

1990

# State of Utah v. Jose Richard Quintana : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

R. Paul Van Dam; Attorney General; Judith S.H. Atherton; Assistant Attorney General; Attorneys for Appellee.

Connie L. Mower; Attorney for Appellant.

---

## Recommended Citation

Brief of Appellee, *Utah v. Quintana*, No. 900264 (Utah Court of Appeals, 1990).  
[https://digitalcommons.law.byu.edu/byu\\_ca1/2653](https://digitalcommons.law.byu.edu/byu_ca1/2653)

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

UTAH  
DOCUMENT  
KFU  
50  
.A10

DOCKET NO. 900264

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH, :  
Plaintiff/Appellee, : Case No. 900264-CA  
v. : Priority No. 2  
JOSE RICHARD QUINTANA, :  
Defendant/Appellant. :

---

BRIEF OF APPELLEE  
- - - - -

APPEAL FROM A CONVICTION OF ATTEMPTED  
AGGRAVATED ROBBERY, A SECOND DEGREE FELONY,  
IN VIOLATION OF UTAH CODE ANN. § 76-6-302 AND  
76-4-101 (1990), IN THE THIRD JUDICIAL  
DISTRICT COURT, IN AND FOR SALT LAKE COUNTY,  
STATE OF UTAH, THE HONORABLE LEONARD H.  
RUSSON, JUDGE, PRESIDING.

R. PAUL VAN DAM (3312)  
Attorney General  
JUDITH S. H. ATHERTON (3982)  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114  
Telephone: (801) 538-1021

Attorneys for Appellee

CONNIE L. MOWER  
623 East 100 South  
Salt Lake City, Utah 84102

Attorney for Appellant

**FILED**

MAR 19 1991

Clara J. Noonan  
Clerk of the Court  
Utah Court of Appeals

---

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH, :  
 : Case No. 900264-CA  
Plaintiff/Appellee, :  
v. : Priority No. 2  
JOSE RICHARD QUINTANA, :  
 :  
Defendant/Appellant. :

---

BRIEF OF APPELLEE

- - - - -

APPEAL FROM A CONVICTION OF ATTEMPTED  
AGGRAVATED ROBBERY, A SECOND DEGREE FELONY,  
IN VIOLATION OF UTAH CODE ANN. § 76-6-302 AND  
76-4-101 (1990), IN THE THIRD JUDICIAL  
DISTRICT COURT, IN AND FOR SALT LAKE COUNTY,  
STATE OF UTAH, THE HONORABLE LEONARD H.  
RUSSON, JUDGE, PRESIDING.

R. PAUL VAN DAM (3312)  
Attorney General  
JUDITH S. H. ATHERTON (3982)  
Assistant Attorney General  
236 State Capitol  
Salt Lake City, Utah 84114  
Telephone: (801) 538-1021

Attorneys for Appellee

CONNIE L. MOWER  
623 East 100 South  
Salt Lake City, Utah 84102

Attorney for Appellant

TABLE OF AUTHORITIES

CASES CITED

	Page
<u>Beazell v. Ohio</u> , 269 U.S. 167 (1925).....	4
<u>Gay Hill Field Service v. Bd. of Review</u> , 750 P.2d 606 (Utah Ct. App. 1988).....	5
<u>Hopt v. Utah</u> , 110 U.S. 574 (1884).....	4-5
<u>Olson v. Salt Lake City School Dist.</u> , 724 P.2d 960 (Utah 1986).....	4
<u>State Department of Social Services v. Higgs</u> , 656 P.2d 998 (Utah 1982).....	4-5
<u>State Tax Comm'n v. Spanish Fork</u> , 99 Utah 177, 100 P.2d 575 (1940).....	5
<u>State v. Davenport</u> , 30 Utah 2d 298, 517 P.2d 544 (1973).....	1
<u>State v. Norton</u> , 675 P.2d 577 (Utah 1983).....	5
<u>Vealey v. Clegg</u> , 579 P.2d 919 (Utah 1978).....	6

CONSTITUTIONAL, PROVISIONS, STATUTES & RULES

Utah Code Ann. § 76-4-101 (1990).....	1
Utah Code Ann. § 76-6-302 (1990).....	1-2
Utah Code Ann. § 76-8-1001 (1990).....	2
Utah Code Ann. § 76-10-503 (1990).....	2
Utah Code Ann. § 77-13-6 (1990).....	1-3, 5, 7
Utah Code Ann. § 78-2a-3 (Supp. 1990).....	1

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
JURISDICTION AND NATURE OF PROCEEDINGS.....	1
STATEMENT OF ISSUES AND STANDARD OF REVIEW.....	1
CONSTITUTIONAL PROVISIONS, STATUTES AND RULES.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
SUMMARY OF ARGUMENT.....	3
ARGUMENT THE TRIAL COURT LACKED JURISDICTION TO ENTERTAIN DEFENDANT'S MOTION TO WITHDRAW HIS NO CONTEST PLEA BECAUSE DEFENDANT FAILED TO FILE HIS MOTION WITHIN THE 30-DAY PERIOD MANDATED IN UTAH CODE ANN. § 77-13-6 (1990)..	3
CONCLUSION.....	7

---

IN THE UTAH COURT OF APPEALS

---

STATE OF UTAH, :  
Plaintiff/Appellee, : Case No. 900264-CA  
v. : Priority No. 2  
JOSE RICHARD QUINTANA, :  
Defendant/Appellant. :

---

BRIEF OF APPELLEE

- - - - -

JURISDICTION AND NATURE OF PROCEEDINGS

This appeal is from a conviction of attempted aggravated robbery, a second degree felony, in violation of Utah Code Ann. §§ 76-6-302 and 76-4-101 (1990), in the Third Judicial District Court, in and for Salt Lake County, the Honorable Leonard H. Russon, presiding. This Court has jurisdiction to hear this appeal pursuant to Utah Code Ann. § 78-2a-3(2)(f) (Supp. 1990).

STATEMENT OF THE ISSUES AND

STANDARD OF REVIEW

Did the trial court have jurisdiction to entertain defendant's motion to withdraw his guilty plea when defendant failed to file his motion within the 30-day period mandated by Utah Code Ann. § 77-13-6 (1990)? Although this issue was not raised below, a jurisdictional question may be entertained at any time during trial or on appeal. State v. Davenport, 30 Utah 2d 298, 517 P.2d 544, 545 n.2 (1973).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 77-13-6 (1990)

- (1) A plea of not guilty may be withdrawn at any time prior to conviction.
- (2)(a) A plea of guilty or no contest may be withdrawn only upon good cause shown and with leave of the court.  
(b) A request to withdraw a plea of guilty or no contest is made by motion, and shall be made within 30 days after the entry of the plea.
- (3) This section does not restrict the rights of an imprisoned person under Rule 65B(i), Utah Rules of Civil Procedure.

STATEMENT OF THE CASE

On December 29, 1987, defendant was charged with one count of aggravated robbery, a first degree felony, in violation of Utah Code Ann. § 76-6-302 (1990), one count of possession of a dangerous weapon by restricted person, a second degree felony, in violation of Utah Code Ann. § 76-10-503 (1990) and as a habitual criminal under Utah Code Ann. § 76-8-1001 (1990) (R. 19-21). On February 8, 1988, defendant entered pleas of not guilty to all counts (R. 23).

On March 21, 1988, defendant withdrew his plea of not guilty to count one and entered a plea of guilty to attempted aggravated robbery, a second degree felony (transcript of guilty plea hearing [hereinafter "T"] at 4). As part of a plea agreement, the State moved to dismiss the other two counts (T. 1). The trial court accepted the plea, and defendant was sentenced to a term of one to fifteen years in the Utah State Prison on the attempted aggravated assault charge with an enhancement of one year for the use of a firearm, said terms to be served consecutively to the sentence he was currently serving (T. 9, R. 29-30).

On August 11, 1989, defendant filed a motion to withdraw his guilty plea, stating that he did not enter it with full knowledge of its consequences (R. 41). After a hearing on defendant's motion, the trial court denied the motion (R. 55-57). Defendant filed his notice of appeal on April 27, 1990 (R. 58-59).

#### STATEMENT OF FACTS

The facts pertinent to this case are stated in the statement of the case, supra.

#### SUMMARY OF THE ARGUMENT

The trial court had no jurisdiction to entertain defendant's motion to withdraw his no contest plea because defendant failed to file his motion within the 30-day period mandated in Utah Code Ann. § 77-13-6 (1990).

#### ARGUMENT

THE TRIAL COURT LACKED JURISDICTION TO ENTERTAIN DEFENDANT'S MOTION TO WITHDRAW HIS NO CONTEST PLEA BECAUSE DEFENDANT FAILED TO FILE HIS MOTION WITHIN THE 30-DAY PERIOD MANDATED IN UTAH CODE ANN. § 77-13-6 (1990).

On March 21, 1988, defendant entered a guilty plea to the charge of attempted aggravated robbery (T. 4). At that time, there was no statutory time limit placed on defendant for filing a request to withdraw his plea. However, Utah Code Ann. § 77-13-6, the withdrawal of plea statute, was amended in 1989. As of April 24, 1989, subsection (2)(b) of that statute reads: "A request to withdraw a plea of guilty or no contest is made by motion, and shall be made within 30 days after the entry of the plea." Defendant filed a motion to withdraw his guilty plea on



August 11, 1989, nearly seventeen months after the entry of the plea and four months after the amendment was adopted (R. 41). If this amendment is applied retroactively, defendant was barred from filing a motion to withdraw his plea, and the trial court had no jurisdiction to hear the motion because it was untimely filed. Although this issue was not raised below, a question of jurisdiction may be raised at any time. See Olson v. Salt Lake City School Dist., 724 P.2d 960, 964 (Utah 1986); State v. Davenport, 30 Utah 2d 298, 517 P.2d 544, 545 n.2 (1973).

The general rule of nonretroactivity is based upon the notion that

[l]aws, whatever their form, which purport to make innocent acts criminal after the event, or to aggravate an offense, are harsh and oppressive, and that the criminal quality attributable to an act, either by the legal definition of the offense or by the nature or amount of the punishment imposed for its commission, should not be altered by legislative enactment, after the fact, to the disadvantage of the accused.

Beazell v. Ohio, 269 U.S. 167, 170 (1925). However, there is a long-standing exception to the general rule of nonretroactivity.

[P]rocedural statutes enacted subsequent to the initiation of a suit which do not enlarge, eliminate, or destroy vested or contractual rights apply not only to future actions, but also to accrued and pending actions as well. Petty v. Clark, 113 Utah 205, 192 P.2d 589 (1948); Boucofski v. Jacobsen, 36 Utah 165, 104 P. 117 (1909).

State Department of Social Services v. Higgs, 656 P.2d 998, 1000 (Utah 1982) (emphasis added). A procedural change was defined in

Hopt v. Utah, 110 U.S. 574 (1884):

[A]lterations which do not increase the punishment, nor change the ingredients of the

offense or the ultimate facts necessary to establish guilt, . . .--leaving untouched the nature of the crime and the amount or degree of proof essential to conviction--. . . relate to modes of procedure only, in which no one can be said to have a vested right, and which the state, upon grounds of public policy, may regulate at pleasure.

110 U.S. at 210 (emphasis added). The 30-day requirement on a motion to withdraw a plea contained in section 77-13-6(2)(b) has no substantive effect on the crime with which a defendant was charged. Therefore, it is procedural and can be applied retroactively.

In State v. Norton, 675 P.2d 577 (Utah 1983), the Utah Supreme Court addressed the issue of retroactivity of a statute in the context of an amendment to a resentencing statute. There, the defendant argued that since the amendment contained no express language indicating its retroactive effect, it could only be applied to crimes committed after its effective date. Rejecting that argument, the Court stated that the defendant had ignored the Court's "long-standing exception to the general rule of nonretroactivity. Remedial and procedural amendments apply to accrued, pending, and future actions." 675 P.2d at 585 (citing Department of Social Services v. Higgs, 656 P.2d at 1000-01).

This Court defined the term "accrued" in Gay Hill Field Service v. Bd. of Review, 750 P.2d 606 (Utah Ct. App. 1988). There, it stated that "a cause of action 'accrues at the time it becomes remediable in the courts.'" 750 P.2d at 609 (quoting State Tax Comm'n v. Spanish Fork, 99 Utah 177, 181, 100 P.2d 575, 577 (1940) (where the Utah Supreme Court further explained that a claim accrues "when the claim is in such a condition that the

courts can proceed and give judgment if the claim is established.")). Under that definition, and under the statute as it read at the time of defendant's plea, defendant's option to file a motion to withdraw his plea accrued at the time he entered his plea. Under the original version of the statute, defendant's ability to remedy his plea by filing such a motion began at the time of his plea and continued indefinitely. The option of withdrawing his plea had accrued to defendant. The amendment limiting the time period in which defendant could file a motion to withdraw his plea was procedural. Consequently, that procedural amendment can and should be applied to defendant's motion to withdraw his plea.

The amendment limiting the time in which a motion to withdraw a guilty plea can be filed is in the nature of a statute of limitations. The Utah Supreme Court has stated:

[T]he law is well settled that statutes affecting limitation may be amended and shortened without impinging on any constitutional rights of a party, provided always that a sufficient period of grace is allowed to enable a plaintiff to maintain his cause of action if he will follow the new law. . . .

Limitation statutes . . . are but procedural matters and are not constitutionally protected if they do not adversely affect vested rights.

Vealey v. Clegg, 579 P.2d 919, 920 (Utah 1978) (emphasis added).

While the Vealey court spoke of a grace period to allow a plaintiff to maintain his cause of action, that exact proviso is not required in all cases. Due process concerns which dictated a grace period in the Vealey case have been provided for in the amendment to the plea withdrawal statute. The 1989 amendment to

section 77-13-6 provides that a prisoner is not precluded from filing for postconviction relief under rule 65B(i), Utah Rules of Civil Procedure. See § 77-13-6(3). That option is open for defendant.

Because defendant failed to file a motion to withdraw his plea within the mandated 30-day limit, defendant was precluded from filing a motion to withdraw, and the trial court had no jurisdiction to hear the motion. Defendant is left with the remedy provided for in the statute. He may file a petition for postconviction relief.

CONCLUSION

Based on the foregoing, this Court should affirm the trial court's denial of defendant's motion to withdraw his guilty plea and affirm his conviction.

Respectfully submitted, this 19<sup>th</sup> day of March, 1991.

R. PAUL VAN DAM  
Attorney General

Judith S. H. Atherton by DB  
JUDITH S. H. ATHERTON  
Assistant Attorney General

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing Brief of Appellee was mailed, postage pre-paid to Connie L. Mower, attorney for appellant, 623 East 100 South, Salt Lake City, Utah 84102, this 19<sup>th</sup> day of March, 1991.

Judith S. H. Atherton  
by DBT