1999

State of Utah v. Enrique Coria : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	Case No. 990374-CA
vs.	:	
		Priority No. 2
ENRIQUE CORIA	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM SENTENCING FOR CONVICTION OF SOLICITATION TO COMMIT MURDER, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-4-203 (1998), IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR WEBER COUNTY, STATE OF UTAH, THE HONORABLE MICHAEL D. LYON, PRESIDING.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	**Case No. 990374-CA**
vs.	:	**Priority No. 2**
ENRIQUE CORIA,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

Defendant appeals from his sentencing for conviction of solicitation to commit murder, a second degree felony, in violation of Utah Code Ann. § 76-4-203 (1999). This court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(e) (1996).

STATEMENT OF THE ISSUE ON APPEAL AND STANDARD OF APPELLATE REVIEW

Issue: Did the trial court act within its discretion in ordering defendant's sentence for solicitation to commit murder to run consecutively to his sentence for a previous murder?

Standard of Review: A sentence will not be disturbed unless it exceeds that permitted by law or the trial court has abused its discretion. *State v. Shelby*, 728 P.2d

987, 988 (Utah 1986). An appellate court finds an abuse of discretion only if "'no reasonable [person] would take the view adopted by the trial court.'" *State v. Schweitzer*, 943 P.2d 649, 651 (Utah 1997) (quoting *State v. Gerrard*, 584 P.2d 885, 887 (Utah 1978)).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 76-3-401 (Supp. 1998) provides as follows:

> (1) A court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses. Sentences for state offenses shall run concurrently unless the court states in the sentence that they shall run consecutively.
>
> (2) The court shall order that sentences for state offenses run consecutively if the later offense is committed while the defendant is imprisoned or on parole unless the court finds and states on the record that consecutive sentencing would be inappropriate.
>
> * * *
>
> (4) A court shall consider the gravity and circumstances of the offenses and the history, character, and rehabilitative needs of the defendant in determining whether to impose consecutive sentences.
>
> * * *

STATEMENT OF THE CASE

On March 20, 1998, defendant was charged with solicitation to commit aggravated murder, a first degree felony, in violation of Utah Code Ann. § 76-4-203 (1999) (R.1). On December 17, 1999, defendant entered a guilty plea to a reduced charge of solicitation to commit murder, a second degree felony in violation of Utah Code Ann. § 76-4-203 (1999) (R.63-66). On March 25, 1999, the court sentenced defendant to a term of 1-15 years for the second degree solicitation and ordered the

sentence to run consecutively to the murder sentence he was then serving (R.12). Defendant timely appealed (R.77).

STATEMENT OF THE FACTS

While incarcerated pending trial on a homicide charge, defendant solicited another inmate to murder a key witness in defendant's murder case for $1,000.

Defendant was arrested on a criminal homicide charge on January 23, 1998, and held in the Weber County Jail through late February awaiting trial (R.92: 3). While incarcerated, defendant met John Garrard, who was housed in the same cell block for several days (R.92:8). Although Garrard and defendant had not previously met, defendant would stop by Garrard's cell to talk when defendant was let out of his cell and allowed to walk around the cell block for one or two hours each day (R.92:8-9).

Defendant told Garrard that he was in jail on a murder charge, and discussed the facts of the murder with him (R.92:9). Defendant told Garrard that he and a friend, James Claude Carroll, had been in defendant's truck looking for rival gang members who owed defendant money from a drug deal (R.92:19,27, 29). Defendant described how he and Carroll had caught up to the rival gang at an Ogden gas station, but had been outnumbered and chased away (R.92:27). A car full of the rival gang members had then followed defendant and Carroll out of the gas station. As the rival car passed defendant's truck, defendant fired a handgun into the vehicle

(R.92:9,29). Defendant told Garrard that one of the bullets fired by Carroll or him had hit someone in the other car in the back of the head (R.92:10,29).

After describing the murder, defendant told Garrard he was worried that Carroll would testify against him and implicate him in the murder (R.92:10). Defendant asked Garrard how much it would cost to have Carroll killed (R.92:10, 24). Garrard told defendant to name a price, and defendant offered Garrard $1000 to kill Carroll (R.92:10-11). Defendant later told Garrard that he could not come up with $1,000, and asked if "a car and a couple of hundred would be good enough" (R.92:24). Defendant and Garrard discussed the arrangement several times a day for the next few days (R.92:12). The two arranged for Garrard to contact defendant when Garrard got out on bail (R.92:11). Defendant gave Garrard his phone number, name and gang name, and offered to provide Garrard with a pistol that he had hidden on his property in order to complete the murder (R.92:11-13).

Garrard felt defendant was very serious about the murder, and that it would have happened with or without his involvement. Garrard believed defendant was an angry and dangerous man (R.92:13-14, 31).

Garrard reported defendant's murder solicitation to the police (R.92:14-16). Detectives Chad Ledford and Steve Zachardy of the Ogden Police Department arranged for Garrard to call defendant while they listened in on the conversation (R.92:15-18).

When Garrard asked defendant about the proposed murder of Carroll, defendant stated that "it had already been taken care of" (R.92:18).

Defendant was arrested for solicitation (R.92:38-39). Although defendant had earlier denied he had talked to anyone about killing Carroll, when confronted with the tape, he asserted that Garrard had approached him about the murder (R.92:41, 48).

Based upon his belief that there was a substantial risk of conviction, defendant pleaded guilty to a solicitation of murder charge without admitting the elements of the crime, as allowed under *North Carolina v. Alford,* 400 U.S. 25 (1970) (R.91:6-7).

At the sentencing hearing, the trial court found that defendant's crimes were both "serious" and "involved violence" (R.93:11) (Addendum A). The trial court also found that defendant was still "in denial of this [crime] notwithstanding his plea of guilty" (R.93:12). The court felt this raised "a question in the Court's mind about how conducive [defendant] would be to supervision in a less restrictive setting" (R.93:11). The court found mitigating circumstances not mentioned in the presentence report, including that defendant is "developmentally slow" and does not see "accurately some of the consequences of his acts"(R.93:12).

The trial court considered the factors listed in section 76-3-401(4) in deciding whether a consecutive sentence should be imposed, including the gravity and circumstances of the crime (a "very serious charge") and defendant's rehabilitative needs, and ordered that defendant's sentence on the murder solicitation charge run

consecutively with his murder sentence (R.93:12). The court found that given the nature of the offense, the consecutive sentence was not "oppressive or unreasonable" (R.93:12).

SUMMARY OF ARGUMENT

The trial court did not abuse its discretion in ordering that defendant's sentence for solicitation of murder run consecutively to his prior murder sentence. Consecutive sentencing is authorized by Utah Code Ann. § 76-3-401, and the court properly considered the factors listed in section 76-3-401 as relevant to the determination whether to impose a consecutive sentence. Defendant's presentence report has not been made a part of the record on appeal, and the trial court's balancing of the various factors relevant to sentencing therefore cannot be reviewed by this Court on appeal.

In addition, the nature of the crime, solicitation to murder a potential witness in defendant's murder case, makes consecutive sentencing especially appropriate, in that a consecutive sentence is necessary to provide a deterrent. Defendant's refusal to acknowledge his guilt also supports the court's finding that consecutive sentencing is appropriate.

Finally, the case law also supports the court's exercise of discretion in imposing a consecutive sentence, in that such sentences have only been reversed upon a showing that the consecutive sentences operated to remove any significant discretion from the Board of Pardons in monitoring a defendant's progress in prison. The sentence

imposed in this case does not add significantly to the minimum sentence that defendant will serve.

ARGUMENT

POINT I

THE TRIAL COURT ACTED WITHIN ITS DISCRETION TO SENTENCE DEFENDANT TO CONSECUTIVE SENTENCES CONSIDERING THE GRAVITY OF THE OFFENSE AND THE HISTORY, CHARACTER, AND REHABILITATIVE NEEDS OF THE DEFENDANT

Defendant asserts that the trial court improperly imposed a consecutive sentence due to its failure to consider his potential to be rehabilitated and to take into account the significance of his *Alford*-type guilty plea, in which he refused to acknowledge his guilt. Brief of Appellant, pp.8-12.

Standard of Review. This Court reviews a trial court's sentencing decisions for abuse of discretion. *State v. Montoya*, 929 P.2d 356, 359 (Utah App. 1996) (*quoting State v. Houk*, 906 P.2d 907, 909 (Utah App. 1995)). "Abuse of discretion 'may be manifest if the actions of the judge in sentencing were "inherently unfair" or if the judge imposed a "clearly excessive sentence."'" *Houk*, 906 P.2d at 909 (quoting *State v. Wright*, 893 P.2d 1113, 1120 (Utah App. 1995)). Additionally, "abuse of discretion results when the judge 'fails to consider all legally relevant factors' or if the sentence imposed is 'clearly excessive.'" *State v. McCovey*, 803 P.2d 1234, 1235 (Utah 1990) (footnotes and citations omitted). This Court "may only find abuse of discretion 'if it

can be said that no reasonable person would take the view adopted by the trial court.'" *Houk*, 906 P.2d at 909 (*quoting Wright*, 893 P.2d at 1120).

Consecutive sentencing statute. When a defendant has been found guilty of multiple felonies, Utah law grants the trial court discretion to impose consecutive sentences. Utah Code Ann. §76-3-401(1) (1999) provides that "[a] court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses." The statute directs the trial court to "consider the gravity and circumstances of the offenses and the history, character, and rehabilitative needs of the defendant in determining whether to impose consecutive sentences." Utah Code Ann. §76-3-401(4) (1999). However, the statute requires only that the court consider these factors, not that it give them equal weight. *See State v. Howell*, 707 P.2d 115, 118 (Utah 1985) ("Although a sentencing judge will give considerable weight to the circumstances of the crime, a judge may also consider other factors."); *State v. Nutall*, 861 P.2d 454, 458 (Utah App. 1993) ("the trial court did not abuse its discretion by placing more emphasis on punishing defendant rather than rehabilitating him"). As such, "the exercise of discretion in sentencing necessarily reflects the personal judgment of the court," seeking to impose "a proper sentence based on the facts and law before it." *State v. Gerrard*, 584 P.2d 885, 887 (Utah 1978).

At defendant's sentencing hearing, the trial court properly considered the statutory factors, and found that the "gravity and circumstances of the offenses and the history, character, and rehabilitative needs of the defendant" supported the imposition of consecutive sentences. The court's consideration and balancing of these factors was thorough and careful, and its ruling was not an abuse of discretion.

The gravity and circumstances of the offenses. At the sentencing hearing, the trial court discussed the nature of defendant's crimes and found them to be grave and serious (R.93:12) (Addendum A). The first offense was a gang-related drive-by shooting and murder in which defendant opened fire on the passing vehicle of a rival gang member (R.92:9,27,29). The second offense was a solicitation to kill a witness to defendant's murder offense, with defendant asking a fellow inmate to kill the passenger in his truck during the murder because he was afraid the witness would testify against him (R.92:10).

These separate crimes are both serious and warrant consecutive sentences. Noting that both crimes were violent, the trial court found that defendant's solicitation of a murder was especially serious under the circumstances: "the solicitation to kill a person who may be a witness in a homicide seems to the Court to be a very serious charge and it's one to which he pled guilty" (R.93:12).

Indeed, the specific facts of this crime make consecutive sentences especially appropriate. While in custody for murder charges, defendant solicited the murder of a

witness in his pending case. Imposition of consecutive sentences is the only way to deter such conduct because if, as in this case, a defendant anticipating a murder conviction were to only face a concurrent sentence for killing a witness in his case, there would not be any disincentive to making the attempt. *See* Utah Code Ann. § 76-3-401(2) (1999) (creating a presumption in favor of consecutive sentences where a later offense is committed while defendant is imprisoned or on parole).[1]

Instead of considering the serious nature of his crime, defendant simply criticizes the state's evidence, reciting a limited and skewed version of the facts.[2] However, the nature of the state's evidence is not an issue at sentencing. Imposition of any sentence is based upon a finding that defendant is, in fact, guilty, and defendant's criticism of the state's evidence does not undercut the court's finding regarding the seriousness of the crime.

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[1] At sentencing, the prosecutor argued that the court should "send a message to other inmates who are sitting in the Weber County Jail that this county will not tolerate somebody making arrangements to kill a witness in a case." Defendant asserts that the court abused its discretion "by even considering" this argument (Brief of Appellant, p. 12), but fails to explain why the prosecutor's statement is improper: deterrence of others is a proper sentencing consideration, and consecutive sentences are appropriate, even necessary to provide a deterrent under these circumstances. *State v. Gardner*, 947 P.2d 630, 634 (Utah 1997) (traditional justifications for punishment include retribution, incapacitation, deterrence, and rehabilitation).

[2] Defendant likewise argued his innocence to the trial court, prompting the prosecutor to describe at length the strong evidence of guilt which formed the basis for defendant's guilty plea (R.93:5-9). The trial court responded by simply noting that defendant had, in fact, pled guilty to the charge (R.93:12).

Defendant's history, character, and rehabilitative needs. In sentencing defendant to consecutive terms, the court considered all of the information contained in defendant's presentence report, the accuracy of which is not challenged, and which has not been made a part of the record on appeal. In the absence of the report, the appellate court must assume that the information contained in the report would support the court's ruling. *State v. Eloge*, 762 P.2d 1, 2 (Utah 1988) ("defendant has not provided this Court with a copy of the presentence report, so there is nothing before this Court to determine whether the trial court's use of that report amounted to an abuse of discretion. Absent a record, this Court presumes regularity in the proceedings below."); *State v. Nuttall*, 861 P.2d 454, 458 n. 12 (Utah App. 1993) (appellate review of sentencing decision is limited when presentence report is not made a part of the record on appeal).

Thus, defendant's assertion that the trial court "failed to consider his potential to be rehabilitated" (Brief of Appellant, p. 9) is unsupported by the record, and wrong. The record indicates that the court considered the information contained in defendant's presentence report, which defendant does not question on appeal. The court also considered the fact that a psychological evaluation had determined that defendant is "somewhat developmentally slow" (R.93:12).

Given the facts of the case, the court properly found that defendant did not have a strong potential for rehabilitation, especially in light of defendant's refusal to acknowledge his guilt:

> The Court will make the following findings that this defendant has been convicted of a crime of homicide, murder, and while waiting trial on that charge commits another serious crime that also involved violence. It also, it will observe from the report that [defendant] appears to be in denial of this notwithstanding his plea of guilty. Therefore, [it] raises a question in the Court's mind about how conducive he would be to supervision in a less restrictive setting.

Sentencing Hearing Transcript, p. 11-12 (R.93:11-12).

Defendant also asserts in his brief that he has no prior record of violent crimes (aside, presumably, from his murder conviction). Brief of Appellant, p.11. However, defendant does not cite to the record on appeal in support of this assertion, and there is thus no way to evaluate the nature of defendant's past criminal record. As noted above, the nature of defendant's background as described in the presentence report is not subject to review in the absence of a proper record. Further, consecutive sentencing may be appropriate even where the defendant had no prior violent crimes on his record. *State v. Schweitzer*, 943 P.2d 649, 652 (Utah App. 1997) (consecutive sentences appropriate for defendant without violent criminal history; defendant was unable to show that court did not consider this factor in sentencing).

Effect of defendant's *Alford* plea. Defendant makes no argument that would diminish the seriousness of his crimes, instead claiming that the court improperly failed

to consider the fact that defendant still claims to be innocent. "The Court failed to take into account that the plea of guilty was in the nature of an Alford plea . . . . At no time did the Appellant admit there was a factual basis for his plea." Brief of Appellant, p. 8. An *Alford* plea is taken when a court accepts a defendant's guilty plea even though the defendant refuses to make an admission of guilt:

> While typically guilty pleas "consist of both a waiver of trial and an express admission of guilt," Alford pleas are ones in which a defendant "voluntarily, knowingly, and understandingly consents to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime."

State v. Stilling, 856 P.2d at 672 (*quoting Alford*, 400 U.S. at 37).

Defendant complains that the court failed to acknowledge the significance of his *Alford* plea, as if this were a factor to be considered in his favor. Brief of Appellant, p. 8-9. To the contrary, the trial court properly found that defendant's refusal to acknowledge his guilt shows a lower likelihood of rehabilitation and a need for a more restrictive sentence. *Compare State v. Galli,* 967 P.2d 930, 938 (Utah 1998) (the fact that defendant confessed "and admitted responsibility for the crimes he committed" reflected positively on his character and weighed against consecutive sentencing).

In sum, under these facts, the trial court's decision to run defendant's sentences consecutively was not an abuse of discretion. The court considered all of the relevant factors in imposing the consecutive sentence and defendant has failed to show that no reasonable person would take the view adopted by the trial court. *See Schweitzer*, 943

P.2d at 652-53 ("because the length and consecutive nature of the terms are within the statutory parameters, we cannot say that defendant's consecutive prison and jail terms are either unfair or unnecessarily harsh"). Ultimately, since the presentence report has not been included in the record on appeal, there is no basis for this court to consider whether the trial court reasonably balanced the factors it considered in sentencing defendant. *Eloge*, 762 P.2d at 2.

Case law. Defendant cites to two cases where appellate courts have reversed a trial court's imposition of consecutive sentences: *State v. Smith,* 909 P.2d 236 (Utah 1995), and *State v. Strunk,* 846 P.2d 1297 (Utah 1993). The rulings in both of these cases were based upon an issue which is not raised in this case: extremely long consecutive sentences that essentially removed all discretion from the Board of Pardons.

In *Smith*, the sentencing court stacked four 15-year minimum mandatory terms, resulting in a sixty-year sentence without possibility of parole. *Smith,* 909 P.2d at 244. In a ruling "limited to the facts of this case," the Utah Supreme Court held "it unreasonable and an abuse of discretion to have imposed essentially a minimum mandatory life sentence and thereby deprive the Board of Pardons of discretion to take into account defendant's future conduct and possible progress toward rehabilitation." *Id.* at 245.

In *Strunk*, a 16-year-old defendant pled guilty to first degree murder, child kidnaping, and aggravated sexual abuse of a child. *Strunk,* 846 P.2d at 1299. He received a life sentence on the first degree murder, and consecutive minimum mandatory sentences of 15 years for the child kidnaping and nine years for the aggravated sexual assault of a child. *Id.* at 1299, 1301. The court remanded the case because "the trial court abused its discretion in failing to sufficiently consider defendant's rehabilitative needs in light of his extreme youth and the absence of prior violent crimes." *Id.* at 1302.

The court went on to address Strunk's sentence. "By ordering Strunk's minimum sentences . . . to run consecutive to each other, the trial court assured that Strunk would spend a minimum of twenty-four years in prison before being eligible for parole." *Id.* at 1301. The Court noted, "While imprisonment for that period of time, or even longer, may prove to be necessary and appropriate, the twenty-four-year term robs the Board of Pardons of any flexibility to parole Strunk sooner." *Id.* Accordingly, the court directed that "if on remand the trial court again imposes the longest minimum mandatory terms for these two offenses, all three terms should be ordered to run concurrently to afford the Board of Pardons the flexibility to adjust Strunk's prison stay to match his progress in rehabilitation and preparation to return to society." *Id.* at 1302.

Strunk and *Smith* are best understood as departures from the general rule that consecutive sentences are within the trial court's discretion, and were based on a finding that the trial court acted to prevent the Board of Pardons from exercising any discretion over the term of the sentence in light of defendant's later progress. In this case, the imposition of consecutive sentences does not significantly alter the Board of Pardon's ability to monitor defendant's rehabilitation and adjust his sentence accordingly. Defendant's sentence for murder is for 5 years to life (R.93:2). Defendant's sentence for solicitation to commit murder is for 1-15 years (R.93:12). The Boards of Pardons therefore retains wide discretion to release defendant from prison only one year later than they would if the sentences were ordered to run consecutively. Indeed, under Utah Code Ann. § 77-27-9(1)(b) (Supp. 1998), the Board may release defendant even before the minimum term has been served if mitigating circumstances justify the release. *Foote v. Utah Board of Pardons and Parole*, 808 P.2d 734, 735 (Utah 1991) (The Board of Pardons has the "unfettered discretion" to release defendant after any minimum period of the indeterminate sentence); *see also Schweitzer*, 943 P.2d at 652 (*Strunk* and *Smith* rulings were based upon infringement of the Board of Pardons' duty to monitor defendant's progress).

Accordingly, the concerns underlying the decisions in *Strunk* and *Smith* are not present in this case, and the court did not abuse its discretion in imposing the consecutive sentences. *See Smith,* 909 P.2d at 245 ("We do not mean to imply by this

ruling that consecutive sentences are never appropriate."); *State v. Jolivet,* 712 P.2d 843, 844 (Utah 1986) ("Having determined that the consecutive sentences are statutorily permissible, we find no abuse of discretion by the trial court in their imposition in this case.").

CONCLUSION

Based on the foregoing arguments, this Court should affirm defendant's consecutive sentence.

RESPECTFULLY SUBMITTED this 13 day of December, 1999.

JAN GRAHAM
Attorney General

SCOTT KEITH WILSON
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing Brief of Appellee was mailed first class mailed, postage prepaid, to Maurice Richards, PUBLIC DEFENDERS ASSOCIATION, INC. OF WEBER COUNTY, 2568 Washington Blvd., Suite 102, Ogden, UT 84401, this 13 day of December 1999.

Addendum A

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	Case No. 98-1901227
Plaintiff,	:	
vs.	:	
ENRIQUE CORIA,	:	
Defendant.	:	

SENTENCING HELD MARCH 25, 1999

BEFORE

JUDGE MICHAEL D. LYON

ORIGINAL

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* * *

March 25, 1999

HONORABLE MICHAEL D. LYON PRESIDING

P R O C E E D I N G S

THE COURT: State versus Enrique Coria. Mr. Perkins, I am in receipt of your letter as well as your critique of the pre-sentence report so I understand --

MR. PERKINS: This is what I prepared and (inaudible) attached to this one so that's why I did that. I didn't get the pre-sentence report until yesterday when I, cause I didn't want to come again if it wasn't ready so I called over and spoke to your clerk and she indicated that they had one. So, I came over and got a copy. Then I immediately included the same things that I had included in Judge Dutson's Court.

THE COURT: Okay.

MS. BEATON: The State didn't get a copy of whatever you're referring to.

THE COURT: Well, it's a response to the presentence of this issue. And you did not get a copy of that?

MR. PERKINS: It's the same one that you've got from Judge Dutson's Court.

MS. BEATON: I don't recall getting one in Judge Dutson's Court. What's the objection to it.

MR. PERKINS: No, no. It was the response to the

presentence investigation and it had all the letters with it. Were you, you were there in sentencing, weren't you?

MS. BEATON: Yeah, I had a look at that. Yeah, I have.

MR. PERKINS: I was going to say, you've had that for months.

THE COURT: Do you have any other brief statement you'd make before sentencing?

MR. PERKINS: Your Honor, I would. My brief statement would go to the fact that in this particular instance Mr. Coria was awaiting getting the finalization for bail when this instant was alleged to occur. The Court will recall after he was convicted of homicide we came here, we plead no contest under an Alford plea because of the fact that he'd already been convicted of murder of second degree, a second degree murder, first degree felony and was facing five to life so, I think that's somewhat laid out in my letter but I wanted to remind the Court because part of the response from the probation officer in Salt Lake that went and did this report, Mr. Coria indicates to me he talked to that individual for maybe five minutes when he came and saw him down in prison. So, he really didn't have much time to see Mr. Coria and get a feel for him. Nor do I think that they had any of the other information that I had furnished and had been

furnished for the presentence report that was initially prepared here in Ogden which included the psychological evaluations done by Dr. Berger, Dr. Berger and the sociology, the sociological report done by Mr. Beesley in this regard.

The other thing that the Court should be aware is that when Mr. Coria was charged with this a day after the preliminary hearing he was then taken into custody when he was out on bail. So he's served about nine or ten months in jail because this charge making him felony on a felony because he already posted bail relative to the homicide.

My view in this particular case is because when you're talking about the only testimony was from the individual John Gerrard at the preliminary hearing, his testimony was the first time he ever meets Mr. Coria and Mr. Coria is soliciting him to, you know, commit this homicide. Mr. Gerrard didn't know that James Carrol was his best friend and has been his best friend for two or three years prior to this time, that they hung out together. Always hung out together. He didn't know that. Obviously had he known that he might not have made those statements. The credibility was certainly at issue and it still remains an issue in my estimation and mind. Mr. Coria is sentenced and is serving a five to life at the present time for the homicide. He indicated to me today

that he's already involved in some programs at the prison. He's already involved in, it's called Conquest. And in that they have different areas and fields in which he'll be involved in including drug awareness, alcohol counseling, group setting, group therapy, orientation awareness, anger management, and he's not sure of all the areas in which he'll be in. Obviously this wasn't even known to the people preparing the presentence report so they're not, they're certainly not getting a very complete story as to what Mr. Coria is like.

I make all of these representations to the Court because my view is that the sentence shouldn't even be concurrent or consecutive. My view is the fact that the way this case was postured Mr. Coria should be given credit for time served and this case ought to be terminated because he served about nine months for this particular offense because he wasn't entitled to bail at that point in time. So, in essence, it was for this particular offense. So, obviously, we think that that's more than enough for what the allegations were. And it's important to note that Mr. Coria never, ever did anything to follow up on. Matter of fact, what he did was he kind of told Gerrard the first time he called him after he was out, he ignores him, doesn't respond the second time he calls. He said, I've already taken care of it. Obviously, he wasn't meaning

that he'd done anything because Mr. Gerrard, nothing was ever done or attempted, excuse me, with Mr. Carroll, his friend. So, I think the nine months that he served is sufficient.

THE COURT: Thank you. Do you wish to say anything, Mr. Coria?

MR. CORIA: No.

MS. BEATON: The State does.

THE COURT: You may be heard.

MS. BEATON: Thank you. You Honor, this feeling of Mr. Palmrey and I, who prosecuted both the murder and were assigned to this particular case, that the sentencing recommendation from Adult Probation and Parole is appropriate in this case, that this crime be sentenced consecutive to the murder case that he has.

Mr. Perkins wants to talk about John Gerrard, the inmate who came and testified and unfortunately this Court did not get the opportunity to hear the preliminary hearing. But, nonetheless, Mr. Gerrard came down here and testified at both that preliminary hearing and at the actual murder trial to a variety of facts that he knew that were not public knowledge, that had not placed in the newspaper, or any other way that he could have found that information out but for the fact that he was talking to the defendant. And in addition to the defendant telling him a

great many details about the crime that he had committed, he also indicates to him at that time that he would give him $1,000 if he were willing to kill the other individual who was in the truck.

Now, at some point in time Mr. Coria knew. This is a situation where this case goes unsolved essentially for almost a month's period of time because there were no witnesses. We have a group of individuals that come from Logan to the Weber County area and they've never seen the defendant, they don't know him personally or anything like that. And they end up getting shot at repeatedly by the defendant and then Mr. Carrol is riding along with the defendant. So, the defendant knows that this case is essentially based on the fact that he confesses and that Mr. Carrol is also in the car and he has also given a statement to Detective Ledford of the gang unit.

So, the defendant in his own mind and according to John Gerrard told Detective Ledford that the defendant sees C.J. Carroll, the witness in this case, and the guy that's in the car with him, despite the fact that he's a friend of his, as an essential witness for the State and an essential witness in order to see that he's convicted on the murder case. Also, the defendant makes comments to John Gerrard, things about ballistics and how he didn't think that we would be able the ballistics that are found

in the victims head as compared to the gun that was recovered that the defendant had the night that he was arrested and those sorts of things. Thereby making him even more of a necessary witness in the State's case.

There was also some indication, after speaking with Mr. Carroll, the witness in the case, that the defendant may, in fact, have been upset because he was also not charged in this crime. There was an incident apparently where the defendant, after he was bailed out, went over to Mr. Carroll's home and was mad and engaged in some sort of angry display there, ripping up pictures and that sort of thing. Was angry because he also wasn't charged. And, in fact, there were two different guns in the car and two different guns were fired on that night. Now, the defendant admitted that at one point, he's questioned first and he admits to using both of the guns at some point in that night.

Mr. Carroll indicates he never was involved in any of the guns, although from what it was looking like in the defendant's reaction it may have been possible that Mr. Carroll may have been using one of the two guns, as well. But we do think the gun that shot the victim was the one that the defendant used because that's what the defendant told us.

Also, in addition to Mr. Gerrard, if we're to

comment, obviously we're not here for trial but if we're going to comment on Mr. Gerrard as a witness just in general because I do agree with Mr. Perkins assessment. This was a case where an inmate contacts Detective Ledford. He, in fact, contacts his attorney, Mr. Miles, who then in turn contacts Mr. Saunders from our office, who, then in turn, we then make arrangements for him to go talk to Detective Ledford. But Mr. Gerrard, when he's doing this, is doing this as some risk to himself. I mean he was obviously concerned both of the two times that he testified because he's in the Utah State prison himself and he knew he was going to go to the Utah State prison. So, he's risking his life essentially by coming and testifying on two occasions. There was nothing in it for him. He was not given any kind of concession on the charges he currently had pending while he was in the Weber County jail from the State of Utah in exchange for his testimony against this defendant and he has not since been given any sort of consideration for it and never, in fact, asked for any consideration for it.

Spoke with Detective Ledford on at least two or three different occasions. Actually was willing to participate in a monitored call in which he did speak with the defendant on two different occasions and did all of this without requesting anything in exchange from the

State. No leniency on his charges, no intervention at the Board of Pardons or anything for himself. And essentially the reason he said that he came forward was because this guy is talking about killing another person while he's sitting in the Weber County jail awaiting trial on a murder case.

Now, as far as the time that he has served while he was in and he did get, he actually did bail out at one point in time on a property bond. He then did come back in on felony, on felony status. It was the felony on felony status which made non-bailable at that point in time but the State is prepared to concede that he should be receiving credit for time served, I believe he'd received credit for time served in the murder case though and it doesn't seem necessary that he receive credit for time served on each of the two crimes.

In addition, your Honor, this is a situation where somebody is awaiting trial on a murder case and in order for the State to put forth cases in this county and in this State, it is necessary that we have witnesses who are available to testify. And essentially what the defendant was willing to do was to snub out an essential witness or a witness that we thought would be essential originally when the case was filed, to snub that witness out prior to actually going to trial so he could somehow

prevent us from actually going to trial and putting this case to the Court.

The State's position is is that the Defendant did, one, and has been convicted of the murder charge, and, two, has now admitted to this solicitation type charge. Both of these incidents are very serious and both of these deserve that the defendant receive an appropriate punishment. And essentially, also, to send a message to other inmates who are sitting in the Weber County Jail that this county will not tolerate somebody making arrangements to kill a witness in a case. It is the State's position that his sentence should be consecutive to the murder case.

MR. PERKINS: Your Honor, if I may respond.

THE COURT: Briefly.

MR. PERKINS: Thank you, your Honor. Your Honor, I think that it's obviously a situation for a concurrent. We're talking about, the only reason it's presumptively concurrent unless there is a showing that of non-rehabilitation type of aspects and all that. Those aren't addressed. Those weren't addressed, either in the presentence report done in Judge Dutson's Court nor in this second report. This second report, I don't know, if we knew it was going to be like that we could have done it three months ago as far as the information that it supplied.

Obviously, Ms. Beaton and I have a much different view as far as Mr. Gerrard is concerned, what he said and how it (inaudible). But the point is, the State charged this as a soliciting, not as a conspiracy because they never had any overt acts and they knew they couldn't ever establish any overt acts. They're talking about this one jailhouse confession at best as being the foundation for this charge which obviously people in jail say all kinds of things.

Mr. Coria, as I indicated in my response to the Court, Gerrard brings up the subject and Mr. Coria just says that's what he did. I never wanted to kill my friend and he still doesn't. Never has. Never did anything to do it. So, that's our position, your Honor. We are prepared for sentencing. I would indicate that relative to the other charge he does have a prison assessment already that's given of 18 years so that's where that stand relative to active prison at this particular time.

THE COURT: The Court will make this observation that he did plead guilty to a criminal solicitation. The Court will make the following findings that this defendant has been convicted of a crime of homicide, murder, and while waiting trial on that charge commits another serious crime that also involved violence. It also, it will observe from the report that appears to be in denial of

this notwithstanding his plea of guilty. Therefore, raises a question in the Court's mind about how conducive he would be to supervision in a less restrictive setting. The Court further finds that subsequent to his arrest he then commits another serious grave crime.

The pre-sentence report does not address any mitigating circumstances but the Court will make this finding based on Dr. Beasley's report that was submitted to the Court that he does appear to the Court to be somewhat developmentally slow, perhaps has the equivalent mental development of a twelve to fourteen year old and sometimes does not see the, accurately some of the consequences of his acts.

This Court has balanced all of these considerations and since, also what Ms. Beaton has observed that the solicitation to kill a person who may be a witness in a homicide seems to the Court to be a very serious charge and it's one to which he plead guilty. Having regard, therefore, for his potential to be rehabilitated, having regard for the severity of all of these aggravating circumstances, the Court sentences the defendant to serve a prison term of one to fifteen years and I will order that that be served consecutively. It strikes the Court that given the nature of this offense that does not prove to the Court to be oppressive or unreasonable. And I'm doing that

also mindful that he's already down there five years to life but my guess is that they could keep him as long as they wanted to but they will also take a look at this sentence and recognize that in the Court's judgment, and they look to what the trial judge is recommending, this Court is concerned about this conduct and this case on the heels of a very serious crime.

You have thirty days in which to file an appeal of this size.

MR. PERKINS: Thank you, your Honor.

(Whereupon the sentencing was concluded.

CERTIFICATE

I HEREBY CERTIFY that the foregoing transcript in the before mentioned hearing held before Judge Michael D. Lyon was transcribed by me from a video tape and is a full, true, and correct transcription of the proceedings as set forth in the preceding pages to the best of my ability.

Signed this 9th day of August, 1999 in Sandy, Utah.

Carolyn Erickson
Certified Shorthand Reporter
Certified Court Transcriber

My Commission expires May 4, 2002