

1986

State of Utah v. Peter L. Prosper : Unknown

Utah Supreme Court

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David L. Wilkinson; attorney general; attorney for respondent.

Randall W. Richards; Richards, Caine and Richards; attorney for appellant.

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DAVID L. WILKINSON (3472)
Attorney General
KIMBERLY K. HORNAK (4341)
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Telephone: (801) 533-7606

NO. 860290

Clark, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, : AMENDED RESPONSE TO
Plaintiff-Respondent, : COUNSEL'S REQUEST TO
-v- : WITHDRAW AS COUNSEL
 : FOR APPELLANT
PETER L. PROSPER, : Case No. 860290
Defendant-Appellant. :

INTRODUCTION

This memorandum is filed in response to Mr. Randall W. Richard's request to withdraw as appellant's counsel--a request made in an Anders¹ brief filed with the Court September 22, 1986. Because of the nature of the State's response, a memorandum is being filed in lieu of a formal brief.

ARGUMENT

POINT I

BECAUSE DEFENSE COUNSEL HAS NOT FOLLOWED THE NOTICE REQUIREMENTS SET FORTH IN STATE V. CLAYTON, 639 P.2d 168 (UTAH 1981), HIS REQUEST TO WITHDRAW SHOULD BE DENIED AS PREMATURE.

Counsel for defendant has filed with the Court an Anders brief which identifies the issues that arguably might

¹ See Anders v. California, 386 U.S. 738 (1967).

support an appeal and then explains why they are without merit. That brief includes a request to withdraw as defendant's counsel on appeal. Although these aspects of counsel's brief substantially comply with certain of the requirements for an Anders brief set forth in State v. Clayton, 639 P.2d 168 (Utah 1981), counsel does not appear to have complied with the requirement that a copy of the brief be furnished the defendant and time allowed him to raise any points that he chooses. Clayton, 639 P.2d at 170. Accordingly, counsel's request to withdraw should be denied as premature. State v. Rodriguez, 33 Adv. Rep. 18, ___ P.2d ___ (May 12, 1986).

CONCLUSION

Based upon the foregoing argument, defense counsel's request to withdraw should be denied.

DATED this 3 day of October, 1986.

DAVID L. WILKINSON
Attorney General

Kimberly K. Hornak

KIMBERLY K. HORNAK
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that four true and exact copies of the foregoing Response were mailed, postage prepaid, to Randall W. Richards, Attorney for Appellant, 2568 Washington Boulevard, Ogden, Utah 84401, this 3 day of October, 1986.

Carol J. Nye