

2002

The State of Utah v. Jose Orlando Valdovinos : Reply Brief

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Utah v. Valdovinos*, No. 20020410 (Utah Court of Appeals, 2002).

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH :
Plaintiff/Appellee :
v. :
JOSE ORLANDO VALDOVINOS : Case No. 20020410-CA
Defendant/Appellant :

APPELLANT'S REPLY BRIEF

Appeal from a judgment of conviction for three counts of aggravated robbery, a first degree felony in violation of Utah Code Annotated section 76-6-302 (1999), in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Anne M. Boyden, presiding.

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UTAH COURT OF APPEALS

JUL 08 2003

Christine Stagg

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INTRODUCTION

This appeal properly challenges all three of Mr. Valdovinos' sentences as an abuse of discretion. The notice of appeal fully alerted the State and the courts that Mr. Valdovinos appealed all three convictions since the convictions occurred at a consolidated sentencing hearing on the same day and were treated as one case throughout the proceedings. This Court must liberally construe notices of appeal, especially when, as here, pro se defendants attempt to comply with this court's rules. To rule otherwise would result in a grave injustice and deprive Mr. Valdovinos of his right to appeal. In challenging the sentences, Mr. Valdovinos can show that the trial judge abused her discretion in denying probation on any one or all of the sentences and in ordering the sentences to run consecutively. Because the trial judge failed to adequately weigh Mr. Valdovinos' young age, lack of prior record, intellectual needs, supportive family, and lack of violent behavior, lesser sanctions were appropriate.

I. THE NOTICE OF APPEAL THAT REFERRED TO THE CONSOLIDATED SENTENCING HEARING NOTIFIED THE STATE OF AN INTENT TO APPEAL ALL THREE CONVICTIONS

Contrary to the State's contentions, the uncounseled notice of appeal satisfied Rule of Appellate Procedure 3 and notified the State that Mr. Valdovinos was appealing all three of his convictions. Appellants need not strictly comply with the content requirements for notices of appeal as long as the Appellant provides sufficient notice to the parties and the courts. Case law conclusively establishes that a notice of appeal from a consolidated sentencing hearing sufficiently alerts the State that the defendant is appealing from all of the cases heard at the consolidated hearing. To rule otherwise, would promote form over substance, defeat the purpose of notices of appeal, and involuntarily deprive criminal defendants of their constitutional right to appeal.

A. Based on the Liberal Construction of Notices of Appeal, the Consolidated Proceedings, and the Pro Se Filing, Mr. Valdovinos' Notice of Appeal Fully Notified the State and the Courts of an Intent to Appeal

In construing notices of appeal, appellate courts liberally apply the requirements for such notices to avoid the dismissal of appeals based on technicalities. The adequacy of a notice of appeal presents a question of law for this Court. In re B.B., 2002 UT App 82, ¶4, 45 P.3d 527, cert. granted 53 P.3d 1 (Utah 2002). Under Utah Rule of Appellate Procedure 3(d), notices of appeal "shall specify the party or parties taking the appeal;

shall designate the judgment or order, or part thereof, appealed from; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken." Despite this mandatory language, "'notices of appeal are to be liberally construed.'" B.B., 2002 UT App 82, ¶9, 45 P.3d 527 (quoting Roberson v. Draney, 182 P.2d 212, 213 (Utah 1919) (internal quotations omitted)); see also Smith v. Barry, 502 U.S. 244, 248 (1992) ("Courts will liberally construe the requirements of Rule 3."). Thus, courts "look to the substance of a notice of appeal and not its caption." Reeves v. Steinfeldt, 915 P.2d 1073, 1077 (Utah Ct. App. 1996).

Courts are even more lenient when laypersons seek to perfect appeals. "[B]ecause of his [or her] lack of technical knowledge of law and procedure [a layman acting as his [or her] own attorney] should be accorded every consideration that may reasonably be indulged." Lundahl v. Quinn, 2003 UT 11, ¶3, 67 P.3d 1000 (internal quotations omitted).

In liberally construing notices of appeal, the focus must be on the purpose behind the notice. "While a notice of appeal must specifically indicate the litigant's intent to seek appellate review, . . . the purpose of this requirement is to ensure that the filing provides sufficient notice to other parties and the courts. . . . Thus, the notice afforded by a document, not the litigant's motivation in filing it, determines the document's sufficiency as a notice of appeal." Barry, 502 U.S. at 248. In other words, "the object of a notice of appeal is to advise the opposite party that an appeal has been taken from a

specific judgment in a particular case." Nunley v. Stan Katz Real Estate, Inc., 388 P.2d 798, 800 (Utah 1964). As the United States Supreme Court has ruled in interpreting an identical provision under the federal rules, a notice of appeal is adequate if "the litigant's action is the functional equivalent of what the rule requires.'" Barry, 502 U.S. at 248 (quoting Torres v. Oakland Scavenger Co., 487 U.S. 312, 317 (1988)).

Mr. Valdovinos' notice of appeal more than adequately notified the State and the courts that he sought review of all three of his convictions. Throughout the entire history of the three cases, the parties and the courts have treated the cases as one consolidated prosecution. The State initially brought the three cases in juvenile court where the cases were charged as three counts of aggravated robbery under a single case number. R. 40-55. Eventually, the State filed three separate Informations, each alleging multiple crimes, but the Informations were kept under one case number. R. 35-36.

After the juvenile court bound over Mr. Valdovinos to adult court, the State filed three separate Informations with different case numbers: 011913948, 011913950, and 011913951. R. 6; Addenda A, B. Nevertheless, when Mr. Valdovinos agreed to plead guilty to one count in each of the three cases, he executed one plea agreement and affidavit that covered all three cases. R. 55-61. In the agreement, the State specifically preserved the option of recommending consecutive versus concurrent sentences on the three counts. T. 55. The trial judge conducted a single plea change hearing and accepted the guilty pleas together. R. 118: 9-10, 13-14. The judge then scheduled all three cases

for a consolidated sentencing hearing. Id. at 15-16.

Prior to sentencing, Mr. Valdovinos filed a motion to withdraw his three guilty pleas. R. 71. He argued that the plea agreement treated him more harshly than his co-defendants, in part, because it included gang and weapons enhancements which deprived him of the possibility of probation. R. 74-75. The motion also noted Mr. Valdovinos' low IQ and lesser culpability in the crimes. R. 75-76. The State initially opposed the motion but later agreed to drop the gang and weapons enhancements. R. 83, 119: 5.

Rather than proceeding with sentencing, the trial judge ordered Mr. Valdovinos to submit to a 60-day diagnostic evaluation on the three cases. R. 119: 9-10. The trial judge expressed concern about Mr. Valdovinos' low IQ and the new possibility of probation as a sentencing option. Id. The Department of Corrections completed a single presentence investigation report for all three cases and conducted a joint diagnostic evaluation. R. 128.

The trial judge held a consolidated sentencing hearing on the three counts on April 1, 2002, where he sentenced Mr. Valdovinos to three prisons terms and ordered the sentences to run consecutively. R. 120. Following sentencing, the trial judge filed three separate judgments of convictions for the three cases. R. 101; Addenda A, B. Mr. Valdovinos then filed a timely notice of appeal "from the judgement and commitment entered against him in the above-entitled matter on or about April 1, 2002." R. 103. In the caption, the notice listed only case number 011913948. R. 103. The notice was

signed by Jose Haro, Mr. Valdovinos' step-father. R. 15, 103. Mr. Haro does not appear to be a licensed attorney because this Court remanded this matter to the trial court for the appointment of appellate counsel and his name is not registered with the Utah State Bar. R. 121; www.utahbar.org/html/find_a_lawyer.html.

As this history shows, these cases have been consolidated for all purposes from the juvenile court through sentencing. The plea agreement addressed all three cases and the trial judge accepted the guilty pleas at a single hearing. When Mr. Valdovinos sought to withdraw his guilty pleas, he filed a single motion and treated the three cases as one consolidated matter. The State filed one response in opposition rather than three separate filings. The Department of Corrections likewise treated the cases as one consolidated action in preparing its reports for sentencing. Finally, the trial judge conducted one sentencing hearing.

Thus, every participant in this matter has treated the three cases as one matter. When Mr. Valodvinos filed his notice of appeal and referred to the "judgement and commitment" entered on "April 1, 2002," there was no doubt what he meant. R. 103. The only issues left unresolved by the plea agreement were Mr. Valdovinos' sentences. As the motion for new trial demonstrates, Mr. Valdovinos' main concern was the length of his sentences and the possibility of probation. R. 71-79. Thus, when Mr. Valdovinos filed his notice of appeal, the State and the courts knew that Mr. Valdovinos sought a review of all three of his consecutive prison sentences rather than just one.

Because the notice of appeal provided "sufficient notice to other parties and the courts," the failure to list all three case numbers in the notice was inconsequential. Barry, 502 U.S. at 248. Rule 3 does not require parties to list case numbers. Rather, it only directs appellants to "designate the judgment or order, or part thereof, appealed from." Utah R. App. P. 3(d). Here, the notice of appeal plainly referred to the joint sentencing hearing on "April 1, 2002" where judgment was entered in all three cases. This Court "look[s] to the substance of a notice of appeal and not its caption." Reeves, 915 P.2d at 1077. Moreover, Mr. Valdovinos "should be accorded every consideration that may reasonably be indulged" given that he and/or his step-father apparently completed and signed the notice of appeal. Lundahl, 2003 UT 11, ¶3, 67 P.3d 1000 (quotations omitted).

B. Applicable Case Law Establishes that the Notice of Appeal Notified the State and the Courts that Mr. Valdovinos Appealed All Three Sentences

Case law eliminates any doubt about the adequacy of the notice of appeal. In In re B.B., 2002 UT App 82, ¶¶3, 10, 45 P.3d 527, for example, the trial judge entered findings, conclusions, and judgment on September 6, 2000, in a child visitation case which finally resolved the case. On the same date, the judge entered an order awarding attorney's fees to the prevailing party. Id. at ¶3. The appellants filed a notice of appeal that referred only to the denial of the motion leading to the findings, conclusion, and

judgment, but they omitted any reference to the order awarding attorney's fees. Id. at ¶10. This Court ruled that although the lack of specificity in the notice was not "ideal, it sufficiently notifies [appellees] that the orders resulting from the September 6, 2000 hearing are being appealed, particularly where the orders bear the same date." Id. (emphasis added).

Like in B.B., the notice of appeal below referred to the "judgement and commitment" entered on "April 1, 2002." R. 103. That judgment resolved three cases in a consolidated sentencing hearing. By referring to the date of the hearing and the judgment entered, Mr. Valdovinos left no doubt about the subject of his appeal. Mr. Valdovinos' obvious intent to challenge the consecutive prisons terms seals his purpose in filing the notice.

In an almost factually identical case, the Court of Appeals for the Eleventh Circuit ruled that omitting one of two case numbers from a notice of appeal did not deprive the government of notice. In United States v. Grant, 256 F.3d 1146, 1149 (11th Cir. 2001), the defendant was convicted of conspiracy and weapons charges. In a separate case, the government charged and convicted the defendant for failing to appear at court proceedings relating to the original charges. Id. at 1150. The trial judge held a consolidated sentencing hearing, entered one judgment for all of the charges, but listed both case numbers on the judgment. Id. The judge then entered the same judgment in both cases. Id.

The defendant filed a notice of appeal that identified the consolidated sentencing date but listed only one of the case numbers. Id. He later filed an untimely notice of appeal as to the second case. Id. The Eleventh Circuit ruled that the first notice of appeal adequately identified both cases because it listed the consolidated sentencing date and the trial judge entered one judgment in both cases. Id. at 1151. That court viewed the defendant's intent as clear despite the omission of one case number. Id.

Mr. Valdovinos' intent was equally clear to the State and the courts. Although the notice of appeal did not include all three case numbers, Mr. Valdovinos obviously intended to challenge the judgments entered at sentencing. In fact, because he waived all other rights by pleading guilty, the sentences were the only issues left for him to raise on appeal. Utah R. Crim. P. 11(e). Viewing this appeal as merely a challenge to the sentence in case number 011913948 defies logic and utterly disregards Mr. Valdovinos' intent in appealing.

Utah case law addressing similar situations confirm the adequacy of the notice of appeal. When a notice of appeal "generally designate[s] the final judgment," appellants need not identify "intermediate orders or events that have led to that final judgment." Zions First Nat'l Bank v. Rocky Mountain Irrigation, Inc., 931 P.2d 142, 144 (Utah 1997). But, a party who seeks to appeal a nonfinal summary judgment must "identify a final judgment that relates to" that [nonfinal] judgment. U.P.C., Inc. v. R.O.A. General, Inc., 1999 UT 303, ¶23, 990 P.2d 945. Further, a notice of appeal is inadequate only if

its deficiencies somehow prejudiced the appellee. Jensen v. Intermountain Power Agency, 1999 UT 10, ¶8, 977 P.2d 474.

Here, Mr. Valdovinos appealed from the final "judgement and commitment entered" "on April 1, 2002" which resolved all three of his convictions. R. 103. When a "notice of appeal sufficiently identifie[s] the final judgment at issue," the notice is effective. Jensen, 1999 UT 10, ¶8, 977 P.2d 474. The failure to mention two case numbers was secondary to Mr. Valdovinos' plain reference to the judgment entered against him on the three cases. Further, the State suffered no prejudice from the omission of the other two case numbers. Because the sentencing hearing, presentence report, and diagnostic evaluation were consolidated, the State has full opportunity to respond to Mr. Valdovinos' challenges to all of his sentences in this appeal.

Likewise, in Price v. Western Loan & Savings, 100 P. 677, 679 (Utah 1909), the notice of appeal referred to the date a motion for new trial was decided but omitted the date of the final judgment. The Utah Supreme Court ruled that even though the notice referred to the wrong date, it adequately identified the final judgment. Id. In addition, the Court noted that the appellee had suffered no prejudice from the failure to list the correct date. Id. Instead, the Court concluded that fairness dictated the liberal construction of the notice of appeal:

The object of a notice of appeal is to advise the opposite party that an appeal has been taken from a specific judgment in a particular case. If the notice is plain and explicit in this particular and sufficient in all other requisites, it ought not to be

declared a nullity. The trend of modern authority is to the effect that statutes giving the right of appeal are to be liberally construed. In Sutherland on Statutory Construction (2d Ed.), sec. 717, it is said: "Statutes giving the right of appeal are liberally construed in furtherance of justice. Such an interpretation as will work a forfeiture of that right is not favored."

Id.

Here, the omission of the case numbers was no different than the missing date in Price. Mr. Valdovinos made clear his desire for probation or concurrent sentences. The notice of appeal from the consolidated sentencing hearing provided ample notice that this appeal challenged the denial of those requests.

C. The Right to Appeal Requires this Court to Construe the Notice of Appeal As Appealing All Three Sentences

To rule against Mr. Valdovinos would not only violate this court's duty to liberally construe notices of appeal, but would also deprive him of his right to appeal. Article I, section 12 of the Utah Constitution grants accused persons "the right to appeal in all cases." Further, when a state establishes a right to an appeal, the Due Process Clause of the Federal Constitution preserves the right to an "'adequate and effective' appeal." Evitts v. Lucey, 469 U.S. 387 393 (1985) (quoting Griffin v. Illinois, 351 U.S. 12, 20 (1956)). Because the right to appeal is "essential to a fair criminal proceeding," Utah appellate courts have a duty to prevent that right from being "lightly forfeited."

State v. Tuttle, 713 P.2d 703, 704 (Utah 1985). Accordingly, "courts generally indulge every reasonable presumption against waiver of such a right." Bruner v. Carver, 920 P.2d 1153, 1155 (Utah 1996). The "State ha[s] the burden of proving a knowing and willing relinquishment of the right to appeal. . . ." Id. at 1156.

Strictly construing the notice of appeal as only effective in case number 011913948 would violate these principles. Mr. Valdovinos, being untrained in the law, did not knowingly and voluntarily relinquish his right to challenge the other two sentences. In fact, the State never even suggests that Mr. Valdovinos only intended to appeal one of his sentences. State's Brief at 15-16. By all accounts, Mr. Valdovinos, through his step-father, unwittingly failed to include all three case numbers on the notice of appeal.

This Court recently liberally construed a notice of appeal to guarantee the right to appeal. In U.P.C., the trial court granted summary judgment for the plaintiffs without resolving the defendant's counterclaim and cross-motion for summary judgment. 1999 UT 303, ¶5, 990 P.2d 945. The plaintiff then filed a motion to reverse the granting of summary judgment. Id. On May 1, 1998, the trial court entered an order denying the plaintiffs' motion for reversal. Id. at ¶6. On the same day, the trial court entered a second order which resolved the defendant's outstanding counterclaim. Id. The plaintiffs then filed a notice of appeal from "the final order . . . entered in this matter on May 1, 1998." Id.

This Court ruled that because the notice of appeal identified "a final judgment that related to the summary judgment," the document gave the parties and the courts sufficient notice that the plaintiffs were appealing all orders leading up to the final judgment. Id. at ¶27. The Court explained that any other conclusion would result in an injustice and violate the right to appeal:

To hold otherwise would be unduly harsh, does not further the underlying purpose of a notice of appeal, and is in direct contradiction of our jurisprudence governing the right of appeal. "Statutes giving the right of appeal are liberally construed in furtherance of justice. Such an interpretation as will work a forfeiture of that right is not favored." Price v. Western Loan & Sav. Co., 35 Utah 379, 100 P. 677, 679 (1909) (citation omitted).

Id. at ¶28. Arguably, an even greater injustice would occur in this case because it is criminal in nature and affects fundamental rights in addition to the right to appeal. On the other hand, ensuring a fair sentencing proceeding promotes justice and would afford Mr. Valdovinos his day in court.

D. At the Very Least, This Court Should Remand this Matter to the Trial Court for Resentencing Nunc Pro Tunc To Preserve the Right to Appeal

If this Court were to conclude that the notice of appeal were inadequate, this Court should remand this matter for resentencing *nunc pro tunc*. By filing a timely notice of appeal, Mr. Valdovinos demonstrated his intent to appeal his three sentences.

Nevertheless, Mr. Valdovinos filed the notice of appeal without the assistance of trial counsel. Thus, defense counsel did not secure Mr. Valdivinos' right to appeal.

In State v. Johnson, 635 P.2d 36, 37-38 (Utah 1981), the Utah Supreme Court recognized that criminal defendants must be afforded a right to appeal when trial counsel has denied them of that right without a knowing and voluntary waiver. In such circumstances, a defendant "must be provided an opportunity to take a direct appeal from his conviction." Id. at 38. The appropriate remedy is to dismiss the appeal to allow the defendant to file a post-conviction petition and raise trial counsel's ineffectiveness in the trial court. Id. That court added that when the defendant shows that trial counsel misled the defendant into forfeiting the right of appeal, the defendant should "be resentenced *nunc pro tunc* upon the previous finding of guilt so as to afford him [or her] "an opportunity for prosecuting and perfecting an appeal."" Id. (quoting People v. Callaway, 247 N.E.2d 127, 130 (N.Y. 1969) (footnote and internal citations omitted)).

In subsequent cases, the Utah Supreme Court has established a more efficient remedy where it is apparent that trial counsel erroneously deprived a defendant of the right to appeal a conviction. In State v. Gordon, 913 P.2d 350, 352 (Utah 1996), rather than reviewing the denial of a petition for post-conviction relief that alleged trial counsel failed to preserve the right to appeal, the Supreme Court simply remanded the case to the trial court for resentencing *nunc pro tunc*. The Supreme Court took this action ten years after the conviction was entered to allow the defendant to pursue his "first appeal as of

right." Id.

More recently, the Utah Supreme Court remanded a case for resentencing *nunc pro tunc* where it was apparent from the record that the defendant had not knowingly and voluntarily waived his right to appeal. State v. Munford, Case No. 20010413-SC; Addendum C. The Supreme Court similarly remanded a case and ordered the trial court to resentence the defendant to afford him the right to an appeal. State v. Clark, Case No. 20010819-SC; Addendum D. As authority for remanding the case, the Supreme Court relied on its "supervisory powers[]" where it [wa]s obvious from the record that defendant was denied his constitutional right to appeal. . . ." (citing State v. Bennett, 2000 UT 34, ¶13, 999 P.2d 1 (Durham, J., concurring)). Even more recently, in State v. Hassan, Case No. 20020885-SC, the defendant filed a premature new trial motion, resulting in an untimely notice of appeal. To remedy the untimely filing, the Utah Supreme Court invoked its authority "under section 78-2-2(2)," and remanded the case to the trial court for resentencing *nunc pro tunc* so the defendant could properly perfect his appeal.

Addendum E.

Like these cases, it obvious that Mr. Valdovinos intended to appeal from all three of his sentences. Because Mr. Valdovinos never knowingly waived his right to appeal, he will be denied his appeal rights if this Court strictly construes his notice of appeal. To secure Mr. Valdovinos' appeal rights, this Court should remand this matter to the trial court for resentencing. Johnson, 635 P.2d 36, 37-38.

II. THE TRIAL JUDGE HAD DISCRETION TO IMPOSE PROBATION FOR ANY OR ALL OF THE THREE CONVICTIONS

The State summarily concludes that Mr. Valdovinos cannot challenge the denial of probation because only one sentence is at issue in this appeal. State's Brief at 18. Not only are these three sentences properly raised on appeal, but the State's assumptions about probation are faulty. Trial judges have discretion to impose probation even if the defendant is serving a prison term.

Relying on its rigorous reading of the notice of appeal, the State argues that the denial of probation is not at issue in this appeal because Mr. Valdovinos only appealed from the sentence in case number 011913948. State's Brief at 18. But, because the notice of appeal was effective as to all three convictions, this Court may review the trial judge's discretion in imposing prison terms instead of probation. As more fully set forth in the opening brief, the trial judge abused her discretion in denying probation without adequately weighing Mr. Valdovinos' youth, poor intellectual functioning, unique rehabilitative needs, inconsequential prior record, lesser role in the crimes, and supportive family. Appellant's Brief at 13-23. As the diagnostic evaluators suggested, a jail term as a condition of probation was appropriate based on Mr. Valdovinos' circumstances.

The State also errs in concluding that "[s]ince an inmate incarcerated at the Utah State Prison cannot be simultaneously placed on probation, this relief is unavailable to

him." State's Brief at 18. The State cites no authority for this assertion. In fact, Utah law contradicts the State's bald claim. Judges have power to "impose sentence or a combination of sentences which may include the payment of a fine, restitution, probation, or imprisonment." State v. Snyder, 747 P.2d 417, 420 (Utah 1987) (footnote omitted); see also Utah Code Ann. § 76-3-201(2) (Supp. 2002). Probation is available for "conviction of any crime or offense" "unless otherwise specifically provided by law." Utah Code Ann. § 76-3-201(2)(c), 77-18-1(2)(a) (Supp. 2002). The only crimes for which probation is not available are murder and serious sex offenses not applicable here. Utah Code Ann. § 79-3-406 (1999).

Under the plain language of Utah law, trial judges can impose any combination of sentences without limitation for "any crime or offense." Utah Code Ann. § 76-3-201(2)(c), (Supp. 2002). Thus, sentencing judges can impose probation while a defendant is serving a prison term for another offense. In fact, this practice may be entirely appropriate under certain circumstances. State v. Jones, 601 P.2d 1060 (Ariz. 1979) (overruling prior decision and concluding that judges may impose probation while a defendant is serving a prison term).

III. THE TRIAL JUDGE'S FAILURE TO WEIGH THE MITIGATING EVIDENCE CONSTITUTED AN ABUSE OF DISCRETION

In denying probation and imposing consecutive prison terms, the trial judge failed to give "adequate weight to certain mitigating circumstances." State v. Helms, 2002 UT 12, ¶15, 40 P.3d 626 (quoting State v. Galli, 967 P.2d 930, 938 (Utah 1998)). Thus, even if the trial judge was aware of all relevant factors, she must still give appropriate weight to them. Instead of crediting Mr. Valdovinos for his youth, supportive family, intellectual needs, lesser culpability, and minimal prior record, the sentencing judge focused on the seriousness of the offenses. Given these mitigating circumstances and Mr. Valdovinos' lack of prior exposure to the criminal justice system, he would have benefitted greatly from less punitive measures. Instead, the trial judge treated him like a hardened criminal who lacked any hope for rehabilitation.

Further contrary to the State's claims, this case is similar to State v. Strunk, 846 P.2d 1297 (Utah 1993). Like in Strunk, although Mr. Valdovinos was 17 years old at the time of the crimes, the trial judge failed to weigh that mitigating factor. Id. at 1301. Further, Mr. Valdovinos is a more deserving of mitigation than the defendant in Strunk. Specifically, he has no prior history of violence and he inflicted no violence on any of his victims. Mr. Valdovinos' criminal conduct was also not nearly as severe as the crimes in Strunk. Mr. Valdovinos also has the advantage of a supportive family and both APP's and the diagnostic evaluators' endorsement of intermediate sanctions. Rather than

depriving the Board of Pardons and Parole of flexibility to fashion a sentence according to Mr. Valdovinos' needs, the Board should be free to "monitor [Mr. Valdovinos'] subsequent behavior and possible progress toward rehabilitation while in prison and to adjust the maximum sentence[s] accordingly." State v. Smith, 909 P.2d 236, 244 (Utah 1995).

Also contrary to the State's claims, the imposition of concurrent versus consecutive sentences will make a significant difference in the length of Mr. Valdovinos's sentence. State's Brief at 17 n.6. According to the State, only a difference of 22 months are at issue in this case. Id. Again, the State bases this argument on its contention that this appeal only addresses the sentence in case number 011913948. Rather, when considering all three sentences, the difference between the recommended time for consecutive sentences ($72 \text{ months} + (72 \times .40) + (72 \times .40) = 72 + 28.8 + 28.8 = 129.6$ months or 10 years and 10 months) and concurrent sentences ($72 \text{ months} + (72 \times .10) + (72 \times .10) = 72 + 7.2 + 7.2 = 86.4$ months or 7 years and two months) is over three and a half years (10 years 10 months - 7 years and 2 months = 3 years 8 months). This period is certainly significant to a young man who has never been incarcerated in prison prior to this incident. Even the 22 months that the State minimizes is not trivial.

CONCLUSION

This court has jurisdiction to review all three of Mr. Valdovinos' sentences. Because the trial judge abused her discretion in sentencing, Mr. Valdovinos requests this Court to remand this matter to the trial court for a new sentencing hearing.

Submitted, this 9th day of July, 2003.



KENT R. HART

Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, KENT R. HART, certify that I have caused to be delivered eight copies of this brief to the Utah Court of Appeals, 450 South State, 5th Floor, P.O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 8th day of July, 2003.


KENT R. HART

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this ____ day of July, 2003.

ADDENDUM

ADDENDA

ADDENDUM A

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH vs. JOSE ORLANDO VALDOVINOS

CASE NUMBER 011913950 State Felony

CHARGES

Charge 1 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony Plea: September 24, 2001 Guilty
Disposition: September 24, 2001 {Guilty Plea}

Charge 2 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 3 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 4 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 5 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 6 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 7 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 8 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 9 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 10 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 11 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony

Disposition: September 24, 2001 Dismissed
Charge 12 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 13 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 14 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 15 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 16 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 17 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 18 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 19 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 20 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 21 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 22 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 23 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 24 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 25 - 76-8-508 - TAMPER W/ WITNESS/JUROR
Attributes: Gang. Weapon.
2nd Degree Felony
Disposition: September 24, 2001 Dismissed
Charge 26 - 76-6-203 - AGGRAVATED BURGLARY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

CURRENT ASSIGNED JUDGE
ANN BOYDEN

PARTIES

Defendant - JOSE ORLANDO VALDOVINOS
Represented by: ROBERT M. ARCHULETA

Plaintiff - STATE OF UTAH

DEFENDANT INFORMATION

Defendant Name: JOSE ORLANDO VALDOVINOS
Date of Birth: May 23, 1983
Jail Booking Number:
Law Enforcement Agency: SALT LAKE POLICE
LEA Case Number: 2001-71876
Prosecuting Agency: SALT LAKE COUNTY
Agency Case Number: 1010858
Sheriff Office Number: 257621
Violation Date: April 24, 2001 782 WEST FREMONT AVE

ACCOUNT SUMMARY

CASE NOTE

DAO 1010858

PROCEEDINGS

09-10-01 INITIAL APPEARANCE scheduled on September 17, 2001 at 08:30 AM
in Fourth Floor - S42 with Judge BOYDEN. laniv
09-10-01 Note: CASE FILED BY TIMMERMAN OF SLC POLICE CASE BINDOVER FROM
JV COURT WARRANT FAXED TO JAIL laniv
09-10-01 Case filed by laniv laniv
09-10-01 Judge BOYDEN assigned. laniv

Printed: 07/07/03 13:58:50 Page 3

CASE NUMBER 011913950 State Felony

09-17-01 INITIAL APPEARANCE scheduled on September 24, 2001 at 08:30 AM
in Fourth Floor - S42 with Judge BOYDEN. patd
09-17-01 Minute Entry - Minutes for Arraignment State patd
Judge: ANN BOYDEN
PRESENT
Clerk: patd
Prosecutor: ESQUEDA, CARLOS A
Defendant not present
Defendant's Attorney(s): ROBERT ARCHULETA

Video
Tape Number: 2001-47 Tape Count: 105414

HEARING

DEFT NOT TRANSPORTED C/O HEARING CONTINUED
INITIAL APPEARANCE is scheduled.
Date: 09/24/2001
Time: 08:30 a.m.
Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN
09-24-01 Minute Entry - Minutes for Arraignment meloniep
Judge: ANN BOYDEN
PRESENT
Clerk: meloniep
Prosecutor: LEMCKE, HOWARD R
Defendant
Defendant's Attorney(s): ARCHULETA, ROBERT M.

Video
Tape Number: 2001-48 Tape Count: 1000

ARRAIGNMENT

Defendant waives reading of Information.
Advised of rights and penalties.
Defendant waives preliminary hearing.
Defendant is arraigned.
Defendant waives right to a trial by jury.
Presentence Investigation ordered.
The Judge orders Adult Probation & Parole to prepare a pre-sentence
report.
DEFT PLED GUILTY TO COUNT 1 AGG ROBBERY, STATE DISMISSES ALL OTHER
COUNTS
SENTENCING is scheduled.

Printed: 07/07/03 13:58:53 Page 4

CASE NUMBER 011913950 State Felony

Date: 11/19/2001

Time: 08:30 a.m.
Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN

09-24-01 Note: ARRAIGNMENT minutes modified. meloniep
09-24-01 SENTENCING scheduled on November 19, 2001 at 08:30 AM in Fourth
Floor - S42 with Judge BOYDEN. meloniep
09-24-01 Note: ARRAIGNMENT minutes modified. meloniep
11-15-01 Note: FILED AP&P PSR patd
11-15-01 Filed: DEFENSE MOTION TO CONT SENT meloniep
11-15-01 Filed: AP&P PSR meloniep
11-19-01 SENTENCING scheduled on December 27, 2001 at 09:00 AM in Fourth
Floor - S42 with Judge BOYDEN. patd
11-19-01 Minute Entry - Minutes for SENTENCING patd
Judge: ANN BOYDEN
PRESENT
Clerk: patd
Reporter: SCHULTZ, KATHLEEN
Prosecutor: POSTMA, MICHAEL E
Defendant
Defendant's Attorney(s): ARCHULETA, ROBERT M.

Video

Tape Number: 2001-71 Tape Count: OFF

HEARING

ON DEFENSE MOTION C/O SENTENCING CONTINUED
SENTENCING.

Date: 12/27/2001

Time: 09:00 a.m.

Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN

12-20-01 Filed: Transcript of change of plea dated 9-24-01 filed under
case number 011913948 bunnyn
12-27-01 SENTENCING scheduled on January 28, 2002 at 08:30 AM in Fourth
Floor - S42 with Judge BOYDEN. patd
12-27-01 Minute Entry - Minutes for SENTENCING patd
Judge: ANN BOYDEN
PRESENT
Clerk: patd
Reporter: WAY, CARLTON
Prosecutor: WISSLER, SIRENA M.

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Page 5

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CASE NUMBER 011913950 State Felony

Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

CAT/CIC
Tape Number: 2001 Tape Count: 92453

HEARING

C/O SENTENCING CONTINUED, MOTION TO SET ASIDE PLEA ALSO WILL BE
HEARD
SENTENCING.

Date: 01/28/2002
Time: 08:30 a.m.
Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN

01-28-02 Note: Filed State's memorandum in Opposition to Defendant's
Motion to Set Aside Guilty Plea patd

01-28-02 Minute Entry - Minutes for SENTENCING patd
Judge: ANN BOYDEN

PRESENT

Clerk: patd

Reporter: WARNICK, SUZANNE

Prosecutor: ESQUEDA, CARLOS A

Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

CAT/CIC

Tape Number: 2002-8 Tape Count: 92824

HEARING

COURT GRANTS STATE'S MOTION TO WITHDRAW GANG & GUN ENHANCEMENTS
C/O DEFT REFERRED TO UTAH STATE PRISON FOR 60 DAY DIAGNOSTIC
EVALUATION
SENTENCING.

Date: 04/01/2002
Time: 08:30 a.m.
Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN

01-29-02 SENTENCING scheduled on April 01, 2002 at 08:30 AM in Fourth
Floor - S42 with Judge BOYDEN. patd

03-27-02 Note: Diagnostic Report patd

04-01-02 Case Closed patd

Printed: 07/07/03 13:58:57 Page 6

☐
CASE NUMBER 011913950 State Felony

Disposition Judge is ANN BOYDEN patd
04-01-02 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITME patd
Judge: ANN BOYDEN

PRESENT

Clerk: patd

Reporter: WAY, CARLTON

Prosecutor: ESQUEDA, CARLOS A

Defendant

Defendant's Attorney(s): ARCHULETA, ROBERT M.

Interpreter: PRESENT

Language: SPANISH

CAT/CIC

Tape Number: 2002-28 Tape Count: 90152

SENTENCE PRISON

Based on the defendant's conviction of AGGRAVATED ROBBERY a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than five years and which may be life in the Utah State Prison.

COMMITMENT is to begin immediately.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

SENTENCE PRISON CONCURRENT/CONSECUTIVE NOTE

PRISON SENTENCE TO RUN CONSECUTIVELY WITH 011913948 & 011913951

SENTENCE RECOMMENDATION NOTE

RECOMMEND CREDIT FOR TIME SERVED OF 310 DAYS

SENTENCE TRUST NOTE

RESTITUTION TO BE DETERMINED BY BOARD OF PARDONS

10-10-02 Filed: Transcript of scheduled sentencing hearing dated January 28, 2002, Suzanne Warnick, Court Reporter, filed under case number 011913948

bunnyn

ADDENDUM B

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH vs. JOSE ORLANDO VALDOVINOS

CASE NUMBER 011913951 State Felony

CHARGES

Charge 1 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony Plea: September 24, 2001 Guilty
Disposition: September 24, 2001 {Guilty Plea}

Charge 2 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 3 - 76-6-302 - AGGRAVATED ROBBERY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 4 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 5 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 6 - 76-5-302 - AGGRAVATED KIDNAPPING
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 7 - 76-4-103 - TAMPER W/ WITNESS/JUROR
Attributes: Gang. Weapon.
2nd Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 8 - 76-4-103 - AGGRAVATED ASSAULT
Attributes: Gang. Weapon.
3rd Degree Felony
Disposition: September 24, 2001 Dismissed

Charge 9 - 76-4-203 - AGGRAVATED BURGLARY
Attributes: Gang. Weapon.
1st Degree Felony
Disposition: September 24, 2001 Dismissed

CURRENT ASSIGNED JUDGE
ANN BOYDEN

PARTIES

Defendant - JOSE ORLANDO VALDOVINOS

Plaintiff - STATE OF UTAH

DEFENDANT INFORMATION

Defendant Name: JOSE ORLANDO VALDOVINOS
Date of Birth: May 23, 1983
Jail Booking Number:
Law Enforcement Agency: SALT LAKE POLICE
LEA Case Number: 2001-71876
Prosecuting Agency: SALT LAKE COUNTY
Agency Case Number: 1010951
Sheriff Office Number: 257621
Violation Date: May 09, 2001 760 SOUTH 800 WEST

ACCOUNT SUMMARY

CASE NOTE

DAO 1010951

PROCEEDINGS

09-10-01 Note: CASE FILED BY DET. TIMMERMAN OF SLC POLICE CASE BINDOVER
FROM JV COURT WARRANT FAXED TO JAIL laniv
09-10-01 Case filed by laniv laniv
09-12-01 ARRAIGNMENT scheduled on September 17, 2001 at 08:30 AM in
Fourth Floor - S42 with Judge BOYDEN. meloniep
09-12-01 Judge BOYDEN assigned. meloniep
09-17-01 INITIAL APPEARANCE scheduled on September 24, 2001 at 08:30 AM
in Fourth Floor - S42 with Judge BOYDEN. patd
09-17-01 Minute Entry - patd
Judge: ANN BOYDEN
PRESENT
Clerk: patd
Prosecutor: ESQUEDA, CARLOS A
Defendant not present
Defendant's Attorney(s): ROBERT ARCHULETA

Video

Tape Number: 2001-47 Tape Count: 105414

INITIAL APPEARANCE

DEFT NOT TRANSPORTED C/O HEARING CONTINUED
INITIAL APPEARANCE.
Date: 09/24/2001
Time: 08:30 a.m.



Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN

09-24-01 Minute Entry - Minutes for Arraignment meloniep

Judge: ANN BOYDEN

PRESENT

Clerk: meloniep

Prosecutor: LEMCKE, HOWARD R

Defendant

Defendant's Attorney(s): ROBERT ARCHULETA

Video

Tape Number: 2001-48 Tape Count: 1000

ARRAIGNMENT

Defendant waives reading of Information.

Advised of rights and penalties.

Defendant waives preliminary hearing.

Defendant is arraigned.

Defendant waives right to a trial by jury.

Presentence Investigation ordered.

The Judge orders Adult Probation & Parole to prepare a pre-sentence report.

DEFT PLED GUILTY TO COUNT I AGG ROBBERY, STATE DISMISSES ALL OTHER COUNTS

SENTENCING is scheduled.

Date: 11/19/2001

Time: 08:30 a.m.

Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN

09-24-01 Note: ARRAIGNMENT minutes modified. meloniep

09-24-01 SENTENCING scheduled on November 19, 2001 at 08:30 AM in Fourth Floor - S42 with Judge BOYDEN. meloniep

09-24-01 Note: ARRAIGNMENT minutes modified. meloniep

11-15-01 Note: FILED AP&P PSR patd

11-15-01 Filed: DEFENSE MOTION TO CONT SENT meloniep

11-15-01 Filed: AP&P PSR meloniep

11-19-01 SENTENCING scheduled on December 27, 2001 at 09:00 AM in Fourth Floor - S42 with Judge BOYDEN. patd

11-19-01 Minute Entry - Minutes for SENTENCING Judge: ANN BOYDEN patd

PRESENT

Clerk: patd

Reporter: SCHULTZ, KATHLEEN
Prosecutor: POSTMA, MICHAEL E
Defendant
Defendant's Attorney(s): ROBERT M ARCHULETA

Video
Tape Number: 2001-71 Tape Count: OFF

HEARING

ON DEFENSE MOTION C/O SENTENCING CONTINUED
SENTENCING.

Date: 12/27/2001
Time: 09:00 a.m.
Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN

12-20-01 Filed: Transcript of change of plea dated 9-24-01 filed under
case number 091913948

12-20-01 Filed: AFFIDAVIT-DEFT

12-20-01 Filed: MOTION TO SET ASIDE DEFT'S PLEA

12-27-01 Minute Entry - Minutes for SENTENCING

Judge: ANN BOYDEN

PRESENT

Clerk: patd

Reporter: WAY, CARLTON

Prosecutor: WISSLER, SIRENA M.

Defendant

Defendant's Attorney(s): ROBERT M ARCHULETA

bunnyn
meloniep
meloniep
patd

CAT/CIC

Tape Number: 2001 Tape Count: 92453

HEARING

C/O SENTENCING CONTINUED, MOTION TO SET ASIDE PLEA ALSO WILL BE
HEARD
SENTENCING.

Date: 01/28/2002
Time: 08:30 a.m.
Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN

12-27-01 SENTENCING scheduled on January 28, 2002 at 08:30 AM in Fourth
Floor - S42 with Judge BOYDEN.

patd

Printed: 07/07/03 13:59:52

Page 4

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CASE NUMBER 011913951 State Felony

01-28-02 Note: Filed State's memorandum in Opposition to Defendant's

01-28-02 Motion to Set Aside Guilty Plea patd
Minute Entry - Minutes for SENTENCING patd
Judge: ANN BOYDEN
PRESENT
Clerk: patd
Reporter: WARNICK, SUZANNE
Prosecutor: ESQUEDA, CARLOS A
Defendant
Defendant's Attorney(s): ROBERT M ARCHULETA

CAT/CIC
Tape Number: 2002-8 Tape Count: 92824

HEARING

COURT GRANTS STATE'S MOTION TO WITHDRAW GANG & GUN ENHANCEMENTS
C/O DEFT REFERRED TO UTAH STATE PRISON FOR 60 DAY DIAGNOSTIC
EVALUATION
SENTENCING.

Date: 04/01/2002
Time: 08:30 a.m.
Location: Fourth Floor - S42
Third District Court
450 South State
SLC, UT 84111-1860

Before Judge: ANN BOYDEN

01-29-02 SENTENCING scheduled on April 01, 2002 at 08:30 AM in Fourth
Floor - S42 with Judge BOYDEN. patd
03-27-02 Note: Diagnostic Report patd
04-01-02 Case Closed patd
Disposition Judge is ANN BOYDEN patd
04-01-02 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITME patd
Judge: ANN BOYDEN
PRESENT
Clerk: patd
Reporter: WAY, CARLTON
Prosecutor: ESQUEDA, CARLOS A
Defendant
Defendant's Attorney(s): ROBERT M ARCHULETA

CAT/CIC
Tape Number: 2002-28 Tape Count: 91052

SENTENCE PRISON

Based on the defendant's conviction of AGGRAVATED ROBBERY a 1st
Degree Felony, the defendant is sentenced to an indeterminate term
of not less than five years and which may be life in the Utah State

COMMITMENT is to begin immediately.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State P

ADDENDUM C

Rec. 8/2/01

IN THE SUPREME COURT OF THE STATE OF UTAH

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NOTICE OF DECISION

State of Utah,
Plaintiff and Appellee,

v.

No. 20010413-SC
961900939 FS

Damon R. Munford,
Defendant and Appellant.

The above-entitled case was submitted to the court for decision and the attached order has been issued.

Order Issued: July 31, 2001

Notice of Decision Issued: August 1, 2001

Record: None

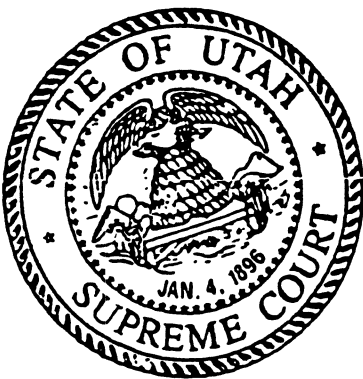
THIRD DISTRICT, SALT LAKE
961900939

Pat H. Bartholomew

Pat H. Bartholomew
Clerk of Court

By *Dickie Brown*
Deputy Clerk

August 1, 2001
Date



IN THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----

State of Utah,
Plaintiff and Appellee,

v.

No. 20010413-SC
961900939FS

Damon R. Munford,
Defendant and Appellant.

ORDER

The State's motion to dismiss this case for lack of jurisdiction is granted, but the case is remanded to the trial court for re-sentencing and appointment of counsel, so that defendant may perfect his appeal as of right.

July 31, 2001
Date

Richard C. Howe
Richard C. Howe
Chief Justice

CERTIFICATE OF MAILING

I hereby certify that on August 1, 2001, true and correct copies of the foregoing ORDER and NOTICE OF DECISION were deposited in the United States mail to the party(ies) listed below:

MARK L. SHURTLEFF
ATTORNEY GENERAL
STATE CAPITOL

DAVID E. YOCOM
SALT LAKE DISTRICT ATTORNEY
2001 S STATE S3400
SALT LAKE CITY UT 84190-1200

and true and correct copies of the foregoing ORDER and NOTICE OF DECISION were hand delivered to a personal representative of the foregoing office to be delivered to the party(ies) listed below:

J. FREDERIC VOROS, JR.
ASSISTANT ATTORNEY GENERAL
160 E 300 S 6TH FL
PO BOX 140854
SALT LAKE CITY UT 84114-0854

ROBERT L. STOTT
SALT LAKE COUNTY DEPUTY ATTORNEY
231 E 400 S STE 300
SALT LAKE CITY UT 84111

JOAN C. WATT
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 E 500 S STE 300
SALT LAKE CITY UT 84111

and true and correct copies of the foregoing ORDER and NOTICE OF DECISION were placed in Interdepartmental Mail to be delivered to the trial court listed below:

THIRD DISTRICT, SALT LAKE
ATTN: SUZY CARLSON
450 S STATE ST
PO BOX 1860
SALT LAKE CITY UT 84114-1860

By 
Deputy Clerk

Case No.: 20010413-SC
THIRD DISTRICT, SALT LAKE , #961900939

ADDENDUM D

1
1/3/2014

FILED
UTAH SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF UTAH

JAN 24 2002

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PAT BARTHOLOMEW
CLERK OF THE COURT

NOTICE OF DECISION

State of Utah,

Plaintiff and Appellee,

v.

Ronald K Clark,

Defendant and Appellant.

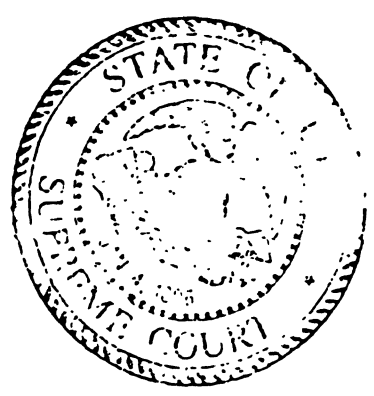
The above-entitled case was submitted to the court for decision and the attached order has been issued.

Order Issued: January 17, 2002

Notice of Decision Issued: January 24, 2002

Record: None

THIRD DISTRICT, SALT LAKE
001902322



Pat H. Bartholomew
Pat H. Bartholomew
Clerk of Court
By Sum Willis
Deputy Clerk
1/24/02
Date

UTAH SUPREME COURT

JAN 17 2002

PAT BASTIENOWMEW
CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----

State of Utah

Plaintiff/Appellee,

v.

Case No. 20010819-SC

Ronald K. Clark,

Defendant/Appellant.

ORDER

The State's motion to dismiss is granted, but the case is remanded to the trial court for resentencing, so that defendant may exercise his constitutional right to appeal. In remanding the case, this court invokes its supervisory powers, where it is obvious from the record that defendant was denied his constitutional right to appeal by an attorney who has since been suspended from the practice of law and where fundamental values are threatened by other modes of proceeding. State v. Bennett, 2000 UT 34, ¶ 13, 999 P.3rd 1.

FOR THE COURT:

Date

Jan. 17, 2002

Richard C. Howe

Richard C. Howe
Chief Justice

CERTIFICATE OF MAILING

I hereby certify that on January 24, 2002, true and correct copies of the foregoing ORDER and NOTICE OF DECISION were hand-delivered to a personal representative of the Attorney General's Office and the Legal Defender's Office to be delivered to the parties listed below:

ERIN RILEY
ASSISTANT ATTORNEY GENERAL
160 E 300 S 6TH FL
PO BOX 140854
SALT LAKE CITY UT 84114-0854

JOAN C. WATT
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 E 500 S STE 300
SALT LAKE CITY UT 84111

and true and correct copies of the foregoing ORDER and NOTICE OF DECISION were placed in Interdepartmental Mail to be delivered to the trial court listed below:

THIRD DISTRICT, SALT LAKE
ATTN: SUZY CARLSON
450 S STATE ST
PO BOX 1860
SALT LAKE CITY UT 84114-1860

By 
Deputy Clerk

Case No.: 20010819-SC
THIRD DISTRICT, SALT LAKE , #001902322

ADDENDUM E

CERTIFICATE OF MAILING

I hereby certify that on April 22, 2003, a true and correct copy of the foregoing ORDER was deposited in the United States mail to the parties listed below:

MARK L. SHURTLEFF
ATTORNEY GENERALS OFFICE
236 STATE CAPITOL
PO BOX 140810
SALT LAKE CITY UT 84114-0810


PAUL B. PARKER
SALT LAKE COUNTY DEPUTY ATTORNEY
231 E 400 S STE 101
SALT LAKE CITY UT 84111

LAURA B. DUPAIX
ASSISTANT ATTORNEY GENERAL
160 E 300 S 6TH FL
PO BOX 140854
SALT LAKE CITY UT 84114-0854

LINDA M. JONES
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 E 500 S STE 300
SALT LAKE CITY UT 84111

and a true and correct copy of the foregoing ORDER was hand delivered to the trial court listed below:

THIRD DISTRICT, SALT LAKE
ATTN: SOPHIE ORVIN /KATHY SHUPE
450 S STATE ST
PO BOX 1860
SALT LAKE CITY UT 84114-1860

By 
Deputy Clerk

Case No. 20020885-SC
THIRD DISTRICT, SALT LAKE, 991915044

IN THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----

State of Utah
Plaintiff/Appellee,

v.

Case No. 20020885-SC

Rehan Hassan,
Defendant/Appellant.

ORDER

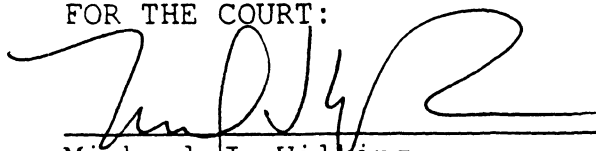
The court denies defendant's motion for order affirming this court's jurisdiction over his appeal. The court grants defendant's motion for order remanding his case to the trial court for re-sentencing. This court invokes its authority to remand the case under section 78-2-2(2) which vests this court with "authority to issue all writs and process necessary to carry into effect its orders, judgments, and decrees." Utah Code Ann. § 78-2-2(2) (2001).

The court denies the State's motion to dismiss the appeal.

FOR THE COURT:

April 21, 2003

Date



Michael J. Wilkins
Justice