

1976

State of Utah v. Naomi Swanson : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
 :
 Plaintiff-Respondent :
 :
 v. :
 :
 NAOMI SWANSON, : Case No. 14609
 :
 Defendant-Appellant :

BRIEF OF APPELLANT

Appeal from conviction in the Third District Court
for Salt Lake County, State of Utah, the Honorable
Hanson, Jr. presiding.

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FILED

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Appeal from conviction in the Third District Court in and
for Salt Lake County, State of Utah, the Honorable Stewart M.
Hanson, Jr. presiding.

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IN THE SUPREME COURT OF THE STATE OF UTAH

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 :
 Defendant-Appellant :

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from a criminal proceeding wherein the defendant pled guilty to possession of a controlled substance and was sentenced to six months in the Salt Lake County Jail. That sentence was stayed and defendant was placed on probation on the condition that she serve 30 days in issolation at the Salt Lake County Jail. From that condition of probation defendant appeals.

DISPOSITION IN LOWER COURT

The defendant plead guilty to a charge of possession of a controlled substance and was sentenced to six months in the Salt Lake County Jail. That sentence was stayed and defendant was placed on probation on the condition that she serve 30 days in issolation at the Salt Lake County Jail.

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RELIEF SOUGHT ON APPEAL

Defendant seeks to have the matter remanded for re-sentencing.

STATEMENT OF FACTS

The facts of this case are set out in the State of the Nature of the Case with the only addition being that the defendant served approximately 7 days in isolation before the Certificate of Probable Cause was signed and appeal perfected. She is now free on her own recognizance pending this appeal.

ARGUMENT

Defendant was placed on probation pursuant to the discretion and power given to the Court in Utah Code Ann. §77-35-17 (as amended). The Court stayed execution of her sentencing and then as a condition of probation ordered that the defendant be incarcerated for 30 days in the Salt Lake County Jail and further ordered that the 30 days be served in isolation. A reading of the statute shows clearly that the court may stay execution of a sentence and place the defendant on probation for a period of time as the Court may determine. However, once the stay is granted there is no authority for the Court to impose jail time as a condition of that probation. The proper procedure, it seems, would be to stay execution of a portion of the sentence and order that 30 days of the sentence be served and then probation commence.

However, even if the procedure if followed by the Court in

this case be deemed correct, there is absolutely no authority, either

case law or statutory in this State for a court to order a person to be confined in solitary confinement, either as a condition of probation or as a part of the original sentence.

CONCLUSION

Defendant would request that the case be remanded for re-sentencing in accordance with the provisions of the Utah Code.

Respectfully submitted,

STEPHEN R. McCAUGHEY
Attorney for Appellant

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IN THE SUPREME COURT OF THE
STATE OF UTAH

:
STATE OF UTAH,

Plaintiff-Respondent, :

-vs-

Case No.
14609

NAOMI SWANSON,

Defendant-Appellant.
:

BRIEF OF RESPONDENT

STATEMENT OF THE CASE

Appellant was charged with and plead guilty to the crime of possession of a controlled substance in violation of Utah Code Ann. § 58-37-8(2)(a) (1953), as amended (R. 9).

DISPOSITION IN THE LOWER COURT

On May 4, 1976, appellant plead guilty to the crime of possession of a controlled substance in violation of Utah Code Ann. § 58-37-8(2)(a), supra (R. 19). On May 27, 1976, before the Honorable Stewart M. Hanson, Jr., in the Third Judicial District Court of Salt Lake County, appellant was sentenced to be confined in the Salt Lake

County Jail for a period of six months. Appellant was then placed on probation and granted a stay of execution of sentence until November 21, 1976. The conditions of probation were that appellant was to be placed in isolation in the Salt Lake County Jail for a period of thirty days after which she was to be released under the normal rules of probation (T. 29).

RELIEF SOUGHT ON APPEAL

Respondent seeks to have the judgment of the lower court affirmed and appellant confined in the Salt Lake County Jail under the terms of the original sentence.

STATEMENT OF FACTS

The facts of this case are set out in the Statement of the Case and Disposition in the Lower Court with the only addition being that the appellant served approximately seven days in isolation before a Certificate of Probable Cause was signed and appeal perfected (R. 30). Appellant is now free on her own recognizance pending this appeal.

ARGUMENT

POINT I

STATUTE GRANTS THE TRIAL JUDGE WIDE DISCRETION
IN ESTABLISHING THE TERMS AND CONDITIONS OF PROBATION.

Appellant was placed on probation pursuant to the discretion and power granted to the Court by Utah Code Ann. § 77-35-17, (1953), as amended, which states:

"Upon a plea of guilty or conviction of any crime or offense, if it appears compatible with the public interest, the court having jurisdiction may suspend the imposition or the execution of sentence and may place the defendant on probation for such period of time as the court shall determine.

The court may subsequently increase or decrease the probation period, and may revoke or modify any condition of probation. While on probation, the defendant may be required to pay, in one or several sums, any fine imposed at the time of being placed on probation; may be required to make restitution or reparation to the aggrieved party or parties for the actual damages or losses caused by the offense to which the defendant has pleaded guilty or for which conviction was had; and may be required to provide for the support of his wife or others for whose support he may be legally liable. Where it appears to the court from the report of the probation agent in charge of the defendant, or otherwise, that the defendant has complied with the conditions of such probation, the court may if it be compatible with the public interest either upon motion of the district attorney or of its own motion terminate the sentence or set aside the plea of guilty or conviction of the defendant, and dismiss the action and discharge the defendant."

This statute allows the trial judge to suspend imposition of a sentence, if he feels that action is compatible with the public interest. He may then place the guilty defendant on probation for such a period of time as he shall determine with the power and authority to subsequently increase or decrease the probationary period. He may also revoke or modify any condition of probation. The statute further provides that, as conditions of probation, the trial judge may impose fines, require restitution or reparation or require the defendant to provide for the support of his wife or others for whose support he may be legally liable.

Case law has expanded the types of probationary conditions a trial judge may impose. The probationer may be required to: remain in a given place, Miller v. State, 330 S.W. 2d 466, ___ Tex. ___ (1959); refrain from engaging in business, People v. Caruso, 345 P.2d 282, 174 C.A. 2d 624 (1959); resign from and not hold any union office, People v. Osslo, 323 P.2d 397, 50 C.2d 75, cert. denied, 357 U.S. 907, 78 S.Ct. 1152, 2 L.Ed.2d 1157 (1958); refrain from having a telephone in his home, People v. Stanley, 327 P.2d 973, 162 C.A.2d 416 (1958); or make building repairs, People v. Sarnoff, 4 N.W.2d 544, 302 Mich. 266 (1942).

It is therefore evident that when the defendant is informed of the terms and conditions of his probation (People v. Sutton, 33 N.W.2d 681, 322 Mich. 104 (1948)) and when the conditions are not too vague or ambiguous to be enforced (Ruse v. State, 320 S.W.2d 149, ___ Tex. ___ (1959)), the trial judge is granted wide discretion in establishing the terms of probation, Williams v. Harris, 149 P.2d 640, 106 Utah 387 (1944), Demnick v. Harris, 155 P.2d 170, 107 Utah 471 (1945).

The probationary decision rests in the sound discretion of the trial judge turning in individual cases on such circumstances, among others, "as the nature of the crime of which the defendant stands convicted, his past criminal record, his character and attitude, and his propensity and willingness for reform." Perck v. Henderson, 317 F.Supp. 29, 32 (1970). These are primarily factors which a judge, according to his observations of the defendant's demeanor and his previous experience, will evaluate in the courtroom. For this reason, the exercise of judicial discretion will not be interfered with on appeal in the absence of a clear showing of an abuse of discretion. People v. Monge, 240 P.2d 432, 109 C.A.2d 141 (1952), People v. Connolly, 229 P.2d 112, 103 C.A.2d 245 (1951).

In State v. Garcia, 504 P.2d 1015, 79 Utah 2d 52 (1972), the trial court arrested judgment and discharged defendant because his co-defendant was permitted to plead guilty to a lesser offense. The Utah Supreme Court stated:

". . . the trial court in a criminal prosecution is granted wide discretion in dealing with the defendant after he is convicted, and the statutes grant to the trial court wide powers in dealing with a defendant other than pronouncing the sentence provided by law. The court may in its discretion place a defendant on probation on whatever conditions it deems proper." (Emphasis added.)

Appellant claims that the court acted improperly in placing her in isolation for 30 days as a condition of her probation. Garcia, supra, states clearly that a trial judge may "place a defendant on probation on whatever conditions it deems proper." Acting in his sound discretion, the trial judge found thirty days in jail in isolation to be a proper condition of appellant's probation.

CONCLUSION

The Legislature has granted the courts broad discretion in establishing the terms and conditions of probation. Absent an abuse of that discretion, which

appellant has failed to allege, let alone illustrate,
this Court should not interfere with the decision
of the trial court. Therefore, respondent respectfully
urges the decision of the trial court be affirmed.

Respectfully submitted,

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