

2010

# State of Utah v. Ronald Keith Loyo : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,  Plaintiff / Appellee,  vs.  RONALD KEITH LOYO,  Defendant / Appellant.	Case No: 20100635-CA
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BRIEF OF APPELLANT

APPEAL FROM THE FOURTH DISTRICT COURT, UTAH COUNTY, STATE OF UTAH, FROM THE JUDGMENT AND SENTENCE OF THE HONORABLE CHRISTINE JOHNSON FOR A CONVICTION OF UNLAWFUL CONTROL OF A MOTOR VEHICLE, A CLASS A MISDEMEANOR

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No Addenda is required in this matter.

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**IN THE UTAH COURT OF APPEALS**

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<p>STATE OF UTAH, Plaintiff / Appellee, vs.  RONALD LOYO, Defendant / Appellant.</p>	<p style="text-align: center;">Case No: 20100635-CA</p>
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**BRIEF OF APPELLANT**

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**JURISDICTION OF THE UTAH COURT OF APPEALS**

This Court has appellate jurisdiction in this matter pursuant to the provisions of Utah Code Annotated § 78A-4-103(2)(e).

**ISSUES PRESENTENDED AND STANDARDS OF REVIEW**

Whether the trial court erred in sentencing ordering Loyo to pay approximately \$800.00 in fines/fees in addition to \$200.00 in restitution for his conviction of a class A and a Class B misdemeanor when he suffered from financial hardship? District courts are afforded “wide latitude in sentencing” and their sentencing decisions will not be reversed absent “an abuse of the judge’s discretion.” *State v. Scott*, 2008 UT App. 68, ¶ 6, 180 P.3d 774.

This issue was preserved in arguments made to the trial court at sentencing.

R. 38: 12.

### **CONTROLLING STATUTORY PROVISIONS**

All controlling statutes and constitutional provisions are contained in the Addendum.

### **STATEMENT OF THE CASE**

#### **A. Nature of the Case**

Ronald Keith Loyo appeals from the judgment and sentence of the Honorable Christine Johnson, Fourth District Court, for a conviction of joyriding/unlawful control of a motor vehicle (joyriding), a class A misdemeanor.

#### **B. Trial Court Proceedings and Disposition**

Ronald Keith Loyo was charged by Information filed in Fourth District Court on with: Count 1 – Theft, a second degree felony, in violation of Utah Code Annotated § 76-6-404; Count 2 – Theft, a class B misdemeanor, in violation of Utah Code Annotated § 76-6-404; Count 3 – Driving on a Suspended or Revoked Operator’s License, a class C misdemeanor, in violation of Utah Code Annotated § 53-3-227. R. 3-2.

On April 27, 2010 Count 1 was amended to joyriding/unlawful control of a motor vehicle, a class A misdemeanor. Loyo pled “no contest” to the amended Count 1 and also to Count 2, Theft, a class B misdemeanor. R. 38: 3-4; 28; 27-21.

On June 29, 2010 Loyo was sentenced to 12 months court probation. He was also given credit for 15 days spent in the Utah County Jail, ordered to pay restitution in the amount of \$200.00 and he was ordered to pay a fine of \$740.00 plus a security fee of \$66.00. R. 38: 19-21; 32-31.

On July 29, 2010 Loyo filed a notice of appeal in Fourth District Court. R. 35.

### **STATEMENT OF RELEVANT FACTS**

Ronal Loyo pled “no contest” to joyriding, a class A misdemeanor, and theft, a class B misdemeanor. R. 38: 3-4. At sentencing the following facts/arguments were made:

1. Loyo did not object to the \$200.00 restitution which was sought, nor to the 12 months of court probation that was recommended. R. 37, 38: 12-13.
2. In regards to the 15 days of work diversion that was requested, Loyo argued against it—or requested credit for the “six weeks and two days” that he had already served in jail for the charges. R. 37; 38: 13. The State agreed. R. 38: 17.
3. Loyo requested that the recommended fine of \$740.00 fine that was requested be reduced to \$300.00, and that any jail recoupment fees be waived. R. 37; 38: 12, 22. The State agreed to a waiver of the recoupment fee. R. 38: 15.
4. Loyo argued for a reduction in the fine due to his financial and personal situation and his ability to pay. He had only secured employment at Deseret

Industries immediately prior to sentencing. In addition, he has the responsibility of caring for his disabled mother. R. 38: 12.

5. Judge Christine Johnson ultimately placed Loyo on court probation, waived any jail recoupment fees, gave Loyo credit for the time he had served in jail, ordered that he pay restitution of \$200.00 and a fine of \$740.00 plus a security fee of \$66.00. R. 38: 19-22.
6. In deciding not to reduce the fine, Judge Johnson stated: “I will order the fine of \$740. That is to include the surcharge. I think that AP&P’s recommendation is fair given the fact that we are dealing with a couple of charges here, and I think in fairness to other people who stand before me in a similar situation—you are certainly not the only person who has financial constraints that make the fines and fees difficult to pay. You know, I don’t want to be unfair to everyone else by giving you a break when other people are not getting the same break. I think that there needs to be some uniformity in that. I think that even with some financial constraints, as your counsel has described, I think \$740 is a fair amount, especially considering that the maximum fine here is \$2,500. So you are already getting a significant break on what I could order for this case.” R. 38: 20.

## SUMMARY OF ARGUMENT

Loyo asserts that under the circumstances of this case, the trial court abused its discretion in ordering \$800.00 in fines/fees in addition to restitution for his two misdemeanor convictions.

## ARGUMENT

### **I. The Trial Court Abused its Discretion in the Amount of the Fines/Fees Ordered at Sentencing**

Utah Code Annotated § 76-3-201(2) provides: “Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them: (a) to pay a fine; (b) to removal or disqualification from public or private office; (c) to probation unless otherwise specifically provided by law; (d) to imprisonment....” Because district courts are afforded “wide latitude in sentencing,” this Court cannot reverse the trial court here absent an abuse of discretion by Judge Johnson. Such an abuse of discretion can only be found if Judge Johnson failed “to consider all legally relevant factors or if the sentence is clearly excessive, inherently unfair, or exceeds statutory or constitutional limits.” *State v. Moreau*, 2011 UT App 109, ¶ 6 (citing *State v. Killpack*, 2008 UT 49, ¶ 59, 191 P.3d 17).

In this case, Loyo was ordered to pay \$800.00 in fines/fees in addition to \$200.00 restitution for his misdemeanor convictions of joyriding and theft. He asserts that although Judge Johnson did not exceed statutory or constitutional limits in ordering him

to pay that amount, she nonetheless abused her discretion. One, by failing to consider all “legally relevant factors.” And two, because under the specific circumstances of this case, the fine/fee amount ordered was “inherently unfair.”

Loyo asserts that his personal circumstances and ability to pay is a “legally relevant factor” that should have been more closely considered by the trial court. Loyo also asserts that in this case the order that he pay \$800.00 in fines/fees in addition to \$200.00 in restitution was “inherently unfair.” Loyo concedes that as the trial court pointed out, he “is not the “only person who has financial constraints that make the fines and fees difficult to pay.” R. 38: 20. Nonetheless, he believes that due to his personal circumstances, the amount of the fines/fees on top of the restitution ordered was unfair. One, he secured employment only immediately before sentencing. In addition, he also cares for his disabled mother, who is on a severely fixed income. R. 38: 12.

Accordingly, Loyo asks this Court to reverse the trial court’s order of fines/fees entered at sentencing.

**CONCLUSION AND RELIEF SOUGHT**

Loyo asks that this Court vacate the trial court's sentencing order as it relates to the amount of fines/fees.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of May, 2011.



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Margaret P. Lindsay  
Counsel for Appellant

**CERTIFICATE OF MAILING**

I hereby certify that I delivered two true and correct copies of the foregoing Brief of Appellant to Utah Attorney General, Appeals Division, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this 6<sup>th</sup> day of May, 2011.

