

2002

Utah v. Jose Luis Vicente : Brief of Petitioner

Utah Supreme Court

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Jeanne B. Inouye; assistant attorney general; Mark L. Shurtleff; attorney general; David E. Weiskopf; Deputy Salt Lake County Attorney; attorneys for petitioner.

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
Plaintiff-Petitioner,

v.

JOSE LUIS VICENTE,
Defendant-Respondent.

Case No. 20020201-SC

Ct. App. No. 20000955-CA

BRIEF OF PETITIONER

**ON WRIT OF CERTIORARI
TO THE UTAH COURT OF APPEALS**

JOAN C. WATT
CATHERINE E. LILLY
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Counsel for Petitioner

FILED
UTAH SUPREME COURT

SEP - 6 2002

PAT BARTHOLOMEW
CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
JURISDICTION AND NATURE OF THE PROCEEDINGS	1
ISSUES PRESENTED ON APPEAL AND STANDARDS OF REVIEW	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES	2
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
SUMMARY OF ARGUMENT	4
ARGUMENT	
I. A FUGITIVE DEFENDANT IS NOT ENTITLED TO AN APPELLATE DECISION ON THE MERITS OF HIS CLAIM	5
II. A FUGITIVE DEFENDANT IS NOT ENTITLED TO AN APPELLATE ADJUDICATION OF THE LEGALITY OF HIS SENTENCE	7
CONCLUSION	9
ADDENDA	
ADDENDUM A - <i>State v. Vicente</i> , 2002 ut App 43	
ADDENDUM B - Utah R. Crim. P. 22	
ADDENDUM C - District Court Docket, <i>State v. Vicente</i> , Case No. 99107447	

TABLE OF AUTHORITIES

STATE CASES

<i>Hardy v. Morris</i> , 636 P.2d 473 (Utah 1981)	1, 4, 6
<i>State v. Brooks</i> , 908 P.2d 856 (Utah 1988)	8
<i>State v. Clark</i> , 913 P.2d 360 (Utah App. 1996)	8
<i>State v. Layman</i> , 1999 UT 79, 985 P.2d 911	1
<i>State v. Menzies</i> , 889 P.2d 393 (Utah 1994)	6
<i>State v. Tuttle</i> , 713 P.2d 703 (Utah 1985)	6
<i>State v. Vicente</i> , 2002 UT App 43	1, 3, 4, 5, 7
<i>State v. Wanosik</i> , 2001 UT App 241, 31 P.3d 615, <i>cert. granted</i> , Ut. S. Ct. Feb. 5, 2002	4, 5, 6, 7

STATE STATUTES

Utah Code Ann. § 78-2-2 (Supp. 2001)	1
Utah R. Crim P. 22	2, 8

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
Plaintiff-Petitioner,

v.

JOSE LUIS VICENTE,
Defendant-Respondent.

Case No. 20020201-SC

Ct. App. No. 20000955-CA

BRIEF OF PETITIONER

JURISDICTION AND NATURE OF THE PROCEEDINGS

This Court granted certiorari to review the Utah Court of Appeals' decision in *State v. Vicente*, 2002 UT App 43 (memorandum decision) (addendum A), which vacated defendant's sentence imposed in absentia.

This Court has jurisdiction pursuant to Utah Code Ann. § 78-2-2(3)(a) (Supp. 2001).

ISSUES PRESENTED ON APPEAL AND STANDARDS OF REVIEW

1. Should the court of appeals have adjudicated the merits of defendant's appeal where defendant was a fugitive from the law?

Standard of Review: On certiorari, this Court reviews the decision of the court of appeals for correctness. *State v. Layman*, 1999 UT 79, ¶ 3, 985 P.2d 911. Whether an appellate court should adjudicate the merits of a fugitive defendant's appeal is a question of law, reviewable for correctness. *See Hardy v. Morris*, 636 P.2d 473, 474 (Utah 1981).

2. Should the court of appeals have addressed the legality of defendant's sentence under Rule 22(e), Utah Rules of Criminal Procedure, where defendant was a fugitive from the law?

Standard of Review: This issue also presents a question of law. *Id.*

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

The following provision, set forth in addendum B, is relevant to this appeal:

Utah R. Crim P. 22.

STATEMENT OF THE CASE

Defendant was charged by information with unlawful possession of a controlled substance with intent to distribute, a third degree felony. R. 2. Defendant was released under a federal consent decree to Pre-Trial Services. R. 4. When defendant failed to appear for his roll call, an arrest warrant issued. R. 18. Defendant was subsequently booked into jail. R. 20.

On August 15, 2000, defendant pled guilty to attempted possession of marijuana with intent to distribute, a class A misdemeanor. R. 25-32, 67:4. The court accepted his plea, again released him to Pre-Trial Services, ordered him to appear for preparation of a presentence investigation report (PSI), and notified him of his sentencing hearing. R. 31, 33, 36, 67:4. On August 16, the court rescheduled defendant's sentencing hearing. *See* district court docket (attached as addendum C).

When defendant failed to appear for preparation of his PSI, the trial court ordered the issuance of a nonbailable arrest warrant. R. 39, 41-43. Defendant was not

apprehended and did not appear for his sentencing hearing. R. 44, 67 (Tab 2 at 1). The trial court found that defendant had voluntarily absented himself from the sentencing hearing and sentenced him in absentia to a one-year jail term. R. 44-45, 67 (Tab 2 at 1). The trial court also ordered the prosecutor to prepare findings of fact, conclusions of law, and an order. R. 67 (Tab 2 at 2).

Defense counsel filed a motion to correct an illegal sentence, arguing that the trial court erred when it sentenced defendant in absentia. R. 46-47. The trial court subsequently signed the findings of fact, conclusions of law, and order prepared by the prosecutor. R. 48-49. The record, however, includes no order granting or denying the motion to correct an illegal sentence. Although defendant remained a fugitive, defense counsel timely appealed for him. R. 51; *see also* district court docket (attached).

Defendant was still a fugitive when the court of appeals heard argument on defendant's appeal and when it filed its opinion. *See* district court docket (attached). Rejecting the State's argument that the appeal should be dismissed subject to reinstatement should defendant return to the jurisdiction, the court of appeals addressed defendant's claims and vacated his sentence. *Vicente*, 2002 UT App 43.

As of the filing of this brief, defendant remained a fugitive. *See* district court docket (attached).

STATEMENT OF FACTS

An informant led a Salt Lake County sheriff's detective to defendant's home. R. 3. Defendant allowed the detective to enter his home and consented to a search of his

residence. *Id.* The detective found five ounces of marijuana packaged for distribution, a drug scale, and a fraudulent alien resident card. *Id.* Defendant was arrested at the scene. *Id.*

SUMMARY OF ARGUMENT

A defendant is not entitled to review of his claims on appeal while he is a fugitive from the law. The court of appeals therefore erred when it reached the merits of defendant's claims. *State v. Wanosik*, 2001 UT App 241, 31 P.3d 615, which the court viewed as controlling authority, did not involve a fugitive defendant. Further, the court's decision was contrary to controlling precedent from this Court.

The court of appeals also erred in holding that defendant's claims were reviewable under rule 22(e), Utah Rules of Criminal Procedure. Because defendant was a fugitive, the court should not have addressed the legality of defendant's sentence.

ARGUMENT

Defendant was a fugitive at the time he filed his appeal and at the time the court of appeals issued its decision vacating his sentence. The State sought dismissal of defendant's claim, relying on cases holding that a fugitive defendant "cannot call upon [an appellate court] to decide his appeal." *Hardy v. Morris*, 636 P.2d 473, 474 (Utah 1981). The court of appeals, however, declined to dismiss the appeal. *Vicente*, 2002 UT App 43, ¶ 3.¹ The court of appeals gave alternate rationales: (a) *State v. Wanosik*, 2001

¹ *Vicente* was a memorandum decision, not for official publication. Its paragraphs are unnumbered. The State has numbered the paragraphs to facilitate citation.

UT App 241, 31 P.3d 615, required resentencing, and (b) defendant's sentence was a "sentence imposed in an illegal manner," correctable on appeal under rule 22(e), Utah Rules of Criminal Procedure. *Vicente*, 2002 UT App 43, ¶ 3 & n.1.

Neither rationale supports the decision. Under controlling precedent from this Court, a fugitive defendant is not entitled to appellate review of his claims. The court of appeals should not have addressed any issue associated with defendant's appeal. It should not have determined whether error occurred at the sentencing proceeding or whether that error rendered defendant's sentence illegal. Further, while the court determined that its own opinion in *Wanosik* was dispositive, *Wanosik* was not a fugitive when the court decided his appeal and the opinion does not address the appeal rights of fugitive defendants. *See Wanosik*, 2001 UT App 241, ¶ 6.

I.

A FUGITIVE DEFENDANT IS NOT ENTITLED TO AN APPELLATE DECISION ON THE MERITS OF HIS CLAIM

Rejecting the State's argument that a fugitive defendant is not entitled to appellate review of his claim, the court of appeals held that its own decision in *State v. Wanosik*, 2001 UT App 241, 31 P.3d 615, *cert. granted*, Utah Supreme Court order dated February 5, 2002, required adjudication of defendant's appeal. *See Vicente*, 2002 UT App 43, ¶ 2. That holding is contrary to precedent established by this Court.

Under "the settled rule of *Hardy v. Morris*," a fugitive defendant "places himself beyond the reach of the judicial system and any ruling cannot be enforced against him;

therefore, he should not be allowed to pursue an appeal while out of custody.” *State v. Tuttle*, 713 P.2d 703, 704 (Utah 1985) (citing *Hardy v. Morris*, 636 P.2d at 473). “The dismissal of such an appeal is justified on the theory that the [fugitive] should not be allowed to reap the benefit of a decision in his favor when the state could not enforce a decision in its favor.” *Hardy*, 636 P.2d at 474. A fugitive defendant is not entitled “to call upon the resources of the Court for determination of his claims.”² *Id*

Defendant was a fugitive from justice when the court of appeals decided his appeal. He had failed to appear for his PSI, and a bench warrant had issued. R. 39, 41. He had thereafter failed to appear for sentencing, and his bench warrant had not been recalled at the time his appeal was filed and decided. R. 44; *see also* district court docket (attached). Defendant’s bench warrant, in fact, has not yet been recalled; and he remains even now a fugitive from justice. *See* district court docket (attached).

The Court of Appeals therefore ignored the “settled rule” established by this Court when it reached the merits of defendant’s appeal. The Court of Appeals reasoned that its own opinion in *State v. Wanosik*, 2001 UT App 241, controlled. It did not. A decision by the court of appeals cannot abrogate precedent established by this Court. *State v. Menzies*, 889 P.2d 393, 399 n.3 (Utah 1994) (“stare decisis . . . compels a court to follow strictly the decisions rendered by a higher court”). Therefore, even if *Wanosik* had

²A defendant may, however, be entitled to reinstatement of his appeal after he has been returned to custody. *See Tuttle*, 713 P.2d at 704.

addressed the rights of fugitive defendants, it could not have created precedent inconsistent with the precedent established by this Court.

Furthermore, the *Wanosik* court did not address the rights of fugitive defendants. The *Wanosik* opinion does not require that an appellate court adjudicate a fugitive defendant's claims. Although sentenced in absentia, *Wanosik* was no longer a fugitive when his appeal was adjudicated. See *Wanosik*, 2001 UT App 241, ¶ 6. *Wanosik* therefore provides no precedent for the court of appeals' disposition of this issue.³

II.

A FUGITIVE DEFENDANT IS NOT ENTITLED TO AN APPELLATE ADJUDICATION OF THE LEGALITY OF HIS SENTENCE

The court of appeals reasoned, alternatively, that it could consider defendant's claim because the defendant could challenge the sentence in the trial court under rule 22(e) of the Utah Rules of Criminal Procedure. The court of appeals, relying on *Wanosik*, stated that "the illegality of the sentence under Rule 22(a) can be considered for the first time on appeal under Rule 22(e)." *Vicente*, 2002 UT App 43, ¶ 2 n.1.

³This Court granted the State's petition for a writ of certiorari in *Wanosik*. See order dated February 5, 2002. Petitioner's and respondent's briefs have been filed. The issues before this Court in *Wanosik* include the following:

- whether a trial court may presume that a defendant's unexplained absence from sentencing is voluntary where the defendant has been notified, but does not appear;
- whether, in a defendant's absence, a trial court must affirmatively solicit sentencing input from defense counsel and/or the prosecutor; and
- whether failure to affirmatively solicit that input renders a sentence illegal under rule 22(e).

Rule 22(e) provides an avenue for review of a claim that a sentence is “illegal . . . [or] imposed in an illegal manner” where the claim might otherwise be time barred. Utah R. Crim. P. 22(e) (“The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time”). Further, it permits review of that claim for the first time on appeal, i.e., even where the claimant has not preserved the issue below. *See State v. Brooks*, 908 P.2d 856, 860 (Utah 1995).

Rule 22(e) does not, however, provide for review of an alleged illegal sentence where review is barred for other reasons.⁴ Nothing in this Court’s precedent nor in the history of rule 22(e) suggests that it provides an avenue for appellate review where review is barred because of a defendant’s fugitive status. The court of appeals’ contrary conclusion was incorrect.

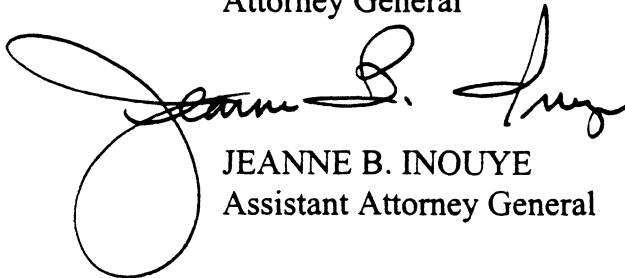
⁴For instance, rule 22(e) does not provide for review of a challenge to the legality of a sentence that is barred by res judicata. *See State v. Clark*, 913 P.2d 360, 362 (Utah App. 1996).

CONCLUSION

This Court should vacate the decision of the court of appeals and dismiss defendant's appeal, subject to reinstatement after he has been returned to custody.

RESPECTFULLY submitted on 6 September 2002.

MARK SHURTLEFF
Attorney General



JEANNE B. INOUE
Assistant Attorney General

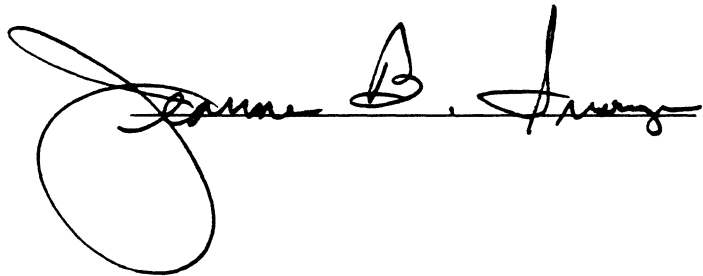
CERTIFICATE OF SERVICE

I hereby certify that four copies of the foregoing Brief of Petitioner were this 6

September 2002 hand-delivered to an agent for the following:

JOAN C. WATT
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Counsel for Defendant/Appellee



Addenda

Addendum A

H
UNPUBLISHED OPINION. CHECK COURT RULES
BEFORE CITING.

Court of Appeals of Utah.

STATE of Utah, Plaintiff and Appellee,
v.
Jose Luis VICENTE, Defendant and Appellant.

No. 20000955-CA.

Feb. 14, 2002.

Joan C. Watt and Nisa J. Sisneros, Salt Lake City, for
appellant.

Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake
City, for appellee.

Before JACKSON, BENCH, and GREENWOOD, JJ.

MEMORANDUM DECISION (Not For Official
Publication)

PER CURIAM.

*1 Appellant Jose Luis Vicente appeals the sentence on his conviction of Attempted Possession of a Controlled Substance with Intent to Distribute, a class A misdemeanor, in violation of Utah Code Ann. § 58-37-8(1)(a)(iii) (1999).

The issues raised in Vicente's appeal are the same issues determined in State v. Wanosik, 2001 UT App 241, 31 P.3d 615, regarding sentencing in absentia and a criminal defendant's Utah Rule of Criminal Procedure 22(a) and Due Process rights. Accordingly, Vicente is entitled to be resentenced under Wanosik because the district court did not (1) make an adequate inquiry into the actual voluntariness of Vicente's absence before proceeding to sentence him in absentia; (2) provide Vicente with the opportunity to present information through counsel in mitigation of punishment and also provide the prosecutor an opportunity to present information relevant to sentencing; and (3) base the sentencing decision on relevant and reliable information regarding the crime, defendant's background, and the interests of society. See *id.* at ¶¶ 36-38.

The State seeks dismissal of this appeal, relying upon cases concluding that an appeal taken by a criminal defendant who is a fugitive may be dismissed, subject to reinstatement if the defendant returns to the jurisdiction and if the State cannot demonstrate that it will be prejudiced by reinstatement. See, e.g., State v. Turtle, 713 P.2d 703, 705 (Utah 1985). Because Wanosik is dispositive of Vicente's appeal and requires a remand for resentencing, we decline to dismiss this appeal. [FN1] However, if Vicente appeals the sentence imposed after remand, the State may raise the dismissal argument in the subsequent appeal.

FN1. Even if we were to dismiss this appeal, Vicente could challenge the sentence in the trial court under Rule 22(e) of the Utah Rules of Criminal Procedure. See Utah R.Crim. P. 22(e) ("The court may correct ... a sentence imposed in an illegal manner, at any time."); see also Wanosik, 241 UT App at n. 11 (stating issues regarding illegality of the sentence under Rule 22(a) can be considered for the first time on appeal under Rule 22(e)). Judicial economy suggests that we resolve the appeal from the sentence and preserve the State's ability to seek dismissal in any appeal taken after resentencing.

We vacate the sentence and remand for resentencing in accordance with Wanosik.

2002 WL 257680 (Utah App.), 2002 UT App 43

END OF DOCUMENT

Addendum B

Rule 22. Sentence, judgment and commitment.

(a) Upon the entry of a plea or verdict of guilty or plea of no contest, the court shall set a time for imposing sentence which shall be not less than two nor more than 45 days after the verdict or plea, unless the court, with the concurrence of the defendant, otherwise orders. Pending sentence, the court may commit the defendant or may continue or alter bail or recognizance.

Before imposing sentence the court shall afford the defendant an opportunity to make a statement and to present any information in mitigation of punishment, or to show any legal cause why sentence should not be imposed. The prosecuting attorney shall also be given an opportunity to present any information material to the imposition of sentence.

(b) On the same grounds that a defendant may be tried in defendant's absence, defendant may likewise be sentenced in defendant's absence. If a defendant fails to appear for sentence, a warrant for defendant's arrest may be issued by the court.

(c) Upon a verdict or plea of guilty or plea of no contest, the court shall impose sentence and shall enter a judgment of conviction which shall include the plea or the verdict, if any, and the sentence. Following imposition of sentence, the court shall advise the defendant of defendant's right to appeal and the time within which any appeal shall be filed.

(d) When a jail or prison sentence is imposed, the court shall issue its commitment setting forth the sentence. The officer delivering the defendant to the jail or prison shall deliver a true copy of the commitment to the jail or prison and shall make the officer's return on the commitment and file it with the court.

(e) The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time.

(f) Upon a verdict or plea of guilty and mentally ill, the court shall impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court retains jurisdiction over a mentally ill offender committed to the Department of Human Services as provided by Utah Code Ann. § 77-16a-202(1)(b), the court shall so specify in the sentencing order.

Addendum C

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH vs. JOSE LUIS CASTRO VICENTE

CASE NUMBER 991907447 State Felony

CHARGES

Charge 1 - 58-37-8(1AIII) - ATTEMPTED POSS W/INTENT TO DIST
CONTR/CNTRFT SUBST (amended)

Attributes: Drug Schedule 1.

Class A Misdemeanor Plea: August 15, 2000 Guilty

Disposition: August 15, 2000 {Guilty Plea}

CURRENT ASSIGNED JUDGE

J DENNIS FREDERICK

PARTIES

Also Known As - JOSE LUIS VICENTE

Defendant - JOSE LUIS CASTRO VICENTE

Represented by: NISA J SISNEROS

Plaintiff - STATE OF UTAH

DEFENDANT INFORMATION

Defendant Name: JOSE LUIS CASTRO VICENTE

Offense tracking number: 10565067

Date of Birth: May 04, 1973

Jail Booking Number: 10565067

Law Enforcement Agency: COUNTY SHERIFF

LEA Case Number: 99-27767

Prosecuting Agency: SALT LAKE COUNTY

Agency Case Number: DAO99004536

Sheriff Office Number: 194152

Violation Date: March 04, 1999

ACCOUNT SUMMARY

TOTAL REVENUE Amount Due: 5,251.86

Amount Paid: 0.00

Credit: 0.00

Balance: 5,251.86

REVENUE DETAIL - TYPE: FINE

Amount Due: 4,625.00
Amount Paid: 0.00
Amount Credit: 0.00
Balance: 4,625.00

REVENUE DETAIL - TYPE: INTEREST

Amount Paid: 0.00
Amount Credit: 0.00
Balance: 626.86

Account Adjustments

Date	Amount	Reason
Jun 29, 2002	626.86	Interest Posted to Date

CASE NOTE

*NEED SPANISH INTER *deft sentenced in absentia 9/22/00, no
PSI*

PROCEEDINGS

04-07-99 Note: CASE FILED BY DET BAILLESS OF SLCO. DEF RELEASED CDR. DEF
TOLD TO CONTACT COURT FOLLOWING RELEASE. melissb

04-07-99 Case filed melissb

04-07-99 ARR scheduled on April 21, 1999 at 09:30 AM in Arraignment -
S31 with Judge ARRAIGNMENT. melissb

04-07-99 Judge ARRAIGNMENT assigned. melissb

04-16-99 Note: FILED FEDERAL CONSENT DECREE RELEASE caroleo

04-16-99 Note: NOTIFIED AMY AT PRE-TRIAL SERVICES TO NOTIFY DEFENDANT
caroleo

04-20-99 ARR - CDR rescheduled on April 30, 1999 at 09:30 AM Reason:
On court's own motion. connieg

04-20-99 Note: Jennifer PTS called and reset case for 4-30-99 connieg

04-30-99 Notice - WARRANT for Case 991907447 ID 328057 connieg

04-30-99 Warrant ordered on: April 30, 1999 Warrant Num: 972066155 Bail
Allowed connieg

Bail amount: 10000.00

04-30-99 Warrant issued on: April 30, 1999 Warrant Num: 972066155 Bail
Allowed connieg

Bail amount: 10000.00

Judge: DENNIS M. FUCHS

Issue reason: Issue warrant on Failure to Appear for non
mandatory court violation.

04-30-99 Minute Entry - Minutes for Sentence, Judgment, Commitme barbarrs

Judge: DENNIS M FUCHS

Clerk: barbarrs

Prosecutor: PARKER, PAUL

DEFT FAILED TO APPEAR. C/O BW TO BE ISSUED FOR \$10,000.00

11-29-99 Warrant recalled on: November 29, 1999 Warrant num: 972066155 eval

Recall reason: Warrant recalled because defendant was
booked.

11-29-99 Note: BUDDY FROM PRE-TRIAL NOTIFIED CLERK FOR COURT DATE
caroleo

11-29-99 INITIAL APPEARANCE scheduled on December 01, 1999 at 09:30 AM
in Arraignment - S31 with Judge ARRAIGNMENT. caroleo

11-29-99 Note: FILED: FEDERAL CONSENT DECREE RELEASE eval

12-01-99 Minute Entry - Minutes for Appointment of Counsel barbarrs

Judge: JUDITH S. ATHERTON

PRESENT

Clerk: barbarrs

Defendant

Interpreter: JACQUELINE GOMEZ

Language: SPANISH

Video

Tape Number: 537 Tape Count: 1424

INITIAL APPEARANCE

The Information is read.

Defendant is arraigned.

APPOINTMENT OF COUNSEL

Court finds the defendant indigent and appoints Legal Defender
Office to represent the defendant.

Appointed Counsel:

Name: Legal Defender Office

City:

Phone:

DRUG ROLL CALL is scheduled.

Date: 12/14/1999

Time: 09:00 a.m.

Location: To Be Determined

Third District Court

450 South State

Salt Lake City, UT 84111

Before Judge: ROGER BEAN

12-01-99 DRUG ROLL CALL scheduled on December 14, 1999 at 09:00 AM in To

Be Determined with Judge BARRETT. barbarrs
12-02-99 Filed: Order requesting Spanish Interpreter connieg
12-02-99 Note: FILED: Affidavit of Indigency - Judge Atherton signed and
appointed LDA to represent the defendant in this case. joannelb
12-03-99 Note: Bail remain CDR joannelb
12-07-99 Filed: Appearance of Counsel by Nisa J. Sisneros mauriem
12-07-99 Filed: Formal Request for Discovery mauriem
12-07-99 Filed: Notice of Bond Hearing mauriem
12-07-99 Note: Calendar Judge assignment changed from ROGER BEAN to
WILLIAM B. BOHLING for appearance on 12/14/1999 barbarrs
12-07-99 Note: DRUG ROLL CALL calendar modified. leonak
12-13-99 Note: Calendar Judge assignment changed from WILLIAM B. BOHLING
to WILLIAM W. BARRETT for appearance on 12/14/1999 barbarrs
12-13-99 Note: DRUG ROLL CALL calendar modified. :terryb
12-14-99 Minute Entry - Roll Call continued carmelle
Judge: WILLIAM W. BARRETT
PRESENT
Clerk: carmelle
Prosecutor: NIELSEN, MATTHEW G.
Defendant
Defendant's Attorney(s): DELLAPIANA, RALPH
Interpreter: RON GOMEZ

Video

Tape Count: 10:39

CONTINUANCE

The Defendant's counsel DELLAPIANA, RALPH FOR SISNEROS, NISA has made a motion for continuance of Roll Call.

The motion is granted.

Reason for continuance:

Conflict in attorney schedule

DRUG ROLL CALL is scheduled.

Date: 12/28/1999

Time: 09:00 a.m.

Location: To Be Determined

Third District Court

450 South State

Salt Lake City, UT 84111

Before Judge: ROBERT K. HILDER

12-14-99 DRUG ROLL CALL scheduled on December 28, 1999 at 09:00 AM in To

Be Determined with Judge HILDER.

carmelle

12-14-99 DRUG ROLL CALL Continued.

12-28-99 Minute Entry - Minutes for Roll Call

patd

Judge: ROBERT K. HILDER

PRESENT

Clerk: patd

Prosecutor: POSTMA, MICHAEL E

Defendant not present

Defendant's Attorney(s): DELLAPIANA, RALPH

Video

Tape Number: 102059

HEARING

DEFT FAILED TO APPEAR C/O \$10,000 B/W TO ISSUE

12-28-99 Notice - WARRANT for Case 991907447 ID 491805 patd

12-28-99 Warrant ordered on: December 28, 1999 Warrant Num: 972096409

Bail Allowed patd

Bail amount: 10000.00

12-28-99 Warrant issued on: December 28, 1999 Warrant Num: 972096409

Bail Allowed patd

Bail amount: 10000.00

Judge: ROBERT K. HILDER

Issue reason: Failure to Appear.

07-31-00 Note: File referred to DRC clerk - Defendant booked on warrant joannelb

07-31-00 Warrant recalled on: July 31, 2000 Warrant num: 972096409 joannelb

Recall reason: Warrant recalled because defendant was
booked.

08-01-00 DRUG ROLL CALL scheduled on August 03, 2000 at 09:00 AM in To

Be Determined with Judge MCCLEVE. :terryb

08-03-00 Minute Entry - Minutes for INCOURT NOTE lauraj

Judge: SHEILA K. MCCLEVE

PRESENT

Clerk: lauraj

Prosecutor: POSTMA, MICHAEL E

Defendant

Defendant's Attorney(s): SISNEROS, NISA J

Interpreter: SONJA COUILLARD

Language: SPANISH

Video

Tape Number: 8/3/2000 Tape Count: 9:48:16

HEARING

C/O SET FOR PRELIMINARY HEARING 8/15/2000 AT 2PM BEFORE JUDGE
MAUGHAN. COURT DENIED ATD'S MOTION FOR A BOND REDUCTION.

PRELIMINARY HEARING is scheduled.

Date: 08/15/2000

Time: 02:00 p.m.

Location: Third Floor - W38

THIRD DISTRICT COURT

450 SOUTH STATE

SLC, UT 84111-1860

Before Judge: PAUL G. MAUGHAN

CUSTODY

The defendant is ordered to the Salt Lake County jail.

08-03-00 Note: INCOURT NOTE minutes modified.

lauraj

08-03-00 PRELIMINARY HEARING scheduled on August 15, 2000 at 02:00 PM in

Third Floor - W38 with Judge MAUGHAN.

lauraj

08-04-00 Filed: Supplemental Request for Discvoery

cheril

08-15-00 Judge FREDERICK assigned.

mauriem

08-15-00 Minute Entry - Minutes for Preliminary Hearing

mauriem

Judge: WILLIAM W. BARRETT

PRESENT

Clerk: mauriem

Prosecutor: POSTMA, MICHAEL E

Defendant

Defendant's Attorney(s): SISNEROS, NISA J

Interpreter: MAYRA VILLAMA

Language: Spanish

Video

Tape Number: 2000-50 Tape Count: 4:09

The Information is read.

Court advises defendant of rights and penalties.

Defendant waives time for sentence.

A pre-sentence investigation was ordered.

The Judge orders Adult Probation & Parole to prepare a Pre-sentence report.

Change of Plea Note

On States motion C/O Amend to Attempt a Class A

HEARING

TAPE: 2000-50 COUNT: 4:09

On Stipulated motion C/O Deft to be released to Pre-Trial

CASE BOUNDOVER

Defendant waived preliminary hearing, State consenting thereto.

This case is bound over. A Sentencing has been set on 9/8/00 at 08:30 AM in courtroom

N41 before Judge J. DENNIS FREDERICK.

08-15-00 SENTENCING scheduled on September 08, 2000 at 08:30 AM in

Fourth Floor - N41 with Judge FREDERICK. mauriem
08-15-00 Note: Case Bound Over mauriem
08-16-00 Filed order: Order of Release to Pre-Trial Services mauriem
Judge wbarrett
Signed August 15, 2000
08-16-00 SENTENCING rescheduled on September 22, 2000 at 08:30 AM
Reason: Correct Calendar. cindyb
08-21-00 Filed: SUPERVISED RELEASE AGREEMENT eval
09-07-00 Filed: Memorandum to Judge from C B Stirling, Adult Probation & Parole
rhondam
09-11-00 Filed: Memo from APP - deft failed to schedule interview
appointment upon release from jail cindyb
09-11-00 Notice - WARRANT for Case 991907447 ID 677500 cindyb
09-11-00 Warrant ordered on: September 11, 2000 Warrant Num: 972122835
No Bail cindyb
09-11-00 Warrant issued on: September 11, 2000 Warrant Num: 972122835 No
Bail cindyb
Judge: J DENNIS FREDERICK
Issue reason: The defendant failed to comply with the Court's order.
09-22-00 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITME cindyb
Judge: J. DENNIS FREDERICK
PRESENT
Clerk: cindyb
Prosecutor: MURPHY, J KEVIN
Defendant not present
Defendant's Attorney(s): SISNEROS, NISA J

Language: SPANISH
Video
Tape Number: 1 Tape Count: 10:39-10:40

SENTENCE JAIL

Based on the defendant's conviction of ATTEMPTED POSS W/INTENT TO
DIST CONTR/CNTRFT SUBST a Class A Misdemeanor, the defendant is
sentenced to a term of 1 year(s)

Commitment is to begin immediately.

SENTENCE FINE

Charge # 1 Fine: \$2500.00
Suspended: \$0.00
Surcharge: \$2125.00
Due: \$4625.00

Total Fine: \$2500.00
Total Suspended: \$0
Total Surcharge: \$2125.00
casehist.935 (89%)[Press space to continue, q to quit, h for help] Total Principal Due:
\$4625.00

Plus Interest
Pay fine to The Court.

The Court finds defendant voluntarily absented himself from sentencing proceedings and the Court sentences the defendant in absentia. Counsel for the State to prepare the findings and order. Defendant to be committed forthwith upon his arrest on this Court's bench warrant.

09-27-00 Fine Account created Total Due: 4625.00 cindyb
09-29-00 Filed: Motion to Correct Illegal Sentence rhondam
10-04-00 Filed order: (signed 10/2/00) Findings of Fact, Conclusions of
Law, and Order Sentencing Defendant in Absentia cindyb
Judge jfrederi
Signed October 02, 2000
10-20-00 Filed: Notice of Appeal rhondam
10-20-00 Filed: Request for Transcript rhondam
10-27-00 Note: Cert/copies of Notice of Appeal, Designation of Record,
Certificate and Request for Transcript sent to Court of Appeals susanc
11-13-00 Filed: Court of Appeals letter to Nisa J. Sisneros (COA #
20000955-CA) - Notice of Appeal filed with Court of Appeals kathys
11-27-00 Filed: Notice of Filing Transcript kathys
11-27-00 Filed: Reporter's Transcript of Proceedings: Plea Hearing on
08/15/00 & Sentencing on 09/22/00 (both transcripts in same
folder) kathys
12-07-00 Note: RECORD/INDEX FORWARDED TO COURT OF APPEALS: 1 FILE, 1
VOLUME OF TRANSCRIPTS kathys
03-13-02 Filed: Letter from Supreme Court - Writ of Cert filed 3-11-02 -
S.C.#20020201-sc sophieo
05-31-02 Filed: Court of Appeals Notice of Transfer (COA # 20000955-CA) kathys
06-29-02 Fee Account created Total Due: 626.86
08-06-02 Filed: Motion for Enlargement of Time and Order sophieo

casehist.935: END