

1996

State of Utah v. Chad Calvert : Brief of Appellant

Utah Court of Appeals

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Jan Graham; Utah Attorney General; Attorney for Plaintiff/Appellee.

Douglas D. Terry; Attorney for Defendant/Appellant.

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IN THE UTAH COURT OF APPEALS ~~UTAH~~ COURT OF APPEALS
BRIEF

STATE OF UTAH,)
)
 Plaintiff and Appellee,)
)
 vs.)
)
 CHAD CALVERT,)
)
 Defendant and Appellant.)

UTAH
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DOCKET NO. 960270-CA

Case No. 960270-CA

BRIEF OF APPELLANT

APPEAL FROM CONVICTION OF COUNT I, ATTEMPTED POSSESSION
OF A CONTROLLED SUBSTANCE, A CLASS A MISDEMEANOR, AND COUNT
II, POSSESSION OF A CONTROLLED SUBSTANCE, A CLASS A MISDEMEANOR
IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR
WASHINGTON COUNTY, JAMES L. SHUMATE PRESIDING

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FILED
Utah Court of Appeals

DEC 19 1996

Marilyn M. Branch
Clerk of the Court

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)
Plaintiff and Appellee,)
vs.)
CHAD CALVERT,) Case No. 960270-CA
Defendant and Appellant.)

BRIEF OF APPELLANT

APPELLATE JURISDICTION

Jurisdiction to hear this appeal is conferred upon the above-entitled Court by Section 78-2a-3(2)(f), Utah Code Annotated, 1953, as amended.

STATEMENT OF ISSUES

1. Was Appellant denied his right to effective assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution?
2. Was Appellant denied the right to due process of law as guaranteed by the Fifth Amendment to the United States Constitution?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Fifth Amendment to the Constitution of the United States.

No person . . . shall be . . . deprived of life, liberty, or property, without due process of law

Sixth Amendment to the Constitution of the United States.

In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defense.

Fourteenth Amendment to the Constitution of the United States

Nor shall any state deprive any person of life, liberty, or property, without due process of law

Article I, Section 7, Constitution of the State of Utah

No person shall be deprived of life, liberty or property, without due process of law.

STATEMENT OF THE CASE

Appellant was charged in an information filed April 5, 1994, with Count I, Possession of a Controlled Substance, a 2nd Degree Felony, Count II, Possession of a Controlled Substance, a Class A Misdemeanor, and Count III, Possession of Drug Paraphernalia, a Class B Misdemeanor. Appellant was originally represented by David Maddox. David Maddox was retained counsel. On May 31, 1994, Appellant waived his preliminary hearing. On July 20, 1994, Appellant was arraigned and plead not guilty to all charges.

On November 15, 1994, Attorney Maddox filed a Motion to Suppress and Waiver of Jury Trial. The suppression hearing was heard before Judge James L. Shumate on December 12, 1994. On January 17, 1995, Judge Shumate issued a memorandum decision denying Defendant's Motion to Suppress.

On March 29, 1995, David Maddox withdrew as Appellant's attorney. On May 23, 1995, Lamar Winward entered his appearance as counsel for Appellant. On September

27, 1995, Lamar Winward withdrew as counsel for Appellant, but appeared again on behalf of Appellant on December 13, 1995, and entered a written plea agreement on behalf of Appellant under the terms of which Appellant plead guilty to Count I, Attempted Possession of a Controlled Substance, a Class A Misdemeanor, and Count II, Possession of a Controlled Substance, a Class A Misdemeanor as charged in an Amended Information. Appellant did not enter a conditional plea. Appellant was ordered to cooperate in the preparation of a presentence investigation report by the Utah Department of Adult Probation and Parole.

On March 27, 1996, following the preparation of a Presentence Investigation Report, Appellant was sentenced to serve one year in the Washington County Jail and pay a fine and surcharge totalling \$925.00. Execution of the sentence was stayed and Appellant was placed on 36 months supervised probation under the terms of which he was to serve 120 days house arrest, with work release, complete 80 hours of community service, and abide by other standard terms of probation.

On April 17, 1996, Appellant appeared once again before the Judge Shumate for the purpose of changing his house arrest to incarceration in the Washington County Jail. Judge Shumate ordered Appellant to serve 45 days in the Washington County Jail in lieu of 120 days house arrest and gave him credit for any jail time previously served.

On April 19, 1996, Lamar Winward withdrew as counsel for Appellant. On April 19, 1996, Appellant filed a pro se notice of appeal. On April 22, 1996, this attorney was appointed to represent the Appellant in his appeal.

ARGUMENT

Counsel for Appellant has made a conscientious examination of the record, including a transcript of the suppression hearing held on December 12, 1994, the arraignment held on July 20, 1994, and the sentencing hearing held on March 27, 1996. Counsel has examined the record in an attempt to discover instances in which Appellant was denied his right to effective assistance of counsel or other errors of the Court. Counsel for Appellant has also researched the law and cannot, in good faith, present an argument to this court upon which Appellant's conviction or sentence should be overturned.

The standard by which an appellate court reviews the performance of counsel in order to determine the effective or ineffective assistance of counsel is set forth in State v. Saunders, 893 P.2d 584 (Utah App. 1995). In Saunders, this court held that in order for a Defendant to prevail on his claim of ineffective assistance of counsel he must first show that his counsel's representation fell below an objective standard of reasonableness and secondly that but for specifically identified acts or omissions of counsel there would exist a reasonable probability of a favorable result. Id. at 591. The court in Saunders also stated that its review of counsel's performance must be "highly differential to avoid second guessing counsel's performance on the basis of an inadequate record." Id. at 591.

It appears from the record that Appellant entered into what he believed to be an advantageous plea agreement and that Judge Shumate stayed well within his discretion in sentencing Appellant. There is no indication from the record that Appellant was denied the effective assistance of counsel. Therefore, Counsel submits this brief pursuant to Anders v. California, 386 U.S. 738, 18 L.Ed 2d 493, 87 S.Ct. 1396 (1967) and State v. Clayton, 639

P.2d 1968 (Utah 1981).

CONCLUSION

Counsel submits this brief pursuant to Anders v. California. Counsel respectfully requests that the court examine the record to determine if grounds exist to remand for reversal of Appellant's conviction or reconsideration of Appellant's conviction. Counsel has filed herewith a motion for leave to withdraw as counsel, pursuant to Anders, and Clayton, supra, and ask the court to reconsider the same.

DATED this 19 day December, 1996.

15/

Douglas D. Terry
Attorney at Law

MAILING CERTIFICATE

I do hereby certify that on this 19 day of December, 1996, I did personally mail four true and correct copies of the above and foregoing document to:

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15/

Douglas D. Terry

ADDENDUM

No Addendum is necessary.