

2000

# State of Utah v. Tara Adele Rogers : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH, :  
Plaintiff/Appellee, :  
vs. : Case No. 20000812-CA  
TARA ADELE ROGERS, :  
Defendant/Appellant. : Priority No. 2

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BRIEF OF APPELLEE

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APPEAL FROM A SENTENCE IMPOSED UPON A CONVICTION FOR ATTEMPTED POSSESSION OF A CONTROLLED SUBSTANCE, A CLASS A MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. §§ 58-37-8(2)(a)(i) (1998) AND 76-4-101 (1999), IN THE THIRD JUDICIAL DISTRICT, SALT LAKE COUNTY, THE HONORABLE J. DENNIS FREDERICK, PRESIDING

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ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

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BRIEF OF APPELLEE

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JURISDICTION AND NATURE OF THE PROCEEDINGS

Defendant appeals from a sentence imposed upon a conviction for attempted possession of a controlled substance, a class A misdemeanor, in violation of UTAH CODE ANN. §§ 58-37-8(2)(a)(i) (1998) and 76-4-101 (1999), in the Third Judicial District, Salt Lake County, the Honorable J. Dennis Frederick, presiding.

This Court has jurisdiction pursuant to UTAH CODE ANN. § 78-2a-3(2)(e) (1996).

ISSUE ON APPEAL AND STANDARDS OF REVIEW

Where defendant has already received all the relief she requests, is her case moot?

As this issue requires no review of a lower court decision, no standard of review applies.

#### RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

No constitutional provisions, statutes, and rules are relevant to the disposition of this case.

#### STATEMENT OF THE CASE

Defendant was charged with unlawful possession of a controlled substance, a third-degree felony. R. 7. She pled guilty to attempted possession, a class A misdemeanor. R. 23-30, 79. The district court scheduled sentencing for August 4, 2000, referred her to Adult Probation and Parole (AP&P) for preparation of a presentence investigation report (PSI), and ordered her release from custody. R. 79:5-6. When defendant failed to appear for her PSI interview, the court ordered the issuance of a non-bailable arrest warrant. R. 38. When she still had not appeared at sentencing, the court found that she had voluntarily absented herself and sentenced her in absentia to a one-year jail term. R. 41-42, 80.

Defendant filed a motion to correct an illegal sentence. R. 46. The motion was denied. R. 51. Defendant was then apprehended and booked into jail. R. 54. Defendant timely appealed. R. 62. She also wrote a letter to the district court asking for review of her case and conceding that “there [was] no excuse” for her absence from sentencing. R. 71.

On January 8, 2001, defendant filed a motion for review and request for hearing. R. 81. On March 2, 2001, the district court held a review hearing. R. 90. On March 16, 2001, with defendant and her counsel present, the court set aside defendant's original sentence and imposed an amended sentence. R. 93-95. Defendant was sentenced to a one-year suspended jail term, placed on probation for one year, granted credit for time served, and ordered released from jail. *Id.*

#### STATEMENT OF THE FACTS<sup>1</sup>

Defendant was a passenger in a car stopped for broken taillights. R. 6. Defendant, who was not wearing a seat belt, exited the car to look in the trunk for the vehicle's license plate. *Id.* The police officer noted that her speech was very rapid, her movements "jerky," and her balance very poor. *Id.*

While searching for the license plate, she placed her hands inside the pockets of her pants and jacket. *Id.* The officer then observed a white plastic object on the ground at her feet. *Id.* The object was a baggie containing a white powdery substance that later field-tested positive for cocaine. *Id.*

#### SUMMARY OF THE ARGUMENT

Defendant's appeal is moot. Defendant has already received all the relief she requests. She cannot show any adverse collateral legal consequences from having been sentenced in absentia on August 4, 2000. Further, the issues presented by her

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<sup>1</sup>Because defendant pled guilty, the facts are taken from the probable cause statement attached to the information. R. 5-6.



appeal will not evade review and, in fact, have already been addressed in *State v. Wanosik*, 2001 UT App 241, 428 Utah Adv. Rep. 10.

## ARGUMENT

### **Because defendant has received all the relief she requests, this case is moot.**

Defendant's appeal is moot.

A case is moot when "the requested judicial relief cannot affect the rights of the litigants." *State v. Sims*, 881 P.2d 840, 841 (Utah 1994); *State v. Martinez*, 925 P.2d 176, 177 (Utah App. 1996). However, "[a] criminal case is moot only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged convictions." *Martinez*, 925 P.2d at 177. Moreover, moot issues may be considered if a case is "likely to recur, and because of the brief time anyone is affected, is capable of evading review." *Kehl v. Schwendiman*, 735 P.2d 413, 415 (Utah App. 1987).

Defendant requested that this Court vacate her sentence and remand her case for a new sentencing proceeding where she can be present and offer information in mitigation. Br. Aplt. at 8-9, 28. Because defendant has already received all the relief she seeks, remanding this case for a new sentencing hearing will not improve defendant's position. R. 93-95. Indeed, a remand will only require the trial court to hold a hearing identical to the one defendant received on March 16, 2001. *See id.* Moreover, because the original one-year jail sentence was set aside after a hearing

at which defendant was present, defendant cannot show any adverse collateral legal consequences from having been sentenced in absentia on August 4, 2000. *See id.*

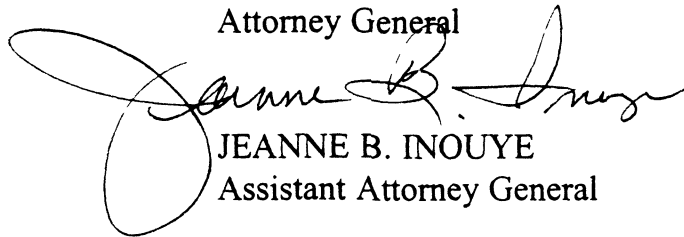
Although this appeal presents important issues, these issues will not evade review. Indeed, *State v. Wanosik*, 2001 UT App 241, decided August 16, 2001, addresses the issues presented here: the voluntariness of a defendant's unexplained absence and the trial court's duty to receive information in mitigation.

#### CONCLUSION

For the foregoing reasons, this Court should dismiss defendant's appeal.

RESPECTFULLY submitted on October 17, 2001.

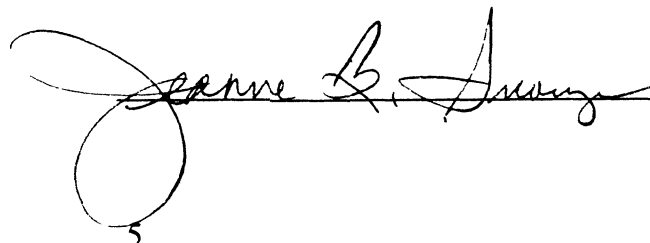
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#### CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were either mailed, postage prepaid, or hand-delivered to Joan C. Watt, Attorney for Appellant, Salt Lake Legal Defender Assoc., 424 East 500 South, Suite 30, Salt Lake City, UT 84111, this 17<sup>th</sup> day of October, 2001.



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