Brigham Young University Law School
BYU Law Digital Commons

Utah Supreme Court Briefs (1965 –)

1982

State of Utah v. Donald F. Williams : Brief of Respondent

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Part of the Law Commons

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.
David L. Wilkinson; Robert N. Parrish; Attorneys for Respondent;
Donald F. Williams; Attorney Pro Se;

Recommended Citation
Brief of Respondent, *State v. Williams*, No. 18353 (Utah Supreme Court, 1982).
https://digitalcommons.law.byu.edu/uofu_sc2/3056

This Brief of Respondent is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 18353
DONALD F. WILLIAMS,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

Appeal from a conviction of Theft by Deception in the Second Judicial District Court in and for Weber County, the Honorable John F. Wahlquist, Judge, presiding.

DAVID L. WILKINSON
Attorney General
ROBERT N. PARRISH
Assistant Attorney General
236 State Capitol
Salt Lake City, UT 84114

Attorneys for Respondent

DONALD F. WILLIAMS
P.O. Box 250
Draper, UT 84020

Attorney Pro Se

FILED

SEP - 2 1982

Clerk, Supreme Court, Utah

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :

Plaintiff-Respondent, :

-v- : Case No. 18353

DONALD F. WILLIAMS, :

Defendant-Appellant. :

BRIEF OF RESPONDENT

Appeal from a conviction of Theft by Deception in the Second Judicial District Court in and for Weber County, the Honorable John F. Wahlquist, Judge, presiding.

DAVID L. WILKINSON
Attorney General
ROBERT N. PARRISH
Assistant Attorney General
236 State Capitol
Salt Lake City, UT 84114

Attorneys for Respondent

DONALD F. WILLIAMS
P.O. Box 250
Draper, UT 84020

Attorney Pro Se

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT.	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF THE FACTS.	2
ARGUMENT	
POINT I. APPELLANT'S NO CONTEST PLEA TO THE CHARGE OF ISSUING CHECKS AGAINST INSUFFICIENT FUNDS WAS PROPERLY ACCEPTED	3
POINT II. APPELLANT DID NOT HAVE A VALID DEFENSE TO THE CHARGE.	8
POINT III. THE UTAH COURT PROPERLY RELIED ON A WYOMING PRE-SENTENCE REPORT IN SENTENCING APPELLANT	10
POINT IV. APPELLANT WAS PROPERLY CHARGED UNDER THE UTAH CODE	11
CONCLUSION.	12

<u>Cases Cited</u>

Brown v. Turner, 21 Utah 2d 96, 440 P.2d 968 (1968) . .	4
Combs v. Turner, 25 Utah 2d 397, 483 P.2d 437 (1971). .	10
Edwards v. United States, 256 F.2d 707 (1958)	9,10
Gonzales v. Turner, 26 Utah 2d 176, 487 P.2d 315 (1971)	6
Guglielmetti v. Turner, 27 Utah 2d 341, 496 P.2d 261 (1972).	7
Henderson v. Morgan, 426 U.S. 637 (1976).	3
Klotz v. Turner, 23 Utah 2d 303, 462 P.2d 705 (1969). .	5
Kryger v. Turner, 25 Utah 2d 214, 479 P.2d 477 (1971) .	7
McMann v. Richardson, 397 U.S. 759 (1970)	7
Sparrow v. State, 102 Idaho 60, 625 P.2d 414 (1981) . .	8
State v. Albert, Utah, 584 P.2d 843 (1978).	7
State v. Blier, 113 Ariz. 501, 557 P.2d 1058 (1976) . .	10
State v. Forsyth, Utah, 560 P.2d 337 (1977)	7,8
State v. Garfield, Utah, 552 P.2d 129 (1976).	5
State v. Harris, Utah, 585 P.2d 450 (1978).	7
State v. Lowery, 417 P.2d 113 (Mont. 1966).	10

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

Table of Contents

Page

Cases Cited

State v. McNichol, Utah, 554 P.2d 203 (1976). 7
State v. Mills, Utah, 641 P.2d 119 (1982) 6
State v. Murphy, 575 P.2d 448 (Hawaii 1978) 10
State v. Nichols, 24 Ariz. App. 329, 538 P.2d 416 (1975) 11
Strong v. Turner, 22 Utah 2d 294, 452 P.2d 323 (1969) . 3,6
Thompson v. State, 426 P.2d 995 (Alaska 1967) 6,10
Wingfield v. State, 535 P.2d 1295 (Nev. 1975) 7

Statutes Cited

Utah Code Ann., § 76-6-405 (1953), as amended 1,12
" " " § 76-6-505 " " " 12

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 18353
DONALD F. WILLIAMS,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged with Theft by Deception in violation of Utah Code Ann., § 76-6-405 for issuing worthless checks on several occasions in January, 1982.

DISPOSITION IN THE LOWER COURT

Appellant entered a plea of no contest to the charge of issuing checks against insufficient funds on February 18, 1982, before the Honorable John F. Wahlquist in the Second Judicial District Court. He was sentenced on March 1, 1982, to a term of zero to five years by the same judge.

RELIEF SOUGHT ON APPEAL

Respondent seeks an Order of this Court affirming the lower court's decision in accepting appellant's plea and the sentence imposed therefor.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

STATEMENT OF FACTS

Appellant was arrested on January 22, 1982, and charged with Theft by Deception (R. 2). He had previously transferred funds to his account at First Security Bank from his Bank of Utah account (T. 5). However, he had no funds in the Bank of Utah account, which was in fact closed (T. 9). He also had arranged to have his Social Security checks deposited directly in the First Security Bank account, but this process would take at least two months to begin (T. 6). Appellant had some accumulated Social Security funds due him which he arranged to receive either personally, at the Post Office, or at First Security Bank (T. 14). However, despite these various arrangements, he had no funds actually in his account when he wrote several checks on that account. In fact, in viewing the evidence most favorable to appellant's position, he could not have expected to have enough money in the account to cover his withdrawals (T. 6).

At the time appellant was arrested, he was on probation in Wyoming, having received a one-year sentence on a similar charge (T. 20). He has had numerous charges against him in the past (T. 22, 23, 24). Appellant is scheduled to be paroled on this charge on October 12, 1982.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

ARGUMENT

POINT I

APPELLANT'S NO CONTEST PLEA TO THE CHARGE OF ISSUING CHECKS AGAINST INSUFFICIENT FUNDS WAS PROPERLY ACCEPTED.

A plea of guilty or no contest must be made voluntarily, without coercion, and with a clear understanding of what the charge is. Strong v. Turner, 22 Utah 2d 294, 452 P.2d 323 (1969). Appellant contends that his plea of no contest was the product of coercion. He claims that the prosecutor and his own attorney coerced his plea by persuading him and by promising him probation.

Respondent contends that appellant's plea was properly accepted. First, under the Strong, supra, standard set forth above, appellant had a clear understanding of the charge against him. The judge explained to appellant that he was charged with writing checks, knowing some of them would not be good (T. 6). Appellant demonstrated his knowledge of the charge when he stated "in other words, saying that I knew that--that the check was worthless" (T. 7). Even if the record had been silent on this point, it would be presumed that defense counsel routinely explained the nature of the offense to the appellant. Henderson v. Morgan, 426 U.S. 637 (1976).

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

Second, in addition to understanding the charge, appellant also knew the possible consequences of his plea. He was informed that a plea of no contest was the equivalent of a jury verdict of guilty (T. 3). He was also informed that by pleading no contest he would forego his right to a trial (T. 3). His own attorney explained the implications of the plea and stated that appellant was willing to take the consequences (T. 8).

When appellant committed this offense, he was actually on probation in Wyoming for a similar charge (T. 20). In Brown v. Turner, 21 Utah 2d 96, 440 P.2d 968, 970 (1968), the defendant had seven prior convictions. This Court stated:

> In view of the circumstances here shown, including the defendant's experience and the fact that he had previously been sentenced on the same charge, his contention that he was not advised of the consequences of his plea of guilty is quite incredible (emphasis added).

Third, not only did appellant understand the charge and the consequences of a no contest plea, but his plea was entered voluntarily. Appellant agreed to enter a plea of no contest if the information was amended to charge "issuing checks against insufficient funds" (T. 2) (The original charge was "theft by deception.") (R. 1). The judge discussed this deal (T. 8, 9), and appellant's attorney stated that the reason for appellant's plea was the change in the charge

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

against him (T. 9). In fact, the prosecutor stated at the hearing that there had been no negotiations between himself and appellant's counsel (T. 3).

Even if the prosecutor had offered to recommend probation, appellant knew that the Court was not bound by any promise. The judge told appellant that the prosecutor, being part of the executive branch, could not tell the court what to do (T. 3). Appellant agreed (T. 4). The judge further stated that he would listen to counsel, but would do what he thought was correct and that he did not make deals (T. 4). Appellant said he understood (T. 4). It is difficult to see how appellant was coerced into pleading no contest when he knew that the judge was not bound by any alleged promise of the prosecutor. This Court dealt with the problem in State v. Garfield, Utah, 552 P.2d 129, 131 (1976), stating:

> Where a defendant is aware there is no guarantee the court will agree to follow the recommendation of the prosecutor, there is no reason to set aside a plea of guilty.

In Klotz v. Turner, 23 Utah 2d 303, 462 P.2d 705 (1969), the defendant claimed he was coerced into pleading guilty because the sheriff promised him leniency. This Court felt that the defendant failed to show any substance in the claim. In this case, the appellant has also failed to show, beyond his bald assertion, that he was in any way coerced

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

into pleading no contest. Nothing in the record supports appellant's claim by showing that his will was overcome or that he did not rationally examine his choices. Strong, supra. In fact, the judge offered to let him withdraw his plea when he still appeared undecided (T. 7).

This Court has required strong proof of coercion before finding a plea to be involuntary. In Gonzales v. Turner, 26 Utah 2d 176, 487 P.2d 315 (1971), the trial court found that the defendant was suffering from heroin withdrawal symptoms at the time he entered his plea. Still, this Court found his plea was entered voluntarily. In State v. Mills, Utah, 641 P.2d 119 (1982), the defendant claimed that his plea was not voluntary because he was under the influence of drugs and suffered from headaches and high blood pressure. This Court did not accept the defendant's contentions and found that his plea was made voluntarily.

In Thompson v. State, 426 P.2d 995, 998 (Alaska 1967), the defendant also entered a guilty plea, hoping for probation, which he did not receive. That Court found that:

> The fact that a plea of guilty was entered because of the possibility of obtaining a more lenient sentence does not make such a plea an involuntary one.

Thus, appellant's hope for probation is not enough to sustain his claim of coercion.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

When appellant entered his plea, it was upon the advice of competent counsel. Guglielmetti v. Turner, 27 Utah 2d 341, 496 P.2d 261 (1972). Appellant's attorney knew the facts of the case and knew the state's potential case. State v. Harris, Utah, 585 P.2d 450 (1978). He gave a detailed explanation of appellant's version of the facts to the Court (T. 4, 5, 6). He assessed the evidence in a manner most favorable to appellant (T. 9). He talked to the state's witness and therefore knew the strength of the case against appellant (T. 10). He was familiar with appellant's defenses. He obviously had adequate time to consult with appellant since he was well acquainted with the facts at issue. State v. Albert, Utah, 584 P.2d 843 (1978). Appellant's attorney gave him competent advice based on his assessment of the evidence. Kryger v. Turner, 25 Utah 2d 214, 479 P.2d 477 (1971). There is simply no support in the record for appellant's contention that his attorney coerced him into entering his plea. Thus, appellant has not met his burden of establishing that his counsel was somehow less than effective. Wingfield v. State, 535 P.2d 1295 (Nev. 1975); State v. McNichol, Utah, 554 P.2d 203 (1976); State v. Forsyth, Utah, 560 P.2d 337 (1977). According to the Supreme Court in McMann v. Richardson, 397 U.S. 759, 774 (1970), a defendant is bound by his plea:

> . . . unless he can allege and prove serious derelictions on the part of counsel sufficient to show that his plea was not, after all, a knowing and intelligent act.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

This Court will not interfere with the trial court's decision in accepting a plea unless the record plainly reflects an abuse of discretion. State v. Forsyth, supra. Respondent contends that appellant's plea of no contest was made knowingly and voluntarily, upon the advice of competent counsel. Thus, the court's decision to accept appellant's plea should be upheld.

POINT II

APPELLANT DID NOT HAVE A VALID DEFENSE TO THE CHARGE.

Appellant contends that his attorney should have prepared a defense to the charge; namely, that appellant lacked the requisite intent. However, appellant knew that to be found guilty of the charge, he had to have written checks, knowing that they were worthless. As mentioned in Point I, appellant, the court and his attorney all discussed the fact that intent was an element of the charge (T. 6, 7, 8).

In a similar case, Sparrow v. State, 102 Idaho 60, 625 P.2d 414 (1981), the defendant pled guilty to the charge of embezzlement although he denied having any intent to commit the crime. In that case, the court thought the defendant's guilty plea was properly accepted although he denied the intent element of the charge. The charge was made on a strong

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

factual basis; the defendant understood the charge and voluntarily entered his plea. In this case, the plea was also voluntarily and knowingly entered (see Point I) and the facts supported the charge.

The facts in this case indicate that appellant did have the requisite intent to issue a check against insufficient funds. His own attorney stated that in the best view of the facts, appellant wrote checks totaling approximately $1,900 on an account containing at most $650 (T. 6, 9). He was personally informed that his Bank of Utah account, upon which he relied for the source of his funds, was closed (T. 9, 10). He knew that the methods of direct deposit of his Social Security checks would take at least two months, yet he wrote checks within days (T. 10). He did have accumulated Social Security funds due him, but he knew these would not definitely be deposited in his bank. Appellant actually states that he was told the past-due checks would go to him, <u>or</u> the Post Office, <u>or</u> to his bank (T. 14). Thus the facts in this case definitely support the charge and show that appellant's defense of no intent is without merit.

Appellant's contention that he had a defense which his attorney should have presented is actually irrelevant in this appeal. Since appellant was represented by competent counsel and entered his plea knowingly and voluntarily, he waived any defense based on lack of intent. <u>Edwards v. United</u>

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

States, 256 F.2d 707 (1958); State v. Lowery, 417 P.2d 113 (Mont. 1966); Thompson v. State, supra. In Combs v. Turner, 25 Utah 2d 397, 483 P.2d 437, 439 (1971), this Court stated its position on the issue:

> A plea of guilty dispenses with the necessity of proof, and the issue of innocence or guilt cannot here be relitigated any more than it could be after a jury verdict of guilty.

POINT III

THE UTAH COURT PROPERLY RELIED ON A WYOMING PRE-SENTENCE REPORT IN SENTENCING APPELLANT.

Appellant contends the Court should not have relied upon a pre-sentence report from Wyoming. However, in determining a sentence, the Court needs all relevant information available. It is proper to use a pre-sentence report a year old from another case. State v. Blier, 113 Ariz. 501, 557 P.2d 1058 (1976). It is also proper to use police arrest reports not contained in the pre-sentence report. State v. Murphy, 575 P.2d 448, 461 (Hawaii 1978). In that case, the court felt that a judge should not be expected to ignore pertinent and helpful information since he needs the fullest information concerning the defendant's life and characteristics. Thus, that court stated:

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

> We conclude that the sentencing court is not limited to any particular source of information in considering the sentence to be imposed upon a defendant.

Respondent contends that whether the pre-sentence report came from Wyoming or Utah is immaterial. Both states would use the same national crime information source in obtaining the information concerning appellant's past charges and convictions. Appellant was given the opportunity to rebut the information contained in the report (T. 20-24), and he failed to do so in a satisfactory manner. He also failed to object to the use of the report, and when asked if he had anything to say before sentencing, he said "No, sir" (T. 25). When appellant failed to rebut the information contained in the pre-sentence report and indicated he was ready to proceed with sentencing, he waived any objection to the pre-sentence report. State v. Nichols, 24 Ariz. App. 329, 538 P.2d 416 (1975).

POINT IV

APPELLANT WAS PROPERLY CHARGED UNDER THE UTAH CODE.

Appellant claims he was charged with attempting to cash an insufficient check. He claims there is no offense listed in the Code corresponding to the charge. His contention is without merit because he was not charged with the offense as he claims.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

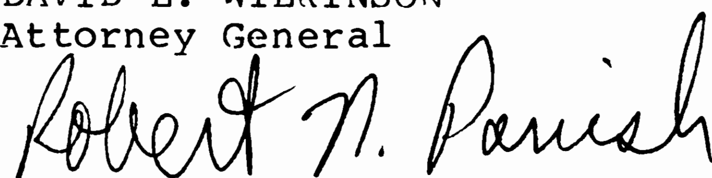
Appellant was originally charged with Theft by Deception, Utah Code Ann., § 76-6-405 (1953), as amended (R. 1). The information was amended to charge issuing checks against insufficient funds, Utah Code Ann., § 76-6-505 (1953), as amended (R. 12) (see Point I). Thus, appellant was properly charged and sentenced under the Utah Criminal Code.

CONCLUSION

Appellant's conviction and sentence should be affirmed for the following reasons. He entered a plea of no contest knowingly, voluntarily, and upon the advice of competent counsel. His defense of no intent, which had no basis in the record, was waived when he entered his plea. The Utah court properly used a Wyoming pre-sentence report in determining his sentence. Finally, he was properly charged under the Utah Criminal Code.

Respectfully submitted this 2nd day of September, 1982.

DAVID L. WILKINSON
Attorney General



ROBERT N. PARRISH
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and exact copies of the foregoing Brief, postage prepaid, to Donald F. Williams, P.O. Box 250, Draper, Utah, 84020, this 2nd day of September, 1982.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.