

2007

State of Utah v. Edward Walter Barela : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

vs.

EDWARD WALTER BARELA,

Defendant/Appellant.

Case No. 20070506-CA

BRIEF OF APPELLEE

**APPEAL FROM SENTENCING FOR POSSESSING MARIJUANA
WITH PRIOR CONVICTIONS, A THIRD DEGREE FELONY, IN THE
FIRST DISTRICT COURT, CACHE COUNTY, THE HONORABLE
GORDON LOW PRESIDING**

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* * *

JURISDICTIONAL STATEMENT

Defendant pleaded guilty to one count of possessing marijuana with prior convictions, a third degree felony under Utah Code Annotated § 58-37-8(2)(c) (West 2004). This Court has jurisdiction pursuant to Utah Code Annotated § 78A-4-103(2)(e) (2008).

ISSUE ON APPEAL & STANDARD OF REVIEW

Issue: Did the trial court abuse its discretion when it sentenced defendant to prison, rather than probation, after defendant pleaded guilty to committing his 23rd crime in 26 years?

Standard of Review: A trial court's sentencing decision is reviewed for an abuse of discretion. *State v. Valdovinos*, 2003 UT App 432, ¶ 14, 82 P.3d 1167.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

There are no determinative constitutional provisions, statutes, or rules in this case.

STATEMENT OF THE CASE

Defendant was charged with one count of possessing marijuana in a drug-free zone, one count of possessing drug paraphernalia, and one count of child endangerment. R. 14-15. He pleaded guilty to one count of possessing marijuana with prior convictions. R. 46-50. At sentencing, the trial court ordered defendant to serve 0-5 years in prison. R. 63-64. Defendant timely appealed. R. 66.

STATEMENT OF FACTS

On November 13, 2006, defendant possessed marijuana. R. 53. Defendant was on probation for prior offenses at the time of this incident. R. 62: 6; 85: 2.

SUMMARY OF ARGUMENT

Defendant's argument should be rejected for two reasons. First, a trial court's decision to sentence a defendant to prison, rather than probation, is only reversed when the decision was "inherently unfair." In this case, defendant has a decades-long criminal record and was actually on probation for a prior offense when he committed this particular crime. Under these circumstances, the trial court's decision was not inherently unfair.

Second, contrary to defendant's claim, the trial court was not required to consider the four sentencing factors set forth in *State v. Galli*, 967 P.2d 30 (Utah 1998). Under its express terms, *Galli* is only applicable when a trial court decides whether multiple sentences should run consecutively or concurrently. Defendant only pleaded guilty to one offense below, however, so *Galli* was inapplicable here.

ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT SENTENCED DEFENDANT TO PRISON FOR COMMITTING HIS 23rd CRIME IN 26 YEARS

Defendant argues that the trial court abused its discretion by sentencing him to prison, rather than probation. Aplt. Br. 9-12. Defendant also claims that the trial court failed to consider the “four mitigating factors” set forth in *State v. Galli*, 967 P.2d 30 (Utah 1998). Aplt. Br. 9. Both arguments should be rejected.

First, the trial court did not abuse its discretion by sentencing defendant to prison, rather than probation. Aplt. Br. 10. A “defendant is not entitled to probation, but rather the [trial] court is empowered to place the defendant on probation if it thinks that will best serve the ends of justice and is compatible with the public interest.” *State v. Rhodes*, 818 P.2d 1048, 1051 (Utah App. 1991). “The granting or withholding of probation involves considering intangibles of character, personality and attitude.” *Id.* at 1049 (quotations and citation omitted). An appellate court therefore only reverses such a decision when it is “clear that the actions of the judge were so inherently unfair as to constitute an abuse of discretion.” *Id.* at 1051 (quotations and citation omitted).

There was nothing inherently unfair about defendant’s sentence in this case. Before pleading guilty, defendant specifically acknowledged that his sentence could include a prison term. R. 55. Although defendant requested another chance at probation, R. 85: 2-6, the trial court rejected this request because defendant had been “involved in criminal behavior . . . for over 30 years” at the time of this offense. R. 85: 8. The court

concluded that defendant's conduct was particularly egregious because defendant was on probation at the time of this offense. R. 85: 8.

If anything, the trial court understated defendant's criminal history. Defendant was charged with 49 separate crimes between 1980 and 2006, resulting in 23 convictions or guilty pleas. R. 62: 3-6. These charges were not clustered around a few isolated incidents, but were instead filed in 32 separate actions. R. 62: 3-6. In fact, during the six years between 2000 and 2006, defendant was charged with 15 separate crimes, resulting in 8 separate convictions. R. 62: 5-6. Defendant also violated his probation twice during this most recent six-year period: once when he absconded from a court-ordered treatment facility, and once when he possessed marijuana in the crime at issue here. R. 62: 5-6. Given this, the trial court's decision to reject defendant's request for yet another chance at probation was perfectly "compatible with [both] the public interest" and the "intangibles of [defendant's] character, personality and attitude." *Rhodes*, 818 P.2d at 1051. This decision was not inherently unfair.

Second, contrary to defendant's claim, the Utah Supreme Court's decision in *State v. Galli* is inapplicable to this case. The defendant in *Galli* pleaded guilty to charges of aggravated robbery in three separate cases. *Galli*, 967 P.2d at 932. On appeal, Galli argued that the trial courts in the second and third cases abused their discretion by ordering his sentences to run consecutively to the sentences in the prior cases. *Id.* at 938. The supreme court agreed, holding that the second and third trial courts had failed to properly consider the four factors set forth in Utah Code Annotated § 76-3-401 (Supp. 1997). *Galli*, 967 P.2d at 938. Under the terms of that statute, a court was required to

apply those factors whenever a defendant was “adjudged guilty of more than one felony offense.” Utah Code Ann. § 76-3-401(1) (Supp. 1997). Defendant in this case was not “adjudged guilty of more than one felony offense,” however, but instead only pleaded guilty to a single criminal charge. There was no consecutive/concurrent determination, and the factors set forth in Utah Code Annotated § 76-3-401 were therefore inapplicable.

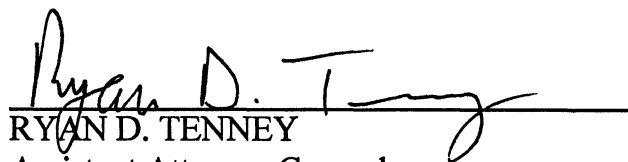
In sum, defendant has a virtually unbroken criminal pedigree that spans several decades. There was nothing inherently unfair about the trial court’s decision to sentence him to prison in this case.

CONCLUSION

For the foregoing reasons, this Court should affirm defendant’s sentence.

Respectfully submitted March 12, 2008.

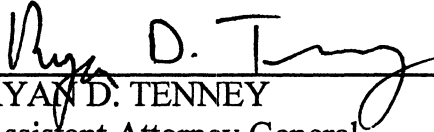
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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2008, I served two copies of the foregoing Brief of Appellee upon the defendant/appellant, by causing them to be delivered by first class mail to his counsel of record as follows:

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