

1995

The State of Utah v. Joshua Jacob St. Clair : Brief of Appellant

Utah Court of Appeals

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J. Frederic Voros, Jr.; Assistant Attorney General; Attorney for Respondent.

William B. Parsons III; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH,)	
)	
Plaintiff and Appellee,)	
)	
v.)	Case No. 950152-CA
)	
JOSHUA JACOB ST. CLAIR,)	
)	
Defendant and Appellant.)	

BRIEF OF APPELLANT

APPEAL FROM JUDGMENT, SENTENCE (COMMITMENT)
OF THIRD JUDICIAL DISTRICT COURT OF TOOELE COUNTY
HONORABLE JOHN A. ROKICH

Argument priority classification: (2) Appeal from conviction in criminal matter;
defendant is incarcerated.

J. Frederic Voros, Jr.
Assistant Attorney General
236 State Capitol Building
Salt Lake City, Utah 84114

William B. Parsons III
440 East 3300 South
Salt Lake City, Utah 84115

Attorney for Plaintiff/Respondent

Attorney for Defendant/Appellant

FILED

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236 State Capitol Building
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William B. Parsons III
440 East 3300 South
Salt Lake City, Utah 84115

Attorney for Plaintiff/Respondent

Attorney for Defendant/Appellant

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STATEMENT OF ISSUES ON APPEAL

The Appellant proposes the following issues as those primarily raised in this appeal:

1. Abuse of judicial discretion in that the sentencing judge did not following the sentencing guidelines, made no findings relative to his decision not to follow the guidelines, and the sentence is therefore arbitrary and capricious, subjecting the Defendant to a lack of uniform operation of the law.

2. The Appellant's knowledge of the co-Defendant's sentence influenced his plea, created an atmosphere of false security and sureness as to the outcome, and removed it from the category of "knowing" and 'voluntary.'

3. The Appellant is entitled to the benefit of his plea bargain.

4. The sentencing judge did not comply fully with Rule 11, governing the acceptance of pleas.

5. The judge's pique at both the prosecuting and defense attorneys led him to use personal discretion, rather than judicial discretion, in sentencing the Defendant/Appellant, constituting a further abuse of discretion.

STATEMENT OF FACTS

In this case, the Defendant/Appellant is an eighteen-year-old youth who was charged in District Court with two counts of theft (second-degree felony), two counts of criminal mischief (third-degree felony), one count of burglary of a vehicle (Class A misdemeanor), one count of theft (Class A misdemeanor), and one count of theft (Class B misdemeanor). The

charges stem mainly from two incidents in which the Defendant/Appellant, in company with a twenty-year-old co-defendant (hereinafter referred to as “Co-defendant Black”) and three juveniles.

These charges had been brought subsequent to a previous case filed in the Juvenile Court of Tooele County, in which the Appellant pled guilty to forgery. The transcript of the Juvenile Court proceedings of October 28, 1994, reflects the parties’ understanding that the State and the Defendant had agreed that a diagnostic evaluation of the Appellant should be performed, and that sentencing and further disposition were deferred to the adult court (Juvenile Court Transcript, p. 3, ll. 16-17).

The Appellant’s co-defendant in the offenses alleged by the State was one Jason John Black, a twenty-year-old man with juvenile and adult police records similar to those of the Appellant. Though these two young men had similar prior records and were charged with the same offenses, Mr. Black was placed on thirty-six months probation and was sentenced to serve only 120 days in the Tooele County Jail, with credit given for time served.

Co-defendant Black was sentenced on October 14, 1994, receiving one- to fifteen- and zero- to five-year terms, suspended upon service of 120 days in the county jail, restitution, 200 hours of community service, and three years of probation.

During arraignment of the Appellant in District Court on November 3, 1994, the State again indicated that the Appellant was pleading as charged on Counts I and IV, and the prosecutor specifically requested that the Appellant submit to a ninety-day evaluation (Transcript, p. 10, l. 8.)

At the sentencing hearing for the Appellant, the State refused to make the recommendation or request that the Appellant submit to the ninety-day evaluation. The sentencing judge evidenced anger towards both counsel for their disagreement concerning the terms of the plea bargain. The Appellant was subsequently sentenced to concurrent terms in the Utah State Prison and was immediately taken into custody and transported to the prison.

It is from these facts and circumstances that this appeal is taken.

SUMMARY OF ARGUMENTS

The Appellant respectfully submits that the Appellant entered into a plea bargain agreement in good faith. The plea bargain agreement was frustrated by two sets of circumstances: (1) the failure of the prosecution to remember the terms and conditions of the plea-bargain agreement at the time of sentencing, which led to the prosecution's failure to abide by its commitments under the plea-bargain agreement; and (2) the failure of the judge to investigate, without bias and without emotion, the allegation of the prosecution's failure to abide by the terms and conditions of the plea-bargain agreement, but instead, engaging in a reckless diatribe, resulting in the frustration of the prosecution and defense counsel and the unjust and excessively harsh sentencing of the Defendant/Appellant.

POINT I

THERE WAS AN ABUSE OF JUDICIAL DISCRETION IN THAT THE SENTENCING JUDGE DID NOT FOLLOW THE SENTENCING GUIDELINES, MADE NO FINDINGS RELATIVE TO HIS DECISION NOT TO FOLLOW THE GUIDELINES, AND THE SENTENCE IS THEREFORE ARBITRARY AND CAPRICIOUS, SUBJECTING THE DEFENDANT TO A LACK OF UNIFORM APPLICATION OF THE LAW

Utah Code Annotated, § 76-1-104, states:

The provisions of this code shall be construed in accordance with these general purposes.

...

(3) Prescribe penalties which are proportionate to the seriousness of offenses. . . .

(4) Prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

To this end the Utah Commission on Criminal and Juvenile Justice was statutorily created by the Legislature in 1983, with the assignment “to develop, monitor and evaluate sentencing and release guidelines for adults and juveniles;” Guidelines were designed in an attempt to structure decision making relative to sentencing and release, with the underlying philosophy that “criminal sentences should be proportionate to the seriousness of the offense for which the offender is convicted.” The Guidelines were not promulgated to “eliminate discretion, but to bridle it,” and to eliminate “unwarranted disparity.” (Code of Judicial Administration, Appendix D.)

The Guidelines were intended to make the charging and plea-bargaining system honest “by making explicit the sentence an offender with a given background is likely to get.”

Id. Recommendations conforming to the guidelines are to be included in the presentence investigation report presented to a sentencing judge, and:

Judges should sentence within the guidelines unless they find compelling aggravating or mitigating circumstances that would justify departure from the guidelines. *These circumstances should be stated in open court and included in the record.*

(*Id.* Italics added.) These guidelines were adhered to with Josh St. Clair until the time of actual sentencing. Adult Probation and Parole conducted its investigation and rated the Appellant a “4” (0-3 being “excellent”; 4-7, “good”; 8-11 “moderate”; 12-15 “fair”; and 16-28, “poor”). On the “General Disposition Matrix of the guidelines, correlating the category “good” with the severity of the Appellant’s crimes placed him well within the recommended disposition of probation. (The presentence reports for this Appellant and for Co-defendant Black are included in the Addendum hereto.)

On the form for “Aggravating and Mitigating Circumstances,” AP&P marked three aggravating factors and two mitigating, for the Appellant. A third probably should also have been marked for the Appellant as it was for Co-defendant Black: “Restitution would be severely compromised by incarceration.”

In exchange for guilty pleas to the same charges, the State dismissed two felony counts and three misdemeanor counts against each defendant. The two defendants had comparable juvenile and adult police records, and were charged with the same offenses leading from the same incidents. At the time of sentencing, Defendant Black received two concurrent prison terms, suspended as stated above. The Appellant received two concurrent prison terms and a fine, and was immediately transported to the Utah State Prison. Defendant Black (the older of the two--twenty years at the time of the incident) received the minimum imposition of sentence under the sentencing guidelines and Defendant/Appellant St. Clair (barely eighteen

years of age) received the maximum imposition of sentence, though both co-defendants were charged with the same offenses and both had similar prior histories.

Section 24, Article I, of the Utah Constitution provides that “[a]ll laws of a general nature shall have uniform operation.” The Courts have affirmed that “all laws shall operate uniformly,” State v. Holtgreve, 58 Utah 563, 200 P.894, 26 A.L.R. 696 (1921); and that the “law must apply equally to all persons within a class,” Greenwood v. City of North Salt Lake, 817 P.2d 816 (Utah 1991). These two defendants were “within a class” of similar persons, having each pled guilty to identical offenses, having similar recommendations under the Guidelines established by the State, but were sentenced differently. The Utah Supreme Court has affirmed that “Equal protection of the law provisions do not preclude people from being treated differently under the law as long as there is a reasonable basis for the difference” (State v. Bishop, 717 P.2d 261 (Utah 1986), which implicitly mandates that the reasonable basis for the difference be set forth as a finding. In the instant case, no such finding was made and, indeed, there is no evidence on the record that it was even contemplated by the court, though it obviously should have been. In State v. Russell, 791 P.2d 188 (Utah 1990), the supreme court held that an “abuse of discretion may be manifest if the actions of the judge in sentencing were ‘inherently unfair’ or if the judge imposed a ‘clearly excessive’ sentence.” Such a disparity is present here, where inherently unfair sentencing constitutes an abuse of the trial court’s discretion and a denial of the Appellant’s constitutional rights under Article I, Section 24.

POINT II

THE APPELLANT'S SENTENCE WAS SO INCONSISTENT WITH THE SENTENCE IMPOSED UPON THE CO-DEFENDANT BLACK, WITHOUT MATERIAL DIFFERENCES IN THEIR CIRCUMSTANCES, AS TO MAKE THE SENTENCE ARBITRARY AND CAPRICIOUS AND ALSO CONSTITUTING A LACK OF UNIFORM APPLICATION OF THE LAW.

The law was not uniformly applied to the Appellant at the time of his sentencing.

With no material differences in the circumstances of the Appellant and Co-defendant Black, the sentences received by each were so disparate that the sentencing of the Appellant, which occurred later in the sequence of events than the sentencing of Co-defendant Black, can only be considered arbitrary and capricious, and therefore subject to being overturned by a court of review. In Malan v. Lewis, 693 P.2d 661, 669 (Utah 1984), Article I, Section 24, of the Utah Constitution was quoted, along with the principal that "persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same." The Appellant is entitled, if he has the same kinds of circumstances, to the same net result, unless there are exigencies that distinguish him from his Co-defendant. There do not appear to be distinguishing characteristics between these persons. For purposes of evidencing to the Court the character of the similarity of the parties, would the Court please refer to the following capsulization of the presentence reports:

<u>Characteristic</u>	<u>Jason Black</u>	<u>Joshua St. Clair</u>
Age	20	18

Bargain	State dismissed two counts of theft, 2° felonies; two counts of vehicle burglary, Cl. A misdemeanors; one count of theft, Cl. B misdemeanor	State dismissed one count of theft, 2° felonies; one count of criminal mischief, 3° felony; one count of vehicle burglary, Cl. A misdemeanor; one count Theft Cl. A misdemeanor; one count of theft, Cl. B misdemeanor
Offenses	Theft, 2° felony; criminal mischief, 3° felony	Theft, 2° felony; criminal mischief, 3° felony
Record	Seven juvenile offenses; this adult offense	Thirty-four juvenile offenses; this adult offense
Agency recommendation	(1) 120 days in jail w/credit for time served; (2) restitution; (3) recoupment fee; (4) substance abuse evaluation; (5) no alcohol use while on probation; (6) no frequenting of bars or liquor stores; (7) 200 hours community service	(1) 120 days in jail w/credit for time served; (2) restitution; (3) recoupment fee; (4) substance abuse evaluation; (5) no alcohol use while on probation; (6) no frequenting of bars or liquor stores; (7) 200 hours community service; (8) commit no further crimes
Total placement score	3 (excellent)	4 (good)
Guideline recommendation	Probation	Probation
AP&P recommendation	Probation	Probation
Aggravating circumstances	Property loss extensive; multiple charges	Repetitive criminal conduct; property loss extensive; multiple charges
Mitigating circumstances	Young; assisted law enforcement officers; restitution would be compromised	Young; assisted law enforcement officers; [should also have marked “restitution would be compromised”]

With the lack of material disparities between the parties, but given the harsh sentence hand out to one and the comparatively mild sentence received by the other, one can only conclude that there was a lack of uniform application of the law as it applied to these two defendants.

POINT III

THE APPELLANT'S KNOWLEDGE OF THE CO-DEFENDANT'S SENTENCE INFLUENCED HIS PLEA, CREATED AN ATMOSPHERE OF FALSE SECURITY AND SURENESS AS TO THE OUTCOME, AND REMOVED IT FROM THE CATEGORY OF "KNOWING" AND "VOLUNTARY."

Appellant, knowing that he had the same recommendation from Adult Probation and Parole as did Co-defendant Black, knowing that the prosecution concurred in the recommendation, knowing that Co-defendant Black (two years older than he) had been given a suspended sentence wherein he served only 120 days in jail, was ordered to pay restitution, and was placed on three years probation, circumstances were created in Defendant's mind where he had every expectation of receiving like treatment.

Despite perhaps having an intellectual understanding that the sentencing judge was not bound by the recommendations of AP&P and the prosecutor, the Appellant had a belief that he would be treated in like manner. In such a circumstance he cannot truly be said to have made his decision freely. His age would have led him to rely on the judgment of his counsel. His emotional state would have been one of fear but hope because of the recommendations. He received outside assurance from the knowledge that Co-defendant Black received probation. He had twice heard the prosecutor state *in open court* that the State would request a ninety-day diagnostic evaluation before he would be sentenced. He had signed a statement in which the

State acknowledged requesting a sixty-day evaluation before he would be sentenced. His expectations were that he would receive a similar sentence as Co-defendant Black, and *any reasonable person in the same position would have had the same expectations*. Could the plea truly then be “knowingly and voluntarily made, without undue influence?”

The appellate courts of this state have found that for a sentence to be upheld, “full knowledge and understanding of the consequences are required” (State v. Miller, 718 P.2D 403 (Utah 1986)). The decision to enter into a plea bargain must be made “without any undue influence, coercion, or improper inducement” State v. Forsyth, 560 P.2d 337 (Utah 1977). The acceptance of confessions has been determined by the tests of whether or not they were the result of a “free and unconstrained choice,” and that they be “‘freely self-determined,’ or the product of ‘rational intellect and free will’” (United States v. Gordon, 638 F. Supp. 1120, 1144 (W.D. La. 1986), as cited in State v. Strain, 779 P.2d 221 (Utah 1989)). Since a plea of guilty amounts to a confession, the same standards must apply, requiring the court to consider “the totality of all the surrounding circumstances--both the characteristics of the accused and the details of the interrogation.” Schneckloth v. Bustamonte, 412 U.S. 218, 226, 93 S. Ct. 2041, 2047, 36 L. Ed. 2d 854, 862 (1973); State v. Hegelman, 717 P.2d 1348 (Utah 1986); State v. Moore, 697 P.2d 233 (Utah 1985), as cited in Strain, *supra*.

The circumstances existing in the Defendant/Appellant’s mind at the time of final sentencing were such that he cannot be deemed to have made his plea knowingly, voluntarily, without coercion and undue pressures.

POINT IV

THE DEFENDANT/APPELLANT IS ENTITLED TO THE BENEFIT OF HIS PLEA BARGAIN

The State's counsel proffered in two different courts, upon the record, that he was requesting a diagnostic evaluation to be performed of the Defendant/Appellant (see Transcript of juvenile court hearing of 10/28/94, p. 3, ll. 16-17; transcript of hearing of 11/3/94, p. 3, ll. 11-12), and received a statement that was referred to in the hearing of 11/3/94 that stated, "The State has also agreed to recommend that I be referred to the diagnostic unit of the Utah State Department of Corrections for a sixty (60) day diagnostic evaluation *before I am sentenced*" (Statement of the Defendant, p. 5, ¶ 13; italics added), but at the time of sentencing, the State reneged and failed to make such a request.

Regardless of whether or not the sentencing judge is bound by the terms of a plea bargain, the Defendant had been influenced by the State's avowal that a request for evaluation would be made, and that influence could well be construed as a determining factor in the Defendant/Appellant's decision to accept the plea bargain. The prosecutor must be bound by the terms of the plea bargain and must make the request as he had previously agreed. The Appellant has a constitutional right to remedy when a plea agreement is broken, since a plea agreement based upon a promise which is later broken is considered to have been coerced and is therefore void. State v. Garfield, 552 P.2d 129 (Utah 1976). The promise created a false inducement to the Defendant to accept the plea bargain, to his detriment.

This Court has previously held that:

The Supreme Court has indicated that "when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the

inducement or consideration, such promise must be fulfilled.” Santobello v. New York, 404 U.S. 257, 262, 92 S. Ct. 495, 499 (1971). The Utah Supreme Court has previously recognized Santobello, finding that a criminal defendant who had entered into a plea bargain was entitled to have his sentence set aside and to be resentenced with the benefit of his bargain when it was not clear from the record that the county attorney’s recommendation for probation had been included in the presentence report presented to the sentencing judge. State v. Garfield, 552 P.2d 129 (Utah 1976).

State v. Thurston, 781 P.2d 1296 (Utah Ct. App. 1989). Further, in State v. Copeland, 765

P.2d 1266 (Utah 1988):

It is well established that a prosecutor may not make promises which induce a guilty plea and then refuse to keep those promises. “[A] constant factor is that when a plea rests in any significant degree on a promise or agreement . . . such promise must be fulfilled.” Santobello v. New York, 404 U.S. 275, 262 (1971). . . .

Utah has followed the Santobello precedent. In State v. Garfield, 552 P.2d 129 (Utah 1976), the prosecutor promised to recommend probation to the sentencing judge. . . . We held that if it had no been included, the defendant was “entitled to have his sentence set aside and to be resentenced with the benefit of his bargain.” Id., at 130.

It is clear from the three occurrences in the record that the Defendant/Appellant had received the promise that the State would request a diagnostic evaluation before sentence would be pronounced. Whether that evaluation was to take sixty or ninety days, it was promised, but the promise was not fulfilled. It seems incomprehensible that the prosecutor would state that he had “nothing in his notes” concerning the promise when the Statement of the Defendant (prepared by the Prosecutor’s office) contained a prominent reference to the promise, but such was the statement by the State at the sentencing hearing of January 12, 1995 (Transcript, p. 13, ll. 24-25). The failure of the State to keep this promise not only deprived the Defendant of its benefit, it also set up the circumstance addressed in Point VI, infra, wherein the sentencing judge was so irritated with counsel that it is highly likely the severity of Defendant’s sentence was increased as a consequence.

Despite this possibility, the facts are that a promise was made, the promise was broken, and Defendant/Appellant is entitled thereby to have his sentence set aside.

POINT V

THE SENTENCING JUDGE DID NOT FULLY COMPLY WITH RULE 11 REQUIREMENTS FOR THE ACCEPTANCE OF PLEAS

The Supreme Court of the State of Utah announced in State v. Gibbons, 740 P.2d 1309 (Utah 1987) a strict compliance policy with regard to Rule 11 of the Utah Rules of Criminal Procedure, which states in pertinent part:

(e) The court may refuse to accept a plea of guilty, no contest or guilty and mentally ill, and may not accept the plea until the court has found:

...

(2) the plea is voluntarily made;

(3) the defendant knows of the right to the presumption of innocence, the right against compulsory self-incrimination, the right to a speedy public trial before an impartial jury, the right to confront and cross-examine in open court the prosecution witnesses, the right to compel the attendance of defense witnesses, and that by entering the plea, these rights are waived;

(4) the defendant understands the nature and elements of the offense to which the plea is entered, . . .

(5) the defendant knows the minimum and maximum sentence, and if applicable, the minimum mandatory nature of the minimum sentence, that may be imposed for each offense to which a plea is entered, including the possibility of the imposition of consecutive sentences;

(6) if the tendered plea is a result of a prior plea discussion and plea agreement, and if so, what agreement has been reached;

...

(8) the defendant has been advised that the right of appeal is limited.

...

(h) (2) When a tentative plea agreement has been reached, the judge, upon request of the parties, may permit the disclosure of the tentative agreement and the reasons for it, in advance of the time for tender of the plea. The judge may then indicate to the prosecuting attorney and defense counsel whether the proposed disposition will be approved.

(3) If the judge then decides that final disposition should not be in conformity with the plea agreement, the judge shall advise the defendant and then call upon the defendant to either affirm or withdraw the plea.

The transcripts of the hearings of November 3, 1994, and January 12, 1995, clearly show that the sentencing judge did not go over the plea-bargain affidavit with the Appellant, nor did he discuss the aspects of the plea bargain itself and possibilities for appeal with the Defendant, as required by Rule 11. Instead, he asked the Defendant/Appellant, “[H]as you [sic] attorney explained to you your constitutional rights and the consequences of your guilty plea?” (Transcript, p. 5, ll. 5-7.) And further, “Now, Mr. St. Clair, have you gone over the statement with your attorney?” (Transcript, p. 5, ll. 21-22.)

In Gibbons, the Utah Supreme Court specifically addressed the use of affidavits and the practice of trial judges relying on defense attorneys to inform clients of the contents of the affidavits.¹ The Court concluded:

. . . [T]he affidavit should be only the starting point, not an end point, in the pleading process. . . . The trial judge should then review the statements in the affidavit with the defendant, question the defendant concerning his understanding of it, and fulfill the other requirements imposed by [Rule 11] on the record before accepting the guilty plea. . . .

This procedure may take additional time, but constitutional rights may not be sacrificed in the name of judicial economy. The procedure outlined is designed to assist trial judges in making the constitutionally required determination that the defendant’s plea is truly knowing and voluntary

Id. at 1313-4. Had this procedure been followed in the instant case, the court would have noticed the statement on page 5 of the Statement of the Defendant, lines 9-11, that “The State has

¹In the instant case, the instrument serving the purpose of an affidavit was titled “Statement of Defendant and Order,” a copy of which appears in the Addendum to this brief.

also agreed to recommend that I be referred to the diagnostic unit of the Utah State Department of Corrections for a sixty (60) day diagnostic evaluation *before I am sentenced.*” [Italics added.]

Further, the court’s statements to the opposing counsel in the sentencing hearing (Transcript, p. 12) absolutely precluded the possibility of discussion of the elements of the plea bargain agreement, so that no possibility occurred for defense counsel to invoke Subparagraph (h)(2) and (3) of Rule 11. Consequently, the Defendant/Appellant had no opportunity to affirm or withdraw his plea.

The appellate courts have affirmed since Gibbons the requirement that Rule 11 be strictly complied with (State v. Smith, 812 P.2d 470 (Utah Ct. App.1991); State v. Dastrup, 818 P.2d 594 (Utah Ct. App. 1991); State v. Maguire, 830 P.2d 216 (Utah 1991)), and have vacated convictions for lack of strict compliance (Id., at 218.) The conviction in the instant case should be vacated for the same reason.

POINT VI

THE JUDGE’S PIQUE AT BOTH THE PROSECUTING AND DEFENSE ATTORNEYS LED HIM TO USE PERSONAL DISCRETION, RATHER THAN JUDICIAL DISCRETION, IN SENTENCING THE DEFENDANT/APPELLANT, CONSTITUTING A FURTHER ABUSE OF DISCRETION.

Both pages 12 and 13 of the transcript of the sentencing hearing held on January 19, 1995, reveal the mood of the sentencing judge at the time of these proceedings. The judge called the discussions between the opposing counsel a “continual battle” and asked, “Do you want me to ban you from talking with each other?” When defense counsel stated, “Judge, I don’t think we have a battle here,” the judge replied, “And you can go to trial because I love to try jury cases.”

Counsel for the State said, “I hesitate to get involved in, [sic] any disagreements.”

The court announced that it was ready to sentence and to proceed. Mr. Parsons asked, “Were we going to have [a request] for a 90 day evaluation?” Mr. Jeppesen stated: “Your Honor. I don’t have anything to that effect in my notes.” As stated previously, it seems incredible given the prior averments by the state and its preparation of the Defendant’s statement that the prosecutor’s notes would not mention the evaluation request. Nevertheless, the request was not made, and the judge’s ire had been raised to a level where quite possibly he transcended his judicial discretion as a result.

In Spann v. People, 561 P.2d 1268, 1269 (Colo. 1977), the Colorado Supreme Court stated:

Judicial discretion is not personal discretion. All judicial power is held in trust for the people, having been delegated by them through the constitution. . . . Judicial discretion cannot be distorted to camouflage or insulate from appellate review a decision based on the judge’s personal caprice, hostility or prejudice.

Cited in State v. Gerrard, 584 P.2d 885 (Utah 1978). The Idaho Supreme Court has held:

The granting or withholding of probation rests entirely within the discretion of the trial court. . . . If the exercise of that discretion is based upon reason rather than emotion, it will not be disturbed by this Court.

State v. Cornwall, 518 P.2d 863, 867 (Idaho 1974); cited in Gerrard, *supra*. Given the court’s failure to set forth reasons or findings for the imposition of a sentence contrary to the guidelines provided through the use of the State’s matrices, and given the dialogue at the beginning of this hearing, and given the sentence itself, it appears very likely that the sentence was rendered with emotion rather than reason, and is therefore subject to being “disturbed” by the Court.

POINT VII

THE JUDGE'S REFUSAL TO GRANT A WITHDRAWAL OF THE GUILTY PLEA WAS AN ABUSE OF DISCRETION IN LIGHT OF THE CHARACTER OF THE CONFLICT BETWEEN THE DEFENSE INTERPRETATION OF THE TERMS OF THE PLEA-BARGAIN AGREEMENT AND THAT OF THE PROSECUTION.

Once it became obvious that the counsel for the two parties had conflicting notions of the terms of the plea-bargain agreement, the judge had an absolute obligation to set aside the guilty plea. Even if he did not recognize that obligation in the heat of the moment, when he was presented with Defendant's motion to withdraw the plea, and particularly with the memorandum in support of that motion, he should have accepted the obligation and should have set aside the guilty plea. The memorandum in support of the motion to withdraw the guilty plea identified the particular points in the taped proceedings of the hearings where the prosecutor had agreed to ask for a diagnostic evaluation. The Statement of Defendant and Order also contained the specific agreement of the prosecutor to ask for a diagnostic evaluation.

With this evidentiary proof that the Defendant had relied upon a different plea-bargain agreement than that presented to the Court at the time of the sentencing, the Court had no choice under Rule 11 and the case law but to refuse to accept the guilty plea. Under these circumstances, when the motion to withdraw the guilty plea was made, it should absolutely have been granted, under both pre-Gibbons rulings and post-Gibbons rulings. The Court abused its discretion in not allowing the withdrawal of the guilty plea.

CONCLUSION

In conclusion, it is the position of the Appellant that any of the following actions by the Appeals Court are appropriate: That first, the Appeals Court may choose to simply reverse the trial court on the issue of failing to authorize a withdrawal of the entry of the guilty plea and remand the matter for trial on the merits. Secondly, the Appeals Court may determine that the trial court has abused its discretion in the character of the sentencing and remand the matter with an order requiring the trial court to sentence the Appellant in conformity with the sentence imposed upon his Co-defendant. Thirdly, the Appeals Court may choose to set aside the sentencing of the Appellant and remand the matter for re-sentencing. Fourth or additional alternatives have not been considered by counsel for the Appellant but may be fashioned by the Appeals Court. It is the position of the Appellant that one of the forgoing remedies should be provided the Appellant, in light of the arguments hereinbefore stated.

RESPECTFULLY SUBMITTED this 15th day of August, 1995.



WILLIAM B. PARSONS III
Attorney for Appellant

WILLIAM B. PARSONS III (#2535)
Attorney at Law
440 East 3300 South
Salt Lake City, Utah 84115
Telephone: (801) 466-6311

Attorney for Defendant/Appellant

IN THE UTAH COURT OF APPEALS

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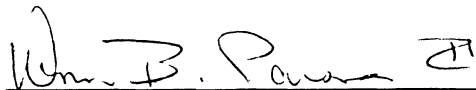
THE STATE OF UTAH,)	
)	
Plaintiff and Appellee,)	
)	
-v-)	
)	
JOSHUA JACOB ST. CLAIR,)	Case No. 950152-CA
)	
Defendant and Appellant.)	

CERTIFICATE OF DELIVERY

I hereby certify that I served a copy of the attached BRIEF OF APPELLANT by
hand-delivering two true and correct copies to:

J. Fredereick Voros, Jr.
Assistant Attorney General
236 State Capitol Building
Salt Lake City, UT 84114

on this 16th day of August, 1995.



WILLIAM B. PARSONS III
Attorney for Defendant/Appellant

ADDENDUM

- (1) Statement of Defendant and Order (October, 1994)
- (2) Presentence Investigation Report of Jason John Black (October 14, 1994)
- (3) Presentence Investigation Report of Joshua Jacob St. Clair (January 2, 1995)
- (4) Judgment, Sentence (Commitment) to Utah State Prison (January 19, 1995)
- (5) Motion for Withdrawal of Guilty Plea (January 27, 1995)
- (6) Memorandum in Support of Motion for Withdrawal of Guilty Plea (January 27, 1995)
- (7) Order Denying Motion to Withdraw Guilty Plea (August 14, 1995)

**In the District Court of the Third Judicial District
Tooele County, State of Utah**

THE STATE OF UTAH,)	
)	
Plaintiff,	)	STATEMENT OF DEFENDANT
	)	AND ORDER
Vs.)	
)	
JOSHUA JACOB ST. CLAIR,	)	Criminal No.
)	
Defendant.)	

COMES NOW, JOSHUA JACOB ST. CLAIR, the defendant in this case and hereby acknowledges and certifies the following:

I have entered a plea of guilty to the following crime(s): COUNT I: THEFT, a second degree felony, carrying an indeterminate period of imprisonment in the Utah State Prison of between one and fifteen years, a fine of up to \$10,000.00 and a surcharge of 85% of the amount of the fine imposed. COUNT IV: CRIMINAL MISCHIEF, a third degree felony, carrying an indeterminate period of imprisonment in the Utah State Prison of up to five years, a fine of up to \$5,000.00 and a surcharge of 85% of the amount of the fine imposed.

I have received a copy of the (charge) (information) against me, I have read it, and I understand the nature and elements of the offense(s) for which I am pleading guilty.

The elements of the crime(s) to which I am pleading guilty are as follows:

COUNT I: that on or about August 16, 1994, in Tooele County, State of Utah, the defendant, as a party to the offense, exercised unauthorized control over the property of Timothy Ford with the purpose to deprive it thereof, to-wit: an operable 1994 Ford Probe motor vehicle. COUNT IV: that on or about August 16, 1994, in Tooele County, State of Utah, the defendant intentionally damaged, defaced or destroyed the property of Timothy Ford, to-wit: a 1994 Ford F-150 pickup truck.

My conduct, and the conduct of other persons for which I am criminally liable, that constitutes the elements of the crime(s) to which I am pleading guilty are as follows: I, along with three friends, stole two new vehicles from a local dealership, drove them around for a while, and then wrecked them.

I am entering this/these plea(s) voluntarily and with knowledge and understanding of the following facts:

1. I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me.

2. I have not waived my right to counsel. My attorney is William B. Parsons III. I have had an opportunity to discuss this statement, my rights and the consequences of my guilty plea(s) with my attorney.

3. I have read this statement and understand the nature and elements of the charges, my rights in this and other proceedings and the consequences of my plea of guilty.

4. I know that I have a right to a trial by jury.

5. I know that if I wish to have a trial, I have the right to confront and cross-examine witnesses against me or to have them cross-examined by my attorney. I also know that I have the right to have my witnesses subpoenaed at state expense to testify in court on my behalf.

6. I know that I have a right to testify in my own behalf, but if I choose not to do so, I can not be compelled to testify or give evidence against myself and no adverse inferences will be drawn against me if I do not testify.

7. I know that if I wish to contest the charge against me, I need only plead "not guilty" and the matter will be set for trial, at which time the State of Utah will have the burden of proving each element of the charge beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous.

8. I know that under the Constitution of Utah, if I were tried and convicted by a jury or by the judge, I would have the right to appeal my conviction and sentence to the Utah Court of Appeals or, where allowed, to the Supreme Court of Utah and that if I could not afford to pay the costs and attorney fees for such appeal, those expenses would be paid by the State.

9. I know that the above set forth maximum possible sentence may be imposed upon my plea(s) of guilty, and that sentence may be for a prison term, a fine, or both. I know that in addition to any fine, a 85% surcharge, required by Utah Code Annotated § 63-63a-1, will be imposed. I also know that I may be ordered by the court to make restitution to any victim or victims of my offense(s).

10. I know that imprisonment may be for consecutive periods, or the fine for additional amounts, if my plea is to more than one charge. I also know that if I am incarcerated, on probation, parole, or awaiting sentencing on another offense of which I have been convicted or to which I have pleaded guilty, my plea in the present action may result in consecutive sentences being imposed upon me.

11. I know and understand that by pleading guilty I am waiving my statutory and constitutional rights set out in the preceding paragraphs. I also know that

by entering such plea(s), I am admitting and do so admit that I have committed the conduct alleged and I am guilty of the crime(s) for which my plea(s) is/are entered.

12. I understand that any motion to withdraw my plea(s) of guilty must be filed with the court within 30 days after the entry of my plea(s). I understand further that any motion to withdraw my guilty plea(s) will only be granted upon the Court finding good cause to do so.

13. My plea(s) of guilty is the result of a plea bargain between myself and the prosecuting attorney. The promises, duties and provisions of this plea bargain, if any, are fully set forth as follows: the State of Utah has agreed to dismiss Counts II-III, V-VII in exchange for my pleas of guilty to Counts I and IV. The State has also agreed to recommend that I be referred to the diagnostic unit of the Utah State Department of Corrections for a sixty (60) day diagnostic evaluation before I am sentenced. I have also agreed to admit to one count of forgery pending in Third District Juvenile Court, and the State in turn has agreed to request that disposition in the juvenile case be delayed until the diagnostic evaluation is complete, and the evaluation will be utilized in the disposition of the juvenile case. I have agreed to be interrogated by the police and truthfully reveal all of the offenses I have committed, with as much detail as possible, and the State has

agreed not to prosecute any additional offenses which I may reveal or which are pending in the juvenile court. There are no other promises.

14. I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing made or sought by either my defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the court may do are also not binding on the court.

15. No threats, coercion, or unlawful influence of any kind have been made to induce me to plead guilty, and no promises except those contained herein have been made to me.

16. I have read this statement or I have had it read to me by my attorney, and I understand its provisions. I know that I am free to change or delete anything contained in this statement. I do not wish to make any changes because all of the statements are correct.

17. I am satisfied with the advice and assistance of my attorney.

18. I am ____ years of age; I have attended school through the _____ grade and I can read and understand the English language. I was not under the influence

of any drugs, medication or intoxicants when the decision to enter the plea(s) was made.

I am not presently under the influence of any drugs, medication or intoxicants.

19. I believe myself to be of a sound and discerning mind, mentally capable of understanding the proceedings and the consequences of my plea and free of any mental disease, defect or impairment that would prevent me from knowingly, intelligently and voluntarily entering my plea.

DATED this ____ day of October, 1994.

JOSHUA JACOB ST. CLAIR,
Defendant

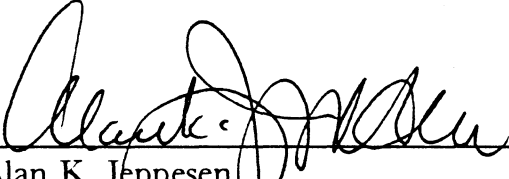
CERTIFICATE OF ATTORNEY

I certify that I am the attorney for JOSHUA JACOB ST. CLAIR, the defendant above, and that I know he/she has read the statement or that I have read it to him/her and I have discussed it with him/her and believe that he/she fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crime(s) and the factual synopsis of the defendant's criminal conduct are correctly stated and these, along with the other representations and declarations made by the defendant in the foregoing statement, are accurate and true.

William B. Parsons III
Attorney for Defendant

CERTIFICATE OF PROSECUTING ATTORNEY

I certify that I am the attorney for the State of Utah in the case against JOSHUA JACOB ST. CLAIR, defendant. I have reviewed this statement of the defendant and find that the declarations, including the elements of the offense of the charge(s) and the factual synopsis of the defendant's criminal conduct which constitutes the offense are true and correct. No improper inducements, threats, or coercion to encourage a plea have been offered defendant. The plea negotiations are fully contained in the statement or as supplemented on the record before the court. There is reasonable cause to believe that the evidence would support the conviction for the offense(s) for which the plea(s) is/are entered and acceptance of the plea(s) would serve the public interest.



Alan K. Jeppesen
Prosecuting Attorney

ORDER

Based upon the facts set forth in the foregoing statement and certification, the court finds the defendant's plea(s) of guilty is freely and voluntarily made and it is so ordered that the defendant's plea(s) of guilty to the charge(s) set forth in the statement be accepted and entered.

DONE IN COURT this _____ day of October, 1994.

John A. Rokich
District Court Judge

STATE OF UTAH
ADULT PROBATION AND PAROLE
REGION III, TOOELE
612 North Main
Tooele, Utah 84074
Telephone: 882-1404

PRIVATE

PRESENTENCE INVESTIGATION REPORT

Date Due: October 14, 1994
Sentencing Date: October 24, 1994

JUDGE DENNIS M. FUCHS THIRD DISTRICT COURT
TOOELE TOOELE UTAH
(CITY) (COUNTY)
MICHAEL HANSEN INVESTIGATOR

NAME: BLACK, JASON JOHN
ALIASES: None
OBSCIS NO.: 00079309
ADDRESS: 1526 South 10th East
Salt Lake City, UT
BIRTHDATE: 05/03/74 AGE: 20
BIRTHPLACE: Salt Lake City, UT
LEGAL RESIDENCE: Utah
MARITAL STATUS: Single

COURT CASE NO: 941300108
CO-DEFENDANTS: Jarrod Howell,
Jeffery Howell, David Mcune,
Joshua StClaire
OFFENSE: THEFT, Second Degree
CRIMINAL MISCHIEF, Third Degree
SENTENCE: 1-15 Years/\$10,000
0-5 Years/\$5,000
PLEA: Guilty DATE: 09/12/94
PROSECUTING ATTY: Alan Jeppesen
DEFENSE ATTY: John Mack Dow

PLEA BARGAIN: In exchange for a plea of guilty to the present charges, the State agreed to dismiss two counts of Theft, Second Degree Felonies; two counts of Vehicle Burglary, Class A Misdemeanors; and one count of Theft, a Class B Misdemeanor. The defendant further agreed to pay restitution in all counts.

OFFENSE:

- A. OFFICIAL VERSION: On June 23, 1994, Annette Nelson of Western Pontiac reported that a 1994 Pontiac Grand Am which was for sale on their lot had been driven from their lot and sustained damage to its undercarriage, shroud and radiator. It had then been returned to their lot.

A. OFFICIAL VERSION: (Continued)

On August 16, 1994, police received a report that a 1994 Ford F150 pickup was up Middle Canyon in the middle of the road with its windows broken and damage to its panels. That same day a 1994 Ford Probe was located northwest of Grantsville with broken windows and panels. Both vehicles were reported stolen from Timothy Ford/Chrysler Auto Dealership in Tooele.

On August 17, Tooele City Police Detective Lance Sutherland received information that a person known as Jason Black was involved in the vehicle thefts from Timothy Ford. He also received information that the defendant and a person known as Pugsley, later identified as David Mcune, were involved in the theft of a 1994 Grand Am from Western several months back. They had damaged the vehicle and returned it to Western. The defendant was located on August 18 and voluntarily went to the Tooele City Police Department where he was interviewed. The defendant arrived at the police department with two other people, Jarrod and Jeffery Howell. The defendant agreed to talk to Detective Sutherland after being advised of his Miranda rights.

During an interview with Detective Sutherland, the defendant related that he, Jason StClaire, Jarrod Howell, Jeffery Howell, and David Mcune had decided to go to Timothy Ford and steal some vehicles. The defendant drove his vehicle and the four others to the rear of Timothy's where Mcune and StClaire exited his vehicle. The group members then agreed to meet at the Catholic Church, and the defendant took the Howells to the Catholic Church and waited in the parking lot. A few minutes later Mcune drove up in a Ford Probe and pulled into the parking lot. The defendant also saw a red Ford pickup heading up Middle Canyon which was being driven by StClaire. The ensemble followed the pickup up Middle Canyon passed the paved road some distance where StClaire got the pickup stuck. They tried to get the truck free, but were unable to free it. The others then started to throw rocks and kick the truck. The defendant denied taking part in the vandalization of the truck.

After the group stopped vandalizing the truck, they returned to their cars and made arrangements to meet in Settlement Canyon where they were going to strip the Probe. The defendant drove to the top of Settlement Canyon, but could

A. OFFICIAL VERSION: (Continued)

not find the Probe. He turned around and finally met Mcune and Jeffery Howell who were in the Probe at the Masonic Temple at the bottom of Settlement Canyon. They then decided to go to Grantsville to a place called Little Mountain. Once at Little Mountain they started to strip the Probe, taking the radio speakers and putting them in the defendant's truck. They also took the spare tire and jacks and put them in his truck. The four others, the defendant again denied taking part, started to drive the Probe around the gravel pit, jumping it off small hills, running it into hills and spinning circles. After awhile all four began to break the windows and beat on body parts. The last thing they did was to put a rock on the accelerator and run it into a ditch. Following this, they all got into the defendant's vehicle, and he drove them back to Tooele.

Regarding the Grand Am which had been stolen from Western. The defendant stated that Mcune had come to a party in Settlement Canyon with the car, and he, the defendant, had taken the vehicle for a ride with Mcune and StClaire. The vehicle apparently sustained damage to its undercarriage when the trio went through areas where the stream bed crossed the road. The defendant stated Mcune later took the vehicle back to Western.

Following the interview with the defendant, Jeffery and Jarrod Howell were interviewed by Detective Sutherland. They provided the same basic information as the defendant, but stated the reason they took the vehicles from Timothy's was because the defendant wanted a new speaker system for his truck. They also said the defendant wanted the spare tire for his truck. A cellular phone which was taken from the pickup was at the Howell residence.

Joshua StClaire was later located and interviewed. Again, he provided the same information regarding the thefts, adding he and Mcune had been dropped off at Timothy's by the defendant, and Mcune had a key to the lock boxes for the vehicle which he used to open the lock boxes on the pickup and Probe. StClaire stated Mcune had apparently found the key to the boxes when walking through Western Pontiac a few months prior to the incident. StClaire also stated he knew the defendant, Mcune, and both Howells had gone into Salt Lake City on August 17 and had stolen a stereo out of a vehicle at one of the car lots on South State Street.

A. OFFICIAL VERSION: (Continued)

Detective Sutherland went to the Mcune residence and made contact with David Mcune's father, Stephen Mcune. Detective Sutherland informed the elder Mcune of what his son David had been involved in and asked David for the key. David stated it was in his room and went into his room and obtained the key. Detective Sutherland then asked David to come to the police department for a statement. Later, David and his father arrived at the police department, and David gave a statement similar to that which the co-defendants had made.

B. DEFENDANT'S VERSION: The following is taken from a handwritten statement submitted by the defendant:

"My friends and I were at cornet when David said he wanted to steal some cars and strip them. After a while I gave in and said that I wouldn't touch them but Id drive them home afterward. They took one up the canyon and it was the truck they messed it up and then we took the other to grantsville where they totaled it and drove it off a cliff."

/s/ Jason Black Dated: 09/16/94

C. CO-DEFENDANT'S STATUS: Jarrod Howell, Jeffery Howell, and David Mcune are juveniles and have been referred to juvenile court. Joshua StClaire has been charged with similar offenses as the defendant, and his case is presently awaiting adjudication in adult court.

D. VICTIM'S IMPACT STATEMENT: Rachel Ruybal, controller of Timothy Ford/Chrysler and Western Pontiac, submitted a Victim Impact Statement stating the corporation would request full restitution to them for monies not reimbursed by insurance and to the insurance company. They would also recommend the defendants perform community service in which he would be required to learn respect for other's property.

E. RESTITUTION: Timothy Ford/Chrysler and Western Pontiac submitted the following list of damages:

1994 Ford Probe (totalled)	\$16,000
1991 Ford F150 pickup damages	\$ 7,060
1994 Pontiac Grand Am damages	\$ <u>762</u>

TOTAL DAMAGES \$23,822

E. RESTITUTION: (Continued)

Timothy's insurance, Universal Underwriters, have paid a total of \$15,714 leaving a balance owed to Timothy of \$8,108. A cellular phone was also removed from the Ford pickup which belonged to Timothy Ford. That phone has been recovered and is presently in evidence. It is not known whether the phone was damaged during the theft, if not, the phone would just have to be reactivated.

F. CUSTODY STATUS: The defendant was booked into the Tooele County Jail on August 24 and has been in custody since that time, a total of 61 days as of October 24.

G. PROSECUTOR'S STATEMENT: No statement was received from the Tooele County Attorney's Office.

H. DEFENSE ATTORNEY'S STATEMENT: John Mack Dow will reserve comment until the time of sentencing.

I. LAW ENFORCEMENT STATEMENT: Detective Sutherland said the defendant was cooperative with him during his investigation when it was to the defendant's benefit. Detective Sutherland related that at least two other co-defendants had indicated they committed the crimes because the defendant wanted a new stereo system and speakers for his truck. They also said the defendant took part in some of the vandalization of the vehicles. Detective Sutherland said he has also heard the defendant made some threats to other people in the community who may have knowledge about the crimes. Regarding the alleged vehicle burglary in Salt Lake, Detective Sutherland has recovered a stereo, but has been unable to determine where it was stolen from to date. Detective Sutherland does not believe the defendant should go to prison, but he does believe the sentence should make an impression on the defendant to try and moderate his behavior.

PRIOR RECORD:

A. JUVENILE:

<u>AGENCY</u>	<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
Cache CO SO	11/22/86	Burglary Non-Dwelling 3rd Degree	Probation By Probation Department/Work Hours

A. JUVENILE: (Continued)

<u>AGENCY</u>	<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
Cache CO SO	11/22/86	Theft, Class A	Probation By Probation Department/Work Hours
	02/11/87	Review	Probation Terminated/ Restitution Ordered
Tooele PD	08/11/89	Theft \$100 or Less Non-Judicial	Voluntary Restitution
Tooele PD	09/23/91	Shooting In Restricted Area	Restitution/Fine
Tooele PD	09/23/91	Destruction Of Property	\$250 Plus Restitution/ Fine
Tooele PD	09/23/91	Destruction Of Property	\$250 Plus Restitution/ Fine

B. ADULT:

<u>AGENCY</u>	<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
Tooele PD	08/24/94	Auto Theft/Criminal Mischieff/Vehicle Burglary	Present Offenses

Pending Cases: None known.

Probation/Parole History: None available.

BACKGROUND INFORMATION AND PRESENT LIVING SITUATION: Jason John Black was born in Salt Lake City to the union of Jack and Letha Black. Initially he grew up in the Salt Lake area where his parents divorced when he was five years old. He remained in the custody of his mother who remarried when the defendant was 8, and the family moved to Hiram, Utah, where his stepfather was employed with Valley Metals. The family moved to Tooele in 1986 following his stepfather obtaining employment at a local car dealership in Tooele. In addition to himself, the defendant's extended family included two stepsisters, a stepbrother, a half sister, and a younger sister who died as an infant. The defendant reports no history of any type of abuse while growing up nor having any serious family problems with the exception of some problems with his stepfather when the defendant was a

BACKGROUND INFORMATION AND PRESENT LIVING SITUATION: (Continued)

teenager which included several physical altercations. The defendant relates that since his stepfather and mother divorced in 1992, his relationship with his stepfather has improved, and he now enjoys good relationships with all family members.

Following his graduation from high school, the defendant moved out of his home to get an apartment, but moved back in with his mother in Salt Lake City several months before his arrest for this offense.

MARITAL HISTORY: The defendant is single and has no plans for marriage in the immediate future.

EDUCATION: The defendant graduated from Tooele High School in 1992 and has successfully completed a welding course through Salt Lake Community College since his graduation.

ORGANIZATIONAL OR COMMUNITY AFFILIATIONS: None.

HEALTH:

- A. **Physical:** The defendant states his overall physical health is good. He has sustained several serious injuries in his life, one being an injury to his shoulder which prevented him from playing football his senior year. He was also involved in two car accidents as a child; however, those accidents have left no lasting disabilities.
- B. **Mental:** The defendant describes his emotional health as "pretty good." He has never been referred to a mental health specialist for counseling.

SUBSTANCE ABUSE:

- A. **Alcohol:** The defendant stated he began to use alcohol at age 16 and drinks approximately every other weekend or as much as possible. He believes he can benefit from alcohol treatment and states alcohol played a part in the present offenses, but he accepts responsibility for the decisions he made.
- B. **Drugs:** The defendant denies the use or experimentation of any illicit drug or the abuse of prescription drugs.

EMPLOYMENT HISTORY:

<u>EMPLOYER/ADDRESS</u>	<u>WAGE</u>	<u>TITLE</u>	<u>START/END</u>	<u>REASON FOR LEAVING</u>
Pace Staffing Service, SLC, UT	\$6.00 p/hour	Laborer	08/16/94- 08/24/94	Jailed
ELF Janitorial Services, SLC, UT	\$6.00 p/hour		01/94-05/94	Laid Off
Semco SLC, UT	\$6.00 p/hour	Laborer	09/93-11/93	Lack Of Transportation

Comments: The defendant asserted his ex-boss at Pace has advised him he still has a job once he is out of jail.

FINANCIAL SITUATION:

Present Monthly Income: -0-

Other Income: -0-

Total Monthly Income: -0-

Total Debts: \$3,000 for vehicle

Comments: The defendant stated his mother is presently making his car payments of \$156 per month while he is incarcerated. When he is released, he intends to move back home with her and gain employment and pay her in full for the money she has expended.


MILITARY RECORD: The defendant has never served in the military.

COLLATERAL CONTACTS: Lynn Berry, the defendant's stepfather, submitted a statement verifying the defendant's background. Mr. Berry said the defendant had some emotional problems while growing up due to his mother's divorce in trying to fit in without a real father. He believes the defendant was influenced by the type of friends he was hanging around with when he committed these crimes and hopes the defendant will learn from this.

EVALUATIVE SUMMARY: Appearing before the court for sentencing for one count of Theft, a Second Degree Felony, and one count of Criminal Mischief, a Third Degree Felony, is 20-year-old Jason John Black. In this incident the defendant and four co-defendants stole a total of three vehicles from two dealerships in Tooele damaging two of the vehicles, a Ford pickup and a Pontiac Grand Am, and caused such extensive damage to a third, a Ford Probe, that it was totalled. The incidents occurred in the summer of 1994 and were able to occur due to the fact one of the co-defendants apparently had a key to the lock boxes for the dealerships. As noted, the defendants' conduct caused substantial damages to all three vehicles which totalled in excess of \$23,000. The defendant was cooperative with police during the investigation and voluntarily confessed to his parts in the crime. Several of the co-defendants maintain the defendant was instrumental in beginning the crime spree as he wanted a speaker system for his truck and encouraged them to participate in the crime. The defendant denies this stating it was one of the co-defendants who brought up the idea, and he was the only participant who did not participate in any of the vehicle vandalism.

The defendant has a minimal criminal history though he does have several entries for theft-related offenses as a juvenile. The defendant does not lack education and in fact has sustained post high school training. He appears to enjoy good family support and readily admits responsibility for his actions in this offense and the fact he made poor decisions in joining in these criminal activities. It appears the defendant could benefit from substance abuse counseling, particularly with alcohol, but he does not appear to have any serious substance abuse problem that cannot be dealt with at this time if he is willing to make the proper commitment. It is believed the defendant is an excellent candidate for probation though it is felt additional punitive sanctions should be imposed on the defendant due to the large amount of damages.

Respectfully submitted,



RONALD D. COOK, SUPERVISOR



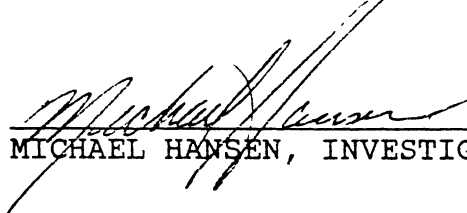
MICHAEL HANSEN, INVESTIGATOR

A G E N C Y R E C O M M E N D A T I O N

It is respectfully recommended by the staff of Adult Probation and Parole that the defendant be favorably considered for probation for 36 months with the following special conditions:

- (1) That he serve 120 days in the Tooele County Jail with credit for time served;
- (2) That he be jointly and severally responsible for restitution in the amount of \$23,822;
- (3) That he pay \$300 recoupment fee;
- (4) That he undergo a substance abuse evaluation and successfully complete any treatment recommended by Adult Probation and Parole;
- (5) That he not consume or possess any alcoholic beverage while on probation;
- (6) That he not frequent any bar or liquor store;
- (7) That he perform 200 hours community service in lieu of the court ordered fine.

Respectfully submitted,


MICHAEL HANSEN, INVESTIGATOR

APPROVED,


RONALD D. COOK, SUPERVISOR

k:\black.jas

lb/ds

CRIMINAL HISTORY ASSESSMENT

FOR FELONY CONVICTIONS
(SEPARATE CRIMINAL INCIDENTS)

- 0 NONE
- 1 ONE
- 2 TWO
- 3 THREE
- 4 MORE THAN THREE

CRIMINAL HISTORY CATEGORY

POOR 16 - 28

FAIR 12 - 15

MODERATE 8 - 11

GOOD 4 - 7

EXCELLENT 0 - 3

PLEASE CIRCLE THE CORRECT CATEGORY

FOR MISD. CONVICTIONS
(SEPARATE CRIMINAL INCIDENTS)
(INCLUDES DUI & RECKLESS)
(EXCLUDES OTHER TRAFFIC)

- 0 NONE
- 1 ONE
- 2 TWO TO FOUR
- 3 FIVE TO SEVEN
- 4 MORE THAN SEVEN

FOR JUVENILE REFERRALS
(FINDINGS OF DELINQUENT FOR INCIDENTS THAT WOULD HAVE BEEN FELONIES IF COMMITTED BY AN ADULT)
(NON-STATUS MISD. = 1 FELONY)

- 0 NONE
- 1 ONE
- 2 TWO TO FOUR
- 3 MORE THAN FOUR
- 4 SECURE PLACEMENT

FOR SUPERVISION HISTORY

(ADULT OR JUVENILE)

- 0 NO PRIOR SUPERVISION
- 1 PRIOR SUPERVISION
- 2 PRIOR RESIDENTIAL PLACEMENT
- 3 PRIOR REVOCATION
- 4 CURRENT SUPERVISION OR PRE-TRIAL RELEASE

FOR SUPERVISION RISK

(ADULT OR JUVENILE)

- 0 NO ESCAPES OR ABSCONDINGS
- 1 FAILURE TO REPORT (ACTIVE OFF.) OR OUTSTANDING WARRANT
- 2 ABSCONDED FROM SUPERVISION
- 3 ABSCONDED FROM RESIDENTIAL PROG. OR EXTRADITION REQ'D
- 4 ESCAPED FROM CONFINEMENT

FOR WEAPONS ENHANCEMENT

(ACTIVE OFFENSE)

- 0 NONE
- 1 OTHER
- 2 KNIFE
- 3 FIREARM OR EXPLOSIVE
- 4

** NOTE: 2nd FIREARMS CONVICTION
REQUIRES A MANDATORY 5 - 10 YEAR
CONSECUTIVE SENTENCE **

TOTAL PLACEMENT SCORE: 3

GENERAL DISPOSITION MATRIX

	CRIME SEVERITY									
	CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
			MUR II	OTHER	HOMICIDE 2ND SEX	2ND DEG 3RD SEX	3RD DEG 3RD SEX	2ND DEG	3RD DEG	A	B
POOR		\$10,000	\$10,000	\$10,000	\$5,000	\$5,000	\$10,000	\$5,000	JAIL	
		↑	↑	↑	↑	↑	\$5,000	\$2,500	\$2,500	\$1,000
									\$2,000	\$800
FAIR			PRISON						\$2,000	\$800
									\$2,500	\$600
									\$1,500	\$600
MODERATE				\$5,000	\$2,500	\$2,500	\$2,500	\$1,250	\$1,500	\$600
									\$1,000	\$400
									\$500	\$200
GOOD		\$5,000	\$5,000	ALTERNATE					PROBATION	
		↑	↑	\$5,000	\$2,500	\$2,500	↑	↑	\$1,000	\$400
				\$2,500	\$1,250	\$1,250			\$500	\$200
EXCELLENT		\$5,000	\$2,500	\$2,500	\$1,250	\$1,250			\$500	\$200
		↑	↑	↑	↑	↑	↑	↑	\$200	\$50
				\$1,250	\$625	\$625	\$1,250	\$625		

DISTRIBUTION OF OR INTENT TO DIST. OVER \$500 & RESIDENTIAL BURGLARY SHOULD BE "PERSON" CRIMES

AGGRAVATING AND MITIGATING CIRCUMSTANCES
(Use Form 2 For Mandatory Sentence Situations)

Circle the numbers of circumstances that may justify departure from the guidelines. Reference the page number of the presentence investigation that the judge can find supportive information

Aggravating Circumstances

Only use aggravating circumstances if they are not implicit in the conviction, offense or the calculation of criminal history score.

PSI Page #

- ___ 1. Established instances of repetitive criminal conduct.
- ___ 2. Offender presents a serious threat of violent behavior.
- ___ 3. Victim was particularly vulnerable.
- 4 4. Injury to person or property loss was unusually extensive.
- ___ 5. Offense was characterized by extreme cruelty or depravity.
- 1 6. There were multiple charges or victims.
- ___ 7. Offender's attitude is not conducive to supervision in a less restrictive setting.
- ___ 8. Offender continued criminal activity subsequent to arrest
- ___ 9. Sex Offenses: Correction's formal assessment procedures classify as an high risk offender.
- ___ 10. Other (specify) _____

Mitigating Circumstances

- ___ 1. Offender's criminal conduct neither caused nor threatened serious harm.
- ___ 2. Offender acted under strong provocation.
- ___ 3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.
- 1 4. Offender is young.
- 1-3 5. Offender assisted law enforcement in the resolution of other crimes.
- 8 6. Restitution would be severely compromised by incarceration.
- ___ 7. Offender's attitude suggests amenability to supervision.
- ___ 8. Domestic crime victim does not want incarceration.
- ___ 9. Offender has exceptionally good employment and/or family relationships.
- ___ 10. Imprisonment would entail excessive hardship on offender or dependents.
- ___ 11. Offender has extended period of arrest-free street time.
- ___ 12. Other (specify) _____

PLEASE COMPLETE THIS SECTION

DAYS OF JAIL CREDIT 61 days

GUIDELINE RECOMMENDATION Probation

AP&P RECOMMENDATION Probation

REASON FOR DEPARTURE _____

COMMUNITY DEMAND _____

SENTENCE ACTUALLY IMPOSED _____

0-5 concurrently

STATE OF UTAH
ADULT PROBATION AND PAROLE
REGION III, TOOELE
612 North Main
Tooele, Utah 84074
Telephone: 882-1404

PRIVATE

PRESENTENCE INVESTIGATION REPORT

Date Due: January 2, 1995
Sentencing Date: January 12, 1995

JUDGE JOHN A. ROKICH THIRD DISTRICT COURT

TOOELE TOOELE UTAH
(CITY) (COUNTY)

MICHAEL HANSEN INVESTIGATOR

NAME: ST. CLAIR, JOSHUA JACOB
ALIASES: None
OBSCIS NO.: 00080125
ADDRESS: 355 West 700 South
Tooele, Utah 84074
BIRTHDATE: 08/01/1976 **AGE:** 18
BIRTHPLACE: Salt Lake City, Utah
LEGAL RESIDENCE: Utah
MARITAL STATUS: Never Married

COURT CASE NO: 941300149
CO-DEFENDANTS: Jason Black/Jarrold
Howell/Jeffery Howell/David Mcune
OFFENSE: THEFT, Second Degree
CRIMINAL MISCHIEF, Third Degree
SENTENCE: 1-15 Years/\$10,000
0-5 Years/\$5,000
PLEA: Guilty **DATE:** 11/03/94
PROSECUTING ATTY: Alan Jeppesen
DEFENSE ATTY: John Mack Dow

PLEA BARGAIN: In exchange for a plea of guilty to the present offenses, the State agreed to dismiss one additional count of Theft, a Second Degree Felony, one additional count of Criminal Mischief, a Third Degree Felony, one count of Burglary Of A Vehicle, a Class A Misdemeanor, one count of Theft, a Class A Misdemeanor, and one count of Theft, a Class B Misdemeanor.

PAGE 2
PRESENTENCE INVESTIGATION REPORT
ST. CLAIR, JOSHUA JACOB

OFFENSE:

- A. **OFFICIAL VERSION:** On June 23, 1994, Annette Nelson of Western Pontiac reported that a 1994 Pontiac Grand Am which was for sale on their lot had been driven from their lot and sustained damage to its undercarriage, shroud, and radiator. It had then been returned to their lot.

On August 16, 1994, police received a report that a 1994 Ford F150 pickup was up Middle Canyon in the middle of the road with its windows broken and damage to its panels. That same day a 1994 Ford Probe was located northwest of Grantsville with broken windows and panels. Both vehicles were reported stolen from Timothy Ford/Chrysler Auto Dealership in Tooele.

On August 17, Tooele City Police Detective Lance Sutherland received information that a person known as Jason Black was involved in the vehicle thefts from Timothy Ford. He also received information that Black and a person known as Pugsley, later identified as David Mcune, were involved in the theft of a 1994 Grand Am from Western several months back. They had damaged the vehicle and returned it to Western. Jason Black was located on August 18 and voluntarily went to the Tooele City Police Department where he was interviewed. Black arrived at the police department with two other people, Jarrod and Jeffery Howell. Black agreed to talk to Detective Sutherland after being advised of his Miranda rights.

During an interview with Detective Sutherland, Black related he, the defendant, Jarrod and Jeffery Howell, and David Mcune had decided to go to Timothy Ford and steal some vehicles. Black had driven his vehicle and the four others to the rear of Timothy's where the defendant and Mcune exited his vehicle. The group members agreed to meet at the Catholic Church, and Black took the Howells to the church and waited in the parking lot. A few minutes later Mcune drove up in a Ford Probe and pulled into the parking lot. Black also saw a red Ford pickup heading up Middle Canyon which was being driven by the defendant. The ensemble followed the pickup up Middle Canyon passed the paved road some distance where the defendant had gotten the pickup stuck. They tried to get the truck free, but were unable to free it. They then started to throw rocks and kick the truck.

After the group stopped vandalizing the truck, they returned to their cars and made arrangements to meet in Settlement Canyon where they were going to strip the Probe.

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PRESENTENCE INVESTIGATION REPORT
ST. CLAIR, JOSHUA JACOB

A. **OFFICIAL VERSION:** (Continued)

Black drove to the top of Settlement Canyon, but could not find the Probe. He turned around and finally met Mcune and Jeffery Howell who were in the Probe at the Masonic Temple at the bottom of Settlement Canyon. They decided to go to Grantsville to a place called Little Mountain. Once at Little Mountain they started to strip the Probe, taking the radio speakers and putting them in Black's truck along with the spare tire and jack. The group started to drive the Probe around the gravel pit, jumping it off small hills, running it into hills and spinning circles. After awhile all four began to break the windows and beat on the car. The last thing they did was to put a rock on the accelerator and run it into a ditch. Following this, they all got into Black's vehicle, and were driven back to Tooele.

Regarding the Grand Am which had been stolen from Western. Black stated Mcune had come to a party in Settlement Canyon with the car, and he had taken the vehicle for a ride with Mcune and the defendant. The vehicle apparently sustained damage to its undercarriage when the trio went through areas where the stream bed crossed the road. Mcune later took the vehicle back to Western.

Following the interview with Black, Jeffery and Jarrod Howell were interviewed by Detective Sutherland. They provided the same basic information as Black, but stated the reason they took the vehicles from Timothy's was because Black wanted a new speaker system for his truck. They also said Black wanted the spare tire for his truck.

The defendant was later located and interviewed. Again, he provided the same information regarding the thefts, adding he and Mcune had been dropped off at Timothy's by Black. Mcune had a key to the lock boxes for the vehicle which he used to open the lock boxes on the pickup and Probe. The defendant added Mcune had apparently found the key to the boxes when walking through Western Pontiac a few months prior to the incident. The defendant also stated he knew Black, Mcune, and both Howells had gone into Salt Lake City on August 17 and had stolen a stereo out of a vehicle at one of the car lots on South State Street.

The defendant also admitted to forging three checks he had stolen from a Michelle Phillips and to stealing two other vehicles in the Tooele area over the past months. He had taken the vehicles because he needed a ride to other parts of town. He abandoned them after he was through with them.

A. OFFICIAL VERSION: (Continued)

Detective Sutherland went to the Mcune residence and made contact with David Mcune's father, Stephen Mcune. Detective Sutherland informed the elder Mcune of what his son David had been involved in and asked David for the key. David stated it was in his room and went into his room and obtained the key. Detective Sutherland then asked David to come to the police department for a statement. Later, David and his father arrived at the police department, and David gave a statement similar to that of the other co-defendants.

B. DEFENDANT'S VERSION: The following is taken from a handwritten statement submitted by the defendant on December 1, 1994:

"I was down in cornets parking lot and tried acid for the first time. Some guys talked me into stealing a truck with them and so I did. I took a truck, another guy took a car. The truck got stuck in Middle Canyon and everyone was kicking and denting the truck so I did too. We then left, and me and Jason were in his own truck and everyone else was in the stolen car. We met them in Grantsville and everyone but me and Jason totaled the car. Then we all went home." /s/ Joshua J. St. Clair

C. ~~*~~CO-DEFENDANT'S STATUS: Jarrod Howell, Jeffery Howell, and David Mcune are juveniles and have been referred to juvenile court. Jason Black entered pleas of guilty to the identical charges and was sentenced to 36 months probation with condition he serve 120 days in jail, pay \$8,108 in restitution, and attend substance abuse counseling.

D. VICTIM'S IMPACT STATEMENT: Rachel Ruybal, controller of Timothy Ford/Chrysler and Western Pontiac, submitted a Victim Impact Statement stating the corporation would request full restitution to them for monies not reimbursed by insurance and to the insurance company. They would also recommend the defendants perform community service in which they would be required to learn respect for other's property.

E. RESTITUTION: Timothy Ford/Chrysler and Western Pontiac submitted the following list of damages:

1994 Ford Probe (totalled)	\$16,000
1991 Ford F150 pickup damages . . .	\$ 7,060
1994 Pontiac Grand Am damages . .	\$ 762
Total Damages	\$23,822

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PRESENTENCE INVESTIGATION REPORT
ST. CLAIR, JOSHUA JACOB

E. RESTITUTION: (Continued)

Timothy's insurance, Universal Underwriters, have paid a total of \$15,714 leaving a balance owed to Timothy of \$8,108. A cellular phone was also removed from the Ford pickup which belonged to Timothy Ford. That phone has been recovered and is presently in evidence. It is not known whether the phone was damaged during the theft, if not, the phone would just have to be reactivated.

F. CUSTODY STATUS: The defendant was booked into the Tooele County Jail on August 18, 1994, and was released on his own recognizance later the same day.

G. PROSECUTOR'S STATEMENT: Alan Jeppesen will reserve comment until the time of sentencing.

H. DEFENSE ATTORNEY'S STATEMENT: John Mack Dow will reserve comment until the time of sentencing.

I. LAW ENFORCEMENT STATEMENT: Detective Sutherland said the defendant is responsible for quite a few vehicle thefts in the area over the last few months, and he does not believe the defendant will change his behavior because he does not care. He would recommend the defendant receive a similar sentence as Jason Black.

PRIOR RECORD:

A. JUVENILE: Records of the Utah Juvenile Court list the following referrals:

<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
06/04/91	Criminal Trespass	Non-Judicial Work Assignment
05/13/92	Criminal Trespass-Dwelling	Non-Judicial Theme Or Essay
05/30/92	Curfew	Fine
06/06/92	Shoplift \$100 Or Less	Fine

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 PRESENTENCE INVESTIGATION REPORT
 ST. CLAIR, JOSHUA JACOB

A. JUVENILE: (Continued)

<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
09/07/92	Burglary-Dwelling, 2nd Degree	Stayed DT Order-Short Term Disposition
	Theft Over \$1000, 2nd Degree	Stayed DT Order-Short Term Disposition
	Theft \$100 Or Less	Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Stayed DT Order-Short Term Disposition
	Destruction Of Property Under \$250	Restitution/Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Dismissed On Motion Of County Attorney-Insufficient Evidence
	Destruction Of Property Under \$250	Restitution
	Burglary Of Vehicle	Dismissed On Motion Of County Attorney-Insufficient Evidence
	Destruction Of Property Under \$250	Restitution/Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Dismissed
	Destruction Of Property Under \$250	Dismissed
	Theft \$101-\$250	Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Stayed DT Order-Short Term Disposition
	Theft \$101-\$250, Class A	Restitution/Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Dismissed
	Theft \$251-\$1,000, 3rd Degree	Dismissed
	Burglary Of Vehicle	Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Dismissed
	Destruction Of Property \$250-\$500	Dismissed
	Theft \$101-\$250, Class A	Dismissed

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PRESENTENCE INVESTIGATION REPORT
ST. CLAIR, JOSHUA JACOB

A. JUVENILE: (Continued)

<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
09/07/92	Burglary Of Vehicle	Stayed DT Order-Short Term Disposition
	Theft \$100 Or Less, Class B	Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Stayed DT Order-Short Term Disposition
	Theft \$101-\$250, Class A	Stayed DT Order-Short Term Disposition
	Destruction Of Property \$250-\$500	Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Stayed DT Order-Short Term Disposition
	Theft \$101-\$250, Class A	Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Stayed DT Order-Short Term Disposition
	Theft \$100 Or Less, Class B	Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Dismissed-Insufficient Evidence
	Theft \$101-\$250, Class A	Restitution/Stayed DT Order-Short Term Disposition
	Destruction Of Property Under \$250	Stayed DT Order-Short Term Disposition
	Burglary Of Vehicle	Stayed DT Order-Short Term Disposition
	Theft \$100 Or Less, Class B	Stayed DT Order-Short Term Disposition
	Car Theft, 2nd Degree	Restitution/Stayed DT Order-Short Term Disposition
	Possession Of Dangerous Weapon	Stayed DT Order-Short Term Disposition
12/04/92	Habitual Truancy	No Action Taken After Counseling
12/10/92	Possession Of Tobacco	Fine

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PRESENTENCE INVESTIGATION REPORT
ST. CLAIR, JOSHUA JACOB

A. JUVENILE: (Continued)

<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
01/05/93	Possession Of Tobacco	Fine
03/05/93	Review	Probation By Probation Department Work Hours Ordered
03/19/93	Review	Probation Terminated
09/21/93	Theft \$101-\$250, Class A Possession Of Tobacco	Fine No Action Taken By Intake
11/10/93	Assault-Substantial Risk Of Bodily Injury	Fine
06/10/94	Joyride Driver Return Under 24 Hours	Dismissed-Interest Of Justice As Part Of Plea Bargain
06/18/94	Theft \$100 Or Less, Class B	Dismissed-Interest Of Justice As Part Of Plea Bargain
06/18/94	Burglary Of Vehicle	Dismissed-Interest Of Justice As Part Of Plea Bargain
06/19/94	Joyride Driver Return Under 24 Hours	Dismissed-Interest Of Justice As Part Of Plea Bargain
06/21/94	Forgery-Check Less Than \$10	Restitution
06/23/94	Forgery-Check Less Than \$10 Forgery-Check Less Than \$10	Dismissed-Interest Of Justice As Part Of Plea Bargain Dismissed-Interest Of Justice As Part Of Plea Bargain
07/02/94	Curfew	Fine
10/28/94	Review	Restitution Ordered

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PRESENTENCE INVESTIGATION REPORT
ST. CLAIR, JOSHUA JACOB

B. ADULT: The Utah Bureau of Criminal Identification and the Tooele County Attorney's Office show the following entries:

<u>AGENCY</u>	<u>DATE</u>	<u>OFFENSE</u>	<u>DISPOSITION</u>
Tooele PD	08/18/94	Auto Theft (2 Counts)	Present Offense

Pending Cases: None known.

Probation/Parole History: Mr. Kyle Memmott, juvenile probation officer, was at a loss to explain the defendant's criminal behavior as the defendant came from a good home and had all the advantages of a middle class upbringing. Mr. Memmott said the defendant was compliant and easy to work with while he was on juvenile probation.

BACKGROUND INFORMATION AND PRESENT LIVING SITUATION: Joshua Jacob St. Clair is the oldest of two children born to Jeff and Penny St. Clair of Tooele, Utah. He was born in Salt Lake City but has been a lifelong resident of Tooele having graduated from Tooele Valley High School in 1994. The defendant has spent his entire life in his parents home where the family was supported by his father's employment as a welder at the Tooele Army Depot and his mother was a homemaker. Mr. St. Clair asserted he had a "great" childhood being raised in a middle class home with no history of abuse or neglect. He described his relationship with his parents and younger brother as good as it has been throughout his life. At the time of his arrest the defendant was living at his parents home rent free and was working off and on through the Carpentry Union in Salt Lake City.

MARITAL HISTORY: The defendant has never been married though he states he would like to marry 16-year-old Michele Austin in a couple of years, after she gets out of high school.

EDUCATION: The defendant graduated from Tooele Valley High School in 1994 and has not furthered his formal education since that time. He indicated he would like to attend some education but is unsure what vocation he would like to study.

ORGANIZATIONAL OR COMMUNITY AFFILIATIONS: The defendant stated he is a member of the Carpentry Union in Salt Lake City and has been working at temporary jobs that serves the union since graduating from high school.

HEALTH:

- A. Physical:** The defendant has always enjoyed good physical health. He has no history of any serious injury, illness or disability.
- B. Mental:** Mr. St Clair describes his emotional health as good with no history of any suicide considerations or other psychological problems. He has never been referred to mental health specialists for any problems.

SUBSTANCE ABUSE:

- A. Alcohol:** Mr. St. Clair stated he began to drink alcohol at age 16 and claims to have been a heavy drinker of alcohol following high school graduation. Since his arrest for this offense, the defendant maintains he has moderated his drinking behavior and has been trying to cut down. He contended he has been under the influence when he committed most of this criminal offense. He has never received alcohol counseling.
- B. Drugs:** The defendant maintains he has used LSD and in fact was on the substance the night he committed the present offenses. He asserts this was the only time he has used this substance and denies the use of any other illicit drug.

EMPLOYMENT HISTORY:

<u>EMPLOYER/ADDRESS</u>	<u>WAGE</u>	<u>TITLE</u>	<u>START/END</u>	<u>REASON FOR LEAVING</u>
Carpentry Union Salt Lake City, UT	\$7.23 p/hr.	Carpenter	09/94	
Glowing Embers Tooele, UT	\$4.25 p/hr.	Dishwasher	01/94-03/94	Fired

COMMENTS: As one might expect due to the defendant's young age, he has no substantial job history. He related he has worked approximately one month at carpentry jobs since he joined the union in September

FINANCIAL SITUATION:

Present Monthly Income: -0-
Other Income: -0-

FINANCIAL SITUATION: (Continued)

Total Monthly Income: -0-

Total Debts: -0-

COMMENTS: The defendant is living at his parents home in Tooele and is being supported by them. He augments this situation through jobs he is able to get though he is just starting out.

MILITARY RECORD: The defendant has never served in the military.

COLLATERAL CONTACTS: The defendant's father, Jeff St. Clair, verified the defendant's background and present living situation. He also submitted a letter on behalf of his son which is attached.

EVALUATIVE SUMMARY

Joshua Jacob St. Clair is a 18-year-old male who is before the court for sentencing for the offenses of Theft, a Second Degree Felony, and Criminal Mischief, a Third Degree Felony. These crimes occurred in August of this year in which the defendant and several co-defendants stole at least two vehicles from an auto dealer in Tooele, totalling one vehicle and severely damaging the other. Damage to the vehicles is in excess of \$23,000. The dealer has been reimbursed by his insurance for the majority of damages; however, the dealer has had to make good in excess of \$8,000 of its own money to repair the vehicles. The defendant is one of two adults who was charged with this crime, the other adult having already plead guilty to similar offenses and is currently serving a 180 day jail sentence. He has also been ordered to pay \$8,108 in restitution, the remainder of restitution being reduced to a civil judgment by Judge Fuchs at the time of sentencing. The three juveniles have been referred to juvenile court.

The defendant is only 18 years old and is already involved in the adult criminal justice system in a substantial way. His juvenile record is lengthy with numerous referrals to juvenile court for property offenses including several felonies. The defendant was on juvenile probation for approximately six months in 1993 but apparently failed to learn any long lasting lessons in his dealing with that court system. He was raised in a middle class economic environment and still maintains a close relationship with his family. He has limited job skills in part due to his young age and it would appear he would benefit from some type of formal training or education. In regards to his substance abuse problem, considering the fact it is

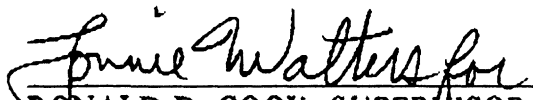
EVALUATIVE SUMMARY (Continued)

illegal for him to consume or possess an alcoholic beverage, his drinking problem may be more serious than what he is admitting to. He denies any other substance abuse problem stating he has only tried LSD on one occasion, the night of this incident. The defendant offers no long range plans for his future other than to get a job and get out on his own but is waiting to get the present court situation behind him. His cooperation with this agency in arranging for this report is less than satisfactory leading Adult Probation and Parole to question whether the defendant will abide by the terms of probation.

Respectfully submitted,


MICHAEL HANSEN, INVESTIGATOR

Approved,


RONALD D. COOK, SUPERVISOR

Apprenticed to the carpenters union
was working 12 hrs / day 7 days per week
previously agreed to a 90 day evaluation


AGENCY RECOMMENDATION

It is respectfully recommended by the staff of Adult Probation and Parole that the defendant be favorably considered for probation for 36 months with the following special conditions:

- (1) That he serve 120 days in the Tooele County Jail with credit for time served; *90 Day Evaluation*
- (2) That he be jointly and severely responsible for restitution in the amount of ~~\$8,108~~ with the remaining \$15,714 being entered as a civil judgment against the defendant; *→ ins. co. Subrogation claim -*
- (3) That he pay \$300 recoupment fee;
- (4) That he undergo a substance abuse evaluation and successfully complete any treatment recommended by Adult Probation and Parole;
- (5) That he not consume or possess any alcoholic beverage while on probation;
- (6) That he not frequent any bar or liquor store;
- (7) That he perform 200 hours community service in lieu of the court ordered fine;
- (8) That the defendant commit no further crimes.

Respectfully submitted,


MICHAEL HANSEN, INVESTIGATOR


RONALD D. COOK, SUPERVISOR

Question 6-Joshua St.Clair

Josh has been brought up in what I would call a normal family atmosphere. He has suffered two losses through death which affected him. His grandmother (Loila Jardine, mothers mother) died in 1988. He was very close to her. He was 12 when she died. He also lost his uncle (Monte St.Clair, fathers brother) in 1990. They were also close. Those two losses were tough on the whole family. We tried to talk about these deaths the best we could but being from St.Clair heritage holding feelings deep inside seems to be the norm. It comes naturally. We know it is wrong so we all fight it but it's a constant battle.

When Josh was very young it was obvious to us that he was very intelligent. He seemed to fit in very well and was quite popular. As he grew older his friends seemed to change because of church affiliation. Josh's mother was brought up LDS but is not active, his father is uncommitted. At an early age we wanted Josh to experience the joys of scouting. He was very excited about being a scout. He attempted to become a scout but it seemed that every time the troop had something planned he wasn't notified. Maybe the word was given out on Sunday when he wasn't present I don't know. No matter how many times we contacted the scoutmaster it seemed that Josh was ignored by the scoutmaster time after time. He did meet a friend through the scouts but he turned out to be a bad influence and the beginning of troubled times for Josh. Josh finally gave up on the scouts.

The friend who was a bad influence on Josh was David Theobald. David seemed to be a good kid. I coached him on a little league baseball team. I noticed that he was a free sole and spent a lot of time by himself. He was one of the only kids in our neighborhood who was Josh's age so we were glad to have him around.

As time went along we were contacted by the police that Josh had been in a vacant house and some damage had been done. When questioned Josh told the police that David had done the damage. We checked into the situation and were told by the juvenile authorities that David was known for such trouble. We tried to discourage Josh from seeing David. We started a communication gap at that point. Josh seemed to rebel against us picking his friends. From that point Josh seemed to spend more time with David and other kids who had been in trouble.

Josh entered high school doing pretty well. He had always enjoyed sports so we hoped he would get involved. His new friends didn't play sports so he didn't make much of an effort. More and more of his friends started dropping out of regular school and going on to the "home study" program. Soon this was the only alternative available to Josh so he went on it also. (over)

Josh stayed on home study for several months. He was doing very well but missed the other students. He applied to Tooele Valley High School and was accepted. This turned out to be a very positive experience for him. He graduated with honors. He took some tests for the Services (army, navy, etc.) and did very well. He has been recruited heavily ever since.

During the summer after he graduated we hounded him to make a decision as to what he wanted to do with the rest of his life. He was unsure whether he wanted to join the service or go to college. As time went along I became concerned that the people he was hanging around with had no intentions of going to college or joining the service. I could see Josh needed to step back and take a look at the big picture so I talked him into going to stay with my brother Tim St. Clair who has been through extensive college and has a masters degree in journalism and is currently working at the West Seattle Herald. Tim has had many experiences from working for Gov. Scott Matheson to working in a restaurant in Boston. Had this visit taken place I don't think we would be in this situation. The only problem was Josh got involved with the stolen vehicles before his trip to Seattle.

I have always tried to teach my sons that they must take responsibility for their actions. I don't know why Josh did what he did but I do know that he is a follower. Josh has a kind heart and goes out of his way not to harm someone. He is quite shy. He is a hard worker when he puts his mind to it.

My hope for Josh is that he can turn his life around before it is too late because he has so much to offer. I think he might be on the right track.

Jeff C. St. Clair

CRIMINAL HISTORY ASSESSMENT

PRIOR FELONY CONVICTION
(SEPARATE CRIMINAL INCIDENTS)

- 0 NONE 0
- 2 ONE
- 4 TWO
- 6 THREE
- 8 MORE THAN THREE

CRIMINAL HISTORY CATEGORY

POOR 16 - 28

FAIR 12 - 15

MODERATE 8 - 11

GOOD 4 - 7

EXCELLENT 0 - 3

PRIOR MISD. CONVICTIONS
(SEPARATE CRIMINAL INCIDENTS)
(INCLUDES DUI & RECKLESS)
(EXCLUDES OTHER TRAFFIC)

- 0 NONE 0
- 1 ONE
- 2 TWO TO FOUR
- 3 FIVE TO SEVEN
- 4 MORE THAN SEVEN

PLEASE CIRCLE THE
CORRECT CATEGORY

PRIOR JUVENILE REFERRALS
(FINDINGS OF DELINQUENT FOR
INCIDENTS THAT WOULD HAVE BEEN
FELONIES IF COMMITTED BY AN ADULT)
[3 NON-STATUS MISD. = 1 FELONY]

- 0 NONE 34
- 1 ONE
- 2 TWO TO FOUR
- 3 MORE THAN FOUR
- 4 SECURE PLACEMENT

SUPERVISION HISTORY
(ADULT OR JUVENILE)

- 0 NO PRIOR SUPERVISION
- 1 PRIOR SUPERVISION
- 2 PRIOR RESIDENTIAL PLACEMENT
- 3 PRIOR REVOCATION
- 4 CURRENT SUPERVISION OR PRE-TRIAL RELEASE

SUPERVISION RISK
(ADULT OR JUVENILE)

- 0 NO ESCAPES OR ABSCONDINGS
- 1 FAILURE TO REPORT (ACTIVE OFF.) OR OUTSTANDING WARRANT
- 2 ABSCONDED FROM SUPERVISION
- 3 ABSCONDED FROM RESIDENTIAL PROG. OR EXTRADITION REQ'D
- 4 ESCAPED FROM CONFINEMENT

WEAPONS ENHANCEMENT
(ACTIVE OFFENSE)

- 0 NONE
- 2 OTHER
- 3 KNIFE
- 4 FIREARM OR EXPLOSIVE

** NOTE: 2nd FIREARMS CONVICTION
REQUIRES A MANDATORY 5 - 10 YEAR
CONSECUTIVE SENTENCE **

TOTAL PLACEMENT SCORE: 4

GENERAL DISPOSITION MATRIX

CRIMINAL HISTORY	CRIME SEVERITY									
	CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
		MUR #	OTHER	HOMICIDE 2ND SEX	2ND DEG 3RD SEX	3RD DEG 3RD SEX	2ND DEG	3RD DEG	A	B
POOR	\$10,000	\$10,000	\$10,000	\$5,000	\$5,000	\$10,000	\$5,000	JAIL	\$2,500	\$1,000
FAIR			PRISON			\$5,000	\$5,000	\$2,500	\$2,000	\$800
				\$2,500	\$2,500	\$1,500	\$800			
MODERATE			\$5,000	\$2,500	\$2,500	\$2,500	\$1,250	\$1,500	\$1,000	\$600
GOOD		\$5,000	ALTERNATE	\$5,000	\$2,500	\$2,500	PROBATION	\$1,000	\$1,000	\$400
		\$2,500		\$2,500	\$1,250	\$1,250		\$600	\$200	
EXCELLENT	\$5,000	\$2,500	\$2,500	\$1,250	\$1,250	\$1,250	\$625	\$500	\$500	\$200
	\$2,500	\$1,250	\$1,250	\$625	\$625	\$625	\$625	\$200	\$200	\$50

DRUG DISTRIBUTION OF OR INTENT TO DIST. OVER \$500 & RESIDENTIAL BURGLARY SHOULD BE "PERSON" CRIMES

TIME MATRIX

USED TO CALCULATE MINIMUM TIME IF SENTENCE IS INCARCERATION

CRIME SEVERITY

CRIMINAL HISTORY	CAPITAL	1ST DEGREE		PERSON CRIMES			OTHER CRIMES		MISDEMEANORS	
		MUR II	OTHER	HOMICIDE	2ND DEG	3RD DEG	2ND DEG	3RD DEG	A	B
				2ND SEX	3RD SEX					
POOR		12 YRS	10 YRS	6 YRS	36 MON	24 MON	24 MON	18 MON	12 MON	6 MON
FAIR		10 YRS	7 YRS	5 YRS	30 MON	21 MON	21 MON	15 MON	10 MON	5 MON
MODERATE		7 YRS	5 YRS	4 YRS	24 MON	18 MON	18 MON	12 MON	8 MON	4 MON
GOOD		5 YRS	5 YRS	3 YRS	21 MON	15 MON	X	9 MON	4 MON	3 MON
EXCELLEN		5 YRS	5 YRS	2 YRS	18 MON	12 MON	12 MON	6 MON	3 MON	3 MON
CONSECUTIVE ENHANCEMENTS										
	36 MON	30 MON	24 MON	18 MON	12 MON	12 MON	6 MON	3 MON	3 MON	
CONCURRENT ENHANCEMENTS ADDED BY B.O.P										
	18 MON	15 MON	12 MON	9 MON	6 MON	6 MON	3 MON	3 MON	3 MON	

DRUG DISTRIBUTION OF OR INTENT TO DIST. OVER \$500 & RESIDENTIAL BURGLARY SHOULD BE "PERSON" CRIMES

ACTIVE CONVICTIONS

		DEGREE	YEARS	MONTHS
MOST SERIOUS	<u>Theft</u>	<u>II</u>	<u>1</u>	<u>3</u>
NEXT MOST SERIOUS	<u>CRIMINAL MISCHIEF</u>	<u>III</u>		
OTHER	_____	_____	_____	_____
OTHER	_____	_____	_____	_____
TOTAL			_____	_____

SENTENCES SHOULD GENERALLY BE CONCURRENT. HOWEVER, THE EXISTENCE OF THE FOLLOWING AGGRAVATING CIRCUMSTANCES SUGGEST CONSIDERATION OF CONSECUTIVE SENTENCES.

1. ESCAPE OR FUGITIVE
2. UNDER SUPERVISION OR BAIL RELEASE WHEN OFFENSE WAS COMMITTED
3. UNUSUAL VICTIM VULNERABILITY
4. INJURY TO PERSON OR PROPERTY LOSS WAS EXTREME FOR CRIME CATEGORY
5. OFFENSE CHARACTERIZED BY EXTREME CRUELTY OR DEPRAVITY

IF THE SENTENCES ARE TO BE CONSECUTIVE, USE THE CONSECUTIVE ENCHANEMENTS PORTION OF THE "TIME MATRIX" FOR ALL CONSECUTIVE SENTENCES EXCEPT THE

AGGRAVATING AND MITIGATING CIRCUMSTANCES
(Use Form 2 For Mandatory Sentence Situations)

Circle the numbers of circumstances that may justify departure from the guidelines. Reference the page number of the presentence investigation where the judge can find supportive information.

Aggravating Circumstances

Only use aggravating circumstances if they are not implicit in the conviction offense or the calculation of criminal history score.

- FSI Page #
5-10 ① Established instances of repetitive criminal conduct.
_____ 2. Offender presents a serious threat of violent behavior.
_____ 3. Victim was particularly vulnerable.
2-4 ④ Injury to person or property loss was unusually extensive.
_____ 5. Offense was characterized by extreme cruelty or depravity.
1 ⑥ There were multiple charges or victims.
_____ 7. Offender's attitude is not conducive to supervision in a less restrictive setting.
_____ 8. Offender continued criminal activity subsequent to arrest.
_____ 9. Sex Offenses: Correction's formal assessment procedures classify as an high risk offender.
_____ 10. Other (specify) _____

Mitigating Circumstances

- _____ 1. Offender's criminal conduct neither caused nor threatened serious harm.
_____ 2. Offender acted under strong provocation.
_____ 3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.
1 ④ Offender is young.
3 ⑤ Offender assisted law enforcement in the resolution of other crimes.
_____ 6. Restitution would be severely compromised by incarceration.
_____ 7. Offender's attitude suggests amenability to supervision.
_____ 8. Domestic crime victim does not want incarceration.
_____ 9. Offender has exceptionally good employment and/or family relationships.
_____ 10. Imprisonment would entail excessive hardship on offender or dependents.
_____ 11. Offender has extended period of arrest-free street time.
_____ 12. Other (specify) _____

PLEASE COMPLETE THIS SECTION

DAYS OF JAIL CREDIT - 0 -
GUIDELINE RECOMMENDATION Probation
AP&P RECOMMENDATION Probation
REASON FOR DEPARTURE _____
COMMUNITY DEMAND _____
SENTENCE ACTUALLY IMPOSED _____

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR TOOELE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

JOSHUA JACOB ST CLAIR

Defendant.

JUDGMENT, SENTENCE
(COMMITMENT) TO
UTAH STATE PRISON

Case No. 941300149

Count No. I, IV

John A. Rokich Judge

Tape 242 Count 131 Reporter

Julie Kroff Clerk

There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by a jury; the court; plea of guilty; plea of no contest; of the offense of F2 - Theft F3 - Criminal Mischief

_____ a felony of the _____ degree; defendant being now present in court and ready for sentence and represented by William Brad Parsons, and the State being represented by Alan K. Jeppesen, defendant is now adjudged guilty of the above offense and is now sentenced to a term in the Utah State Prison:

**Judge's
Initials**

- to a minimum mandatory term of _____ years and which may be for life.
- not to exceed five years; **Count IV**
- not less than one year nor more than fifteen years; **Count I**
- not less than five years and which may be for life;
- not to exceed _____ years;
- and to pay a fine in the amount of \$ _____
- and to pay restitution in the amount of \$ 8108.00 to _____
- such sentence is to run concurrently with each other
- such sentence is to run consecutively with _____
- upon motion of State, Defense, Court, Count(s) _____ is/are hereby dismissed.
- _____
- Defendant is granted a stay of the above (prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of _____ pursuant to the attached conditions of probation.
- Defendant is remanded into the custody of the Sheriff of Tooele County, for delivery to the Utah State Prison, Draper, Utah, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.

DATED this 19th day of January, 19 95

APPROVED AS TO FORM:

John A. Rokich
DISTRICT COURT JUDGE

Defense Counsel

County Attorney

WILLIAM B. PARSONS III (#2535)
Attorney at Law
440 East 3300 South
Salt Lake City, Utah 84115
Telephone: (801) 466-6311

Attorney for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR TOOELE COUNTY, STATE OF UTAH

-oOo-

THE STATE OF UTAH,	)	MOTION FOR WITHDRAWAL
	)	OF GUILTY PLEA
Plaintiff,)	
)	
-vs-)	
)	
JOSHUA JACOB ST.CLAIR,	)	Case No. 941300149
)	
Defendant.	)	Hon. John A. Rokich

COMES NOW the Defendant, by and through his attorney of record, and moves the Court for an Order allowing Defendant to withdraw his guilty plea. This Motion is accompanied by a Memorandum in support thereof.

DATED this 27th day of January, 1995.

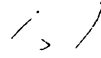
151
WILLIAM B. PARSONS III
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that I served a copy of the foregoing MOTION FOR WITHDRAWAL OF GUILTY PLEA by depositing a true and correct copy thereof in the United States Mails, postage prepaid, addressed to:

Alan K. Jeppesen
Deputy County Attorney
47 South Main Street
Tooele, UT 84074

on this 27th day of January, 1995.



Secretary

WILLIAM B. PARSONS III (#2535)
Attorney at Law
440 East 3300 South
Salt Lake City, Utah 84115
Telephone: (801) 466-6311

Attorney for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR TOOELE COUNTY, STATE OF UTAH

-oOo-

THE STATE OF UTAH,	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR WITHDRAWAL
Plaintiff,	)	OF GUILTY PLEA
)	
-vs-)	
)	
JOSHUA JACOB ST. CLAIR,	)	Case No. 941300149
)	
Defendant.	)	Hon. John A. Rokich
)	

COMES NOW the Defendant, by and through his attorney of record, and submits the following Memorandum in support of his Motion to allow the Defendant to withdraw his guilty plea.

This Motion is made because at the time of the Juvenile Court hearing involving this Defendant (Juvenile Court of Tooele County, Case No. 809869), the prosecution made mention that he was going to participate in a plea bargain with a recommendation that the Defendant would be directed for a ninety-day evaluation. This statement can be heard in the Juvenile Court tape of proceedings for October 28, 1994.

At the time of the plea on the felony first appearance, we again referenced that there would be a recommendation from the prosecutor and the defense that the Defendant be submitted for a ninety-day evaluation. This statement can be heard on the tape

of the proceedings of the District Court for November 3, 1994.

Then, at the time of the final sentencing on January 12, 1995, when I indicated that the prosecution was going to make this recommendation for a ninety-day evaluation, the prosecutor said he had no notes as to that and he therefore did not make such a recommendation.

The Defendant is entitled to faithful performance on the part of the prosecutor with regard to the conditions of the plea bargain. The very concept of the bargain was that the Plaintiff would limit the number of charges against the Defendant and would recommend that the Defendant be submitted for a ninety-day evaluation.

The prosecutor failed to keep his end of the bargain. He limited the charges, but he did not make the recommendation for a ninety-day evaluation of the Defendant. Thereafter, the Defendant was sentenced to two terms of one to fifteen years and zero to five years.

The Defendant is entitled to have the prosecution follow through in his performance of the plea bargain. The judge is not obligated to abide by it, but the prosecution must follow through and that did not happen.


The failure of the prosecution to make the recommendation for the ninety-day evaluation may have had an influence upon the Court. And indeed, the prosecution cannot say now that it did not have an influence, because it's after the fact.

We are entitled to faithful performance of the bargain.

We want to set aside the guilty plea because of failure in the performance.

Defendant's counsel has listened to the tapes of the proceedings of the Juvenile and the District Courts on the dates referenced above, and has determined that the prosecutor did indeed make the statements ascribed to him. We have made a motion to obtain a transcription of the tapes for the dates mentioned herein, and expect that the transcriptions are forthcoming, but we want to make the motion to withdraw the guilty plea now to preserve our right to make such a motion, so that no time runs against the Defendant.

RESPECTFULLY SUBMITTED this 27th day of January, 1995.




WILLIAM B. PARSONS III
Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that I served a copy of the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR WITHDRAWAL OF GUILTY PLEA by depositing a true and correct copy thereof in the United States Mails, postage prepaid, addressed to:

Alan K. Jeppesen
Deputy County Attorney
47 South Main Street
Tooele, UT 84074

on this 27th day of January, 1995.



Secretary

WILLIAM B. PARSONS III (#2535)
Attorney at Law
440 East 3300 South
Salt Lake City, Utah 84115
Telephone: (801) 466-6311

3RD DISTRICT COURT-TOOELE
95 AUG 14 PM 3: 53
FILED BY _____

Attorney for Defendant

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR TOOELE COUNTY, STATE OF UTAH


-o0o-

THE STATE OF UTAH,	)	ORDER DENYING MOTION TO
	)	WITHDRAW GUILTY PLEA
Plaintiff,)	
)	
-v-)	
)	
JOSHUA JACOB ST. CLAIR,	)	Case No. 941300149FS
)	
Defendant.	)	Hon. John A. Rokich


The Court having reviewed the Defendant's Motion to Withdraw Guilty Plea hereby denies said Motion.

DATED this 14 day of August, 1995.

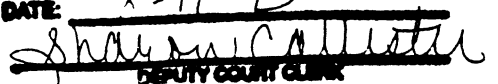
BY THE COURT:



HON. JOHN A. ROKICH
District Court Judge
Attorney for _____

Approved for Entry


I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, TOOELE COUNTY, STATE OF UTAH.

DATE: 8-11-95

DEPUTY COURT CLERK