

1979

# State of Utah v. Daniel A. Temple : Brief of Appellant

Utah Supreme Court

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Daniel A. Temple; Pro Se;

Robert B. Hansen; Attorney General;

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THE STATE OF UTAH,

Plaintiff and Respondent,

v.

No. 16522

DANIEL A. TEMPLE,

Defendant and Appellant.

---

Appeal from a judgment of conviction by the  
Third District Court on May 22, 1979, the Honorable David B.  
Dee, Presiding.

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DANIEL A. TEMPLE, Pro Se  
P.O. BOX 250  
DRAPER, UTAH 84020

ROBERT B. HANSEN  
ATTORNEY GENERAL  
236 STATE CAPITOL BLDG.  
SALT LAKE CITY, UTAH 84114

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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THE STATE OF UTAH :  
Plaintiff and respondent :  
vs : No. 16522  
DANIEL A. TEMPLE :  
Defendant and Appellant :

---

Appeal from a judgement of conviction by the  
THIRD DISTRICT COURT on May 22, 1979, the Honorable  
David B. Dee, Presiding.

---

DANIEL A. TEMPLE  
P. O. Box 250  
Draper, Utah 84020  
Phone (801) 571-2300  
Defendant-In-Person

ROBERT HANSEN  
Attorney General  
236 State Capitol  
Salt Lake City, Utah  
ATTORNEY FOR RESPONDENT

## TABLE OF CONTENTS

	<u>PAGE</u>
Table of Authorities.....	iii
Statement of the Nature of the Case.....	1
Disposition in the Lower Court.....	1
Relief Sought on Appeal.....	2
Statement of Facts.....	2

### ARGUMENT:

POINT I	IN THE ABSENCE OF LEGISLATIVE AUTHORITY, THE COURT DOES NOT HAVE THE POWER TO IMPOSE A CONSECUTIVE SENTENCE IN THE CASE OF A MISDEMEANOR.....	3
POINT II	EXCEPT WHERE CONVICTION IS HAD ON TWO OR MORE OFFENSES, AND BEFORE SENTENCE ON EITHER, THE COURT DOES NOT HAVE THE POWER TO SENTENCE CONSECUTIVELY.....	4
Conclusion.....		5
Certificate of Service.....		6

## TABLE OF AUTHORITIES

Cases Cited: NONE

IN THE SUPREME COURT  
OF THE STATE OF UTAH

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THE STATE OF UTAH :  
Plaintiff and Respondent :  
vs :  
DANIEL A. TEMPLE :  
Defendant and Appellant :

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BRIEF OF APPELLANT

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STATEMENT OF THE NATURE OF THE CASE

This case is an appeal from a judgement of conviction for the Class A Misdemeanor of Attempted Possession of a Stolen Motor Vehicle before the Hon. David B. Dee, Judge, THIRD DISTRICT COURT. Appellant submits that the Court does not have the Authority to impose a consecutive sentence. Appellant was sentenced to a similar consecutive sentence by the Salt Lake Department of the CIRCUIT COURT (Gowans, J.) for the Class A Misdemeanor of Failure to Respond to Officer's Signal to Stop.

DISPOSITION IN THE LOWER COURT

Appellant has been sentenced and is presently in the Utah State Prison.

## RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal on the judgement of conviction, with a remand ordered and sentence to be reimposed according to law.

## STATEMENT OF FACTS

Appellant was arrested on February 1, 1979. On April 23, 1979, he was convicted by his own plea of guilty to the Class A Misdemeanor of Failure to Respond to Officer's Signal to Stop, and sentenced to 11 months in Jail (may serve at City & County Jail, or at State Prison), 'time to run consecutively with time now serving at Utah State Prison', by Judge Floyd H. Gowans, Judge of the CIRCUIT COURT, Salt Lake Department.

On May 22, 1979, Appellant was convicted by his own plea of Guilty to the Class A Misdemeanor of Attempted Possession of a Stolen Motor Vehicle and sentenced to 11 months in the Utah State Prison, sentence to run consecutively with present sentence (10 year Grand Larceny sentence, imposed on December 1, 1969) and concurrently with the sentence of Judge Gowans, by the Hon. David B. Dee, Judge of the THIRD DISTRICT COURT.

Notice of Appeal was timely.

POINT I

IN THE ABSENCE OF LEGISLATIVE AUTHORITY, THE COURT DOES NOT HAVE THE POWER TO IMPOSE A CONSECUTIVE SENTENCE FOR A CLASS A MISDEMEANOR.

SECTION 76-3-401 (UCA) gives the Court authority to impose a consecutive sentence only "---if a defendant has been adjudged guilty of more than one felony offense---"

In subsection (4) of SECTION 76-3-401 (UCA) it appears that some courts are not 'lawfully determined' to impose a consecutive sentence.

Your Appellant submits that the instant case is a Class A Misdemeanor. As Section 76-3-401 (UCA) applies only to felony cases, the sentencing court did not have legal authority under this Section to impose a sentence consecutive to any other sentence-

This case should be remanded to DISTRICT COURT for resentencing and an order should issue to the Hon. Floyd H. Gowans, Judge, Circuit Court, Salt Lake Department, Directing that he resentence your appellant in Criminal No. 79CRS0679 (Class A Misdemeanor Traffic Violation) in Accordance with the law.



POINT II

EXCEPT WHERE A CONVICTION IS HAD ON TWO OR MORE OFFENCES, AND BEFORE SENTENCE ON EITHER, THE COURT DOES NOT HAVE THE POWER TO SENTENCE CONSECUTIVELY.

SECTION 77-35-14 gives the Court the power to impose a consecutive sentence "If the defendant has been convicted of two or more offences, before judgement on either---"

Your appellant submits that he was convicted of Grand Larceny in 1969 and a 10 year sentence was imposed. Surely judgement has already been imposed and the Court's imposition of a sentence to run consecutive to Appellant's 10 year sentence is not authorized by SECTION 77-35-14 (UCA).

This case should be remanded to DISTRICT COURT for resentencing and an order should issue to the Hon. Floyd H. Gowans, Judge, Circuit Court, Salt Lake Department, directing that he resentence your appellant in Criminal No. 79CRS0679 (Class A Misdemeanor Traffic Violation) in accordance with the law.

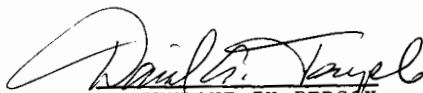
## CONCLUSION

Consecutive sentences are mentioned only twice in the U.C.A., in SECTION 77-3-401 and SECTION 77-35-14. In neither one of the sections does it give the Court authority to impose a consecutive sentence if the offence is a misdemeanor.

Appellant contends and submits that there is no authorization from the legislature to impose a consecutive sentence in the instant case.

DELIVERY CERTIFICATE

I hereby certify that I mailed a true and correct copy of the above and foregoing Brief of Appellant to ROBERT HANSEN, ATTORNEY GENERAL, 236 State Capitol Building, Salt Lake City, Utah, this 27<sup>th</sup> day of August, 1979.

  
DEFENDANT IN PERSON