

1996

Salt Lake City v. Dean Mark Williamson : Brief of Appellant

Utah Court of Appeals

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BEFORE THE UTAH COURT OF APPEALS

.A10
DOCKET NO. 961013370

SALT LAKE CITY,)

Plaintiff/Appellee,)

vs.)

DEAN MARK WILLIAMSON,)

Defendant/Appellant.)

(Subject to Assignment to the Utah
Supreme Court)
Third District Court Case No. 961013370
Appellate Court No. 990736-CA
(Priority Classification No. 15)

BRIEF OF APPELLANT

THIS IS AN APPEAL OF THE FINAL JUDGMENT AND COMMITMENT
IN A CRIMINAL CASE, CASE NO. 961013370, FROM THE THIRD
JUDICIAL DISTRICT COURT, STATE OF UTAH, HONORABLE
STEPHEN L. HENRIOD PRESIDING.

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FILED
Utah Court of Appeals
NOV 12 1999
Julia D'Alesandro
Clerk of the Court

BEFORE THE UTAH COURT OF APPEALS

SALT LAKE CITY,)
)
 Plaintiff/Appellee,)
)
 vs.)
) (Subject to Assignment to the Utah
 DEAN MARK WILLIAMSON,) Supreme Court)
) Third District Court Case No. 961013370
 Defendant/Appellant.) Appellate Court No. 990736-CA
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CONSTITUTIONAL PROVISIONS

None

STATUTORY PROVISIONS

78-2a-3(2)(e) U.C.A.....	1
78-32-3 U.C.A.	3, 4, 5

PRIOR OR RELATED APPEALS

There have been no prior or related appeals.

BEFORE THE UTAH COURT OF APPEALS

SALT LAKE CITY,)	
)	
Plaintiff/Appellee,)	
)	
vs.)	
	)	(Subject to Assignment to the Utah
DEAN MARK WILLIAMSON,	)	Supreme Court)
	)	Third District Court Case No. 961013370
Defendant/Appellant.	)	Appellate Court No. 990736-CA
_____	)	(Priority Classification No. 15)

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

I. The Court of Appeals has jurisdiction over this matter pursuant to pursuant to 78-2a-3(2)(e). The Notice of Appeal was timely filed herein on June 30, 1999. This is an appeal of the final Judgment and Commitment in a criminal case, Case No. 961013370, from the Third Judicial District Court, State of Utah, Honorable Stephen L. Henriod presiding.

STATEMENT OF ISSUES ON APPEAL

1. Did the Trial Court err when it sentenced Defendant to a 30 day jail sentence for contempt without making written findings of fact and conclusions of law required by Von Hake v. Thomas, 759 P.2d 1162, 1172 (Ut. 1988).

STANDARD OF REVIEW

There does not appear to be any Utah case law specifically setting forth the standard of review for direct criminal contempt, however, on review of indirect criminal contempt proceedings Utah Appellate Courts appear to accept the trial court's findings of fact unless

they are clearly erroneous." Von Hake v. Thomas, 759 P.2d 1162, 1172 (Utah 1988). Utah Appellate Courts apply a "correction of error standard," however, when determining whether the court's findings support a legal conclusion that defendant violated a statutory duty. See State v. Taylor, 818 P.2d 561, 565 (Utah App. 1991); State v. Serpente, 768 P.2d 994, 995 (Utah App. 1989).

The Defendant raised the issue of the propriety of the contempt proceeding and the imposition of a 30 day jail sentence in his Application for Stay of Execution of Stay of Sentence and for Issuance of Certificate of Probable Cause. R23, 27.

WHERE OBJECTION MAY BE FOUND IN THE RECORD

Defendant's objection at the trial level to the orders of the trial court was raised at R23.

STATEMENT OF GROUNDS FOR SEEKING REVIEW OF ISSUE NOT PRESERVED IN THE TRIAL COURT

The trial court summarily jailed Defendant without making written findings of fact and conclusions of law as required by Von Hake v. Thomas, 759 P.2d 1162, 1172 (Ut. 1988). An order finding one guilty of criminal contempt is generally considered to be a final order appealable as a matter of right. Utah Power & Light Co. V. Richmond Irrigation Co., 80 Utah 105, 114, 13 P.2d 320, 323 (Ut. 1932).

**CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, RULES, AND
REGULATIONS DETERMINATIVE OF THE APPEAL OR OF CENTRAL
IMPORTANCE TO THE APPEAL**

Utah Code Annotated 78-32-3 is determinative with respect to the issues raised by this appeal. (Full text attached as Addendum A-3).

STATEMENT OF THE CASE

Defendant failed to appear for sentencing on a misdemeanor charge to which he had pleaded guilty in 1996. R.4. Defendant eventually did appear on June 24, 1999. R.19, R.40. The court questioned Defendant regarding his excuse for non appearance, expressed its dissatisfaction with the Defendant's response and ordered a 30 day jail sentence for contempt of court. R.20, 40. (See Judgment and Commitment attached hereto as Addendum A-2). (Trial court's comments attached hereto as Addendum A-4).

Defendant was able to obtain a release from the jail on July 2, 1999. (See Addendum A-1, Order of Release, attached hereto which does not appear in the record).

STATEMENT OF FACTS

Defendant entered a plea of guilty to a misdemeanor offense charged in a citation on July 26, 1996. R.1, 3.

Defendant was ordered to appear for sentencing on September 6, 1996. R.3. The Defendant did not appear for the September 6, 1996 sentencing and a \$5,000 bench warrant was issued on September 9, 1996. R.4.

Finally, on June 24, 1999, nearly three years after the original incident, the Defendant

appeared in Court (R.19). The trial court questioned Defendant regarding his non appearance for the 1996 sentencing, expressed its dissatisfaction with Defendant's excuse and ordered Defendant committed to jail for contempt of court for 30 days. R.20, 40.

A review of the record discloses that the trial court did not make written Findings of Fact and Conclusions of Law with respect to the alleged determination that Defendant had committed contempt of court.

This appeal ensued.

SUMMARY OF ARGUMENT

Defendant asserts that the sentence for contempt was illegal because the trial court did not make any written Findings of Fact or Conclusions of Law regarding the three elements of criminal contempt.

ARGUMENT

Point I.

DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN HE WAS SENTENCED FOR CONTEMPT

The facts of this case are relatively simple and not subject to dispute.

Under Utah law contempt is divisible into two categories, to-wit: in the immediate presence of the court (Direct contempt) and without the immediate presence of the court (indirect contempt). 78-32-3 U.C.A.

At first glance it might appear that failure to appear would be considered indirect contempt as conduct occurring without the immediate presence of the court. However in

Von Hake v. Thomas, 759 P.2d 1162 (Ut. 1988) the Utah Supreme Court specifically held that failure to appear at a hearing (in that case an Order to Show Cause hearing) fell into the category of direct contempt.

As set forth in Von Hake and Kahn v. Kahn, 921 P.2d 466 (Ut. App. 1996) indirect contempt requires the issuance of an order, a hearing, and the full panoply of procedural due process protections afforded to criminal defendants. On the other hand, direct contempt allows the trial court to act in a summary fashion, however the discretion to act in a summary fashion is not without limits.

In order to comport with State and Federal due process concerns the trial court, in a summary contempt proceeding is still required to “. . . enter written findings of fact and conclusions of law with respect to each of the three substantive elements.” Id. Von Hake at 1172.

The trial court in this matter did not make contemporaneous written Findings of Fact and Conclusions of Law regarding the three substantive elements of criminal contempt. In fact, the trial court never made any finding, written or oral, regarding the three elements of criminal contempt.

The contempt statute, 78-32-3 (attached hereto as Addendum A-3) specifically requires, with respect to direct contempt, that “. . . an order must be made, reciting the facts as occurring in such immediate view and presence . . . “.

The only order from the trial court was the Judgment and Commitment, attached hereto as Addendum A-2, which did not recite any facts or circumstances or make any

conclusions of law.

In order to find a criminal contempt the trial court must be shown three elements:

1. That the person knew what was required,
2. That the person had the ability to comply,
3. The person intentionally failed or refused to comply. Von Hake at 1172.

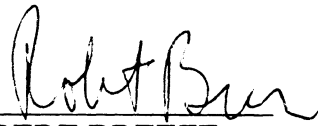
Further, the three elements must be proven beyond a reasonable doubt and finally, the trial court must enter written findings of Fact and Conclusions of Law on each of the three substantive elements. Von Hake v. Thomas at 1172, citing Salvetti v. Bachman, 638 P.2d 543, 544 (Ut. 1981). The trial court in the instant case simply failed to make any written Findings of Fact or Conclusions of Law.

CONCLUSION

Defendant was improperly sentenced for contempt because of the trial court's failure to afford Defendant due process of law when it failed to make Written Findings of Fact and Conclusions.

WHEREFORE, Defendant respectfully requests that this Court vacate the contempt sentence.

DATED this 12 day of November 1999.

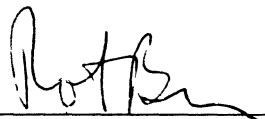

ROBERT BREEZE
Attorney for Appellant

CERTIFICATE OF MAILING

I certify that I ~~personally mailed/hand-delivered~~[?] a true and correct copy~~s~~ of the foregoing to:

Jeanne Robison
Deputy Salt Lake City Prosecutor
451 South 200 East, Suite 400
Salt Lake City, Utah 84111

this 2 day of November 1999.



ADDENDUM

- A-1 Order of Release
- A-2 Judgment and Commitment Order
- A-3 78-32-3 U.C.A. Contempt Statute
- A-4 Trial court's comments

A-1

Order of Release

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Facsimile: (801) 328-2554

IN THE THIRD DISTRICT COURT OF SALT LAKE COUNTY,
STATE OF UTAH, SALT LAKE DEPARTMENT

SALT LAKE CITY,	)	CERTIFICATE OF PROBABLE CAUSE,
	)	ORDER STAYING 30 DAY JAIL
Plaintiff,	)	SENTENCE, and ORDER OF RELEASE
)	
vs.)	
)	
DEAN MARK WILLIAMSON,)	
	)	Case No. 961013370
Defendant.)	
_____	)	Honorable Stephen L. Henriod

BASED UPON a review of the file, the statutory and case law, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The 30 day jail sentence for contempt imposed on June 24, 1999 is hereby stayed and the Defendant is ordered released forthwith from custody.
2. The Court finds that the Defendant has presented a substantial question of ~~law or fact~~ reasonably likely to result in reversal of the contempt conviction previously entered, that Defendant is not likely to flee and Defendant ~~does not~~ pose a ~~danger~~ to the community.
3. The Court further finds that Defendant's Motion for Stay of Sentence and for Issuance

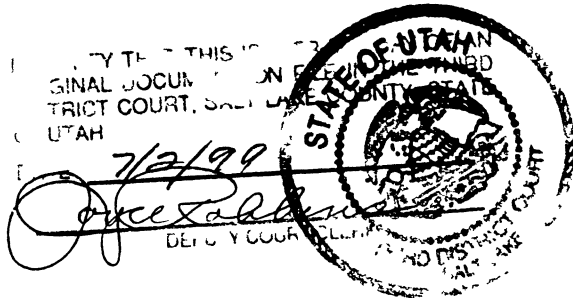
of Certificate of Probable Cause were not for purposes of delay.

SO ORDERED.

DATED this 2 day of ^{July} June 1999.

BY THE COURT:

for 
STEPHEN L. HENN
State District Court Judge

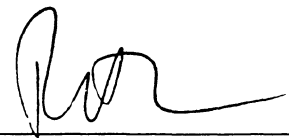


CERTIFICATE OF MAILING

I certify that I personally mailed/hand delivered/faxed a true and correct copy of the foregoing unsigned (proposed) ORDER to:

Cheryl Luke
Salt Lake City Prosecutor
451 South 200 East, 4th Floor
Salt Lake City, Utah 84111

this 30 day of June, 1999.



A-2

Judgment and Commitment Order

Third Circuit Court, State of Utah
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

Salt Lake City _____)
 Plaintiff)
 vs)
Dean Mark Williamson _____)
 Address _____)
 _____)
 DOB 10/22/61 _____)
 Defendant)

COMMITMENT
 After Judgment


Case No. 961013370
 S.O. CASE # 80150

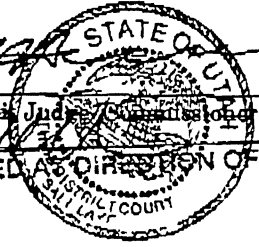
THE STATE OF UTAH TO ANY PEACE OFFICER IN THE STATE OF UTAH
 On the 24 day of June, 1999, the above
 named defendant was brought before a judge of the Circuit Court, Salt Lake County, State of Utah
 charged with having committed the crime of Contempt of Court

The defendant was found guilty and was sentenced to pay a fine of \$ _____ and to serve
30 days in the County Jail with 0 days in the jail to be suspended upon payment of
 the fine on or before _____

~~The fine has not been paid, nor secured, nor has an appeal been taken;~~
 You are hereby commanded to take said defendant into custody and safely keep until he/she shall serve
 out the above-named term of imprisonment or shall pay \$ _____ not to exceed one day
 for each _____ of fine

Dated 6/24, 19 99



 Circuit Judge/Committee Member
 BY _____
 STAMP USED AS DIRECTION OF JUDGE


A-3

78-32-3 U.C.A. Contempt Statute

78-32-3. In immediate presence of court; summary action - Without immediate presence; procedure.

When a contempt is committed in the immediate view and presence of the court, or judge at chambers, it may be punished summarily, for which an order must be made, reciting the facts as occurring in such immediate view and presence, adjudging that the person proceeded against is thereby guilty of a contempt, and that he be punished as prescribed in Section 78-32-10 hereof. When the contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit shall be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the referees or arbitrators or other judicial officers.

A-4

Trial court's comments

Court: How old are you Mr. Williamson?

A. Unintelligible

Q. Let's see, you pled guilty to sex solicitation in, back in about July of 1996. You were ordered to go to the Health Department for a blood test. I understand you did that. Is that correct?

A. Yes your honor.

Q. And then you had a sentencing date September 6, 1996 and you didn't show up and it's almost two years since then and you just haven't done anything, right? Almost three years.

A. Yes your honor. I tried. . . .

Q. Do you want to tell me what your excuse is?

A. Hm?

Q. What's your excuse?

A. Just inability to get up here. I don't own a running vehicle. I've had to borrow a vehicle the first time. I came up here I had to borrow one again to come up here now. I'm certainly not trying to run from this. It's just difficult for me to get here.

Q. Three years. I have never heard such a bad excuse in my time on the bench. You are not trying to get out of this but you sat on this for three years. I can't sentence you without the blood test and I don't have the results, so we can't do sentencing today. But I'm going to put you in jail for 30 days for contempt of Court and that's going to start right now.

A. Hm, my vehicle is parked about a block away, what . . .

Q. It's probably going to get impounded. That's what happens when you ignore Court Orders. You're facing another 180 days on your sex solicitation charge. People who commit crimes have to follow the consequences and you have not only ignored them, you have blatantly and wilfully ignored them. I sentence you to 30 days in jail.

A. I have attempted to, your

Q. (Unintelligible) Duplication Group?
THE COURT THEN WENT ON TO THE NEXT MATTER ON THE CALENDAR.