1979

State of Utah v. Daniel A. Temple : Brief of Respondent

Utah Supreme Court

Daniel A. Temple; Pro Se;
Robert B. Hansen; Attorney General;

IN THE SUPREME COURT OF THE

STATE OF UTAH

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STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-vs-	:	Case No. 16522
DANIEL ALLEN TEMPLE,	:	
Defendant-Appellant.	:	

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BRIEF OF RESPONDENT

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STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with two felonies--Possession of a Stolen Motor Vehicle in violation of § 41-1-112, Utah Code Ann., (1953, as amended), and Theft in violation of § 76-6-404, Utah Code Ann., (1953, as amended), to which he pleaded not guilty (R. 10). He was later charged with the Class A misdemeanor offense of Attempted Possession of a Stolen Motor Vehicle, to which appellant pleaded guilty (R. 8, 21).

DISPOSITION IN THE LOWER COURT

Appellant was sentenced by Judge David B. Dee on May 23, 1979, in the Third Judicial District, in and for Salt Lake County, State of Utah, to a term of 11 months, such term "to run consecutively with the present sentence and concurrently with the sentence of Judge Gowans" (R. 28), who had so sentenced appellant on May 2, 1979 for Failure to Respond to an Officer's Signal to Stop, also a Class A misdemeanor (R. 38 and Appellant's Brief at p. 1).

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the judgments and sentence of the lower court.

STATEMENT OF THE FACTS

Inasmuch as this appeal is limited to a review of a court's consecutive sentencing power, and inasmuch as appellant pleaded guilty to the offense charged in the information, no transcript was made of the proceedings and thus this sketchy statement of facts is derived solely from the trial court's record.

On January 28, 1979, a motor vehicle was stolen from the Budget Rent-A-Car parking lot. On or about Februar 1, 1979, appellant was observed driving a 1979 Mercury automobile, serial number 9Z64F618790, in an unlawful manner

IN THE SUPREME COURT

OF THE STATE OF UTAH

THE STATE OF UTAH :

Plaintiff and Respondent :

vs. :

DANIEL ALLEN TEMPLE : 16522

Defendant and Appellant :

REPLY TO BRIEF OF RESPONDENT

REQUEST TO APPEAR IN PERSON TO

OFFER ORAL ARGUMENTS

DANIEL A. TEMPLE
P. O. BOX 250
Draper, Utah 84020
Phone (801) 571-2300
DEFENDANT-IN-PERSON

ROBERT HANSEN
ATTORNEY GENERAL

PAUL L. BARLOW
Assistant Attorney General

State Capitol
Salt Lake City, Utah 84114

Attorneys for Respondent

IN THE SUPREME COURT OF THE

STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-vs- : Case No. 16522
:
DANIEL ALLEN TEMPLE :
Defendant-Appellant. :

REPLY TO BRIEF OF RESPONDENT

Throughout the Brief of Respondent, the Respondent makes frequent reference to the 'fact' that the Appellant was charged with two (2) felony charges of thieft--which were both, the Respondent claims--later plea bargained down to a Class A Misdemeanor. A small, almost worthless point, your Appellant observes, but considering the vigor with which this mis-statement has been applied, and the many times the Respondent has made reference to it leads your undereducated and bewildered Appellant into believing that the Respondent, with his greater knowledge of law, may have a legal bone in his mouth, worrying it because of some sound legal principal.

Your Appellant was charged with 'Thieft by Receiving' by an ambitious but slow Assistant District Attorney, who found later that the charge was unsupportable and dismissed it before Preliminary Hearing was scheduled. A new charge, 'Possession of a Stolen Motor Vehicle' was instituted on several technical grounds. This charge of

'Possession of a Stolen Motor Vehicle' was, on May 23, 1979, plea-bargained down to the Class A Misdemeanor of 'Attempted Possession of a Stolen Motor Vehicle', to which your Appellant pleaded guilty and was sentenced to 11-months consecutively with the 10-year felony sentence your Appellant received 10 years ago, and from whence this appeal issues.

There was only one felony charge at any time--and your Respondent exaggerates when he propounds two felonies when only the orginal existed.

The Respondent's logic is faltering when he equates a felony committed in 1969 and a misdemeanor plea-bargain with the two (2) or more felonies which are a condition of sentencing consecutively in Section 76-3-401(1). The Respondent dives into subsections (2) thru (5) blithly making the point that the Appellant should have been sentenced to many horrible years in the State Prison as a result of the misdemeanor conviction--completely ignoring the controlling law in Section 76-3-401(1).

It should be noted on page four (4) the Respondent states that the Court has authority to sentence consecutively where defendant has been adjudged guilty of two or more offenses. Later he reluctantly admits that Section 76-3-401(1) does state that a defendant must have been adjudged guilty of more than one felony offense, and then the Respondent uses three pages of Brief to urge this Court to ignore the law.

State v. Beck (58[illegible] P.2d 870), the Respondent would have the Court believe, gives support to his position. In fact, the whole appeal centered on the question of whether the trial court had considered the gravity and circumstances of the felonies when it imposed a consecutive sentence. Such are not the facts at issue. Appellent is a misdemeanant--convicted of a Class A Misdemeanor--and Section 76-3-401 clearly sets limitations on the sentencing Court's power to sentence consecutively.

On page nine (9) of the Brief of Respondent, it may be noted that the Respondent is using legal and latin terminology which confuses the Appellent--but using his exact context that it is a fact that under the general legal and statutory principle of in pari materia, similar statutes must be read together for the aggregate, cumulative effect of each to be realized, your Appellant would submit that the reading of Section 77-35-14 and 76-3-401(1) in pari materia (and remembering that 76-3-401 is headlined Concurrent or Consecutive sentences--Limitations.--) the only conclusion is that the Court acted improperly in sentencing Appellant consecutively with the offense he was presently serving. One of the controlling limitations is that the defendant be convicted of more than one felony. This condition has not been met in the instant case, and usin the reasoning propounded by the learned Respondent--construing 76-3-40 to mean that there is some limitation on the Court's power to sentence consecutively--then 77-35-14 must be construed to mean that the Legislature knowingly circumscribed and delineated the Court's power to impose consecutive sentences.

Section 77-35-14 has been drastically changed since the Dodge decision (State v. Dodge, 19 Utah 2d 44, 425 P.2d 781(1967)) and the wording of the old statute, which gave the almost unbridled power to sentence consecutively (in the Dodge case, it was argued that is was foolish and redundant to sentence a man to 5 more years when he already had a life sentence--and under the old statute, your court agreed that the sentencing court had the power to impose a consecutive sentence). The law has been changed, limitations written into the law which prevent the unjust application of the law. These limitations are written by the legislature in the Statutes--and it is plain and clear that the legislature intended to limit the Court's assumption of the unrestricted right to sentence any malefactor consecutively or concurrently. The legislature restricted the court to the case and category of felony convictions, to not more than a cumulative sentence of thirty (30) years, presumes that the sentenced malefactor will be considered by the Board of Pardons and limits the aggregate minimum to less than twelve (12) year

The Respondent, on page ten (10) comes forth with the utterly invalid argument that if the Court was to have sentenced your Appellant to an 11-month sentence concurrent with his present 10-year felony sentence, he would have been released on November 30, 1979. What utter rot! An 11-month sentence imposed by Judge Dee (and by Judge Gowan of the 5th Circuit Court) on May 22, 1979 would have expirated on April 22, 1980--eleven months after its imposition.

- Your Appellant would point out and submit that he was arrested on February 1, 1979--subsequently sentenced to 11-months to be served consecutively to his previously imposed Grand Larceny sentence of 10 years--and is due to be released from Prison on October 30, 1980. Your Appellant will be serving twenty months of Jail and State Prison time for a Class A Misdemeanor.

Your Appellant requests that he be permitted to offer Oral arguments in the instant appeal.

Your Appellant contends that his constitutional rights to a Fair Trial, Equal Protection of the Laws and Cruel and Unusual Punishment have all been abridged by the illegal imposition of a consecutive sentence.

Your Appellent urges and prays this court to resentence him to the 11-month sentence(s) he has received--to be served concurrently as the law provides.

Respectfully submitted,

DANIEL ALLEN TEMPLE
Appellant-in-Person
Box 250
Draper, Utah, 84020

DELIVERY CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing Reply to Brief of Respondent to ROBERT HANSEN, ATTORNEY GENERAL, 236 State Capitol Building, Salt Lake City, Utah, this 11th day of OCTOBER, 1979.

APPELLANT IN PERSON