

1990

State of Utah v. Alan S. Rhodes : Reply Brief

Utah Court of Appeals

Follow this and additional works at: 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; Sandra L. Sjogren; assistant attorney general; attorneys for appellee.

Elizabeth Holbrook; Salt Lake Legal Defender Assoc.; attorney for appellant.

Recommended Citation

Reply Brief, *State of Utah v. Alan S. Rhodes*, No. 900498 (Utah Court of Appeals, 1990).
https://digitalcommons.law.byu.edu/byu_ca1/2912

This Reply Brief 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. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
CFU

0
A10
DOCKET NO. 900498-CA IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
ALAN S. RHODES, : Case No. 900498-CA
Defendant/Appellant. : Priority No. 2

REPLY BRIEF OF APPELLANT

Appeal from sentence following judgment and conviction for sexual abuse of a child, a second degree felony, in violation of Utah Code Ann. section 76-5-404.1, the Honorable Raymond S. Uno, Judge, presiding.

ELIZABETH HOLBROOK
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant

R. PAUL VAN DAM
ATTORNEY GENERAL
SANDRA L. SJOGREN
ASSISTANT ATTORNEY GENERAL
236 State Capitol Building
Salt Lake City, Utah 84114

Attorneys for Appellee

FILED

JUL 12 1991

IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
Plaintiff/Appellee, :
v. :
ALAN S. RHODES, : Case No. 900498-CA
Defendant/Appellant. : Priority No. 2

REPLY BRIEF OF APPELLANT

Appeal from sentence following judgment and conviction for sexual abuse of a child, a second degree felony, in violation of Utah Code Ann. section 76-5-404.1, the Honorable Raymond S. Uno, Judge, presiding.

ELIZABETH HOLBROOK
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant

R. PAUL VAN DAM
ATTORNEY GENERAL
SANDRA L. SJOGREN
ASSISTANT ATTORNEY GENERAL
236 State Capitol Building
Salt Lake City, Utah 84114

Attorneys for Appellee

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
SUMMARY OF ARGUMENT	1
ARGUMENT	
I. THE BASIS OF MR. RHODES' SENTENCE IS IMPROPER.	1
II. A PROPER BASIS FOR MR. RHODES' SENTENCE HAS YET TO BE ESTABLISHED.	4
CONCLUSION.	6

TABLE OF AUTHORITIES

	<u>Page</u>
<u>CASES CITED</u>	
<u>State v. Anderson</u> , 789 P.2d 27 (Utah 1990)	2, 3
<u>State v. Murphy</u> , 760 P.2d 280 (Utah 1988)	2, 3
<u>State v. Lipsky</u> , 608 P.2d 1241 (Utah 1980)	5
<u>United States v. Carolene Products Company</u> , 304 U.S. 144 (1938)	2, 3, 4

CONSTITUTIONAL AND STATUTORY PROVISIONS CITED

Art. V, § 1, Constitution of Utah	2
Utah Code Ann. § 63-25-4	3, 4
Utah Code Ann. § 63-57b-1 et. seq. (1984)	3
Utah Code Ann. § 77-18-1 (Supp. 1991)	3
Utah Code Ann. § 77-35-13	5
Utah Code Ann. § 78-2a-3(1) (Supp. 1991)	4

OTHER AUTHORITIES CITED

Collins, <u>Reliance on State Law: Protecting the Rights of People with Mental Disabilities</u> , 13 Vt. L.Rev. 305 (1988)	4
Neuborne, <u>State Constitutions and the Evolution of Positive Rights</u> , 20 Rutgers L.J. 881 (1989) . . .	4
Perlin, <u>State Constitutions and Statutes as Sources of Rights for the Mentally Disabled: The Last Frontier?</u> , 20 Loy. L.A.L.Rev. 1249 (1987)	4

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	
ALAN S. RHODES,	:	Case No. 900498-CA
Defendant/Appellant.	:	Priority No. 2

SUMMARY OF ARGUMENT

The basis of the trial court's imprisonment of Mr. Rhodes was the trial court's misperception that it was the court's role to conserve therapeutic sentencing resources. It is the duty of the legislative branch of government to provide sentencing resources. It is the duty of the judicial branch of government to insure that the government provides adequate services to mentally ill and handicapped people like Mr. Rhodes, who do not have the political wherewithal to obtain the services they need.

Due process of law entitles Mr. Rhodes to a sentencing hearing wherein he is permitted to confront and examine witnesses concerning his admission to treatment programs.

I.
THE BASIS OF MR. RHODES' SENTENCE IS IMPROPER.

The State posits numerous hypothetical bases which would support the sentence imprisoning Mr. Rhodes. Brief of Appellee at 7-8. This Court should focus on the actual basis of the trial

court's sentence imprisoning Mr. Rhodes. After describing Mr. Rhodes' low intelligence and mental illnesses, the trial court explained why Mr. Rhodes would go to prison:

And that's the thing that I'm thinking about, is that if we're going to use our resources, we should use it so that the people who really can benefit from it will get the benefit. Although in cases like his are somewhat pathetic and need the attention of the court, I think that those people who really need it and can benefit from it ought to be given the priority. And it's a question of trying to help as many as we can with the resources we have to do the best job that can be done.

(T.2 23-24).

In thus sentencing Mr. Rhodes, the trial court adopted the legislative responsibility over the provision of sentencing resources, in violation of the Utah Constitution's explicit separation of governmental functions. See State v. Murphy, 760 P.2d 280, 289 (Utah 1988) (Durham, J., concurring) (it is legislature's responsibility to provide sentencing resources); State v. Murphy, 760 P.2d 280, 290 (Utah 1988) (Zimmerman, J., concurring) (same); State v. Anderson, 789 P.2d 27, 31 (Utah 1990) (Durham J., concurring, joined by Stewart, J.) (same); Constitution of Utah, Article V, section 1 (1991) (requiring separation of legislative, executive, and judicial powers).

In thus sentencing Mr. Rhodes, the trial court abdicated its duty to insure that the government serve Mr. Rhodes, who is mentally handicapped and mentally ill and unable to obtain through the legislative process the services he needs. See United States v. Carolene Products Company, 304 U.S. 144, 152-153 n.4 (1938)

(discussing how judicial branch must be vigilant to see that insular, permanently outvoted minorities survive).

The State misperceives Mr. Rhodes' arguments as proffering a "constitutional platform to criticize the legislature." Brief of Appellee at 4. Mr. Rhodes is not asking this Court to echo Utah court members who have criticized legislative failure to respond to the needs of the mentally ill and handicapped in the Utah justice system. See Anderson and Murphy. Rather, Mr. Rhodes asks this Court to facilitate the examination of various state agency actors, whose failure to fulfill statutory duties has derailed legislative efforts to address needs for sentencing resources.

The chapter of the Utah Code enacted for the funding of corrections facilities, Utah Code Ann. section 63-57b-1 et. seq., was enacted in 1984, and apparently has not been amended since. If the legislature is unaware of the need for additional sentencing resources, it is not for lack of trying to become informed. The legislature has asked the Department of Corrections and the Judicial Council to study and monitor sentencing needs and inform legislative appropriations subcommittee members on an annual basis. Utah Code Ann. section 77-18-1(3)(a) through (e) (Supp. 1991). The legislature has asked the Commission on Criminal and Juvenile Justice to study, monitor, and plan for changing needs in the criminal justice system. Utah Code Ann. section 63-25-4. The Sentence and Release Guidelines promulgated by the Commission on Criminal and Juvenile Justice indicate that the sentencing guidelines and disposition of every criminal case should be sent to

the Commission so that the guidelines can be properly monitored and modified, and support the Commission's duties under Utah Code Ann. section 63-25-4.

Mr. Rhodes requests this Court to order an evidentiary hearing so that Mr. Rhodes can establish record proof of agency failure to comply with these statutory duties, and so that the trial court can initiate agency fulfillment of these duties. See footnote 5 of Appellant's opening brief. In granting this unusual request, this Court may rely on its broad jurisdiction. See Utah Code Ann. section 78-2a-3(1) (Supp. 1991) (providing power to issue all writs and process necessary). Additionally, this Court should recognize the important role this Court plays in the just treatment of the mentally ill and handicapped people like Mr. Rhodes. See United States v. Carolene Products Company, 304 U.S. 144, 152-153 n.4 (1938); Neuborne, State Constitutions and the Evolution of Positive Rights, 20 Rutgers L.J. 881, 880-883; 888-901 (1989); Collins, Reliance on State Law: Protecting the Rights of People with Mental Disabilities, 13 Vt. L.Rev. 305, 306-315 (1988); Perlin, State Constitutions and Statutes as Sources of Rights for the Mentally Disabled: The Last Frontier?, 20 Loy. L.A.L.Rev. 1249, 1256-1264 (1987).

II.

A PROPER BASIS FOR MR. RHODES' SENTENCE HAS YET TO BE ESTABLISHED.

As previously noted, the basis for the trial court's imprisonment of Mr. Rhodes was the misperception that it was the

court's role to conserve sentencing resources. In remanding this case to the trial court for resentencing after the consideration and articulation of proper criteria, this Court should direct the trial court to allow Mr. Rhodes to present the testimony of the state actors who evaluate Mr. Rhodes' admissibility into treatment programs.

The State cites State v. Lipsky, 608 P.2d 1241, 1244 (Utah 1980), for the proposition that Mr. Rhodes is not entitled to examine those evaluators whose reports appear in the presentence report. Appellee's brief at 9. Lipsky is the decision that requires the disclosure of presentence reports to criminal defendants prior to sentencing hearings. The Lipsky court held that under Utah Code Ann. section 77-35-13, which has since been repealed, a sentencing court could rely on a written presentence report without "necessarily" having the author appear in court. Id. at 1244. Lipsky, thus, does not support the State's argument that Mr. Rhodes currently is not entitled to examine the evaluators in court.

The Lipsky court's purpose in having the presentence report disclosed to the defendant was so that the defendant could understand, rebut and challenge the contents of the report. As the court stated, "[F]undamental fairness requires that procedures both in the guilt phase and in the sentencing phase of a criminal proceeding be designed to insure that the decision-making process is based on accurate information." Id. at 1248. In a footnote to that statement, the court listed the right to confrontation as a

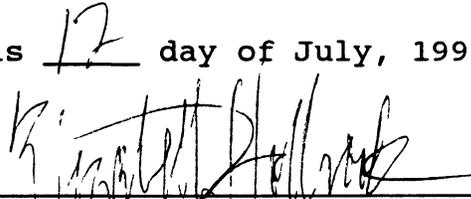
necessary procedural right in sentencing hearings.

The agencies rejecting Mr. Rhodes as a treatment candidate, some of which did not even evaluate Mr. Rhodes personally, should not be allowed to effectively sentence Mr. Rhodes through the presentence investigation report. Mr. Rhodes needs to confront those who evaluated him for the presentence report. For example, contrary to the conclusions the evaluators drew, Mr. Rhodes is not denying his responsibility for his criminal actions. The presentence report and documents contained therein contain several different versions of Mr. Rhodes' admissions of criminal activities. See footnote 3 of Appellant's opening brief. These inconsistencies, if unexamined, could support the inferences that Mr. Rhodes is "in denial" and less amenable to treatment. Mr. Rhodes would like to call the authors of those reports into court and demonstrate that their reports, and not his acceptance of responsibility, are incomplete.

CONCLUSION

Mr. Rhodes renews his request that this Court remand this case to the trial court for a full evidentiary hearing.

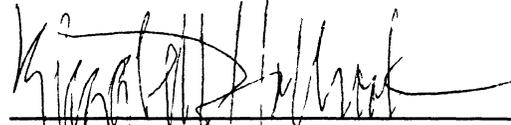
Respectfully submitted this 12 day of July, 1991.



ELIZABETH HOLBROOK
Attorney for Mr. Rhodes

CERTIFICATE OF DELIVERY

I, ELIZABETH HOLBROOK, hereby certify that eight copies of the foregoing will be delivered to the Utah Court of Appeals, 400 Midtown Plaza, 230 South 500 East, Salt Lake City, Utah 84102, and four copies to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 12 day of July, 1991.



ELIZABETH HOLBROOK

DELIVERED by _____
this _____ day of July, 1991.
