

2014

State of Utah v. Tyson Post : Brief of Appellee

Utah Court of Appeals

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Case No. 20131152-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

TYSON POST,
Defendant/Appellant.

Brief of Appellee

Appeal from sentence for attempted disarming of a police officer, a second degree felony, and interference with a peace officer, a class B misdemeanor, in the Seventh Judicial District, San Juan County, the Honorable Lyle R. Anderson presiding

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IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

TYSON POST,
Defendant/Appellant.

Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals from a sentence imposed for attempting to disarm a police officer, a second degree felony, and interfering with a peace officer, a class B misdemeanor. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West 2013 Supp.).

INTRODUCTION

Defendant Tyson Post did not go quietly when officers tried to arrest him for assaulting his girlfriend. Instead, he struggled, cursed, and, as he later stated: "I tried to take the cop[']s gun when he was trying to arrest me." Defendant pled guilty to attempting to disarm a police officer and interference with an arresting officer. On appeal, Defendant claims he

should have been placed on probation and treated for substance abuse instead sentenced to prison. This Court should affirm.

STATEMENT OF THE ISSUES

1. Did the trial court abuse its discretion by sentencing Defendant to prison instead of imposing probation and treatment for substance abuse?

Standard of Review. "The sentencing judge 'has broad discretion in imposing [a] sentence within the statutory scope provided by the legislature.'" *State v. Sotolongo*, 2003 UT App 214, ¶3, 73 P.3d 991 (citation omitted). An abuse of discretion occurs if "the actions of the judge in sentencing were inherently unfair or if the judge imposed a clearly excessive sentence." *State v. Montoya*, 929 P.2d 356, 358 (Utah App. 1996) (quotations and citation omitted). This Court will not overturn a trial court's sentencing decisions unless "no reasonable [person] would take the view adopted by the trial court." *Id.*; accord *State v. Thorkelson*, 2004 UT App 9, ¶12, 84 P.3d 854.

2. Did the trial court properly address and resolve alleged errors in the PSI before imposing sentence?

Standard of Review. "Whether the trial court properly complied with a legal duty to resolve on the record the accuracy of contested information in sentencing reports is a question of law that we review for correctness." *State*

v. Waterfield, 2014 UT App 67, ¶29, 322 P.3d 1194 (citation and internal quotation marks omitted).

3. Did the trial court meet its statutory duty to order Defendant screened for possible substance abuse treatment?

4. Did the trial court violate Defendant's constitutional right to equal protection by allegedly basing its sentencing decision on Defendant's Native American ancestry and his location on an "Indian reservation"?

Standard of Review for Issues 3 and 4. These claims are both unpreserved and may not be reversed absent plain error or exceptional circumstances. *State v. Holgate*, 2000 UT 74, ¶13, 10 P.3d 346 (unpreserved claims reviewed for plain error, which required showing that (i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful because without the error, there is a reasonable likelihood of a more favorable outcome).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following constitutional provisions, statutes, and rules are reproduced in Addendum A:

Utah Code Ann. § 63M-7-305(1) (West 2013 Supp.)
(authorizing preparation of PSI);

Utah Code Ann. § 77-18-1.1 (West 2013 Supp.)
(authorizing screening and assessment of defendants for
substance abuse);

Utah Code Ann. §77-18-1(6)(a) (West 2013 Supp.)
(challenging accuracy of PSI).

STATEMENT OF THE CASE

A. Summary of facts.

Defendant Tyson Post resisted arrest and tried to disarm one of the officers who attempted to arrest him for assaulting his girlfriend. R41. The girlfriend called 911 after Defendant punched her in the eye when she asked him to leave. *Id.* When officers arrived, Defendant was belligerent and was eventually pinned against the wall by two officers. Even then, Defendant continued to resist, yelling obscenities and trying to swing his fists. R41.

B. Summary of proceedings.

Defendant was charged with seven crimes, including assault against a peace officer, assault in the presence of a child, and intoxication. R1-2. He was also charged with disarming a police officer. R29, 41.

As part of a plea agreement, Defendant admitted to attempting to disarm a police officer, a second degree felony, and interference with an arresting officer, a class B misdemeanor. R28. Defendant succinctly admitted his crimes in his written plea statement: "I tried to take the cop[']s gun when he was trying to arrest me." R29.

"High risk"

At the court's request—and with Defendant's consent—Adult Probation and Parole prepared a presentence investigation report (PSI) to aid the court in sentencing. R39-44. Defendant's criminal history was charted on the standard Criminal History Matrix, which assigns a numerical value to a defendant's past crimes and suggests a range of possible sanctions for the current offense. R45. The PSI ranked Defendant's criminal history at four based on prior misdemeanors, one involving physical force or threat of physical force and one instance of court-supervised probation. R42, 45. Defendant's score placed him in the "intermediate sanctions" range, which made him eligible for probation, although the trial court still had discretion to impose prison. R45.

The PSI also placed Defendant in the "high" risk and needs category because of the seriousness of his current offense—attempts to disarm a police officer—his lack of remorse, and his "lackadaisical" attitude. R41. The PSI also noted Defendant's unwillingness to address his substance abuse problems. *Id.* The report stated that Defendant had received a drug and alcohol abuse assessment, but refused to return to receive further treatment. *Id.* R39-42. The PSI investigator recommended that the court

deny probation and sentence Defendant to the statutory one to 15 years in prison.¹ R39.

"[P]retty severe conduct"

At sentencing, Defendant challenged the accuracy of the PSI. R71² (Sentencing Hearing, dated December 2, 2013, Addendum B). Through his attorney, Defendant claimed he actually had only one prior misdemeanor conviction, not two to four, as stated in the PSI. R71:3.³ Defendant also disputed the PSI's characterization of him as "very violent when he's under the influence of alcohol . . ." *Id.* Defendant requested that he be placed on probation and sentenced to drug court to treat his substance abuse issues. R71:4.

¹The PSI also states that Defendant failed to complete the questionnaires and documents in his PSI packet and that he appears to show no remorse for his actions. R40. Additionally, Defendant is unemployed, has not been employed since 2011, and supports himself through "Tribal dividends." R44.

² The record index lists the sentencing transcript as page 71 of the record, but the transcript itself is not numbered. The State will refer to the transcript as "R71:" followed by the transcript's numbered pages.

³ Defendant also submitted a document captioned "Defense-Based Sentencing Report" prepared by Kim Harward, who is described as a "sentencing specialist." R47-65. The report purports to use many of the same criteria used by AP&P to prepare a PSI, although it calculates Defendant's criminal history at five, instead of four. R47. It recommends a sentence of supervised probation, jail time, and community service. *Id.*

The prosecutor disagreed. He told the court that Defendant's criminal history included numerous misdemeanors. He referred specifically to DUIs in 2004 and 2010, drug charges in 2011, and a previous charge of resisting arrest in 2012. R71:5. The prosecutor also noted that Defendant's current offense—resisting arrest and attempting to grab the officer's gun—was “pretty severe conduct” and warranted a prison term. R71:5.

Because Defendant disputed the accuracy of the PSI, the court asked the Defendant which of his four prior misdemeanor charges resulted in convictions. Defendant could not remember. R71:8-9

At the end of the hearing, the court determined that Defendant had at least two prior misdemeanor convictions, which left his criminal history score unchanged at four. R42, 71:9. Neither Defendant nor his attorney objected to this finding. *See* R71:9-10.

The court sentenced Defendant to one to 15 years in the Utah State Prison for attempting to disarm a police officer and six months in jail for interfering with arrest. R71:10. The judge ran the sentences concurrently. *Id.*

Defendant timely appealed.

SUMMARY OF ARGUMENT

Point I: The trial court was well within its discretion to impose prison instead of probation.. Defendants have no right to probation. The seriousness of Defendant's crime—attempting to disarm a police officer—along with his criminal history and “lackadaisical” attitude warranted a prison term. Certainly, it cannot be said that no reasonable jurist would take the view adopted by the sentencing court here.

Point II: The trial court properly considered and resolved alleged errors in Defendant's PSI before imposing sentence. At sentencing, the trial court carefully considered the alleged errors one by one and resolved the disputes without objection from Defendant. Accordingly, the sentence was not based on inaccurate information.

Point III: The trial court met its statutory obligations to screen Defendant for possible substance abuse treatment when the court ordered preparation of a PSI, which included an evaluation of Defendant for possible treatment.

Point IV: Nothing in the record suggests that the trial court sentenced Defendant to prison because of his Native American ancestry or his presence on an Indian Reservation. Thus, Defendant's inadequately

briefed claim that the prison sentence violated his equal protection rights fails.

ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN SENTENCING DEFENDANT TO PRISON

In challenging his sentence, Defendant argues that the trial court should have given him probation and treatment for substance instead of prison. Defendant claims that his prison sentence resulted from the judge's failure to resolve factual disputes in the PSI, which in turn led the judge to refuse Defendant's request to be re-screened for possible substance abuse treatment in lieu of prison. Appt.Br. at 11, 13.

Defendant is wrong. First, on the record before it, the trial court was well within its discretion to sentence him to prison instead of probation. And the record from the sentencing hearing shows that the court carefully considered and properly resolved the alleged inaccuracies in Defendant's PSI before imposing sentence. *See* R71:7-10. The record also shows that Defendant was evaluated for substance abuse treatment, but that he refused to undergo further treatment. R41. Accordingly, the trial court did not abuse its discretion and this Court should affirm Defendant's sentence.

- A. The trial court acted within its discretion in sentencing Defendant to prison instead probation.

Defendant had “no right to be placed on probation. . . .” *State v. Pritchett*, 2003 UT 24, ¶36, 69 P.3d 1278 (quoting *State v. Smith*, 842 P.2d 908, 910 (Utah 1992)). The probation statute “gives the sentencing court full discretion not to suspend a sentence even if a defendant is eligible for probation under the statute.” *State v. Munguia*, 2011 UT 5, ¶24, 53 P.3d 1082. When a defendant pleads guilty, “he is only entitled to receive the sentence the law provides.” *Id.*; see also *State v. Sotolongo*, 2003 UT App 214, ¶3, 73 P.3d 991 (trial court “has broad discretion in imposing [a] sentence within the statutory scope provided by the legislature”) (citation omitted). A trial court may impose probation only if “that will best serve the ends of justice and is compatible with the public interest.” *State v. Rhodes*, 818 P.2d 1048, 1051 (Utah App. 1991). The “granting or withholding of probation involves considering intangibles of character, personality and attitude.” *Rhodes*, 818 P.2d at 1049 (quotation marks and citation omitted).

An abuse of discretion occurs only if “the actions of the judge in sentencing were inherently unfair or if the judge imposed a clearly excessive sentence.” *State v. Montoya*, 929 P.2d 356, 358 (Utah App. 1996) (citation omitted). A court abuses its discretion only when “no reasonable [person] would take the view adopted by the trial court.” *Id.*; accord *State v. Thorkelson*, 2004 UT App 9, ¶12, 84 P.3d 854. “Whether the trial court

properly complied with a legal duty is a question of law,” reviewed for correctness. *State v. Veteto*, 2000 UT 62, ¶13, 6 P.3d 1133.

Utah law also provides that any inaccuracies in the PSI that cannot be resolved by the parties shall be pointed out to the trial judge before sentencing. Utah Code Ann. §77-18-1(6)(a) (West Supp. 2013). If alleged inaccuracies cannot be resolved before sentencing, the court may grant an additional 10 working days to resolve them. *Id.* If the inaccuracies are not resolved during the 10-day period, “the court shall make a determination of relevance and accuracy on the record.” *Id.*

Defendant has not demonstrated that the sentencing court acted outside its discretion in choosing prison over probation. A trial court properly exercises its sentencing discretion when the sentence is reasonable—that is, within the scope of the penalties provided by statute and supported by the evidence. *See, e.g., Sotolongo*, 2003 UT App 214, ¶3 (trial court “has broad discretion in imposing [a] sentence within the statutory scope provided by the legislature”). Here, the prison term imposed by the trial court is within the scope defined by the legislature for the crimes Defendant committed. *See* Utah Code Ann. § 76-5-102.8(2) (West 2013 Supp.) (attempt to disarm a police officer, a second degree felony, punishable by one to 15 years); Utah Code Ann. § 76-8-305 (West 2013

Supp.) (interference with an arresting officer, a class B Misdemeanor, punishable by up to six months in jail).

In short, the sentencing judge did not abuse his discretion because the prison terms were within "the statutory range" and not "clearly excessive." *State v. Oliver*, 2004 UT App 288 (Memorandum Decision); *see also Montoya*, 929 P.2d at 358 (sentencing court acted within its discretion where sentence is not "inherently unfair" or "clearly excessive sentence"). There was no abuse of discretion because it cannot be said that "no reasonable [person] would take the view adopted by the trial court." *Id.*

B. The trial court correctly weighed the relevance and accuracy of Defendant's PSI before imposing sentence.

According to Defendant, "key errors in the presentence report regarding [Defendant's] criminal history, history of violence, and supposed tendency to become violent and dangerous while intoxicated . . . should have been corrected before the court made its sentencing determination." *Aplt.Br.* at 13. Defendant claims that his prison sentence resulted from an inaccurate PSI, which inflated his criminal history by unfairly adding an extra point "for having a prior violent conviction, when he had none." *Id.*

At sentencing, Defendant argued that some of the cases included in the PSI did not result in convictions and should not have been used to calculate his criminal matrix score. R71:6. Defendant claimed that he had

only one prior misdemeanor conviction, while the PSI stated that he had “two to four” misdemeanors, which added an extra point and placed him in the “intermediate sanctions” range on the matrix. *Id.*; *see also* R45.

This claim is contrary to the record from the sentencing hearing. In fact, the sentencing judge carefully considered Defendant’s criminal history and reviewed with him the cases listed in the PSI one by one. R71:6-9. The court acknowledged that the outcome in some of the cases listed in the PSI was unclear. R71:8-9. The court asked Defendant how those cases were resolved; Defendant stated that he could not remember. *Id.* After hearing from Defendant, defense counsel and the prosecutor, the court concluded that Defendant had at least two prior misdemeanor convictions from separate arrests in 2011 in Cedar City for possession or use of a controlled substance and another in 2012 in Mesquite, Nevada, resisting a public officer and other offenses. *See* R42, 71:9. Because the Mesquite charges involved force or threat of force, and because those charges of resisting arrest were similar to the charges at issue here, the PSI correctly included those in calculating Defendant’s criminal history score, which placed him in the intermediate sanctions range on the matrix. *See* R45.

Moreover, Defendant did not challenge these findings. R71:9-10. If Defendant believed the trial court had not adequately addressed his

concerns, he could have requested a continuance. The probation statute allows a defendant to request a 10-day continuance to resolve alleged inaccuracies in the report. Utah Code Ann. §77-18-1(6)(a). Absent such a request from Defendant, the trial court was within its discretion to “make a determination of relevance and accuracy on the record” and proceed with sentencing. *Id.*

Defendant also argues that the PSI mistakenly characterized him as “becoming very violent and dangerous when intoxicated” and that this error resulted in an inaccurate criminal matrix score and a harsher sentence. Aplt.Br. at 13. Nothing in the record suggests that the trial court specifically relied on the PSI’s conclusion that Defendant became violent when drinking. But regardless, the PSI contained ample, undisputed information establishing Defendant’s violent propensities when drinking. For example, one arresting officer reported that Defendant struck the victim in the eye when she called 911 after Defendant refused to leave. R41. “While [she was] on the phone, [Defendant] punched her in the left eye . . . in the presence of their young daughter.” *Id.* Defendant also “told her that when he gets out of jail he would murder her.” *Id.* She also said that Defendant had threatened her in the past and that she is “scared of him.” *Id.*

Even Defendant's own PSI described Defendant's girlfriend as "[t]he victim of domestic violence," although it also stated that she "has remained" in the relationship. R49. It also stated that the victim accompanied Defendant to his interview and that she has no "apprehension or reservations" about Defendant, although she later confided to the interviewer that Defendant's "drinking has become more problematic over the past year." R55 & n.11.

Thus, the record shows that the court properly resolved relevant factual disputes before sentencing Defendant to prison and that the sentence was not based on inaccurate information.

C. Defendant was "screened" for alcohol and drug abuse, as required by Utah law.

Defendant claims that the trial court abused its discretion by not ordering that he be "assessed" and "screened" for so-called "drug court," which provides for probation and treatment in lieu of prison for eligible candidates. Aplt.Br. at 14-15. Before sentencing Defendant, the trial court "should have followed the statutory procedural directives set forth by the legislature to have [Defendant] first screened, and if screening so indicated, assessed for drug court." *Id.* at 16.

This claim is unpreserved. Although Defendant requested screening for drug court at his sentencing hearing, he did not claim, as he does now

on appeal, that the court was statutorily required to order additional screening. Thus, to prevail on this claim, Defendant must show plain error, *i.e.*, that (i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful because without the error, there is a reasonable likelihood of a more favorable outcome. *State v. Holgate*, 2000 UT 74, ¶13, 10 P.3d 346. Defendant cannot show plain error.

Utah law provides for “the screening, assessment, substance abuse treatment, and supervision” for defendants convicted of a felony. *See* Utah Code Ann. § 63M-7-305(1) (West 2013 Supp.) and Utah Code Ann. § 71-18.1.1(2) (West 2013 Supp.). “Screening” is “a preliminary appraisal” to determine whether the offender should be “assessed” by a licensed mental health therapist to determine whether substance abuse treatment or other programs are needed. Utah Code Ann. § 77-18-1.1(a) & (c).⁴ The law states that, before sentencing, the trial court “shall” order convicted felons to be screened for substance abuse issues and, if warranted, assessed for substance abuse treatment if the court finds that the defendant is an “appropriate candidate” for treatment. Utah Code Ann. § 71-18.1.1(2)(a)-(c).

⁴ The definitions of “screening” and “assessment” are incorporated by reference from Utah’s DUI statutes. *See* Utah Code Ann. 41-6a-501(1)(a) & (f) (West 2013).

The findings from any screening or assessment are incorporated into the PSI. Utah Code Ann. § 77-18-1.1(3).

Here, the trial court fully complied with the law. When Defendant pleaded guilty, the trial court ordered preparation of a PSI, which included screening Defendant for substance abuse issues and eligibility for treatment. R37. After speaking with Defendant and the arresting officers, and reviewing the criminal history, the PSI investigators deemed Defendant “high risk” and recommended prison. R39-41. The PSI noted that Defendant has a history of alcohol-related offenses—including the present offense—and that he becomes “very violent” when intoxicated. R41. The PSI also stated that Defendant received an alcohol and drug abuse assessment but Defendant “refused to return to receive further treatment.” *Id.* The PSI concluded that Defendant’s violent history, “lackadaisical” attitude, and lack of remorse made him a poor candidate for probation or supervision in a less restrictive setting. *Id.*

During the sentencing hearing, Defendant renewed his request for probation and treatment and urged the court to reject the PSI’s prison recommendation. *See* R71. Defense counsel specifically asked that Defendant be “screened” for drug court. R71:2. Counsel claimed that the PSI’s determination that Defendant “had no desire to return for further

treatment . . . is incorrect.” R71:3. Rather, counsel argued, Defendant “does not want to take previously prescribed anti-anxiety medication because he didn’t feel that it worked for him, but he does understand that he does need to address his alcoholism.” *Id.*

The trial court was not persuaded: “I’m not going to change anything in the report because I’m perceiving all of these disputes as having to do with change of attitudes on [Defendant’s] part from the time he spoke to the [AP&P] officer and today.” R71:4. Neither defense counsel nor Defendant disputed this finding, even though both were given the opportunity to do so at the hearing.

In short, by ordering a PSI, the trial court ensured that that Defendant would be screened for possible drug and alcohol treatment. And Defendant was, in fact, screened. R.41. But because Defendant was uncooperative, “lackadaisical,” and unwilling “to return for further treatment,” the PSI investigators saw no need to further evaluate Defendant for drug court. R41. Defendant has failed to show an obvious and prejudicial error where the trial court authorized the statutorily required screening for Defendant, adopted the PSI’s conclusion that Defendant was not a good candidate for treatment, and imposed a statutorily authorized prison term.

D. The trial court did not discriminate against Defendant, based on his "family history" or his "location" on an Indian Reservation.

Finally, Defendant argues that the trial court unconstitutionally denied him probation and drug court because of his "family history" and "location" on an Indian Reservation. Aplt.Br. at 10. Defendant bases this claim on one comment from the trial judge: "I don't think that having him be in drug court down here [San Juan County] when he has as much of his family and history up in the Uintah Basin is . . . going to be a practical solution to this situation." R71:10.

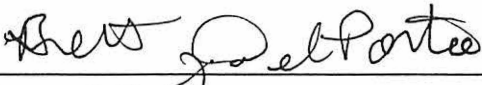
But Defendant's insinuation that the judge's remark shows racial bias misconstrues what, in context, is merely an acknowledgement that drug treatment requires family support and is, therefore, impractical when Defendant lived many miles away. This claim is unpreserved and inadequately briefed. Without more, Defendant cannot show that the judge violated constitutional guarantees of equal protection or otherwise erred.

CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted on September 15, 2014.

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CERTIFICATE OF SERVICE

I certify that on September 15, 2014, two copies of the Brief of Appellee were ☒ mailed ☐ hand-delivered to:

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Also, in accordance with Utah Supreme Court Standing Order No. 8,
a courtesy brief on CD in searchable portable document format (pdf):

☒ was filed with the Court and served on appellant.

☐ will be filed and served within 14 days.

A handwritten signature in black ink, appearing to read "Happy J. Morgan", is written over a horizontal line.

Addenda

Addenda

Addendum A

West's Utah Code Annotated

Title 63M. Governor's Programs

Chapter 7. Criminal Justice and Substance Abuse

Part 3. Utah Substance Abuse Advisory Council

U.C.A. 1953 § **63M-7-305**

Formerly cited as UT ST § 63-25a-205.5

§ 63M-7-305. Drug Offender Reform Act--Coordination

Currentness

(1) As used in this section:

(a) "Council" means the Utah Substance Abuse Advisory Council.

(b) "Drug Offender Reform Act" and "act" mean the screening, assessment, substance abuse treatment, and supervision provided to convicted offenders under Subsection 77-18-1.1 (2) to:

(i) determine offenders' specific substance abuse treatment needs as early as possible in the judicial process;

(ii) expand treatment resources for offenders in the community;

(iii) integrate treatment of offenders with supervision by the Department of Corrections; and

(iv) reduce the incidence of substance abuse and related criminal conduct.

(c) "Substance abuse authority" has the same meaning as in Section 17-43-201.

(2) The council shall provide ongoing oversight of the implementation, functions, and evaluation of the Drug Offender Reform Act.

(3) The council shall develop an implementation plan for the Drug Offender Reform Act. The plan shall:

(a) identify local substance abuse authority areas where the act will be implemented, in cooperation with the Division of Substance Abuse and Mental Health, the Department of Corrections, and the local substance abuse authorities;

(b) include guidelines on how funds appropriated under the act should be used;

- (c) require that treatment plans under the act are appropriate for criminal offenders;
- (d) include guidelines on the membership of local planning groups;
- (e) include guidelines on the membership of the Department of Corrections' planning group under Subsection (5); and
- (f) provide guidelines for the Commission on Criminal and Juvenile Justice to conduct an evaluation of the implementation, impact, and results of the act.

(4)(a) Each local substance abuse authority designated under Subsection (3) to implement the act shall establish a local planning group and shall submit a plan to the council detailing how the authority proposes to use the act funds. The uses shall be in accordance with the guidelines established by the council under Subsection (3).

(b) Upon approval of the plan by the council, the Division of Substance Abuse and Mental Health shall allocate the funds.

(c) Local substance abuse authorities shall annually, on or before October 1, submit to the Division of Substance Abuse and Mental Health and to the council reports detailing use of the funds and the impact and results of the use of the funds during the prior fiscal year ending June 30.

(5)(a) The Department of Corrections shall establish a planning group and shall submit a plan to the council detailing how the department proposes to use the act funds. The uses shall be in accordance with the guidelines established by the council under Subsection (3).

(b) The Department of Corrections shall annually, before October 1, submit to the council a report detailing use of the funds and the impact and results of the use of the funds during the prior fiscal year ending June 30.

(6) The council shall monitor the progress and evaluation of the act and shall provide a written report on the implementation, impact, and results of the act to the Law Enforcement and Criminal Justice and the Health and Human Services legislative interim committees annually before November 1.

Credits

Laws 2008, c. 382, § 1957, eff. May 5, 2008; Laws 2009, c. 337, § 2, eff. July 1, 2009; Laws 2010, c. 39, § 9, eff. May 11, 2010; Laws 2011, c. 51, § 6, eff. May 10, 2011.

U.C.A. 1953 § 63M-7-305, UT ST § 63M-7-305

Current through 2014 General Session.

West's Utah Code Annotated Title 77. Utah Code of Criminal Procedure Chapter 18. The Judgment

U.C.A. 1953 § 77-18-1.1

§ 77-18-1.1. Screening, assessment, and treatment

Currentness

(1) As used in this section:

(a) "Assessment" has the same meaning as in Section 41-6a-501.

(b) "Convicted" means:

(i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental illness, or no contest; and

(ii) conviction of any crime or offense.

(c) "Screening" has the same meaning as in Section 41-6a-501.

(d) "Substance abuse treatment" means treatment obtained through a substance abuse program that is licensed by the Office of Licensing within the Department of Human Services.

(2) On or after July 1, 2009, the courts of the judicial districts where the Drug Offender Reform Act under Section 63M-7-305 is implemented shall, in coordination with the local substance abuse authority regarding available resources, order offenders convicted of a felony to:

(a) participate in a screening prior to sentencing;

(b) participate in an assessment prior to sentencing if the screening indicates an assessment to be appropriate; and

(c) participate in substance abuse treatment if:

(i) the assessment indicates treatment to be appropriate;

(ii) the court finds treatment to be appropriate for the offender; and

(iii) the court finds the offender to be an appropriate candidate for community-based supervision.

(3) The findings from any screening and any assessment conducted under this section shall be part of the presentence investigation report submitted to the court before sentencing of the offender.

(4) Money appropriated by the Legislature to assist in the funding of the screening, assessment, substance abuse treatment, and supervision provided under this section is not subject to any requirement regarding matching funds from a state or local governmental entity.

Credits

Laws 2005, 1st Sp.Sess., c. 14, § 4, eff. July 1, 2005; Laws 2006, c. 61, § 2, eff. May 1, 2006; Laws 2007, c. 218, § 4, eff. July 1, 2007; Laws 2009, c. 337, § 3, eff. July 1, 2009; Laws 2011, c. 342, § 153, eff. May 10, 2011; Laws 2011, c. 366, § 177, eff. May 10, 2011.

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U.C.A. 1953 § 77-18-1.1, UT ST § 77-18-1.1

Current through 2014 General Session.

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West's Utah Code Annotated Title 77. Utah Code of Criminal Procedure Chapter 18. The Judgment

U.C.A. 1953 § 77-18-1

§ 77-18-1. Suspension of sentence--Pleas held in abeyance--Probation--Supervision--
Presentence investigation--Standards--Confidentiality--Terms and conditions--
Termination, revocation, modification, or extension--Hearings--Electronic monitoring

Currentness

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2)(a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

(i) on probation under the supervision of the Department of Corrections except in cases of class C misdemeanors or infractions;

(ii) on probation with an agency of local government or with a private organization; or

(iii) on bench probation under the jurisdiction of the sentencing court.

(b)(i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(3)(a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

(i) the type of offense;

(ii) the demand for services;

(iii) the availability of agency resources;

(iv) the public safety; and

(v) other criteria established by the department to determine what level of services shall be provided.

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in accordance with department standards.

(5)(a) Before the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include:

(i) a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family;

(ii) a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;

(iii) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1;

(iv) recommendations for treatment of the offender; and

(v) the number of days since the commission of the offense that the offender has spent in the custody of the jail and the number of days, if any, the offender was released to a supervised release or alternative incarceration program under Section 17-22-5.5.

(c) The contents of the presentence investigation report are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6)(a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

(i) pay, in one or several sums, any fine imposed at the time of being placed on probation;

(ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

(iii) provide for the support of others for whose support the defendant is legally liable;

(iv) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;

(v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

(vi) serve a term of home confinement, which may include the use of electronic monitoring;

(vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 76-6-107.1;

(viii) pay for the costs of investigation, probation, and treatment services;

(ix) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and

(x) comply with other terms and conditions the court considers appropriate; and

(b) if convicted on or after May 5, 1997:

(i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or

(ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:

(A) a diagnosed learning disability; or

(B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

(a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and

(b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10)(a)(i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, or 12 months in cases of class B or C misdemeanors or infractions.

(ii)(A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable. If the court retains jurisdiction for this limited purpose, the court may order the defendant to pay to the court the costs associated with continued probation under this Subsection (10).

(B) In accordance with Section 77-18-6, the court shall record in the registry of civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.

(b)(i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11)(a)(i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12)(a)(i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b)(i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended.

(c)(i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed if the defendant is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d)(i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.

(e)(i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If probation is revoked, the defendant shall be sentenced or the sentence previously imposed shall be executed.

(13) The court may order the defendant to commit himself or herself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

- (a) ordered by the court pursuant to Subsection 63G-2-202(7);
 - (b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;
 - (c) requested by the Board of Pardons and Parole;
 - (d) requested by the subject of the presentence investigation report or the subject's authorized representative; or
 - (e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.
- (15)(a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.
- (b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).
- (16)(a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.
- (b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.
- (c) The electronic monitoring device shall be used under conditions which require:
- (i) the defendant to wear an electronic monitoring device at all times; and
 - (ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.
- (d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:
- (i) place the defendant on probation under the supervision of the Department of Corrections;

- (ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and
 - (iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.
- (e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.
- (f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Credits

Laws 1980, c. 15, § 2; Laws 1981, c. 59, § 2; Laws 1982, c. 9, § 1; Laws 1983, c. 47, § 1; Laws 1983, c. 68, § 1; Laws 1983, c. 85, § 2; Laws 1984, c. 20, § 1; Laws 1985, c. 212, § 17; Laws 1985, c. 229, § 1; Laws 1987, c. 114, § 1; Laws 1989, c. 226, § 1; Laws 1990, c. 134, § 2; Laws 1991, c. 66, § 5; Laws 1991, c. 206, § 6; Laws 1992, c. 14, § 3; Laws 1993, c. 82, § 7; Laws 1993, c. 220, § 3; Laws 1994, c. 13, § 24; Laws 1994, c. 198, § 1; Laws 1994, c. 230, § 1; Laws 1995, c. 20, § 146, eff. May 1, 1995; Laws 1995, c. 117, § 2, eff. May 1, 1995; Laws 1995, c. 184, § 1, eff. May 1, 1995; Laws 1995, c. 301, § 3, eff. May 1, 1995; Laws 1995, c. 337, § 11, eff. May 1, 1995; Laws 1995, c. 352, § 6, eff. May 1, 1995; Laws 1996, c. 79, § 103, eff. April 29, 1996; Laws 1997, c. 390, § 2, eff. May 5, 1997; Laws 1998, c. 94, § 10, eff. May 4, 1998; Laws 1999, c. 279, § 8, eff. May 3, 1999; Laws 1999, c. 287, § 7, eff. May 3, 1999; Laws 2001, c. 137, § 1, eff. April 30, 2001; Laws 2002, c. 35, § 7, eff. May 6, 2002; Laws 2002, 5th Sp.Sess., c. 8, § 137, eff. Sept. 8, 2002; Laws 2003, c. 290, § 3, eff. May 5, 2003; Laws 2005, 1st Sp.Sess., c. 14, § 3, eff. July 1, 2005; Laws 2007, c. 218, § 3, eff. July 1, 2007; Laws 2008, c. 3, § 252, eff. Feb. 7, 2008; Laws 2008, c. 382, § 2193, eff. May 5, 2008; Laws 2009, c. 81, § 3, eff. May 12, 2009; Laws 2011, c. 366, § 176, eff. May 10, 2011; Laws 2014, c. 120, § 3, eff. May 13, 2014; Laws 2014, c. 170, § 1, eff. May 13, 2014.

Relevant Notes of Decisions (53)

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Due process

One of the requirements of due process in the context of a probation revocation hearing is the right to confront and cross-examine adverse witnesses. U.S.C.A. Const.Amend. 14; U.C.A.1953, 77-18-1(12)(d)(iii). *State v. Tate*, 1999, 989 P.2d 73, 380 Utah Adv. Rep. 22, 1999 UT App 302. Constitutional Law ¶ 4733(2)

Due process protections attach to statutory requirements which afford probationers certain procedural protections before probation is extended. U.S.C.A. Const.Amend. 14; U.C.A.1953, 77-18-1(12). *State v. Martin*, 1999, 976 P.2d 1224, 364 Utah Adv. Rep. 13, 1999 UT App 62. Constitutional Law ¶ 4731

Under circumstances, due process did not require that probation violation report regarding probationer's progress at sex-offender therapy program have been sent to probationer before revocation hearing or that probationer have been given additional time to review report at hearing; probationer freely admitted having violated probation by taking illegal drugs and failing to complete therapy program, revocation decision was based upon those unequivocal admissions, and probationer was allowed to review report and could have addressed any gross inaccuracy at that time. U.S.C.A. Const.Amend. 14; U.C.A.1953, 77-18-1(6)(a).

Addendum B

IN THE SEVENTH JUDICIAL DISTRICT COURT
OF SAN JUAN COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

TYSON POST,

Defendant.

Case No. 131700064 FS



ORIGINAL

Sentencing
Electronically Recorded on
December 2, 2013

BEFORE: THE HONORABLE LYLE R. ANDERSON
Seventh District Court Judge

APPEARANCES

For the Plaintiff:

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UTAH APPELLATE COURTS

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P R O C E E D I N G S

(Electronically recorded on December 2, 2013)

THE COURT: Tyson Post, 1317-64.

MS. MORGAN: Your Honor, Mr. Post is here for sentencing. There is a PSI from AP&P outside of this area near Mr. Post's mother's house, and then there is a defense based PSI that I provided to Mr. Halls this morning and also -- or to Mr. Halls last week and to your Honor this morning.

Before we proceed with sentencing, Mr. Post is wondering if we would consider him based on all the information in both the reports as a candidate for drug court, and screen him for that. He has an extremely small criminal history, and I have that here with me, your Honor. Nothing on it I believe would bump him out of drug court. Addition -- but he does have an admitted alcohol problem.

MR. HALLS: Where is Randlett, Utah?

MS. MORGAN: Fort Duchesne area. That's where his mother lives, but his -- his girlfriend, who is also the mother of his -- one child or two?

MR. POST: Yes.

MS. MORGAN: Of his daughter lives in this area -- lives in Blanding. He could live here and participate that way if the drug court team would be willing to screen him.

THE COURT: All right. Mr. Halls, are you supporting the recommendation from Adult Probation and Parole?

1 MR. HALLS: I am, your Honor.

2 THE COURT: Okay. Are there factual inaccuracies in the
3 report, Ms. Morgan?

4 MS. MORGAN: Judge, I believe you are -- there are. I
5 have Mr. Post's Utah criminal history -- or his criminal history
6 provided through discovery from Mr. Halls's office. I believe
7 that Mr. Post only has one prior conviction, if I may present
8 that to your Honor.

9 Also, Judge, it says limited employment history and
10 skills in his State PSI. He has had five different jobs since
11 2004 when he graduated from high school. He also has an
12 associate's degree, and the PSI doesn't indicate the secondary
13 education. It indicates in the PSI that there's no desire to
14 return for further treatment, and that is incorrect. Mr. Post
15 does not want to take previously prescribed anti-anxiety
16 medication because he didn't feel that it worked for him, but he
17 does understand that he does need to address his alcoholism.

18 Also, Judge, it indicates in the pre-sentence report
19 that he becomes very violent when he's under the influence of
20 alcohol and becomes a serious threat to those in contact with
21 him. There's nothing in his history that indicates that except
22 the current charge, and I -- the victim -- the alleged victim in
23 the case -- the victim in the case didn't indicate that there
24 were any injuries, and in fact accompanied him to his appointment
25 for his PSI.

1 It also says that Mr. Post is not interested in getting
2 work, and he would indicate that that's not correct. He has
3 never had the opportunity to have any form of supervised
4 probation, your Honor.

5 THE COURT: Okay. I'm not going to change anything in
6 the report because I'm perceiving all of these disputes as having
7 to do with change of attitudes on his part from the time he spoke
8 to the officer until today. Mr. Post, did you want to address
9 the Court before I make a decision about sentencing? Did you
10 want to say anything?

11 MS. MORGAN: What would you like to say on your behalf?

12 MR. POST: Yes. Well, your Honor, just you know, I'd
13 like to let you know that -- well, as far as the charges are, you
14 know, concerned, I do know -- feel remorse for what I've done,
15 and you know, I just -- I'd like you to know that I'm just here,
16 basically, asking for your help.

17 I don't see how, you know, prison would do me any good.
18 I just think another step would be a lot more better to take
19 going to drug court and everything else that -- you know, just
20 provide people to provide guidance from -- you know, help them
21 out and everything. Yeah, that's about it, your Honor.

22 THE COURT: Mr. Halls?

23 MR. HALLS: Your Honor, there's a couple things in
24 this -- in the evaluation that concern me. One of them is his
25 criminal history indicates that he had a DUI in 2004, another in

1 2010, drug charges in '11, and then he has a resisting public
2 officer in 2012, and then this charge is a similar, disarming a
3 police officer. The officer indicates that he told him he was
4 going to take his gun, and he made an attempt to do that. That's
5 pretty severe conduct on the part of somebody. If that isn't
6 attributed to the alcohol, then I think we have a worse problem.
7 So you know, Ms. Morgan indicates here that well, he -- there's
8 no indication that he's violent. Well, there's a pretty good
9 indication here that he does not want to follow any authority.

10 The other thing that kind of causes me concern about him
11 is it took two of the officers to get him. He pushed against the
12 officers when they arrested him, and he did the same thing when
13 he was in the jail. Transport to San Juan County Jail, we talked
14 about all that, but then the investigator's comments, pre-
15 sentence report packet was incomplete. He basically says, "I
16 put it off." The officer -- the evaluator here says very
17 lackadaisical attitude, didn't appear to take legal matters
18 seriously, showed no remorse.

19 I do think he has a significant criminal history, and I
20 do think that he has a significant history here with regard to
21 just not wanting to follow authority. That concerns me about
22 whether or not he'd be a good candidate for drug court. So with
23 those concerns, your Honor, I am joining in the recommendation of
24 Adult Probation and Parole.

25 MS. MORGAN: Your Honor, may I respond?

1 THE COURT: Yes.

2 MS. MORGAN: Your Honor, with regard to the charges that
3 Ms. Halls read out to you, I believe he's reading from the pre-
4 sentence report, but I believe that the criminal history is
5 different from that, and that the PSI writer attributed some
6 guilty dispositions to Mr. Post that were inaccurate.

7 With regard to his attempt to disarm a peace officer, he
8 pled to it, and he didn't do it as an Alford plea, and he knows
9 what he did because he read it in the report. I just do want to
10 point out to the Court that he was face up against a wall, that
11 he had two officers behind him. He was struggling and he was
12 being difficult because he was drunk, but when he said, "I'm
13 going to take your weapon," he made a very small reach back, was
14 immediately stopped by Mr. Whipple, never even was able to put
15 his fingers or his hand on the weapon, and we're all glad for
16 that.

17 Also, Judge, just with looking at the sentencing factors
18 and guidelines and the points, the criminal history record shows
19 only one misdemeanor conviction, which would be one point, not
20 two to four prior misdemeanors -- two points -- so he got extra
21 points on form one for that.

22 It also indicates that Tyson was on probation when the
23 present offense was committed, which is four points, but it
24 should only be four points when it's supervised, and -- as
25 opposed to one point for unsupervised. There is no prior violent

1 convictions on his record, but he did get one point for that. So
2 he got more points than he should have when this document was
3 being scored.

4 THE COURT: Let's go over that. What you're saying is
5 that he only had one previous misdemeanor conviction and so the
6 score for that should have been one rather than two?

7 MS. MORGAN: Correct.

8 THE COURT: Are you saying -- is that the only thing you
9 have a quarrel with or --

10 MS. MORGAN: I think that he got four points for being
11 on probation when the present offense was committed, and I think
12 that that is inaccurate because he was not on supervised
13 probation, he was simply on court probation.

14 THE COURT: That's under supervision history, is that
15 what you're --

16 MS. MORGAN: Uh-huh.

17 THE COURT: I'm not familiar with what the standard is
18 for supervision, that it needs to be (inaudible) AP&P rather than
19 court supervision. That's an interesting question. I've never
20 had to resolve that before that I can remember. When you're
21 scoring these do you view --

22 UNIDENTIFIED MALE: We score that any kind of probation
23 (inaudible) judge, whether it's court or supervised probation.

24 THE COURT: Court or AP&P or private probation or all
25 supervision if they're probation?

1 UNIDENTIFIED MALE: Right.

2 MS. MORGAN: Okay.

3 THE COURT: So what -- what was the deal with these
4 charges in -- up in the Vernal/Duchesne area? You had two of
5 them, 2004 and 2010. They say adjudication -- one of them says
6 adjudication pending. The other one says we don't know what
7 happened. Mr. Post, do you have any memory about those things?

8 MR. POST: Yeah, the -- it was transferred to the tribal
9 courts, and the charges were dropped, I believe.

10 THE COURT: You believe?

11 MR. POST: Yeah, I spoke -- yeah, they were. I spoke
12 with the judges and there -- had them transferred to tribal
13 courts and the other charges were dropped.

14 THE COURT: Did you have to do anything to get them
15 dropped or they just dropped them?

16 MR. POST: No, they just gave me -- I think community
17 service. I think that was it.

18 THE COURT: Why would they have been transferred? It
19 looks like you were arrested by the tribal PD?

20 MR. POST: Okay. Which one is he talking about, this
21 one?

22 MS. MORGAN: He's asking about both.

23 MR. POST: Okay.

24 MS. MORGAN: Well, how about starting with this one with
25 the tribal PD.

1 MR. POST: In 2007.

2 MS. MORGAN: Judge, he's not remembering.

3 MR. POST: Yeah.

4 THE COURT: Okay. What happened with this case down in
5 Mesquite, Nevada?

6 MR. POST: It was when I went down to Mesquite. I was
7 alone and --

8 MS. MORGAN: How did it turn out? Dismissed, guilty?

9 MR. POST: I paid my bail amount and -- 450 for bail,
10 and they told me to sign a paper, forfeit your bail and you don't
11 have to return for court.

12 THE COURT: Okay. Any legal reason why sentence should
13 not be pronounced?

14 MS. MORGAN: No.

15 THE COURT: Did you have any response you wanted to
16 make, Mr. Halls? You've said everything you wanted to say?

17 MR. HALLS: Well, your Honor, I guess that I'm looking
18 at the report that was done, and assuming, I guess, that the
19 investigator checked some of those out. The criminal history I
20 have shows that some of those are pending clear back to 2004, but
21 I have nothing else, your Honor.

22 THE COURT: Well, I find that there are at least two
23 previous misdemeanor convictions. Most likely the -- well, the
24 one in Cedar City and then the one in Mesquite, Nevada appear to
25 be convictions. It's difficult to weigh the ones from tribal

1 court. It's very difficult, I'm sure, to get information,
2 particularly the way relationships are between the state and
3 county up there and the Uintah/Ouray tribe. I don't think that
4 having him be in drug court down here when he has as much of
5 his family and his history up in the Uintah Basin is -- as he
6 does is -- is going to be a practical solution to this situation.

7 It's the judgment and sentence of the Court that the
8 defendant be incarcerated in the Utah State Prison for a term of
9 not less than one nor more than 15 years, and in the San Juan
10 County Jail for a period of six months. That will be served
11 concurrently. I'm not going to grant the privilege of probation.
12 He's remanded to the custody of the sheriff to be transported to
13 the prison to serve that sentence. The amount of time you
14 actually spend will be determined by the board of pardons.
15 I'm not going to impose a fine. I don't see any claim for
16 restitution in this case.

17 MS. MORGAN: There is none.

18 THE COURT: Okay. That's it.

19 (Hearing concluded)