

2000

Utah v. Manuel Ernesto Samora : Brief of Appellee

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



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.

Jeanne B. Inouye; Assistant Attorney General; Mark L. Shurtleff; attorney general; Kevin Murphy; Deputy Salt Lake County Attorney; attorney for appellee.

Joan C. Watt, John K. West; Salt Lake Legal Defender Assoc.; attorneys for appellant.

Recommended Citation

Brief of Appellee, *Utah v. Samora*, No. 20000884 (Utah Court of Appeals, 2000).
https://digitalcommons.law.byu.edu/byu_ca2/2936

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

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

:

:

Case No. 20000884-CA

vs.

:

MANUEL ERNESTO SAMORA,
Defendant/Appellant.

:

Priority No. 2

BRIEF OF APPELLEE

APPEAL FROM A SENTENCE FOR ATTEMPTED JOY RIDING WITH
INTENT TO TEMPORARILY DEPRIVE OWNER, A CLASS A
MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 41-1a-1314 (1997)
AND UTAH CODE ANN. § 76-4-101 (1973), IN THE THIRD JUDICIAL
DISTRICT, SALT LAKE COUNTY, THE HONORABLE J. DENNIS
FREDERICK, PRESIDING

FILED

Utah Court of Appeals

301

Clerk of the Court

JOAN C. WATT
JOHN K. WEST
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, UT 84111

JEANNE B. INOUE (1618)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
Salt Lake City, UT 84114-0854

KEVIN MURPHY
Deputy Salt Lake County Attorney
231 East 400 South, Suite 300
Salt Lake City, UT 84111

Counsel for Appellant

Counsel for Appellee

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	Case No. 20000884-CA
vs.	:	
MANUEL ERNESTO SAMORA,	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM A SENTENCE FOR ATTEMPTED JOY RIDING WITH
INTENT TO TEMPORARILY DEPRIVE OWNER, A CLASS A
MISDEMEANOR, IN VIOLATION OF UTAH CODE ANN. § 41-1a-1314 (1997)
AND UTAH CODE ANN. § 76-4-101 (1973), IN THE THIRD JUDICIAL
DISTRICT, SALT LAKE COUNTY, THE HONORABLE J. DENNIS
FREDERICK, PRESIDING

JOAN C. WATT
JOHN K. WEST
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, UT 84111

Counsel for Appellant

JEANNE B. INOUE (1618)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
160 East 300 South, 6th Floor
Salt Lake City, UT 84114-0854

KEVIN MURPHY
Deputy Salt Lake County Attorney
231 East 400 South, Suite 300
Salt Lake City, UT 84111

Counsel for Appellee

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
JURISDICTION AND NATURE OF PROCEEDINGS	1
ISSUES ON APPEAL AND STANDARDS OF REVIEW	1
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	4
SUMMARY OF ARGUMENT	5
ARGUMENT	
I. Defendant, a fugitive from justice, cannot call on this Court to decide his appeal.	5
II. The trial court properly sentenced defendant in absentia	9
III. A trial court may sentence a voluntarily absent defendant even though he has not been warned that sentencing may proceed in his absence.	12
IV. The trial court had no affirmative duty to expressly solicit defense counsel's presentation of mitigating information.	20
V. The trial court properly exercised its discretion when it sentenced defendant to the statutory indeterminate term.	22
CONCLUSION	27
ADDENDUM - Docket, Third District Court - Salt Lake, Case No. 001906887	

TABLE OF AUTHORITIES

FEDERAL CASES

<i>Crosby v. United States</i> , 506 U.S. 255 (1993)	17
<i>Ortega-Rodriguez v. United States</i> , 507 U.S. 234 (1993)	6
<i>Schneckloth v. Bustamonte</i> , 412 U.S. 218 (1973)	9
<i>Taylor v. United States (Taylor II)</i> , 414 U.S. 17 (1973)	15, 17, 20
<i>United States v. DiPrima</i> , 165 F.R.D. 61 (E.D. Va. 1996)	19
<i>United States v. Jordan</i> , 216 F.3d 1248 (11th Cir. 2000)	19
<i>United States v. Lastra</i> , 973 F.2d 952 (D.C. Cir. 1992)	19
<i>United States v. Marotta</i> , 518 F.2d 681 (9th Cir. 1975)	11
<i>United States v. McPherson</i> , 421 F.2d 1127 (D.C. Cir. 1969)	15, 16
<i>United States v. Taylor (Taylor I)</i> , 478 F.2d 689 (1st Cir.)	16
<i>United States v. Turner</i> , 532 F. Supp. 913 (N.D. Ca. 1982)	19

STATE CASES

<i>Frost v. United States</i> , 618 A.2d 653 (D.C. 1992)	2, 9
<i>Hardy v. Morris</i> , 636 P.2d 473 (Utah 1981)	2, 6, 7
<i>Johnson v. State</i> , 604 S.W.2d 927 (Ark. 1980)	2, 9
<i>Mel Trimble Real Estate v. Monte Vista Ranch, Inc.</i> , 758 P.2d 451 (Ut. App. 1988)	4
<i>Moore v. State</i> , 670 S.W.2d 259 (Tex. Crim. App. 1984)	10, 12
<i>Riche v. Riche</i> , 784 P.2d 465 (Ut. App. 1989)	4

<i>State v. Anderson</i> , 929 P.2d 1107 (Utah 1996)	10, 11, 13, 14, 15
<i>State v. Brady</i> , 655 P.2d 1132 (Utah 1982)	7
<i>State v. Cotton</i> , 621 S.W.2d 296 (Mo. Ct. App. 1981)	11
<i>State v. Dunn</i> , 850 P.2d 1201 (Utah 1993)	13
<i>State v. Gerrard</i> , 584 P.2d 885 (Utah 1978)	3, 22, 26
<i>State v. Ham</i> , 910 P.2d 433 (Utah App. 1996)	9
<i>State v. Hoover</i> , 728 P.2d 689 (Ariz. App. 1986)	26
<i>State v. Howell</i> , 707 P.2d 115 (Utah 1985)	20, 21
<i>State v. Moya</i> , 815 P.2d 1312 (Utah App. 1991)	8
<i>State v. Reed</i> , 992 P.2d 1132 (Ariz. Ct. App. 1999)	2
<i>State v. Rhodes</i> , 818 P.2d 1048 (Utah App. 1991)	2
<i>State v. Ross</i> , 951 P.2d 236 (Ut. App. 1997)	9, 13
<i>State v. Sanwick</i> , 713 P.2d 707 (Utah 1986)	21
<i>State v. Schweitzer</i> , 943 P.2d 649 (Utah App. 1997)	23
<i>State v. Tuttle</i> , 713 P.2d 703 (Utah 1985)	6, 7
<i>State v. Verikokides</i> , 925 P.2d 1255 (Utah 1996)	7
<i>State v. Wagstaff</i> , 772 P.2d 987 (Ut. App. 1989)	10, 11
<i>State v. Worthy</i> , 583 N.W.2d 270 (Minn. 1998)	11

FEDERAL STATUTES

Fed. R. Crim. P. 43	18, 19
---------------------------	--------

STATE STATUTES

Utah Code Ann. § 41-1a-1314 (1997)	1, 3
Utah Code Ann. § 76-4-101 (1973)	1
Utah Code Ann. § 78-2a-3 (1996)	1
Utah R. Crim. P. 22	14

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
	:	Case No. 20000884-CA
vs.	:	
	:	
MANUEL ERNESTO SAMORA,	:	Priority No. 2
Defendant/Appellant.	:	

BRIEF OF APPELLEE

JURISDICTION AND NATURE OF THE PROCEEDINGS

Defendant appeals from a sentence for attempted joy riding with intent to temporarily deprive owner, a class A misdemeanor, in violation of UTAH CODE ANN. § 41-1a-1314 (1997) and UTAH CODE ANN. § 76-4-101 (1973), 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).

ISSUES ON APPEAL AND STANDARDS OF REVIEW

1. Should this court adjudicate the merits of defendant's appeal, where defendant is a fugitive from the law?

This is a question of law, reviewable for correctness. *See Hardy v. Morris*, 636 P.2d 473 (Utah 1981).

2. Did the trial court err when it found that defendant, who had notice of his sentencing hearing and was free to attend, was voluntarily absent?

Sentencing decisions are reviewed for abuse of discretion. *See State v. Rhodes*, 818 P.2d 1048, 1049 (Utah App. 1991). Review of factual findings is for clear error. *See id.* Whether a defendant has voluntarily absented himself is a question of fact reviewed for clear error. *See Johnson v. State*, 604 S.W.2d 927, 929 (Ark. 1980) (finding of voluntary absence not “clearly wrong”); *Frost v. United States*, 618 A.2d 653, 657 (D.C. 1992) (finding of voluntary absence not “clearly erroneous”); *cf. State v. Reed*, 992 P.2d 1132, 1133 (Ariz. Ct. App. 1999) (review of voluntary absence determination for abuse of discretion”).

3. Should this Court adopt the novel rule, not asserted below, that a trial court may only sentence a voluntarily absent defendant if he was previously warned that sentencing could proceed in his absence?

This is a question of law, and review is for correctness. *Rhodes*, 818 P.2d at 1049.

4. Did the district court have an affirmative duty to expressly solicit information in mitigation, where defense counsel was present, but made no request to present information and did not object to sentencing without it?

A question of law, this issue is reviewed for correctness. *Id.*

5. Did the trial court abuse its discretion when it sentenced defendant to the statutory indeterminate term?

An appellate court “will not reverse or modify a sentence prescribed by law unless it is clearly excessive or unless the trial court abused its discretion.” *State v. Gerrard*, 584 P.2d 885, 887-88 (Utah 1978). “The appellate court can properly find abuse only if it can be said that no reasonable man would take the view adopted by the trial court.” *Id.* at 887.

STATEMENT OF THE CASE

On April 18, 2000, defendant was charged with unlawful control over a motor vehicle with the intent to temporarily deprive the owner of possession, a third degree felony, in violation of Utah Code Ann. § 41-1a-1314. On August 8 defendant pleaded guilty to attempted unlawful control over a motor vehicle, a class A misdemeanor. R. 63:5. The trial judge accepted his plea, released him to pretrial services, told him to make an appointment with Adult Probation and Parole (AP&P) for preparation of a presentence report (PSI), and notified him of his sentencing hearing on September 22, 2000. R. 63:5, 7-8.

Defendant failed to appear at AP&P as instructed. R. 41. Pre-trial services notified the court that defendant had not reported and they had been unable to

contact him. R. 34. The court revoked defendant's release and issued a non-bailable bench warrant for his arrest. R. 39.

Defendant also failed to appear at sentencing. R. 64:2. Noting defendant's two failures to appear and the warrant for his arrest, the court found that defendant had voluntarily failed to appear. *Id.* The court then sentenced him in absentia to the statutory one-year indeterminate term. *Id.*

Defense counsel timely appealed defendant's conviction. R. 47. Defense counsel concedes that defendant's name did not appear on the jail roster for Salt Lake County on the day his opening brief was filed. Br. Aplt. at 25 n.4. Defendant is apparently still at large, as the district court docket does not indicate a subsequent recall of the bench warrant for defendant's arrest. Docket, Third District Court–Salt Lake, Case No. 001906887 (Addendum, attached).¹

STATEMENT OF FACTS

According to the probable cause statement, defendant was at his girlfriend's home, became drunk and angry, and drove away in her car without her permission. R. 3. Defendant's relative telephoned the following day and gave the girlfriend the vehicle's location. She then retrieved the vehicle. *Id.*

¹The State requests that this Court take judicial notice of the trial court docket in this case as permitted by Rule 201 of the Utah Rules of Evidence. *See Riche v. Riche*, 784 P.2d 465, 468 (Ut. App. 1989) (court “may take judicial notice of the records and prior proceedings in the same case”); *Mel Trimble Real Estate v. Monte Vista Ranch, Inc.*, 758 P.2d 451, 456 & n.4 (Ut. App. 1988) (appellate court may take judicial notice to affirm).

SUMMARY OF ARGUMENT

1. Defendant is a fugitive from justice. He is not entitled to call upon this Court to decide his appeal.
2. The trial court properly sentenced defendant in absentia. Its finding that defendant was voluntarily absent is not clearly erroneous.
3. A trial court may properly sentence a voluntarily absent defendant even though he has not been warned that sentencing may proceed in his absence.
4. Although a trial court must allow defense counsel to present mitigating information, the court has no affirmative duty to expressly solicit mitigating information or request that defense counsel make a presentation.
5. The trial court properly exercised its discretion when it sentenced defendant to the statutory term. Defendant has pointed to no relevant information the court failed to consider. Further, defendant has not demonstrated that the sentence was one that “no reasonable man” would have imposed.

ARGUMENT

Point I

Defendant, a fugitive from justice, cannot call on this Court to decide his appeal.

Defendant argues that the trial court erred when it sentenced defendant in absentia and requests that this Court vacate his sentence. Br. Aplt. at 14, 31. Defendant, who was free on release, did not appear at sentencing and has not

subsequently appeared. Although the court has issued a bench warrant for his arrest, he remains at large. Because defendant is a fugitive from justice, this Court should decline to adjudicate his claims.

Under “the settled rule of *Hardy v. Morris*,” a fugitive defendant “places himself beyond the reach of the judicial system and any ruling cannot be enforced against him; therefore, he should not be allowed to pursue an appeal while out of custody.” *State v. Tuttle*, 713 P.2d 703, 704 (Utah 1985) (citing *Hardy*, 636 P.2d at 473).² “The dismissal of such an appeal is justified on the theory that the [fugitive] should not be allowed to reap the benefit of a decision in his favor when the state could not enforce a decision in its favor.” *Hardy*, 636 P.2d at 474.

Defendant, who was conditionally released to pre-trial services, did not appear for either preparation of his presentence report or for sentencing. While a bench warrant for his arrest has issued, defendant is still at large. Assuming he remains at large, he cannot claim the privilege “to call upon the resources of the Court for determination of his claims.” *Id.*

Defendant states that *Tuttle* “call[s] the holding of *Hardy* into question.” Br. Aplt. at 27. It does not. *Tuttle* merely held that a defendant may be entitled to

² Similarly, in the federal courts, “[i]t has been settled for well over a century that an appellate court may dismiss the appeal of a defendant who is a fugitive from justice during the pendency of his appeal.” *Ortega-Rodriguez v. United States*, 507 U.S. 234, 239 (1993).

reinstatement of his appeal after he has been returned to custody.³ *Tuttle* neither rejected nor undermined *Hardy*'s rule. The *Tuttle* court simply stated that "[o]nce Tuttle was returned to custody, this Court's power again extended to Tuttle and the rationale of *Hardy* no longer applie[d]." 713 P.2d at 704. In the case at bar, in contrast, defendant has not been returned to custody, and the rationale of *Hardy* therefore does apply.

Defendant also attempts to distinguish *Hardy*, where the defendant was an escaped prisoner, from this case because here "[defendant] has not escaped [defendant] simply did not appear at sentencing." Br. Appt. at 28. Further, defendant argues, *Hardy* escaped after he had initiated his appeal; defendant's appeal was initiated during his absence. *Id.*

While the procedural posture of this case differs slightly from that in *Hardy*, the difference is irrelevant. In this case, as in *Hardy*, defendant has "placed himself outside the control of the judicial system" and "a ruling adverse to him cannot be enforced." 636 P.2d at 474. *Hardy*, in fact, made no distinction between the

³*Tuttle* rejected the reasoning of *State v. Brady*, 655 P.2d 1132, 1133 (Utah 1982), that an escaped defendant had "abandoned his appeal," thereby foreclosing reinstatement of the appeal upon his return to custody. *Tuttle* held that appeals "may be reinstated unless the State can show that it has been prejudiced by the defendant's absence and the consequent lapse of time." 713 P.2d at 705. *State v. Verikokides*, 925 P.2d 1255 (Utah 1996), illustrates the exception. The Utah Supreme Court upheld the district court's denial of Verikokides' motion for a new trial, despite his argument that the loss of a trial transcript made meaningful appeal impossible. *Id.* at 1255. Any loss of a meaningful appeal was the "unavoidable result of his long absence from the jurisdiction." *Id.* at 1258.

appeals of criminal defendants who fail to surrender themselves after they have been freed on bail and those who escape, citing and quoting from cases in both postures. *See id.* (citing *Molinaro v. New Jersey*, 396 U.S. 365, 366 (1970) (failure to surrender after release on bail) and *Golden v. State*, 243 S.E.2d 303, 304 (Ga. App. 1978) (escape)).

Finally, defendant argues that *State v. Moya*, 815 P.2d 1312 (Utah App. 1991), supports appellate review of Samora's claims. Br. Aplt. at 28. It does not. *Moya*, which addressed a unique and convoluted factual scenario, is wholly distinguishable. Nothing in the *Moya* record substantiated the claim that Moya was a fugitive from the Utah justice system. 815 P.2d at 1313 n.1. Moya never escaped custody in Utah. *Id.* Whether he was absent from supervision was "irrelevant" where "supervision over him terminated by operation of law long before his alleged fugitive status arose." *Id.*

Defendant, on the other hand, *is* a fugitive from justice. Supervision over him did not terminate: rather, he did not conform to the requirements of his supervised release and did not appear.

In sum, *Hardy* controls this case. Defendant, a fugitive from justice, cannot call on this Court to decide his appeal. No precedent cited by defendant distinguishes *Hardy*.

Point II

The trial court properly sentenced defendant in absentia.

Defendant states that the record does not establish a knowing and voluntary waiver of his right to be present and defend at sentencing. Br. Aplt. at 15. In support of this claim, defendant appears to argue that the record does not demonstrate that he was voluntarily absent. See Br. Aplt. at 15. Defendant's argument on this point is a challenge to the court's finding of fact, and appellate review is for clear error.⁴ See *Johnson v. State*, 604 S.W.2d at 929; *Frost v. United States*, 618 A.2d 653, 657 (D.C. 1992).

⁴Defendant mistakenly relies on *State v. Ham*, 910 P.2d 433, 438 (Utah App. 1996), for the applicable standard of review. See Br. Aplt. at 2. Citing *Ham*, defendant argues that whether he was or was not voluntarily absent should be reviewed for correctness. *Ham* applies the correctness standard to the ultimate issue of whether consent to search has been voluntarily given. Whether consent has been voluntarily given is not a mere question of fact, i.e., of whether a defendant agreed to a search, but requires that the court consider whether the defendant's agreement was sufficiently uncoerced to be treated as legally voluntary. When reviewing the voluntariness of a consent to search, the appellate court must balance "the legitimate need for such searches and the equally important requirement of assuring an absence of coercion." *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973). Voluntariness in the context of a defendant's absenting himself from trial, on the other hand, requires no review for coercion and no balancing of competing interests. It is, rather, a mere factual inquiry.

Further, even if the question were a mixed question of law and fact, defendant could not meet the "plain error" standard applicable for unpreserved claims. Error, if any, was not obvious for the same reasons it was not clear. Additionally, error is not obvious where "no settled appellate law" should have guided the trial court. *State v. Ross*, 951 P.2d 236, 239 (Ut. App. 1997). Defendant has pointed to no Utah precedent suggesting that a defendant, having notice of his sentencing hearing and released from custody, may not be found voluntarily absent.

The controlling case in this jurisdiction is *State v. Anderson*, 929 P.2d 1107 (Utah 1996). In *Anderson*, the Utah Supreme Court held that a defendant is voluntarily absent when he receives notice of the hearing and is “free to attend” in the sense that he is “not incarcerated elsewhere.” *Id.* at 1110.

The record in this case indicates that defendant had notice and was not incarcerated. Defendant and his counsel both received notice of the sentencing date and time at the plea hearing. R. 63:8. Defendant was released from custody on August 28, 2000, almost a month before sentencing. R. 34. The trial court’s finding that defendant was voluntarily absent is therefore not clearly erroneous.

Furthermore, in determining whether a defendant is voluntarily absent, this Court has implicitly held that its review of a trial court’s voluntariness decision may extend to evidence developed subsequent to the trial court’s ruling. *See State v. Wagstaff*, 772 P.2d 987, 988 (Ut. App. 1989) (reviewing affidavit filed with motion for a new trial eight months after trial in absentia). This approach is also consistent with the express holdings of other jurisdictions. Reasoning that the validity of a trial court’s voluntariness decision will be clearer in hindsight, these jurisdictions hold that appellate courts may consider evidence not before the trial court. *See, e.g., Moore*, 670 S.W.2d 259, 261 (Tex. Crim. App. 1984) (en banc). To exclude post-ruling evidence would make it difficult for a defendant to show involuntary absence when moving to correct an illegal sentence. *See id.* Likewise, to preclude such

evidence would hinder an appellate court's ability to accurately review the trial court's finding of voluntariness. *See id.*

In the instant case, post-sentencing entries in the district court docket demonstrate that defendant has made no effort to contact the court to explain his absence. *See* Docket, Third District Court–Salt Lake, Case No. 001996887. The court's bench warrant, issued on September 20, 2000, remains outstanding.

Finally, *Anderson* implicitly holds that a defendant who has notice and is not incarcerated carries the burden of proffering some “sound reason” to support a contention that his absence was not voluntary. 929 P.2d at 1100; *see also Wagstaff*, 772 P.2d at 990 (“If [defendant’s] absence is deliberate without a sound reason, the trial court may start in his absence.”). *Anderson*’s implicit holding is consistent with precedent in other jurisdictions expressly holding that a defendant, having notice of his trial or sentencing proceeding and not incarcerated, has the burden of at least proffering some evidence that his absence was involuntary. *See United States v. Marotta*, 518 F.2d 681, 684 (9th Cir. 1975) (stating that where defendant knew trial date and where no evidence suggested an enforced absence, defendant “ha[d] the burden of going forward and offering evidence to refute the [voluntariness] finding of the trial court”); *State v. Worthy*, 583 N.W.2d 270, 277 (Minn. 1998) (holding that a “defendant bears the burden of showing that his or her absence from trial was voluntary”); *State v. Cotton*, 621 S.W.2d 296, 298 (Mo. Ct.

App. 1981) (“When a defendant is free on bond and does not appear at the time specified, it is presumed, until established otherwise, that his absence is voluntary for the purpose of deciding whether he has waived his right to be present at trial.”); *Moore v. State*, 670 S.W.2d at 261 (“Absent any evidence from the defendant to refute the trial court’s determination that his absence was voluntary, we will not disturb the trial court’s finding.”).

In the instant case, defendant had notice and had been released from custody. He did not, however, proffer any reason for his absence from sentencing. He did not meet the burden of going forward to present some “sound reason” for his absence.

In sum, the trial court did not clearly err in finding defendant voluntarily absent. The record demonstrates both that defendant had notice of sentencing and that he was free to attend in the sense that he was not incarcerated. Evidence developed after sentencing supports the trial court’s finding. Finally, defendant did not, either at sentencing or at any time thereafter, proffer a reason for his absence. Nothing in the record suggests that defendant’s absence was involuntary.

Point III

A trial court may sentence a voluntarily absent defendant even though he has not been warned that sentencing may proceed in his absence.

Defendant argues that sentencing cannot proceed, even though a defendant may be voluntarily absent, unless he has been warned that he can be sentenced in

absentia. *See* Br. Aplt. at 15. Defendant asserts that a knowing and voluntary waiver of the right to presence is not possible without a warning. *See id.*

To establish plain error, as defendant must since the claim is unpreserved, he must show that (i) an error occurred, (ii) the error was obvious, and (iii) the error was harmful. *See State v. Dunn*, 850 P.2d 1201, 1208 (Utah 1993).

Error, if any, was not obvious. “Utah courts have repeatedly held that a trial court’s error is not plain where there is no settled appellate law to guide the trial court.” *See State v. Ross*, 951 P.2d 236, 239 (Utah App. 1997). No Utah precedent imposes a warning requirement.

In any event, no error occurred. Defendant’s insistence on a warning requirement is, in fact, inconsistent with Utah precedent. *Anderson* details the Utah law controlling waiver of the right to presence. Under *Anderson*, voluntary absence—absence after notice where the defendant is free to attend in the sense that he is not incarcerated elsewhere—effects a waiver. “[A] defendant not accused of a capital crime waives his right to be present at sentencing by voluntary absence.” *Anderson*, 929 P.2d at 1110. No warning is required.⁵

⁵Defendant attempts to distinguish *Anderson*, arguing that no warning was required because of its unique procedural posture. The court, however, never entertained the possibility that a warning might be required. Rather, the *Anderson* court explained how, under the unique circumstances surrounding the case, sentencing was permissible without actual notice to defendant.

The propriety of sentencing in absentia arose in the trial court after *Anderson* moved for permission to leave the state to visit his parents. The court granted his motion upon *Anderson*’s written and oral agreement to be tried in absentia should he fail to

The *Anderson* holding relied on and is consistent with the Utah Rules of Criminal Procedure. Rule 22(b) states: “On the same grounds that a defendant may be tried in defendant’s absence, defendant may likewise be sentenced in defendant’s absence.” Rule 17(a)(2) details those grounds: in non-capital cases, “the defendant’s voluntary absence from the trial after notice to defendant of the time for trial shall not prevent the case from being tried and a verdict or judgment entered therein shall have the same effect as if defendant had been present.”

Neither *Anderson* nor the Utah Rules of Criminal Procedure make waiver contingent on defendant’s having been warned that he may be tried in his absence. Further, public policy considerations militate against requiring a warning.

Anderson explains some of the practical considerations that favor sentencing in absentia. These include the possibility that “a defendant might . . . absent himself for years,” during which a judge might go on to other assignments or retire, trial

appear for trial. *Anderson* failed to appear and was tried and sentenced in his absence. 929 P.2d at 1108.

On appeal *Anderson* admitted waiving his right to be present a trial, but objected to his sentencing in absentia. He argued that the sentencing procedure violated his rights to due process and to allocution. On review, the Utah Supreme Court held that he had voluntarily absented himself and waived his right to be present at sentencing. After explaining that a defendant must generally have notice and be free from custody, the court held that *Anderson*, who did not have notice of the sentencing proceeding, had nevertheless waived his right to presence by his voluntary absence. The court found that *Anderson*’s lack of notice was attributable to his own misconduct. “Had he maintained contact with pretrial services and with his attorney, as was his duty, he would have known of the sentencing date.” *Id.* at 1111.

records could be lost or destroyed, victims might move, or trial counsel could die. *See Anderson*, 929 P.2d at 1111. At the very least, “it would be a waste of judicial resources to repeat a sentencing hearing simply due to [a] defendant’s caprice.” *Id.*

The result defendant seeks, i.e., a ruling that sentencing cannot proceed for lack of warning, could force the trial courts to deal with every one of the practical problems that *Anderson* sets forth. Should a court inadvertently fail to give a required warning, a defendant could simply choose not to attend—for whatever reason—and thereby foreclose, at least until his apprehension, further proceedings in the court.

Defendant argues for a warning requirement relying on *United States v. McPherson*, 421 F.2d 1127, 1129 (D.C. Cir. 1969). Defendant argues that *Anderson*’s reliance on *McPherson* requires that defendant be given notice, or warned, that sentencing will occur even if he does not appear. Br. Appt. at 8. *Anderson*, however, merely relied on *McPherson* for the proposition that a “defendant must have notice of proceedings.” *Anderson*, 929 P.2d at 1110.

Furthermore, *McPherson* was effectively overruled by *Taylor v. United States (Taylor II)*, 414 U.S. 17 (1973). *McPherson*, who was released on bail during trial and failed to return, was tried in absentia. On appeal, the appellate court reversed, holding that *McPherson* may not have intentionally relinquished his right to be present, testify, and confront the witnesses against him. Because he had not been

warned that trial could continue without him, the court vacated the judgment and remanded for a determination of whether McPherson knew in fact that trial could go on without him. 421 F.2d at 1130-31.

The dissent argued that the issue was not whether McPherson knew that trial could proceed in his absence, but whether he knew he had a right to be present and waived it. *Id.* at 1131.

In *United States v. Taylor (Taylor I)*, 478 F.2d 689 (1st Cir.) (*aff'd*, 414 U.S. 17 (1973)), also a case where the defendant absented himself mid-trial, the appellate court adopted the reasoning of the McPherson dissent. If a “defendant knew or should have known that he had a right to be present, his voluntary absence . . . [is] a waiver of that known right.” *Id.* at 691 (internal quotation marks omitted). No warning that sentencing will continue in a defendant’s absence is necessary because “[t]he very statement that a trial will continue or commence at a fixed time, when coupled with knowledge of one’s right to be present at trial, implies that the continuation of the trial, at least in non-capital cases, does not depend on his presence.” *Id.*

The United States Supreme Court granted certiorari in *Taylor* and affirmed. The Supreme Court, like First Circuit Court of Appeals, rejected Taylor’s argument that “his mere voluntary absence from his trial [could not] be construed as an effective waiver . . . unless it is demonstrated that he knew or had been expressly

warned by the trial court not only that he had a right to be present but also that the trial would continue in his absence.” *Taylor II*, 414 U.S. at 19. Like the court below, the Supreme Court found that the issue was “the right to be present” and that “that right was effectively waived by [the defendant’s] voluntary absence.” *Id.* at 20. The Court determined that no warning was required and reiterated that “a trial may not be defeated by conduct of the accused that **prevents the** trial from going forward.” *Id.* The Supreme Court’s opinion follows the reasoning of *Taylor I* and **rejects** the analysis of the *McPherson* majority. Defendant’s reliance on *McPherson* is therefore unavailing.

Defendant also suggests **that** *Crosby v. United States*, 506 U.S. 255 (1993), supports a warning requirement. *Crosby*, a more recent United States Supreme Court case, interpreted Rule 43 of the Federal Rules of Criminal Procedure. In *Crosby*, the Court held that Rule 43, a more restrictive **rule** than its Utah counterpart, proscribes the **commencement** of a trial in a defendant’s absence. The Court noted that Rule 43 permits the continuance, but not the commencement, of a trial in a defendant’s absence. The case was decided on the basis of statute and did not reach any **constitutional** claim. The case did not address a warning requirement and does not support defendant’s argument that warning is required.

Crosby and *Taylor* are both consistent with the current version of Rule 43 of the Federal Rules of Criminal Procedure. While the rule requires a defendant’s

presence at the commencement of trial, the right to presence may be waived by absence during the continuation of trial and at sentencing:

The further progress of the trial to and including the return of the verdict, and the imposition of sentence, will not be prevented and the defendant will be considered to have waived the right to be present whenever a defendant, initially present at trial, or having pleaded guilty or nolo contendere,

(1) is voluntarily absent after the trial has commenced (whether or not the defendant has been informed by the court of the obligation to remain during trial),

(2) in a noncapital case, is voluntarily absent at the imposition of sentence, or

(3) after being warned by the court that disruptive conduct will cause the removal of the defendant from the courtroom, persists in conduct which is such as to justify exclusion from the courtroom.

Fed. R. Crim. P. 43(b).

The federal rule therefore permits sentencing in absentia where a defendant has pleaded guilty and then voluntarily absents himself from sentencing. While the rule requires a warning to disruptive defendants, it requires no warning that sentencing will proceed if the defendant voluntarily absents himself. The advisory committee notes explain the rationale behind the rule. “Delay in conducting the sentencing hearing [when a defendant voluntarily flees before sentence is imposed] may result in difficulty later in gathering and presenting the evidence necessary to

formulate a guideline sentence.”⁶ See Fed. R. Crim. P. 43 advisory committee’s notes (1995 amendment). The rationale also supports Utah law permitting sentencing in absentia where a defendant voluntarily absents himself—the law set forth in *Anderson* and Rules 17 and 22 of the Utah Rules of Criminal Procedure.

In sum, Utah law permits the trial court to sentence in absentia a defendant who is voluntarily absent from sentencing. Where a defendant has notice of the proceeding, is not incarcerated, and is therefore free to attend, but does not, the court may proceed to sentencing. By his voluntary absence, a defendant waives his **right** to be present. He need not be warned that sentencing will proceed in his absence.

Should this court accept defendant’s argument it would, in effect, impose a **new** affirmative duty on trial courts accepting guilty pleas or entering guilty verdicts to warn all **unincarcerated** defendants of the possibility of sentencing in absentia. Failure to give the warning would preclude imposition of sentence whenever defendants chose not to appear. It would empower defendants to defeat “the

⁶Rule 43, as currently codified, permits **sentencing, but not** commencement of a trial, in a defendant’s absence. The rule undermines defendant’s argument that presence is more important at sentencing than at trial. See Br. Aplt. at 10. The federal cases cited by defendant in support of this argument interpreted a former version of Rule 43. Compare *United States v. Lastra*, 973 F.2d 952, 955 (D.C. Cir. 1992), and *United States v. Turner*, 532 F. Supp. 913, 915-16 (N.D. Ca. 1982) (both cited by defendant) with *United States v. Jordan*, 216 F.3d 1248, 1249-50 (11th Cir. 2000) and *United States v. DiPrima*, 165 F.R.D. 61 (E.D. Va. 1996) (both interpreting Rule 43 as amended in 1995). Their holdings are inconsistent with the current version of the rule, and their statements of policy support a position that was rejected when the rule was amended.

governmental prerogative” to proceed with a trial, including sentencing. *Taylor II*, 414 U.S. at 20.

Point IV

The trial court had no affirmative duty to expressly solicit defense counsel’s presentation of mitigating information.

Defense counsel was present at sentencing, made no attempt to present information in mitigation, and made no objection to sentencing without the presentation of mitigating information. *See* R. 42, 64:1-2. Defendant nevertheless argues that the trial court erred by failing to conduct a “full and fair sentencing hearing based on relevant and reliable information.” Br. Aplt. at 9. In other words, defendant argues that the trial court erred because it did not “afford defense counsel or the prosecutor the opportunity to present information relevant to sentencing.” Br. Aplt. at 10.

Specifically, defendant contends that the court erred because Rule 22, Utah R. Crim. P., states that “the court shall afford the defendant an opportunity to make a statement and to present information in mitigation of punishment.” He argues that this rule imposes upon the court an affirmative duty to invite or solicit such statements, rather than a duty to allow defendant or his counsel to present information if they so request. *See* Br. Aplt. at 10.

In support of this interpretation, defendant cites only *State v. Howell*, 707 P.2d 115, 118 (Utah 1985). *Howell* does not support defendant’s argument. Affirming a

defendant's conviction, the *Howell* court held that a trial judge may consider evidence of unconvicted criminal conduct in exercising his decision to fix a sentence. In reaching that conclusion, the court observed that the statutory predecessor of Rule 22 "direct[ed] trial courts to hear evidence from both the defendant and the prosecution" to "insure fairness in the sentencing procedure." *Id.* The court also commented, "Pursuant to this provision, trial judges may *receive* and consider a wide range of evidence concerning the defendant in fixing the penalty to be imposed for the crime committed." *Id.* (emphasis added).

Whether the court had an affirmative duty to solicit information in mitigation was not at issue. Further, even the dicta cited by defendant **does** not support his argument for that affirmative duty. A court may "hear" or "receive" evidence when a party proffers it without expressly requesting or soliciting input.

A trial court has substantial discretion in conducting a sentencing hearing and imposing a sentence. See *State v. Sanwick*, 713 P.2d 707, 709 (Utah 1986); *Howell*, 707 P.2d at 117. It makes little sense, as a matter of policy, to limit this discretion by imposing upon the trial court an affirmative duty to solicit comment from defense counsel (or from the prosecution). Defense counsel, not the court, knows whether she possesses information that may be mitigating. She **can** proffer the evidence; she **can** object if the proffer is declined. The trial court is not required to "coach" the parties.

Finally, even assuming the trial court had an affirmative duty to request the presentation of mitigating (and aggravating) information, error in this case is harmless. Defendant points to no relevant mitigating information not already part of the record and does not, even on appeal, suggest that such information existed.

Point V

The trial court properly exercised its discretion when it sentenced defendant to the statutory indeterminate term.

Defendant argues that the trial court abused its discretion by imposing sentence without considering relevant and reliable information and that this abuse constituted “plain error.” Br. Aplt at 8-14. Specifically, defendant argues that the court may not have been aware that defendant’s crime involved no violence and was part of a domestic dispute and, in any case, that the sentence was too severe in light of his “relatively benign” crime, his employment, and the lack of record evidence of an extensive criminal history. *See* Br. Aplt at 12-13.

An appellate court “will not reverse or modify a sentence prescribed by law unless it is clearly excessive or unless the trial court abused its discretion.” *State v. Gerrard*, 584 P.2d 885, 887-88 (Utah 1978). “The appellate court can properly find abuse only if it can be said that no reasonable man would take the view adopted by the trial court.” *Id.* at 887.

Defendant alleges that the sentencing court failed to consider several factors: that he had been employed at the same place for a year, that the vehicle taken was

his girlfriend's car, that he had been living with his girlfriend for three years, that he did not intend to permanently deprive her of the vehicle, and that no violence was involved. Br. Aplt. at 11. Defendant asserts that the sentencing judge could not have known about these factors because the plea was entered before another judge and the plea transcript had not been prepared at the time of sentencing. *Id.*

Assuming these factors are relevant, defendant does not show that the trial court failed to consider them. These factors were part of the record even without the transcript of the plea hearing. The probable cause statement, the written statement of defendant in connection with his plea, and defendant's personal information sheet attest to his employment, to the victim's being his three-year domestic partner, and to his intent to only temporarily deprive her of possession. See R. 3, 10, 20-27. This Court may presume that the sentencing court considered the information before it. See *State v. Schweitzer*, 943 P.2d 649 (Utah App. 1997).

The record does not state that the offense was committed without violence. The offense, however, has no violence component. Further, the probable cause statement recites only that defendant "was drinking[] and became angry," took the vehicle, and drove away. R. 3. Nothing in the record suggests that the sentencing judge might have thought that defendant committed the crime with violence. The absence of evidence or testimony that the crime was non-violent is harmless and

perhaps irrelevant. Nothing suggests that the court imposed sentence in belief that the crime involved violence.

Defendant also argues that the record lacked evidence of an extensive criminal history. Br. Aplt. at 12-13. Nothing suggests that the court imposed sentence on the basis of defendant's criminal history. In any case, defendant failed to appear as ordered for preparation of his PSI. Because defendant refused to cooperate, AP&P did not prepare a PSI, which would have reflected defendant's criminal record, if any. He cannot now fault the court for failing to base his sentence on the absence of an extensive criminal record. Even if his record is minimal, which he does not assert, defendant did not place that information before the court, either by way of a PSI or at the sentencing proceeding.

Defendant points to one piece of information that came in during the plea hearing but was not otherwise part of the record. Br. Aplt. at 11. Defendant was released to Pre-Trial Services on the condition that he have no contact with the victim, his former girlfriend. At the plea hearing, defendant stated that he had some personal property, apparently at her home, that had not yet been returned and that she was using a cell phone that was in his name. R. 63:6. He asked the judge how he could secure possession of these items without contacting the victim. *Id.*

On appeal, defendant apparently suggests that the victim's possession of these items is a mitigating factor that should have been considered by the sentencing

judge. Defendant apparently believes that the victim's possession of these items in some way justified his offense. Nothing in the record suggests that the victim had refused to return these items to defendant. They may have been in her possession simply because defendant had failed to pick them up or hoped to reestablish his relationship with her. Further, nothing suggests that the items had a value even somewhat commensurate with the value of the vehicle taken.

In any event, defendant has pointed to no precedent suggesting that a victim's possession of a defendant's property is a factor that should be considered in mitigation. Further, even had this been legitimate mitigating information that might have been considered, defendant failed to identify this or any other factor as mitigating information and call it to the court's attention. Although the court ordered preparation of a PSI, defendant did not appear for its preparation. He cannot now fault the court for failing to consider information that he might have placed in the record had the PSI been prepared. Further, he did not appear at sentencing and cannot now fault the court for failing to consider information that he might have presented by way of allocution. Finally, defendant did not, through counsel, who was **present** at sentencing, ask to present **information** in mitigation. Even assuming the existence of some mitigating information—such as defendant's uncertain claim about the victim's possession of his cell phone—defendant waived

his right to present that information and cannot now fault the court for not considering it.

Defendant's only remaining argument is that the court abused its discretion because, under the circumstances before the court, his sentence was too harsh. Defendant can prevail on this argument only if his sentence was one that "no reasonable man" would impose. *See Gerrard*, 584 P.2d at 887-88. Defendant points to no precedent suggesting that a one-year indeterminate sentence for attempted joy-riding is excessive. Further, the sentencing court was entitled to consider defendant's failures to appear in this case and the likelihood that he was not sufficiently responsible for probation. *See State v. Hoover*, 728 P.2d 689, 691 (Ariz. App. 1986) (court "entitled to aggravate appellant's sentence on the basis of his failure to appear").

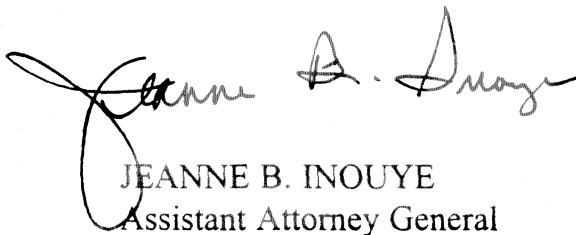
In sum, defendant has pointed to no relevant mitigating information that the sentencing court failed to consider. Even on appeal, defendant has not suggested any relevant information he might have presented had he appeared at sentencing or had counsel proffered such information in his behalf. In any event, defendant failed to appear for preparation of his PSI or at sentencing, thereby waiving his opportunities for personal input. Further, defense counsel, who was present at sentencing, proffered no mitigating information. Defendant cannot now fault the trial court for failure to consider information that he could have, but did not present.

CONCLUSION

Defendant's appeal should be dismissed because he is a fugitive from justice. Should this Court decide to hear the appeal, defendant's conviction should be affirmed.

RESPECTFULLY submitted on May 1, 2001.

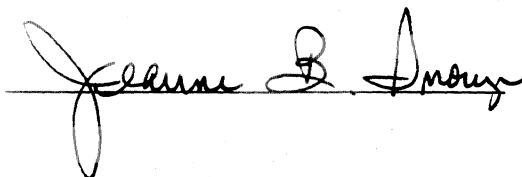
MARK L. SHURTLEFF
Attorney General



JEANNE B. INOUE
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing Brief of Appellee were mailed, postage prepaid, to Joan C. Watt and John K. West, Attorneys for Appellant, Salt Lake Legal Defender Assoc., 424 East 500 South, Suite 300, Salt Lake City, UT 84111, this 1st day of May, 2001.



1. *Journal of the American Medical Association*, 1997; 277: 1001-1005.

Addendum

Running Report ...
Displaying Report

THIRD DISTRICT COURT SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH vs. MANUEL ERNESTO SAMORA

CASE NUMBER 001906887 State Felony

CHARGES

Charge 1 - 41-1A-1314 - ATTEMPTED JOYRIDING W/ INTENT TO TEMP
DEPRIVE OWNR (amended)
Class A Misdemeanor Plea: August 08, 2000 Guilty
Disposition: August 08, 2000 {Guilty Plea}

CURRENT ASSIGNED JUDGE
J. DENNIS FREDERICK

PARTIES

Defendant - MANUEL ERNESTO SAMORA
Represented by: JOHN K WEST

casehist.142 (4%)[Press space to continue, q to quit, h for help] Plaintiff - STATE OF
UTAH

DEFENDANT INFORMATION

Defendant Name: MANUEL ERNESTO SAMORA
Offense tracking number: 10982395
Date of Birth: August 21, 1958
Jail Booking Number:
Law Enforcement Agency: COUNTY SHERIFF
LEA Case Number: 00-40295
Prosecuting Agency: SALT LAKE COUNTY
Agency Case Number: DAO 00007593
Sheriff Office Number: 0103075
Violation Date: March 31, 2000 6124 SOUTH 4000 WEST

ACCOUNT SUMMARY

TOTAL REVENUE Amount Due: 4,619.05

Amount Paid: 0.00
Credit: 0.00
Balance: 4,619.05

TRUST TOTALS Trust Due: 250.00
casehist.142 (8%)[Press space to continue, q to quit, h for help]
0.00

Amount Paid:

Credit: 0.00
Trust Balance Due: 250.00
Balance Payable: 0.00

REVENUE DETAIL - TYPE: FINE

Printed: 05/01/01 11:19:40 Page 1
^L
CASE NUMBER 001906887 State Felony

Amount Due: 4,619.05
Amount Paid: 0.00
Amount Credit: 0.00
Balance: 4,619.05

TRUST DETAIL
casehist.142 (12%)[Press space to continue, q to quit, h for help]
Attorney Fees

Trust Description:

Recipient: LDA
Amount Due: 250.00
Paid In: 0.00
Paid Out: 0.00

CASE NOTE

(PTS revoked, no PSI, failed to appear snt 9/22/00-snt in
absentia)

PROCEEDINGS

04-18-00 Note: CASE FILED BY DET BAILLESS-SL COUNTY SHERIFF. DEF
NON-JAIL. WARRANT ACTIVATED. cynthiav

Office to represent the defendant.

Appointed Counsel:

Name: Legal Defender Office

City:

Phone:

ROLL CALL is scheduled.

Date: 07/06/2000

Time: 02:00 p.m.

Location: To Be Determined

casehist.142 (32%)[Press space to continue, q to quit, h for help]
Court

Third District

450 South State

Salt Lake City, UT 84111

Before Judge: WILLIAM W. BARRETT

06-28-00 ROLL CALL scheduled on July 06, 2000 at 02:00 PM in To Be
Determined with Judge BARRETT.

barbarrs

06-28-00 Note: FILED: Affidavit of Indigency - Judge Reese signed and
appointed LDA to represent defendant in this case

joannelb

06-28-00 Note: Bail remain \$5,000

joannelb

07-05-00 Filed: Notice of Bond Hearing

mauriem

07-05-00 Filed: Appearance of Counsel by John K. West

mauriem

07-05-00 Filed: formal Request for discovery

mauriem

07-06-00 ROLL CALL scheduled on July 20, 2000 at 02:00 PM in To Be
Determined with Judge ATHERTON.

carmellic

07-06-00 Minute Entry - Roll Call continued

carmellic

Judge: WILLIAM W. BARRETT

PRESENT

Clerk: carmellic

Prosecutor: STOTT, ROBERT L.

Defendant

Defendant's Attorney(s): WEST, JOHN K

Video

casehist.142 (41%)[Press space to continue, q to quit, h for help]

Tape Number: 2000-40

Tape Count: OFF

CONTINUANCE

The Stipulation of counsel has made a motion for continuance of
Roll Call.

The motion is granted.

Deft has pending charges

ROLL CALL is scheduled.

Date: 07/20/2000

Printed: 05/01/01 11:20:06 Page 3

^L

CASE NUMBER 001906887 State Felony

Time: 02:00 p.m.

Location: To Be Determined

Third District Court

casehist.142 (46%)[Press space to continue, q to quit, h for help]

450 South State

Salt Lake City, UT 84111

Before Judge: JUDITH S. ATHERTON

07-06-00 ROLL CALL Continued.

07-20-00 Minute Entry - Minutes for Roll Call

terryb

Judge: JUDITH S. ATHERTON

PRESENT

Clerk: terryb

Prosecutor: PAUL PARKER

Defendant

Defendant's Attorney(s): JOHN K WEST

Video

Tape Number: 314 Tape Count: 30.94

HEARING

Case set for Preliminary hearing 8/8 before Judge Reese.

PRELIMINARY HEARING is scheduled.

Date: 08/08/2000

Time: 09:00 a.m.

Location: Third Floor - S32

Third District Court

casehist.142 (54%)[Press space to continue, q to quit, h for help]

450 South State

SLC, UT 84111-1860

Before Judge: ROBIN W. REESE

07-25-00 PRELIMINARY HEARING scheduled on August 08, 2000 at 09:00 AM in

Third Floor - S32 with Judge REESE.

terryb

08-08-00 Judge FREDERICK assigned.

marlened

08-08-00 SENTENCING scheduled on September 22, 2000 at 08:30 AM in
Fourth Floor - N41 with Judge FREDERICK. marlened
08-08-00 Note: Case Bound Over marlened
08-08-00 Minute Entry - Minutes for INCOURT NOTE marlened
Judge: ROBIN W. REESE
PRESENT
Clerk: marlened
Prosecutor: STOTT, ROBERT L.
Defendant
Defendant's Attorney(s): WEST, JOHN K

Video

Tape Number: TAPE Tape Count: 12:06

Court advises defendant of rights and penalties.

A pre-sentence investigation was ordered.

The Judge orders Adult Probation & Parole to prepare a Pre-sentence
casehist.142 (63%)[Press space to continue, q to quit, h for help]

Printed: 05/01/01 11:20:13 Page 4

^L

CASE NUMBER 001906887 State Felony

report.

Change of Plea Note

C/O AMEND TO "ATTEMPTED, CLASS A MISD" ON STATE MOTION

C/O DEFT RELEASED TO PRE-TRIAL SERVICES - NO CONTACT WITH VICTIM /
TO PAY FULL RESTITUTION

CASE BOUNDOVER

Defendant waived preliminary hearing, State consenting thereto.

This case is bound over. A Sentencing has been set on 9/22/00 at

08:30 AM in courtroom N41 before Judge J. DENNIS FREDERICK.

08-31-00 Filed: Supervised Release Agreement connieg

09-18-00 Filed: Affidavit in Support of Request for Revocation cindyb

09-18-00 Filed order: Request & Order for Revocation of Supervised
casehist.142 (69%)[Press space to continue, q to quit, h for help] Release

cindyb

Judge jfrederi

Signed September 18, 2000

09-20-00 Notice - WARRANT for Case 001906887 ID 682956 cindyb
09-20-00 Warrant ordered on: September 20, 2000 Warrant Num: 972123539
No Bail cindyb
09-20-00 Warrant issued on: September 20, 2000 Warrant Num: 972123539 No
Bail cindyb
Judge: J. DENNIS FREDERICK
Issue reason: Pretrial Release Revoked. Defendant Fled.
09-20-00 Filed: Memo from APP (deft failed to contact APP for PSI upon
release from jail 8/28/00) cindyb
09-22-00 Minute Entry - Minutes for SENTENCE, JUDGMENT, COMMITME cindyb
Judge: J. DENNIS FREDERICK
PRESENT
Clerk: cindyb
Prosecutor: MURPHY, J KEVIN
Defendant not present
Defendant's Attorney(s): WEST, JOHN K

Video

Tape Number: 1 Tape Count: 9:25-9:27
casehist.142 (78%)[Press space to continue, q to quit, h for help]

SENTENCE JAIL

Based on the defendant's conviction of ATTEMPTED JOYRIDING W/
INTENT TO TEMP DEPRIVE OWNR a Class A Misdemeanor, the defendant is
sentenced to a term of 1 year(s)

Commitment is to begin immediately.

SENTENCE FINE

Charge # 1 Fine: \$2500.00

Printed: 05/01/01 11:20:19 Page 5

^L

CASE NUMBER 001906887 State Felony

casehist.142 (84%)[Press space to continue, q to quit, h for help]

Suspended: \$0.00

Surcharge: \$2119.05

Due: \$4619.05

Total Fine: \$2500.00

Total Suspended: \$0

Total Surcharge: \$2119.05

Total Principal Due: \$4619.05

Plus Interest

SENTENCE TRUST

The defendant is to pay the following:

Attorney Fees: Amount: \$250.00 Plus Interest

Pay in behalf of: LDA

Pay fine to The Court.

The Court finds defendant voluntarily absented himself from
sentencing proceedings and the Court sentences the defendant in
absentia. Counsel for the State to prepare the findings and order.

Defendant to be committed forthwith upon his arrest on this
Court's bench warrant.

09-27-00 Trust Account created Total Due: 250.00 cindyb

casehist.142 (90%)[Press space to continue, q to quit, h for help]09-27-00 Fine Account created

Total Due: 4619.05 cindyb

09-28-00 Judgment #1 Entered theresab

Creditor: LDA

Debtor: MANUEL ERNESTO SAMORA

250.00 Attorneys Fee's

250.00 Judgment Grand Total

09-28-00 Filed judgment: Criminal Sentence, Judgment, Commitment @J theresab

Judge jfrederi

Signed September 22, 2000

10-10-00 Filed order: Findings of Fact, Conclusions of Law, and Order

Sentencing Defendant in Absentia

cindyb

Judge jfrederi

Signed October 10, 2000

10-17-00 Filed: Notice of Appeal rhondam

10-17-00 Filed: Request for Transcript rhondam

10-18-00 Note: Forwarded Cert/copies of Notice of Appeal, Designation of
Record, Certificate, and Request for Transcript to Court of
Appeals susanc

10-23-00 Filed: Court of Appeals letter to John K. West - Notice of

Appeal filed with Court of Appeals/COA # 20000884-CA kathys

10-27-00 Filed: Transcript of hearing 9-22-00 sharonb

10-27-00 Filed: Transcript of hearing 8-8-00

sharonb

casehist.142 (99%)[Press space to continue, q to quit, h for help]

Printed: 05/01/01 11:20:19 Page 6 (last)

^L

casehist.142: END[Press space to continue, q to quit, h for
help]

Party Name	Case Num	CT	DOB	Par	Cit Num	LEA	Judge/Commsr
------------	----------	----	-----	-----	---------	-----	--------------

SAMORA, MANUEL ERNESTO	001906887	FS	08/21/58	DEF		COS J	FREDERICK 1
------------------------	-----------	----	----------	-----	--	-------	-------------

of 1 (1 - 1 on screen)CASES: Toggle Party Detail Schedule Case History Help Exit
Run Case History report for highlighted Case