

2002

Utah v. Jeffery Russell Finlayson : Reply Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

THE STATE OF UTAH, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 :
 JEFFERY RUSSELL FINLAYSON, : Case No. 20020339-SC
 :
 Defendant/Appellant. :

RESPONSE TO CROSS-PETITION AND REPLY BRIEF OF PETITIONER

This case is here for a review of the Utah Court of Appeals' decision affirming Appellant Jeffery Russell Finlayson's sentence for one count of rape, a first degree felony in violation of Utah Code Ann. § 76-5-402 (1999), and one count of forcible sodomy, a first degree felony in violation of Utah Code Ann. § 76-5-403(2) (1999).

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v.	:	
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SUMMARY OF THE ARGUMENTS

This brief has two parts. The first is a response to the State’s cross-petition on the issue of whether the sentencing court had jurisdiction to re-sentence Mr. Finlayson after this Court modified his conviction. The second part is a reply to the State’s response to Mr. Finlayson’s argument that errors in the pre-sentence investigation report tainted the sentencing.¹

¹ The posture of this appeal is slightly unusual. Originally, Mr. Finlayson petitioned this Court for a review of the Court of Appeals’ opinion on two issues: 1) its ruling that the trial court “may not have had jurisdiction to re-sentence” Mr. Finlayson, and 2) its ruling that the mistakes in the pre-sentence investigation report do not justify a remand of this case or a vacation of the sentence with a remand. State v. Finlayson, 2002 UT App 36. Mr. Finlayson outlined problems with these rulings and requested a review of both. Pet. for Writ of Cert. 10-17.

Then, the State cross-petitioned only on the jurisdictional issue. Condit. Cross-Pet. for Writ of Cert. 1.

This Court granted both the petition and cross-petition. Pet. Add. D.

Accordingly, Mr. Finlayson filed an opening brief and presented arguments on both the jurisdiction and pre-sentence investigation report issues. Pet. 11-20. The State responded to Mr.

The first part, which is the response to the State's cross-petition issue, shows that the trial court had jurisdiction to re-sentence Mr. Finlayson after this Court reversed one count of his three-count conviction.² This is because changing part of a conviction warrants re-evaluation of the sentence as a whole, and the trial court had to re-evaluate the sentence in light of this Court's holding. Furthermore, the State has cited no authority to the contrary, and has no basis for its argument that the trial court lacked jurisdiction. And so, the trial court's re-sentencing was proper.

The second part of this argument, which is the reply to the State's response to Mr. Finlayson's petition issues, demonstrates that the most appropriate remedy in this case is a vacation of the sentence, a remand for correction of the pre-sentence investigation report, and re-sentencing. This is because due process requires re-sentencing where the trial court relied on an inaccurate pre-sentence investigation report and did not disclaim

Finlayson's arguments on both issues in a red brief entitled "Brief of Cross-Petitioner and Respondent on Certiorari Review." Cross-Pet. 8-18.

At this point, the rules technically require a response to the cross-petition issue, which is the jurisdiction issue, and a reply to the State's response on the petition issues, which are the jurisdiction and pre-sentence investigation report issues. Utah R.App. 51(b) (2002). However, because the jurisdiction issue is both a petition and cross-petition issue, and because it was thoroughly briefed in Mr. Finlayson's opening brief, the response portion to the State's cross-appeal more closely resembles a reply brief. There is no statement of the issue, standard of review section, or other such information typical of a response brief. Also, discussion is limited to a response to the State's arguments. This is appropriate to avoid needless repetition. See Utah R.App. 24(c) (2002) ("The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief.")

² This Court reversed his aggravated kidnaping conviction in State v. Finlayson, 2000 UT 10, ¶ 1, 994 P.2d 1243.

reliance on the inaccuracies. This is explained in United States Supreme Court and Tenth Circuit cases.³ It is also apparent from this Court's opinions in State v. Johnson, 856 P.2d 1064 (Utah 1993)⁴ and State v. Veteto, 2000 UT 62, 6 P.3d 1133. Here, the trial court did not disclaim reliance on the inaccurate portions of the report, and so vacation of the sentence and remand for error correction and re-sentencing is the appropriate remedy.

ARGUMENTS

I. CONTRARY TO THE STATE'S ARGUMENTS, THE TRIAL COURT HAD JURISDICTION TO RE-SENTENCE MR. FINLAYSON, AND THIS COURT HAS JURISDICTION TO HEAR THIS APPEAL

The State's argument that the trial court did not have jurisdiction to re-sentence Mr. Finlayson after this Court reversed one count of his three-count conviction is unreasonable and is not supported by authority.

First, the argument is unreasonable because the modification of a conviction warrants re-evaluation of the sentence as a whole.⁵ This is basic.⁶ Modification of the

³ Gardner v. Florida, 430 U.S. 349, 351 (1977); United States v. Peterman, 841 F.2d 1474, 1483 (10th Cir. 1988); United States v. Gattas, 862 F.2d 1432, 1435 (10th Cir. 1988).

⁴ This case was superseded on other grounds as stated in State v. Hammond, 2001 UT 92, 34 P.3d 773.

⁵ See United States v. Pimienta-Redondo, 874 F.2d 9, 14 (1st Cir. 1989) ("When the conviction on one or more of the component counts is vacated, common sense dictates that the judge should be free to review the efficacy of what remains in light of the original plan, and to reconstruct the sentencing architecture upon remand, within applicable constitutional and statutory limits, if that appears necessary in order to ensure that the punishment still fits both crime and criminal."); United States v. Bentley, 850 F.2d 327, 328 (7th Cir. 1988) ("Our court has concluded that whenever a reversal on appeal undoes a sentencing plan, or even calls the plan into question, the district court should be invited to re-sentence the defendant on all counts

number and severity of counts in a conviction may affect the sentences imposed for each individual count. It may also affect whether multi-count sentences run consecutively or concurrently.⁷ It affects the prison-time matrix. And, it may affect the aggravating and mitigating factors considered during sentencing.⁸ All of this should be re-examined and applied in a re-sentencing after the modification of a conviction.

Further, this Court's omission of the word "remand" in its reversal of one count of Mr. Finlayson's three-count conviction⁹ does not absolve the trial court of its duty to carry out this Court's order. The trial court still had a duty to re-evaluate Mr. Finlayson's

in order to achieve a rational, coherent structure in light of the remaining convictions.")

⁶ The wisdom of re-evaluation after an appellate modification pervades legal practice. For instance, when part of a statute is held unconstitutional, the effect on the statute as a whole must be evaluated. State v. Lopes, 980 P.2d 191, 196-97 (Utah 1999). Also, if part of a property deed is invalid, it may affect the owners' rights of ownership. Julian v. Petersen, 966 P.2d 878, 881-82 (Utah Ct. App. 1998). Likewise, if a sales contract is not integrated, this may effect the contractual provisions as a whole. Spears v. Warr, 2002 UT 24, ¶19, 44 P.3d 742. An invalid "Release of Liability" clause in a contract affects the parties' liabilities as a whole. Ong Int'l, Inc. v. 11th Ave. Corp., 850 P.2d 447, 453-54 (Utah 1993). These are only a few examples of why changing part of an original plan requires re-evaluation of the plan as a whole.

⁷ State v. Russell, 791 P.2d 188, 191-92 (Utah 1990). See Utah Code Ann. § 76-3-201(1)(b) & (4)(a) (Supp. 2002) (allowing the sentencing court to take into consideration other crimes of which the defendant was convicted, along with "any criminal conduct" admitted by the defendant, in imposing restitution); Utah Sentencing Commission, Adult Sentencing and Release Guidelines 2, 5, 7-12 (1998) (offender sentenced according to all charges supporting conviction; offender sentenced in accordance with his or her "overall culpability based on the nature of the current offense[s]"; severity of the offenses key in determining enhancement of sentences; criminal history including current offenses considered in sentencing; percentage of sentence served is determined by the length of the sentence for each charge; and intermediate sanctions such as probation imposed according to number and nature of charges).

⁸ See Utah Code Ann. § 76-3-201 (6) (Supp. 2002).

⁹ See State v. Finlayson, 2000 UT 10, ¶ 35-36, 994 P.2d 1243 (omitting the term "remand.")

sentence in light of this Court's opinion and re-sentence him.¹⁰ After all, lower courts "must implement both the letter and the spirit of the [appellate court's] mandate, taking into account the appellate court's opinion and the circumstances it embraces." Thurston v. Box Elder County, 892 P.2d 1034, 1038 (Utah 1995).

In short, after this Court reversed Mr. Finlayson's aggravated kidnaping charge,¹¹ it was both reasonable and appropriate for the trial court to re-visit his imposed punishment, and re-sentence him on the remaining charges. To do otherwise would have been to ignore the effect of this Court's modification of his conviction and, in essence, fail to carry out this Court's judgment on the matter.

What is more, the State's position that the trial court did not have jurisdiction to re-sentence Mr. Finlayson is completely unsupported by authority. None of the State's cited cases are directly on point or even helpfully analogous.

The State discusses only two cases in depth and neither of them apply here. The first case, Frost v. District Court, did not involve an appellate court's partial reversal or modification of the district court's judgment. It simply held that the trial court did not have authority to modify its own judgment in a water rights case where no appeal had been taken and the original judgement was not incorrect. Frost v. District Court, 83 P.2d 737, 740 (Utah 1938). That is not what happened here. The trial court did not, upon its

¹⁰ See Utah R.App. 30(b) (2002) ("If a judgment of conviction is reversed, a new trial shall be held unless otherwise specified by the court. If a judgment of conviction or other order is affirmed or modified, the judgment or order affirmed or modified shall be executed.")

¹¹ Finlayson, 2000 UT 10, ¶ 1.

own initiative, re-open a case and alter its own correct judgment. Here, this Court reversed one count of Mr. Finlayson's three-count conviction,¹² and re-sentencing took place in light of that reversal. And so, Frost doesn't apply.

The other case discussed by the State is Peters v. Peters, on which the State relies for the principle that an appeal from a trial court's decision ends the trial court's jurisdiction over the matter appealed. Cross-Pet. 10. In that case, this Court had to decide whether the trial court's temporary award of alimony and attorney's fees during an appeal of its judgment in a divorce action was grounded in jurisdiction. Peters v. Peters, 394 P.2d 71, 72-73 (Utah 1964). This Court decided it was. Id. But that holding does not apply here. This case doesn't involve a ruling that the trial court made during an appeal. It involves a trial court's re-sentencing of a criminal defendant after part of his conviction was reversed by this Court. Pet. 2. So, Peters is of little use here.

None of the other cases cited by the State are relevant to the issue at hand. Some cases cited by the State, including Saunders v. Sharp, Clark v. State, and State v. Grant, are irrelevant because, like Peters v. Peters, they involved district court rulings made while appeals were in progress.¹³ Another case cited by the State, State v. Montoya, is not

¹² Finlayson, 2000 UT 10, ¶1

¹³ Clark v. State, 727 N.E.2d 18, 20 (Ind. Ct. App. 2000); State v. Grant, 614 N.W.2d 848, 851-52 (Iowa Ct. App. 2000); Saunders v. Sharp, 818 P.2d 574, 577 (Utah Ct. App. 1991).

In Clark v. State the defendant was convicted of a crime and placed on probation. Clark, 727 N.E.2d at 19. He appealed. Id. While the appeal was in progress, the trial court received notice of three probation violations, and it held a hearing on the violations. Id. Following the hearing, the court revoked the defendant's probation and imposed the suspended sentence. Id.

on point because, like Frost v. District Court, it involved the correction of a sentence that was already correct,¹⁴ not re-sentencing in light of a partial reversal of a conviction, as we have here.

Other cases are not relevant because they concern laws or circumstances that do not apply here. For instance, the State quotes Schoney v. Mem'l Estates, Inc., a civil case, as saying “[a]n affirmance is the confirmation and ratification by an appellate court of a judgment, order, or decree of a lower court” and is not the same as “a remand.” Cross-Pet. 10 (quoting Schoney v. Mem'l Estates, Inc., 863 P.2d 59, 61 (Utah App. 1993)). In Schoney a civil lawsuit ended after default judgment was entered against the plaintiff. Schoney, 863 P.2d at 60. This judgment was affirmed by this Court. Id. But then, the plaintiff attempted to reinstate the litigation by filing a new motion in the trial court. On

Later, the conviction was affirmed by the appellate court. Id. On appeal once again, the Indiana Court of Appeals supported the trial court’s action, noting that, although the trial court generally loses jurisdiction once an appeal is perfected, it retains collateral jurisdiction over matters such as probation violation. Id. at 20.

In State v. Grant, the defendant filed a motion to suppress prior to trial, but the judge did not ever rule on the motion. Grant, 614 N.W.2d at 851-52. The defendant was convicted and appealed. Id. at 852. After the appeal was filed, the appellate counsel filed a motion in the trial court seeking a ruling on the motion to suppress. Id. In response, the court entered a ruling denying the motion to suppress. Id. However, the Iowa Court of Appeals did not consider this ruling, noting that “a district court loses jurisdiction over the merits of a controversy once the notice of appeal is perfected.” Id.

In Saunders v. Sharp, the trial court awarded post-judgment attorney’s fees to one party while an appeal was in progress. Saunders, 818 P.2d at 575-76. This Court later affirmed the award, holding that, while a trial court generally loses jurisdiction with regard to matters appealed, it retains collateral jurisdiction. Id. at 577-78. The award of attorneys fees is a collateral matter over which the trial court retained jurisdiction. Id. at 578.

¹⁴ State v. Montoya, 825 P.2d 676, 679 (Utah Ct. App. 1991).

appeal again, this Court held that the case was over and that no remand had facilitated the plaintiff's filing of a motion. Id. at 61.

Schoney is not relevant here. This is not a civil case nor does it involve a default judgment. Indeed, this Court did not even summarily affirm Mr. Finlayson's conviction. Here, this Court partially reversed Mr. Finlayson's conviction and remitted the case. Finlayson, 2000 UT 10, ¶1. Re-sentencing was required so that this Court's judgment could be executed. And so, Schoney does not apply.

Finally, Lopez v. State is not on point. In that case, the Texas Court of Criminal Appeals interpreted a Texas statute to mean that a new trial awarded to a defendant because of an error made during the punishment stage trial gave the trial court jurisdiction only to hold further punishment proceedings. Lopez v. State, 18 S.W.3d 637, 639-40 (Tex. Crim. App. 2000). It did not give the court jurisdiction over guilt-innocence matters. Id. at 639. But no such statute is involved here, and even if it was, this Court did not find a mere sentencing error. This Court actually reversed one of Mr. Finlayson's criminal convictions, necessitating a re-sentencing. Finlayson, 2000 UT 10, ¶1. And so, Lopez is not persuasive.

In short, the State's argument that Mr. Finlayson should not have been re-sentenced after this Court reversed one count of his three-count conviction is not reasonable or supported by case law. Indeed, re-sentencing was appropriate to re-evaluate the sentence in light of this Court's holdings and to carry out the judgment of this Court. And so, the jurisdiction of the trial court to re-sentence should be affirmed.

II. A VACATION OF THE SENTENCE AND REMAND FOR FINDINGS AND RE-SENTENCING, RATHER THAN A SIMPLE REMAND, IS APPROPRIATE IN THIS CASE

Contrary to the State's argument, a vacation of the sentence and remand for re-sentencing is necessary because the trial court's reliance upon the inaccurate pre-sentence investigation report may have affected the sentence. The court did not make oral or written statements saying that it was not relying upon the inaccurate portions of the report. Nor did it explain the extent of its general reliance upon the report. R. 1071 [5, 14, 18]. In these circumstances, the court's reliance may have affected the sentence. And so, the most appropriate remedy is a vacation of the sentence, a remand to resolve the errors, and re-sentencing in light of those findings.

This remedy is compelled by case law, especially federal case law. Importantly, the United States Supreme Court has strongly implied that the due process clause of the federal constitution compels re-sentencing whenever the trial court relies on faulty information from a pre-sentence investigation report in sentencing.¹⁵ This imputation has usually come in the context of death sentences, but it is nevertheless useful here. One case, Gardner v. Florida, is particularly enlightening. In Gardner the Court held, in a divided opinion,¹⁶ that because the trial court had relied on information from a

¹⁵ Gardner v. Florida, 430 U.S. 349, 351 (1977).

¹⁶ In Gardner three justices joined in the lead opinion, a fourth concurred without a written opinion, a fifth took the view that the Eighth Amendment's ban on cruel and unusual punishment was violated by the use of secret information in imposing the death penalty, and a sixth concurred in the judgment while relying upon other case law. Gardner, 430 U.S. at 351, 362-64.

confidential portion of the pre-sentence investigation report, the conviction must be vacated, the confidential portion added to the record, and the defendant re-sentenced in light of the information. Gardner, 430 U.S. at 360-62. This remedy was appropriate to ensure that the sentencing was characterized by sound information and identifiable influences:

it is now clear that the sentencing process, as well as the trial itself, must satisfy the requirements of the Due Process Clause. Even though the defendant has no substantive right to a particular sentence within the range authorized by statute, the sentencing is a critical stage of the criminal proceeding The defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence even if he may have no right to object to a particular result of the sentencing process.

Gardner, 430 U.S. at 358 (citations omitted). From this, it follows that, when the quality of information used in sentencing is inadequate, a vacation of the sentence and remand for re-sentencing is required. Id. at 362.

The Tenth Circuit has provided even further guidance. In United States v. Peterman, the Tenth Circuit specifically held that, whenever the record does not document the extent of the trial court's reliance upon unreliable information, the sentence must be vacated and the case remanded for re-sentencing. United States v. Peterman, 841 F.2d 1474, 1483 (10th Cir. 1988). Of course, federal courts such as the Tenth Circuit are not guided by section 77-18-1(6)(a) of the Utah Code, as we are here. But they rely on a very similar federal rule.¹⁷ And, courts have interpreted this rule to require re-sentencing

¹⁷ Compare Fed. R.Crim. 32(c)(3)(d) and Utah Code Ann. § 77-18-1(6)(a) (Supp. 2002).

The federal rule reads:

whenever the trial court does not document the extent of its reliance upon unreliable information. Peterman, 841 F.2d at 1483-84. This documentation does not have to be extensive. Id. But it must be more than simply ignoring the errors, as occurred in this case. R. 1071 [5]. This remedial guideline has now become well-entrenched in the Tenth

If the comments of the defendant and his counsel or testimony or other information introduced by them allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to the Bureau of Prisons or the Parole Commission.

Peterman, 841 F.2d at 1482-83 (quoting the rule). Notably, since Peterman and Gattas this rule has been amended and renumbered, but this does not appear to have affected the principle that concerns us here. See Fed. R.Crim. 32(c)(1) (2002) (“At the sentencing hearing, the court . . . must rule on any unresolved objections to the presentence report. The court may, in its discretion, permit the parties to introduce testimony or other evidence on the objections. For each matter controverted, the court must make either a finding on the allegation or a determination that no finding is necessary because the controverted matter will not be taken into account in, or will not affect, sentencing. A written record of these findings and determinations must be appended to any copy of the presentence report made available to the Bureau of Prisons.”)

The Utah statute reads:

The department shall provide the presentence investigation report to the defendant’s attorney, or the defendant if not represented by counsel , the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional ten working days to resolve the alleged inaccuracies of the report with the department. If after ten workings days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

Utah Code Ann. § 77-18-1(6)(a) (Supp. 2002).

Circuit. United States v. Gattas, 862 F.2d 1432, 1435 (10th Cir. 1988).

Here, the trial court did not document the extent of its reliance on inaccuracies in the pre-sentence investigation report, or even its reliance on the report in general. The court did not even comment orally on whether it was relying on the inaccurate portions of the report. R. 1071 [5]. Instead, the court brushed aside concerns about the report's inaccuracies and continued with the proceeding. Id. The court generally relied upon the report in sentencing,¹⁸ but it never addressed the defense counsel's concerns about inaccuracies in the report. In these circumstances, the sentence should be vacated and this case should be remanded for resolution of the inaccuracies and re-sentencing.

The State contends that there is no Utah authority supporting this course of action. Cross-Pet. 15. However, the State is wrong. Both State v. Johnson and State v. Veteto support a vacation of the sentence, a remand for resolution of the errors in the pre-sentence investigation report, and re-sentencing in this case.

In Johnson the pre-sentence investigation report inappropriately contained multi-level hearsay about a crime involving a third-party victim.¹⁹ The trial court used this

¹⁸ R. 1071 [5, 14, 18]. The State contends that the judge who sentenced Mr. Finlayson was the same judge who had conducted trial, and he did not need to rely on the pre-sentence investigation report. Cross-Pet. 16. However, the trial occurred August 29th and 30th, 1995, five years before the sentencing at issue, R. 206, 407, 616, 829, and it is unlikely that the judge could have recalled all aspects of the case without reviewing the record or pre-sentence investigation report. Also, the court indicated that it had reviewed the case, R. 1071 [5], and referred to the report twice during sentencing. Id. at 14, 18.

¹⁹ State v. Johnson, 856 P.2d 1064, 1071 (Utah 1993) (superseded by statute on other grounds as stated in State v. Hammond, 2001 UT 92, 34 P.3d 7731).

report in pronouncing sentence. Id. Upon review, this Court held that multi-level hearsay is inappropriate in a pre-sentence investigation report, and vacated the sentence and remanded for correction of the report and re-sentencing. Id. at 1074-75. Then, in Veteto, this Court found that the trial court had failed to resolve alleged inaccuracies in the pre-sentence investigation report. State v. Veteto, 2000 UT 62, ¶15, 6 P.3d 1133. This Court remanded the case for resolution of the inaccuracies, and indicated that if the findings necessitated further proceedings, presumably factual hearings or re-sentencing, these proceedings should be conducted:

we remand to the trial court with instructions that it expressly resolve defendant's objections in full compliance with section 77-18-1(6)(a) by entering the required findings on the record. The court may hold an additional hearing if required by the circumstances, or simply enter the necessary findings upon the record where the contested issues were presented to the court and considered at the sentencing hearing.

Id. And so, both Johnson and Veteto support a vacation of the sentence, remand for correction, and re-sentencing in this case.

Finally, although a vacation of the sentence and remand for re-sentencing is appropriate, Mr. Finlayson requests that, in the event a vacation is not granted, a remand for relevant findings be issued. These findings are necessary to prevent the report's errors from affecting future proceedings before the Board of Pardons and Parole or other courts.²⁰ Correcting the errors would also accomplish the statutory purpose of providing

²⁰ As the Tenth Circuit has noted, errors in the pre-sentence investigation report should be corrected because the report affects an inmate throughout his term of incarceration and throughout his life:

the Board with accurate information from which to assess the defendant's progress in prison and on parole. Utah Code Ann. § 77-18-1(3), (4) & (5) (Supp. 2002). Nonetheless, a vacation of the sentence and re-sentencing is preferable in this case to ensure that accurate information is used in sentencing.


CONCLUSION

In light of the above, Mr. Finlayson respectfully requests a vacation of his sentence with a remand to the sentencing court for appropriate findings and re-sentencing. Alternatively, Mr. Finlayson requests a remand for findings in accordance with section 77-18-1(6)(a) of the Utah Code.

Although the requirement in the second part of Rule 32(c)(3)(D) [of the Federal Rules of Criminal Procedure] that the sentencing court attach a record of its resolution of contested matters concerning the presentence report is ministerial in nature, we believe that the requirement is a significant enough part of the sentencing process to support an action under Section 2255. The Advisory Committee's comments to Rule 32(c)(3)(D) recognize that "the Bureau of Prisons and Parole Commission make substantial use of the presentence report." 97 F.R.D. 245, 308. In fact, after a defendant is sentenced, the presentence report becomes "the central document in the correctional process." Fennel & Hall, Due Process at Sentencing: An Empirical and Legal Analysis of the Disclosure of Presentence Reports in Federal Courts, 93 Harv.L.Rev. 1613, 1628 (1980). For example, the report may have an important influence on a defendant's classification in a prison, his ability to obtain furloughs, the treatment programs provided to him, and his parole determinations. *Id.* at 1679-80. Thus, transmission of an accurate presentence report, which includes a written record of the sentencing judge's resolution of contested matters in the report, is vitally important to the post-sentencing lives of criminal defendants.

Gattas, 862 F.2d at 1434.

RESPECTFULLY SUBMITTED this 10th day of December, 2002.


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CERTIFICATE OF DELIVERY

I, HEATHER JOHNSON, hereby certify that I have caused to be hand-delivered the original and nine 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 10th day of December, 2002.


HEATHER JOHNSON

DELIVERED to the Utah Supreme Court and the Utah Attorney General's Office as indicated above this _____ day of September, 2002.