

1996

## Steven Ray James v. Henry Galetka : Reply Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS  
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DOCKET NO. 960767-CA

IN THE UTAH COURT OF APPEALS

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STEVEN RAY JAMES, :

Petitioner/Appellant, : Case no. 960767-CA

vs. : Priority No. 3

HENRY GALETKA, Warden, :

Respondent, Appellee. :

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REPLY BRIEF OF APPELLANT

THIS IS AN APPEAL FROM THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER ENTERED OCTOBER 25, 1996, BY THE HONORABLE PAT B. BRIAN, IN AND FOR THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH, WHEREIN THE HONORABLE JUDGE DISMISSED APPELLANT'S PETITION FOR EXTRAORDINARY RELIEF.

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**FILED**

APR 17 1998

COURT OF APPEALS

**TABLE OF CONTENTS**

	Page
TABLE OF AUTHORITIES .....	ii
THE TRIAL COURT CORRECTLY APPLIED THE “INTERESTS OF JUSTICE” EXCEPTION TO THE APPLICABLE STATUE OF LIMITATIONS .....	1
THE STATUTE OF LIMITATIONS FOR PROSECUTIONS OF FELONIES SHOULD NOT BE WAIVABLE, AND IF IT IS WAIVABLE, APPELLANT DID NOT KNOWINGLY WAIVE THIS RIGHT, AND THE AMENDED INFORMATION DID NOT RELATE BACK TO THE ORIGINAL TIMELY FILED INFORMATION .....	4
CONCLUSION .....	7

**TABLE OF AUTHORITIES**

**CASES CITED**

Currier v. Holden, 862 P.2d 1357 (Utah App. 1993)

**CONSTITUTIONAL PROVISIONS, STATUTES AND RULES**

Utah Code Ann. section 76-1-302 (1995)

Utah Code Ann. section 78-35a-107(1)(1996)

Rule 15(c) Utah Rules of Civil Procedure

**IN THE UTAH COURT OF APPEALS**

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STEVEN RAY JAMES,	:	
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HENRY GALETKA, Warden,	:	
Respondent, Appellee.	:	

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**ARGUMENT**

**THE TRIAL COURT CORRECTLY APPLIED THE “INTERESTS OF JUSTICE”  
EXCEPTION TO THE APPLICABLE STATUTE OF LIMITATIONS**

In its brief Appellee first contends that the trial court erroneously applied the “interests of justice” exception to the applicable statute of limitation contained in Utah Code Ann. section 78-35a-107(1) (1996). As Appellee aptly noted “neither section 78-35a-107 nor any prior appellate opinion specifically defines what circumstances trigger the ‘interests of justice’ exception to filing a timely petition.” (Appellee’s brief at p. 9). With little, if any, statutory or precedential guidance, and with a general and broad term such as “interests of justice” to interpret and apply to the particular facts of a case, a trial judge is basically asked to make a fairness decision. In deciding what is fair the judge has to weigh the competing interests of the parties and factor in the possible prejudice or lack thereof to the respective parties. That is what the trial judge did in this

case, and that is what this Court must do in determining whether to uphold the trial judge' decision on this issue.

In the case of Currier v. Holden, 862 P.2d 1357 (Utah App. 1993), this Court discussed the competing policy interests where it was argued by the State that a petitioner's writ of Habeas Corpus should be dismissed due to a filing beyond the applicable statute of limitations.<sup>1</sup> In setting forth the interests of the State this Court noted that ". . . the core purpose of any statute of limitation is to compel exercise of a right within a reasonable time to avoid stale claims, loss of evidence, and faded memories." Id. At 1369. The question that should be asked now is "were any of these purposes seriously jeopardized by the Appellant herein filing his petition 15 days late?" The answer is a definite **NO**, especially when you consider two points. First, the issues that Appellant included in his Petition were legal issues that did not necessarily involve delving into the facts of the underlying charge. Consequently, there is no concern about "faded memories" or "loss of evidence." And second, the remaining purpose of prohibiting stale claims pales in comparison to the enormous policy interests supporting writs of habeas corpus. In setting forth those interests this Court stated:

. . . the writ of habeas corpus is so important in Utah that Article I, section 5 of the Utah Constitution expressly prohibits its restriction unless public safety requires it. The writ is an extraordinary remedy invocable 'where the requirements of law have been so disregarded that the party is substantially and effectively denied due process

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<sup>1</sup>Currier is the case where this Court held the prior statute of limitation to contained in section 78-12-31.1 to be unconstitutional.

of law. . . .’

(Citations omitted). Id. Essentially, the policy purposes behind a writ is protecting individual liberty and substantial justice, and that is exactly what Appellant will be deprived of if his Petition is not granted. In determining whether Appellant should be allowed to even argue his claims that could involve substantial and serious denials of constitutional rights, the trial judge in this case simply concluded that a de minimus delay of 15 days was not unreasonable, especially when you consider that Appellant could be held unjustifiably up to 15 years in the state prison if his claims were meritorious.

Appellee further argues that “the trial court’s determination that petitioner’s fifteen-day tardiness was ‘not unreasonable,’ and, consequently excusable, similarly negates the statute’s effect. The legislature has already determined that any delay beyond one year is unreasonable.” (Appellee’s brief at p. 10). This is not true. If this truly is the legislature’s reasoning, then why did the same legislative body include in the same statute the “interests of justice” exception to the one-year rule? Obviously, the legislative intent is that sometimes late filings are reasonable, otherwise the exception has no effect. It all comes back to the balancing of interests previously discussed, and a 15 day delay is not unreasonable when you consider the potential injustices that could be done, and that the purposes underlying the statute of limitation are not seriously violated.

On this issue Appellee finally argues that “buyer’s remorse in the plea process does not trigger the ‘interests of justice’ exception to excuse his untimely filing.” (Appellee’s brief at p.

15). In response to this Appellant respectfully submits that “buyers remorse” is a legitimate trigger if the buyer is sold a defective bill of goods, i.e, a guilty plea to a charge that he could not have been convicted of due to the statute of limitations, when, as is the case here, the buyer was not informed by his legal counsel of the statute of limitations bar in relation to this particular charge.

**THE STATUTE OF LIMITATIONS FOR PROSECUTIONS OF FELONIES SHOULD NOT BE WAIVABLE, AND IF IT IS WAIVABLE, APPELLANT DID NOT KNOWINGLY WAIVE THIS RIGHT, AND THE AMENDED INFORMATION DID NOT RELATE BACK TO THE ORIGINAL TIMELY FILED INFORMATION**<sup>2</sup>

It is interesting to note that in response to the argument that the statute of limitations for prosecution of felonies should not be waivable, Appellee propounds that a somewhat loose and expansive reading of this statute should be adopted by this Court in that it should hold that a criminal defendant may waive the statute’s protections in the context of a plea agreement. (See Appellee’s brief at p. 18). The irony in this position is that earlier Appellee argues for a very strict interpretation of the statute of limitations relating to filing of petitions for extraordinary relief. Appellee can’t have it both ways. If anything, it should be just the opposite. The reasons is that the statute of limitations for prosecution of felonies set forth in Utah Code Ann. section 76-1-302 (1995),<sup>3</sup> contains no language such as “in the interests of justice” that would give the judge

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<sup>2</sup> The arguments set forth herein respond to the arguments set forth in Point II of Appellee's brief.

<sup>3</sup> The text of the relevant portions of section 76-1-302 are as follows:

equitable powers to waive the deadline, whereas the statute of limitations for filing of a petition for extraordinary relief set forth in Utah Code Ann. section 78-35a-107 (1996) does contain such language. Clearly, the reason for the distinction is to protect the rights of the accused and to ensure that no substantial injustices are done. In our judicial system it is commonly stated that it is better for 100 criminals to go free than for one truly innocent person to be convicted. The distinction in the two statutes just noted is consistent with that philosophy. In the case of the statute for prosecution of felonies it is to protect against old claims that may be difficult to defend, and in the case of the statute for filing of extraordinary writs it is to ensure that a person is not incarcerated not one minute longer than is legally justifiable in spite of some technical procedural error by the petitioner.

If this Court does hold that the statute of limitations is waivable, then Appellant re-asserts his argument contained in his original brief that any such waiver was not done knowingly, and as such, it should not be recognized as valid. You can't knowingly give up something that you don't know you have, especially when you are relying upon the advice of counsel to tell you when you have a right.

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Except as otherwise provided, a prosecution for:  
(a) a felony or negligent homicide shall be commenced  
Within four years after it is committed;  
(b) a misdemeanor other than negligent homicide shall  
be commenced within two years after it is committed; and  
(c) any infraction shall be commenced within one year  
after it is committed.

Appellant alternatively argues on page 23 of its brief that the statute of limitations does not present a bar anyway because the amendment of the Information related back to the filing of the original Information. In support of this argument Appellant cites Rule 15(c) of the Utah Rules of Civil Procedure which provides:

Whenever the claim or defense asserted in the amended pleadings arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

Appellee then notes that “at the time he murdered his son, petitioner wrapped the infant’s body in a tarp weighted down with rocks and threw the body into the Bear River to conceal it.” Appellee then argues that “concealing his baby’s body by discarding it in the river formed an integral part of the originally charged homicide. Therefore, the evidence tampering arose out of the same transaction or occurrence which gave rise to the aggravated murder charges.” (See Appellee’s brief at p. 24). This is not true. The reason why this is not true is that the homicide was completed before Appellant wrapped the body in the tarp. Consequently, it was not part of the same event or occurrence charged in the original Information. The occurrence charged in the original Information was the murder of the infant. The wrapping and disposing of the body occurred sometime after that. Therefore, the amendment does not relate back to the filing of the original Information, and thus, the tampering with evidence charge is still barred by the statute of limitations.

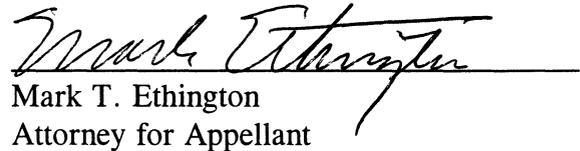
In response to Points III and IV of Appellee’s brief, Appellant will stand on the arguments

previously set forth in his original brief.

**CONCLUSION**

Appellant's guilty plea to the tampering with evidence charge should be vacated. Alternatively, due to the ineffectiveness of prior counsel, the entire plea bargain, and thus, the entire sentence should be vacated, and the Appellant should have the opportunity of either negotiating a new plea bargain or going to trial.

Respectfully submitted this 17 day of April, 1998.

  
Mark T. Ethington  
Attorney for Appellant

**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the law office of Day Shell & Liljenquist, L.C., and that I mailed a true and correct copy of the foregoing to following by first class mail, postage pre-paid, on this 17 day of April, 1998:

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