 2

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STATE OF UTAH,
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LELAND KEITH WILLIAMS
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Brief of Appellee

STATEMENT OF JURISDICTION

The State appeals the illegal sentence imposed on the Defendant, Leland Keith Williams, for his conviction for failure to register as a sex offender, a class A misdemeanor. This Court has jurisdiction over this appeal under UTAH CODE ANN. § 77-18a-1(3) (k)(2009) (prosecution has right of appeal from illegal sentence)

STATEMENT OF THE ISSUE

Whether the trial court acted within its discretion by deciding not to impose a 90-day term of incarceration when it sentenced the Defendant

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Rule 22, Utah Rules of Criminal Procedure. Sentence, Judgment and Commitment.

(e) The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time

STATEMENT OF THE CASE

In November 2008, Mr. Williams was charged with failure to register as a sex offender a class A misdemeanor, under UTAH CODE ANN. § 77-27-21.5 (West Supp. 2009)² R.1-2. In August 2009, Mr. Williams pled guilty to that charge. R.39. At sentencing, the prosecutor told the trial court that the applicable statute required Mr. Williams to serve “a 90-day minimum mandatory.” T:4. “Other than that,” the prosecutor recommended bench probation. T:4. The trial court sentenced Mr. Williams to one year in the county jail, but suspended that sentence, instead of placing Mr. Williams on 18 months’ probation conditioned on 30-day incarceration, “with eligibility for good time and work release.” T:6-7; R. 40-41. The trial court also imposed a \$1,100 fine, explaining, “I am converting some of the 90 day time to a fine, which I consider to be a more appropriate sanction, and also I consider to be an appropriate alternative because of jail overcrowding,” T:7. The State appealed the legality of the sentence. R 42-43.

STATEMENT OF FACTS

According to the probable cause statement, Mr. Williams, a convicted sex offender, moved to Utah from Las Vegas In June 2008. R.3. At the time of his arrest in November 2008, he had not registered in Utah, though required to do so. *Id.* See also T:2-3

SUMMARY OF ARGUMENT

Mr. Williams’ argument is that the State failed to preserve these claims for appeal and that Rule 22(e) is not applicable. There was no timely or specific objection to the sentence by the prosecution and no objection was raised that was specific enough to give the trial court

²Section 77-27-21.5 has been amended since Defendant entered his guilty plea, but none of those changes affects the analysis in this case. For the convenience of the reader, this brief cites only to the current version of the statute.

notice of the error of which the party complained. Therefore if there was an error in the Court's sentencing it is invited error and therefore the appeal should be dismissed.

Also, Rule 22(e) is not applicable because the sentence is not illegal.

ARGUMENT

The Utah Appellate Courts have held consistently that "claims not raised before the trial court may not raised on appeal" *State v. Hollgate* 10 P.3d 346. To preserve an issue for appeal, a party "must enter an objection on the record that is both timely and specific" *State v. Rangle* 866 P. 2d 607. "The objection must be specific enough to give the trial court notice of this very error of which the party complains" *State v. Bryant*, 965 P.2d 539 (internal citations omitted) This preservation rule "applies to every claim, including constitutional questions" *State v. Hollgate* 10 P.3d 346.

At the sentencing hearing in this case the State mentioned that its recommendation to the court was that the sentence of Mr. Williams includes the 90 day jail term as laid out by the statute. However, after the court pronounced the sentence, the State made no timely objection on the record. No mention was made of the requirement that the court must follow. There was no specific objection to the court not following the statute as laid out herein and the court had no opportunity to correct itself from State's objection. Counsel for the State did not raise this issue before the trial court and give the trial court a chance to correct itself if it needed to be corrected. By not objecting at the sentencing to specific issues, it did not give the court the notice required, nor was any additional motion made after the sentencing to bring this to the court's attention. This issue was raised for the first time on this appeal.

The State must be held by the same standard that defendants are in these types of cases. When defendants fail to raise issues with trial court and raise them the first time on

appeal, those requests are generally denied for failure to preserve the objection in the court below. Failing to object when an error is known by a party and then raising it on appeal is typically considered as invited error. Invited error is defined as an error that was made when a party knew that an error was being made but not bringing it the court's attention and then requesting reversal on appeal. Invited error is frowned upon by Utah Appellate Courts and the State should be held to the same standards as defense bar is in these types of cases. The State can not simply appeal the matter and send it back down and to have the court overturn the sentence on a misdemeanor case simply because the State failed to properly preserve its claim. The State can not lead the court into an error that it was aware of.

The State in this brief posits that this case may still be heard under Rule 22(e) Rules of Criminal Procedure to “correct an illegal sentence or a sentence imposed in an illegal manner at any time”.

Under *State v. Garner* UT App 32, 177 P3d 637 the court held that to review a sentence using rule 22(e) requires the sentence be “patently” or “manifestly” illegal. Determination of whether a sentence is patently or manifestly illegal begins by determining if there is jurisdiction or whether the sentence was beyond the authorized statutory range.

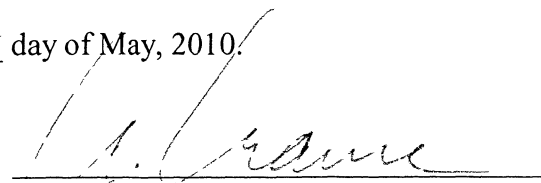
This is not a case that is beyond authorized statutory range. The word beyond in its normal dictionary use and construction means something that is in excess of a normal sentence. The State's complaint is not that Mr. Williams was sentenced to too much time, but that he was not sentenced to enough time. That is not a “beyond” argument it is a “below” argument and therefore is a run of the mill type of objection that does not lend itself to Rule 22e analysis. The pivotal question then becomes has the sentencing court lost subject matter jurisdiction over the defendant's sentence.

The issue of subject matter jurisdiction is the question that this court has to determine. If the sentence does not qualify for review under 22(e) then the appeal should be dismissed. If this court does have jurisdiction under *State v. Torkleson* 84 P.3d 854 the court needs to determine whether the sentencing court has jurisdiction. The State essentially must prove that the trial court had no jurisdiction to impose the sentence it imposed. The case law provides that the only way the court can be found to not have jurisdiction is under a constitutional argument that would qualify it for Rule 22(e) analysis. See *State v. Gardner* 177 P.3d 637. Under that analysis the State must prove that the sentence received by Mr. Williams in this case was unconstitutional in order to get relief under rule 22(e). The State cannot show that this is an unconstitutional sentence and therefore Rule 22(e) does not apply and the previous analysis above must be followed. Therefore, the trial court did not lose its jurisdiction and the sentence is not beyond the authorized statutory range.

CONCLUSION

Because the State failed to preserve their claim for appeal, and the trial court's sentence was not illegal, Mr. Williams respectfully requests this court to affirm the trial court's decision and dismiss the State's appeal.

Respectfully submitted this 22 day of May, 2010.


Aric Cramer
Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing instrument to the following parties of interest on the 22 day of May, 2010.

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