

2001

State of Utah v. Jeffrey Alan Byrum : Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 :
 JEFFREY ALAN BYRUM, : Case No. 20010410-SC
 : Priority No. 2
 Defendant/Appellant. :

REPLY BRIEF OF APPELLANT

Appeal from a judgment of conviction for sodomy on a child, a first degree felony, in violation of Utah Code Ann. § 76-5-403.1 (1953 as amended), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Anthony B. Quinn, Judge, presiding.

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ARGUMENT

ISSUE: THE TRIAL COURT LACKED JURISDICTION OVER MR. BYRUM'S PROBATION PROCEEDINGS WHERE THE PROBATIONARY TERM HAD EXPIRED AS A MATTER OF LAW .

The State incorrectly argues that a life-long probationary term for defendants adjudged guilty and mentally ill (“GAMI”) is both statutorily authorized and constitutional. The State ignores issues of fundamental fairness and due process in making its argument. See U.S. Const. amend. XIV (Due Process); Utah Const. art. I, § 7 (same).

Discussed at length in Mr. Byrum’s opening brief (“AB”), this Court’s opinion in State v. Green, 757 P.2d 462 (Utah 1988), recognizes the inherent fundamental fairness concerns in sentencing a GAMI defendant to life-long probation. See AB Point II (discussing Green and its application to the present case). The Court described “a perpetual state of limbo” lacking any of the necessary guarantees of “certainty and regularity” afforded probationers. Green, 757 P.2d at 464. The Court also described a scenario where a probationer could be brought into court “decades” later even though the

probationary term was “thought to have been terminated long ago.” Id.

Although Green was decided under the standard probation statute, Utah Code Ann. § 77-18-1, the principles are the same for GAMI probationers governed by Utah Code Ann. § 77-16a-201(2) (Supp. 2001). Ignoring the plain language of the GAMI probation statute, which limits the probationary term to “no less than five years, or until the expiration of the defendant’s sentence, whichever occurs first,” Utah Code Ann. § 77-16a-201(2), would create the same sort of “absurd results.” Green, 757 P.2d at 464. GAMI probationers would be on probation forever, regardless of their record for good behavior. Like Mr. Byrum, they could go years without any violation, fulfill all their treatment requirements, and otherwise live a productive and responsible, law-abiding life. Yet a court at any time could revoke their probation and incarcerate them. This would severely undermine the probationer’s and society’s interests in having finality, certainty, and regularity in the sentencing process. See Green, 757 P.2d at 454.

Contrary to the State’s assertion, Green’s analysis is not distinguishable simply because it deals with the standard probation statute, Utah Code Ann. §77-18-1, as opposed to the GAMI probation statute. See SB n.3 (arguing that Green is not dispositive of this issue). If anything, Green compels the conclusion that GAMI probationers must be afforded the same protections that standard probationers enjoy viz-a-vis a cap on the probationary term as opposed to an indefinite, open-ended period with no finality or certainty in sentencing. Section 77-16a-201 is the counterpart to § 77-18-1.

So too are the probationers governed under the respective statutes. An enlightened society does not discriminate so egregiously between two classes of defendants so as to limit one set to a maximum of 36 months on probation, regardless of the offense, yet place another on life-long probation for no other reason than their mental illness and despite their years of good behavior.

The Utah Code provides procedures to retain jurisdiction over GAMI probationers if added time is necessary to oversee the successful completion of their probation and their reintegration into society. See AB 11-12 & Point III (discussing statutory authority allowing courts to retain jurisdiction over GAMI probationers). By enacting these procedural precautions regarding GAMI probationers, the Legislature recognized that five years is adequate time in most instances to address their special needs. See State v. Deplonty, 749 P.2d 621, 625-26 (Utah 1987) (noting specialized treatment needs of GAMI defendants). In fact, the Legislature gave courts an opportunity to *lessen* the five year term through § 77-16a-201(3)(c) upon a GAMI probationer's application, which is an implicit recognition that even five years, let alone a lifetime, may be too long to retain jurisdiction over a GAMI probationer in some cases. Hence, the State's interpretation of the GAMI probation statute is draconian and treats GAMI probationers in a fundamentally unfair way for no other reason than their mental illness, and disregards trial courts' other options in retaining jurisdiction over them if five years is not enough time to address their particular mental health problems.


The State's interpretation of § 77-16a-201(2) should not be adopted by this Court because it runs counter to the plain language of the statute. See AB Point I (discussing how plain language of § 77-16a-201(2) directs that probation be limited to five years in Mr. Byrum's case). The critical language is written in clear, precise terms, consisting of three phrases separated by commas which leave no room for the possibility of life-long probation. It says, "[t]he period of probation may be for no less than five years, or until the expiration of defendant's sentence, whichever occurs first." Utah Code Ann. § 77-16a-201(2). The State laboriously twists the simple language to achieve a result that runs counter to fundamental notions of fairness and due process by placing a person on life-long probation for no other reason than his or her mental illness. In fact, "whichever occurs first," provides a simple directive for trial courts in determining the length of the probationary period for GAMI defendants. In Mr. Byrum's case, five years would occur before the expiration of his possible life sentence. See AB Point III (discussing time frame and expiration date of Mr. Byrum's sentence). Accordingly, absent any timely and proper Order to Show Cause, revocation hearing, or waiver thereof, the trial court below erred in extending the probationary period. See AB Point III.

CONCLUSION

In light of the foregoing, and based on the arguments set forth in his opening brief, Mr. Byrum respectfully requests this Court to vacate the trial court's order revoking and reinstating his probation for lack of jurisdiction, and extinguish the

probationary term since it expired by operation of statute on July 19, 1995.¹

RESPECTFULLY submitted this 27th day of April, 2002


CATHERINE E. LILLY
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, CATHERINE E. LILLY, hereby certify that I have caused to be hand-delivered ten copies of the foregoing to the Utah Supreme Court, 450 South State Street, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, Third Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 27th day of April, 2002.


CATHERINE E. LILLY

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this ___ day of April, 2002.

¹ Mr. Byrum submits on his opening brief for any arguments raised by the State that are not expressly addressed herein.