

2016

**State of Utah, Plaintiff/ Appellee, v. Roger Wayne Simmons,
Defendant/ Appellant.**

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

Recommended Citation

Brief of Appellant, *State of Utah v Simmons*, No. 20151012 (Utah Court of Appeals, 2016).
https://digitalcommons.law.byu.edu/byu_ca3/3153

This Brief of Appellant 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 (2007–) 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,

v.

ROGER WAYNE SIMMONS,
Defendant/Appellant.

Case Number: 20151012-CA

BRIEF OF THE APPELLANT

Appeal from a conviction for Driving Under the Influence of Alcohol/Drugs, a third degree felony in violation of Utah Code Ann. § 41-6A-502; Alcohol Restricted Driver, a class B misdemeanor in violation of Utah Code Ann. § 41-6A-530; Operating a Vehicle Without an Ignition Interlock System, a class B misdemeanor in violation of Utah Code Ann. § 41-6A-518.2(3) in the Third District Court, State of Utah, the Honorable Richard McKelvie, Judge, presiding.

Sean D. Reyes (7969)
UTAH ATTORNEY GENERAL
160 East 300 South, 6th Floor
PO BOX 140854
Salt Lake City, Utah 84114-0854

Attorney for Appellee

Samuel P. Newton (9935)
LAW OFFICE OF
SAMUEL P. NEWTON, PC
The Historic KM Building
40 2nd Street East, Suite 235
Kalispell, MT 59901-6114

Attorney for Appellant

FILED
UTAH APPELLATE COURTS

JUL 12 2016

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

ROGER WAYNE SIMMONS,
Defendant/Appellant.

Case Number: 20151012-CA

BRIEF OF THE APPELLANT

Appeal from a conviction for Driving Under the Influence of Alcohol/Drugs, a third degree felony in violation of Utah Code Ann. § 41-6A-502; Alcohol Restricted Driver, a class B misdemeanor in violation of Utah Code Ann. § 41-6A-530; Operating a Vehicle Without an Ignition Interlock System, a class B misdemeanor in violation of Utah Code Ann. § 41-6A-518.2(3) in the Third District Court, State of Utah, the Honorable Richard McKelvie, Judge, presiding.

Sean D. Reyes (7969)
UTAH ATTORNEY GENERAL
160 East 300 South, 6th Floor
PO BOX 140854
Salt Lake City, Utah 84114-0854

Attorney for Appellee

Samuel P. Newton (9935)
LAW OFFICE OF
SAMUEL P. NEWTON, PC
The Historic KM Building
40 2nd Street East, Suite 235
Kalispell, MT 59901-6114

Attorney for Appellant

TABLE OF CONTENTS

| | |
|--|-----|
| TABLE OF CONTENTS | III |
| TABLE OF AUTHORITIES | V |
| NATURE OF THE PROCEEDINGS AND JURISDICTION | 1 |
| STATEMENT OF THE ISSUES & STANDARD OF REVIEW | 1 |
| CONSTITUTIONAL OR STATUTORY PROVISIONS | 2 |
| STATEMENT OF THE CASE | 2 |
| STATEMENT OF THE FACTS | 2 |
| SUMMARY OF THE ARGUMENT | 8 |
| ARGUMENT | 9 |
| POINT I | 9 |
| The trial court erred in failing to make findings as to the relevance and accuracy of Mr. Simmons' presentence report | 9 |
| A. If the court finds that the issue was not properly preserved, then this court may still review the issue under the ineffective assistance of counsel doctrine | 12 |
| B. The trial court erred in failing to inquire into Mr. Simmons' dissatisfaction with appointed counsel | 15 |
| CONCLUSION | 17 |
| RULE 24 CERTIFICATE OF COMPLIANCE | 18 |
| CERTIFICATE OF SERVICE | 19 |
| ADDENDUM A (CONSTITUTIONAL PROVISIONS) | |
| ADDENDUM B (STATUTORY PROVISIONS) | |

ADDENDUM C (SENTENCING PROCEEDING)

ADDENDUM D (PORTIONS OF MR. SIMMONS FILINGS)

TABLE OF AUTHORITIES

CASES

| | |
|--|-----------|
| <i>Badger v. Brooklyn Canal Co.</i> , 966 P.2d 844 (Utah 1998) | 12 |
| <i>State v. Abelon</i> , 2016 UT App 22, 369 P.3d 113 | 2, 9, 10 |
| <i>State v. Holland</i> , 876 P.2d 357 (Utah 1994) | 13 |
| <i>State v. Jaeger</i> , 1999 UT 1, 973 P.2d 404 | 9, 12 |
| <i>State v. Kohl</i> , 2000 UT 35, 999 P.2d 7 | 10 |
| <i>State v. Lovell</i> , 1999 UT 40, 984 P.2d 382 | 15, 16 |
| <i>State v. Maroney</i> , 2004 UT App 206, 94 P.3d 295 | 10 |
| <i>State v. Monroe</i> , 2015 UT App 48, 345 P.3d 755 | 9, 10, 14 |
| <i>State v. Powell</i> , 2007 UT 9, 154 P.3d 788 | 13 |
| <i>State v. Pursifell</i> , 746 P.2d 270 (Utah Ct. App. 1987) | 15, 16 |
| <i>State v. Santonio</i> , 2011 UT App 385, 265 P.3d 822, <i>cert. denied</i> , 275 P.3d 1019 (Utah 2012) | 13 |
| <i>State v. Vessey</i> , 967 P.2d 960 (Utah Ct. App. 1998) | 16 |
| <i>State v. Veteto</i> , 2000 UT 62, 6 P.3d 1133 | 2, 12 |
| <i>State v. Waterfield</i> , 2011 UT App 27, 248 P.3d 57 | 10, 11 |
| <i>State v. Waterfield</i> , 2014 UT App 67, 322 P.3d 1194, <i>cert. denied</i> , 333 P.3d 365 (Utah 2014) | 16, 17 |
| <i>Strickland v. Washington</i> , 466 U.S. 668 (1984) | 13 |

STATUTES

| | |
|----------------------------------|------|
| Utah Code Ann. § 77-18-1 | 1, 9 |
| Utah Code Ann. § 78A-4-103(2)(e) | 1 |

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

ROGER WAYNE SIMMONS
Defendant/Appellant.

Case Number: 20151012-CA

NATURE OF THE PROCEEDINGS AND JURISDICTION

Appeal from a conviction for Driving Under the Influence of Alcohol/Drugs, a third degree felony in violation of Utah Code Ann. § 41-6A-502; Alcohol Restricted Driver, a class B misdemeanor in violation of Utah Code Ann. § 41-6A-530; Operating a Vehicle Without an Ignition Interlock System, a class B misdemeanor in violation of Utah Code Ann. § 41-6A-518.2(3) in the Third District Court, State of Utah, the Honorable, Richard McKelvie, Judge, presiding.

This court has jurisdiction pursuant to Utah Code Ann. § 78A-4-103(2)(e).

STATEMENT OF THE ISSUES & STANDARD OF REVIEW

1. Whether the district court erred in failing to resolve Mr. Simmons' objections to inaccuracies in the presentence report as required by Utah Code Ann. § 77-18-1(6)(a).

- a. Standard of Review: "Whether the district court complied with its legal duties under section 77-18-1(6)(a) 'is a question of law that we

review for correctness.” *State v. Abelon*, 2016 UT App 22, ¶ 11, 369 P.3d 113 (quoting *State v. Veteto*, 2000 UT 62, ¶ 13, 6 P.3d 1133).

- b. Preservation of the Argument: Mr. Simmons repeatedly brought up his concerns that the presentence report was inaccurate. *See e.g.*, R. 94-99, 143-243, 273-85, 349-454. Mr. Simmons made most of these requests pro se when he was represented by counsel. However, the district court addressed Mr. Simmons’ concerns, so the matter was preserved. In the event it was not, counsel ineffectively failed to ask the court to comply with section 77-18-1(6)(a).

CONSTITUTIONAL OR STATUTORY PROVISIONS

The texts of the relevant Constitutional provisions and statutes are in Addendum A and B.

STATEMENT OF THE CASE

Mr. Simmons was charged on January 12, 2015. R. 1-6. On August 3, 2015, Mr. Simmons entered a guilty plea to three counts of the information. R. 79-87. On November 9, 2015, the court sentenced Mr. Simmons to prison after it rejected Simmons’ request to amend and correct the PSR. R. 254-57; 268-307. On December 7, 2015, Mr. Simmons appealed to this court. R. 258-63.

STATEMENT OF THE FACTS

Prior to sentencing, Mr. Simmons told the court over a voluminous number of pages that there were serious issues with his presentence report (“PSR”). R. 94-

99, 143-243, 273-85, 349-454. He claimed that the PSR “contained false information in each and every section” and duplicate convictions, that it failed to account for offenses which had been reduced offenses or placed in abeyance, and that it failed to accurately reflect the aggravating and mitigating circumstances. R. 99, 152, 163.

Mr. Simmons also said that a prior PSR prepared by AP&P (and which they duplicated for this sentencing proceeding) was grossly inaccurate and that he had sent Adult Probation and Parole (“AP&P”) 110 pages of material which it neglected to incorporate into that erroneous PSR. R. 99, 124, 140. In the 110 pages, he claimed that he answered over 200 questions from AP&P, detailing how he took responsibility for the crime and had sought to better himself through treatment. R. 140-43. According to Mr. Simmons, an AP&P officer told him that they had never received so much information from a defendant and that he would “try to keep me out of prison because of my excellent employment, support and the fact that I had been proactive and was in treatment—however this officer did not write the report.” R. 144. For example, Mr. Simmons told AP&P to research his BCI to determine his criminal history. The officer, however, reported on the PSR that Simmons “did not disclose prior offenses,” when Mr. Simmons merely directed them to review their documentation. R. 145.

Mr. Simmons gave the court several examples of errors in the PSR before the court. He said that he had only had “one prior commitment” which was in 2004 and that all other convictions should note that jail time was suspended and

that he had successfully completed probation. R. 175. He indicated that some convictions were actually pleas in abeyance which should not have been part of his criminal history, including, but not limited to a simple assault in 2000. R. 175. The PSR said that Simmons paid a fine and did one-day class for one of his convictions, but in reality, Simmons paid \$2,500 and on his own went to a higher level of treatment at Highland Ridge. R. 175. Simmons claimed to have never been charged with an offense of domestic violence, contrary to the PSR. R. 176. He had never consumed alcohol when under supervision and never failed random drug tests, despite the PSR's claims to the contrary. R. 201. He said that the criminal history included dismissed charges, acquitted charges, pleas in abeyance, infractions, diversions and duplicate charges where the state had dismissed and refiled later. R. 176, 186. The cumulative effect of this lengthy, but erroneous, criminal history made it "look like I have many more charges than truthful." R. 176. In reality, Mr. Simmons said that he should have only had three priors: two prior third degree felony DUIs, one from 2004 and one from 2011 in which he successfully finished probation. R. 180. He said he should only have one class A misdemeanor in 2004. R. 180.

Mr. Simmons also alleged that the PSR inaccurately stated that he failed to validate his high school graduation and that his lack of education was a risk factor for criminality. R. 202. Mr. Simmons indicated that he was a N.C. Honor Scholar in high school and that he had degrees from BYU and the University of Utah in computer engineering. R. 202. The PSR specified that Mr. Simmons had

employment risks, but failed to “mention that I have an exceptional career and professional contacts—and that I was employed prior to incarceration” which was included in the documentation he provided to AP&P. R. 202-03. He said that “programs, treatment and things I have done and accomplished were left out entirely.” R. 203. Indeed, Simmons provided the court with his own, more accurate, PSR, which had a recommendation of 90 days to six months in jail with three years probation. R. 204-242.

Mr. Simmons asserted that AP&P failed to use the 2015 amendments to the sentencing guidelines in his case and that without more accurate information, the court was being forced to consider an incomplete PSR. R. 130-31, 216. He asserted that he had limited contact with his appointed counsel and had been unable to help secure the presentation of this evidence to the court. R. 127-31. He also expressed concerns about the PSR’s accuracy because the document is “long-lived and future decisions are made based on these documents long after sentencing.” R. 201.

At sentencing, held November 9, 2015, the court stated that Mr. Simmons had “submitted several voluminous documents to the court outlining his view of the sentencing process.” R. 270-71. Defense counsel told the court that while he did not file the documents, he had discussed self-representation with Simmons, but felt like “that’s something that probably in turn Mr. Simmons would need to address with the Court directly.” R. 271. Defense counsel was concerned that AP&P would not consider Mr. Simmons’ proposed changes to the PSR. This came

from his discussion with the AP&P agent who told counsel the supplemental information "wouldn't change anything":

She made a lot of conclusory statements to me to the effect of he's been incarcerated, absolutely nothing will change, which I found very curious and concerning. Because certainly there is information of what could be going on, things such as classes, and I pointed that out to Agent Gibbons is it would at least be relevant to put in a new report. And she seemed to very quickly dismiss any of those notions, not think they were at the least bit important.

R. 271-72. Counsel was concerned that AP&P did not perform an interview of Mr. Simmons, as he requested and as the court had ordered, and only simply said that Mr. Simmons refused it (and was even dismissive of subsequent requests for one).

R. 272. Counsel asked the court to address Mr. Simmons' sentencing issues. R. 272-73.

Mr. Simmons told the court he did not want to delay the case, but that he only wanted an "honest PSI." R. 273. He said he had requested an interview on multiple occasions but was told AP&P had no intention of doing one. R. 273. He said that he had outlined multiple errors in the PSR and that it was not enough to "verbally update" the document because "[d]ecisions are made at a later date based on that PSR beyond sentencing. It's a long-lived document." R. 273-75.

The State responded that it did not believe that "having an additional PSR ... would be beneficial or necessary" since Mr. Simmons was able to place additional documents on the record. R. 276. The court responded that it had reviewed Mr. Simmons' documents and filings and observed that most of his complaints seemed to be with the process "as opposed to any of the factual

underpendings [sic]." R. 277. Nowhere in Mr. Simmons' pleadings, the court claimed, "did I see any indication that you believe that the underlying facts [in the PSR] were incorrect." R. 278. The court labeled Simmons' motions "much ado about not much." R. 278. Even though the document was "a record that follows you along," the court said, "the only substantive question" for the court was whether Simmons should serve a concurrent or consecutive prison sentence since "no other sentence other than that makes any sense under the circumstances." R. 278.

Mr. Simmons again emphasized that "decisions are made later on based on that PSR, which is incorrect." For example, Mr. Simmons asserted the PSR's incorrect statement that "he offended while under supervision" could result in a harsher Board sentence. R. 279. Simmons complained about much more than procedure. He feared he would be sentenced to prison based on a "PSR that's grossly incorrect, that did not contain anything that I provided to AP&P." R. 278-79. He said that he wanted simply "a correct PSR, to do one that's honest, complete and correct." R. 279-80. He again claimed he had never been in contact with AP&P and never refused to do an interview, but only wanted a witness present. R. 279-82.

The court rejected Mr. Simmons' request to address the issues with the PSR or to modify it:

Well, you have filed your documents, including your version of the PSR which is part of the Court's record. And I think that given the fact that AP&P has prepared, presented a PSR, you've obviously

objected to its contents, your objections are on the record, your objections can also be made to the Parole Board. Your objections not only are on the record, but you've provided documentation regarding why you believe the PSR is inaccurate and unfair. Those are documents and arguments that you can also present to the Board of Pardons if that becomes necessary. Therefore, I'm not inclined to continue the sentencing in this matter. I want to go forward with the sentencing today. And so I'd like you to address that issue specifically.

R. 283. After hearing from the parties, the court then sentenced Mr. Simmons to a consecutive term at the prison after Mr. Simmons again reminded the court of several inaccuracies in the PSR, for example that he accepted responsibility and had done treatment. R. 293-97.

SUMMARY OF THE ARGUMENT

The district court has a statutory and legal obligation to make a determination about the relevance and accuracy of the presentence report when a defendant makes specific objections to that report. Mr. Simmons' repeatedly told the court that his presentence report was not accurate. While the court appears to have considered his documentation and filings, the court did not review the 110-pages Mr. Simmons' claimed had not been attached to the report, nor did it make the required findings. Because Mr. Simmons claimed that these errors were pervasive, particularly that they grossly overstated his criminal history, the effect of the court's errors may well require resentencing.

In the event that the State were to assert that this issue was not preserved, then defense counsel ineffectively failed to specifically request that the court make the required findings. The court also abused its discretion in failing to inquire into

a potential conflict between defense counsel and Mr. Simmons regarding the need to correct these issues in the PSR.

ARGUMENT

POINT I

The trial court erred in failing to make findings as to the relevance and accuracy of Mr. Simmons' presentence report

According to the Utah Code, a trial court has an affirmative obligation to resolve Mr. Simmons' concerns with the PSR before imposing sentence:

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.*

Utah Code Ann. § 77-18-1 (emphasis added). The trial court failed to make this required finding. "Once a defendant alleges to the district court that a PSR contains unresolved 'factual inaccuracies,' the court '*must* do three things: first, consider the objection raised; second, make findings on the record regarding the accuracy of the information at issue; and third, determine on the record the relevance of that information as it relates to sentencing.'" *Abelon*, 2016 UT App 22, ¶ 19 (quoting *State v. Monroe*, 2015 UT App 48, ¶ 6, 345 P.3d 755) (emphasis in original); *State v. Jaeger*, 1999 UT 1, ¶ 44, 973 P.2d 404 ("section 77-18-1(6)(a)

requires the sentencing judge to consider the party's objections to the report, make findings on the record as to whether the information objected to is accurate, and determine on the record whether that information is relevant to the issue of sentencing"); *State v. Waterfield*, 2011 UT App 27, ¶ 8, 248 P.3d 57 ("The sentencing judge is required to consider the party's objections to the report, make findings on the record as to whether the information objected to is accurate, and determine on the record whether that information is relevant to the issue of sentencing") (internal quotations and citation omitted); *Monroe*, 2015 UT App 48, ¶ 6.

In this case, like in *Abelon*, the district court considered Mr. Simmon's objections, but it "failed to make findings on the record as section 77-18-1(6)(a) requires." *Abelon*, 2016 UT App 22, ¶ 20; *State v. Maroney*, 2004 UT App 206, ¶ 27, 94 P.3d 295. The trial court "has a legal duty to properly resolve defendant's objections" to the PSR before proceeding to sentencing. *State v. Kohl*, 2000 UT 35, ¶ 35, 999 P.2d 7. The court did not comport with this duty, which necessitates reversal.

"This court has emphasized that these findings "must be made on the record because the PSR 'may be utilized in future settings, such as parole hearings.'" *Abelon*, 2016 UT App 22, ¶ 20 (quoting *Waterfield*, 2011 UT App 27, ¶ 11); *Monroe*, 2015 UT App 48, ¶¶ 7, 10 ("the PSI will follow Defendant through the justice system, and it is important to make appropriate corrections to the report"). Mr. Simmons reminded the district court of this issue on several occasions—he

knew that an inaccurate PSR could affect his ability to obtain parole, for example—yet the court failed to make findings as to the report’s accuracy, or even discuss Mr. Simmons’ specific objections to the report.

Even the court’s review of Mr. Simmons’ objections did not meet this standard. First, as Mr. Simmons told the court, most of the information was contained in a 110-page questionnaire he gave to AP&P, which appears to not be a part of the court record. R. 99, 124, 140-43. Mr. Simmons summarized much of that documentation, but the court failed to consider the material Mr. Simmons wanted it to. For example, Mr. Simmons contended that virtually the entire PSR was inaccurate—that it overstated his prior criminal history, that it failed to account for treatment efforts he had made, that it failed to account for his positive educational and employment history, among other things. He claimed the report did not comport with the 2015 sentencing guidelines. *See e.g.*, R. 172-237. Despite these clear complaints, the court somehow believed that Mr. Simmons failed to challenge the accuracy of the report. R. 278. Even during the sentencing proceeding itself, Mr. Simmons told the court that the document was not accurate and gave the court some specific examples, such as an inaccurate notation of a failed probation attempt. R. 273, 278-82.

Second, even had the court gone so far as to agree to “accept the additional corrections,” which in this case it did not, it still would “not satisfy its duty to resolve objections to the PSI on the record.” *Waterfield*, 2011 UT App 27, ¶ 9. The court only noted that it had reviewed Mr. Simmons’ materials and that it was

declining to act further. The court merely relied on its view of the evidence presented by Mr. Simmons and told him he could continue to raise the same concerns about accuracy down the road. R. 283.

The court must do more than review Mr. Simmons' material as part of its sentence. "Statements concerning the court's view of the defendant and the case in general prior to sentencing, as was done in this case, simply do not fully meet the requirements of section 77-18-1(6)(a)." *Jaeger*, 1999 UT 1, ¶ 44; *see also Veteto*, 2000 UT 62, ¶ 15 ("Although the trial court clearly was aware of the issues and the alternative characterization urged by defendant, the trial court failed to make the specific findings on the record as mandated by the statute. In so doing, the trial court did not comply with its legal duty to properly resolve Veteto's objections").

A. IF THE COURT FINDS THAT THE ISSUE WAS NOT PROPERLY PRESERVED, THEN THIS COURT MAY STILL REVIEW THE ISSUE UNDER THE INEFFECTIVE ASSISTANCE OF COUNSEL DOCTRINE

"[T]o preserve an issue for appellate review, a party must first raise the issue in the trial court." *Badger v. Brooklyn Canal Co.*, 966 P.2d 844, 847 (Utah 1998). Mr. Simmons preserved these objections at length, but most of these were pro se actions while he was represented. Nonetheless, the court indicated that it reviewed all of those documents and that it wanted to proceed with sentencing. In fact, defense counsel, while he did not file the documents, told the court to (and the court did) talk with Mr. Simmons about his issues. *See* R. 271-76. This amounted to sufficient preservation since counsel told the court to consider the issues and the

court ruled on the objection. To be preserved, an issue must be “sufficiently raised to a level of consciousness before the trial court ... [so as to give] the trial court an opportunity to address the claimed error, and if appropriate, correct it.” *State v. Santonio*, 2011 UT App 385, ¶ 29, 265 P.3d 822 (omissions and alteration in original) (internal quotation marks omitted), *cert. denied*, 275 P.3d 1019 (Utah 2012). Since the court knew of the issue, addressed it and ruled on it, the issue is preserved.

However, in the event counsel, since Mr. Simmons was represented, should have specifically asked the court to make findings and did not,¹ then he was ineffective. The Sixth Amendment provides a criminal defendant with the right to the effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). To establish a claim of ineffective assistance, the defendant must show that (1) his attorney’s acts or omissions “fell below an objective standard of reasonableness,” and (2) “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *State v. Powell*, 2007 UT 9, ¶ 45, 154 P.3d 788 (footnotes omitted); *see also State v. Holland*, 876 P.2d 357, 359 (Utah 1994) (stating “defendants are wholly dependent on the dedication of their attorneys to protect their interests and to ensure their fair treatment under the law”).

¹ Counsel asked the court to discuss Mr. Simmons’ issues with him, which was a sufficient basis to preserve the claim. R. 271-76.

As for the first point, and as demonstrated *supra*, the law is clear: the trial court has an obligation to resolve Mr. Simmons' objections on the record. This court has said, "defense counsel should have asked the district court to make findings on the record addressing the [defendant's] claimed deficiencies" in the PSR. *Monroe*, 2015 UT App 48, ¶ 11. To the extent defense counsel failed to do make this request, he was ineffective for the reasons outlined above.

As to harm, had the court complied with the law, at a minimum, Mr. Simmons would be entitled to findings as to the accuracy and relevance of the PSR to the sentencing decision. At the maximum, if the PSR is indeed as inaccurate as Mr. Simmons claims it is, then he would be entitled to resentencing.

Simmons argued the PSR vastly overstated his criminal history (such as duplicating offenses and listing dismissed offenses) and the inaccurate history appears to be the major factor governing the trial court's sentence. The court stated that its sentence (of consecutive prison terms) appeared appropriate for two reasons: Mr. Simmons history with alcohol and his decision to drive while intoxicated. R. 296-97. If, as Mr. Simmons argued, the PSR grossly inflated this history, then the trial court may well have reduced its sentence had it had accurate information. R. 175-76, 180. Thus, not only should the remand require the court to assess the objections to the PSR, but it should allow the court to resentence Mr. Simmons if those objections are sufficient to warrant an alternative sentence.

B. THE TRIAL COURT ERRED IN FAILING TO INQUIRE INTO MR. SIMMONS' DISSATISFACTION WITH APPOINTED COUNSEL

One complicating factor in the ineffective assistance claim (and related to a potential preservation issue) is that the trial court failed to inquire into a conflict of interest between Mr. Simmons and his counsel. At sentencing, defense counsel told the court that he and Mr. Simmons discussed self-representation, given Simmons' pro se filings, but counsel felt like "that's something that probably in turn Mr. Simmons would need to address with the Court directly." R. 271. This statement clearly was a request for the court to inquire into a conflict. The court did not follow that request, which was error because had it done so, it would have been able to ascertain the conflict's particulars.²

"When a defendant expresses dissatisfaction with counsel, a trial court '*must make some reasonable, non-suggestive efforts* to determine the nature of the defendant's complaints.'" *State v. Lovell*, 1999 UT 40, ¶ 27, 984 P.2d 382 (citing *State v. Pursifell*, 746 P.2d 270, 273 (Utah Ct. App. 1987) (emphasis added)). When the defendant alleges dissatisfaction with trial counsel, the court must "apprise itself of the facts

² This sub-point could arguably be raised as a separate issue. However, the core claim relates to the trial court's failure to make proper findings regarding the PSR. Mr. Simmons raises this sub-point because it relates to his claims of preservation. Mr. Simmons clearly wanted multiple corrections made to the PSR, as he repeatedly contended in his pro se filings. Additionally, his counsel alerted the court that there were issues necessitating an inquiry into a potential desire for self-representation. The State may argue that Mr. Simmons did not preserve his claims because he was represented by counsel and counsel did not specifically re-articulate or re-assert claims made in the pro se filings. However, if counsel alerted the court to the fact that there was a conflict meriting further inquiry and the court failed to pursue that line of inquiry, then the preservation fault lies with the court, not with Mr. Simmons.

necessary to determine whether the defendant's relationship with his or her appointed attorney has deteriorated to the point that sound discretion requires substitution or even to such an extent that his or her Sixth Amendment right to counsel would be violated but for substitution." *Pursifell*, 746 P.2d at 273. "Even when the trial judge suspects that the defendant's requests are disingenuous and designed solely to manipulate the judicial process and to delay the trial, *perfunctory questioning is not sufficient.*" *Id.* (emphasis added); *Vessey*, 967 P.2d at 962.

Here, even after defense counsel's request, the court engaged in *no* questioning. Clearly the issue was sufficient enough for counsel to raise it with the court. Mr. Simmons filed hundreds of pages of pro se motions. In those motions, he indicated that he was having difficulty communicating with his attorney and gathering the information he needed. *See e.g.*, R. 96, 127-31. The motions raised meritorious issues (as discussed *supra*) that his counsel did not address. The court could not assess whether there was, in fact, a sufficient conflict of interest to prevent defense counsel from continuing to represent Mr. Simmons absent some sort of inquiry. This failure was an abuse of discretion. *See State v. Waterfield*, 2014 UT App 67, ¶ 10, 322 P.3d 1194, *cert. denied*, 333 P.3d 365 (Utah 2014)

In *Vessey*, this court held that the trial court's failure to address defendant's pro se ineffective assistance of counsel claims constituted per se error. 967 P.2d 960. While the Supreme Court appears to allow for a harmless error analysis in this context, *see Lovell*, 1999 UT 40, ¶ 27, the fact remains that absent a record of the conflict, which would have happened had the court questioned Mr. Simmons

as counsel asked, the court could not assess whether Mr. Simmons was entitled to substitute counsel. *Waterfield*, 2014 UT App 67, ¶ 17 n.9. Here, the trial court “did not conduct any questioning at all,” which amounted to an abuse of discretion. *Vessey*, 967 P.2d at 962.

While the record does not entirely reflect the nature of the conflict, counsel believed it merited the court’s inquiry, which ought to be sufficient basis for remand to address the issue.

CONCLUSION

For these reasons, Mr. Simmons asks this court to reverse and remand for the trial court to make findings regarding the accuracy and relevance of matters contained in his presentence report. If the district court on remand finds that the PSR is indeed inaccurate, the court should order that it be allowed to resentence Mr. Simmons accordingly.

RESPECTFULLY SUBMITTED this 7 day of July, 2016.

/s/ Samuel P. Newton
SAMUEL P. NEWTON
Attorney for the Defendant/Appellant

RULE 24 CERTIFICATE OF COMPLIANCE

Pursuant to rule 24(f)(1)(C), Utah Rules of Appellate Procedure, I certify that this brief has been prepared in a proportionally-spaced font using Microsoft Word for Mac 2011 in Baskerville 13 point, and contains 4465 words, excluding the table of contents, table of authorities, and addenda.

/s/ Samuel P. Newton
SAMUEL P. NEWTON
Attorney for the Defendant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on 12th July, 2016, I have caused to be ☐ mailed ☒

hand-delivered eight copies of the foregoing to:

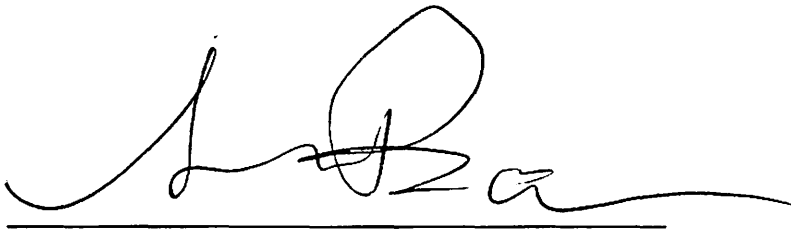
Utah Court of Appeals
450 South State
P.O. Box 140230
Salt Lake City UT 84114-0230

I certify that on 12th July, 2016, two copies of the foregoing brief were ☐

mailed ☒ hand-delivered to:

Utah Attorney General
160 East 300 South, 6th Floor
PO BOX 140854
Salt Lake City, Utah 84114-0854

A digital copy of the brief was also included: ☒ Yes ☐ No



Tab A

ADDENDUM A

Constitutional Provisions

UNITED STATES CONSTITUTION

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

FOURTEENTH AMENDMENT, SECTION 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UTAH CONSTITUTION

ARTICLE I, SECTION 7. [DUE PROCESS OF LAW.]

No person shall be deprived of life, liberty or property, without due process of law.

ARTICLE I, SECTION 12. [RIGHTS OF ACCUSED PERSONS.]

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases.

Tab B

ADDENDUM B
Statutory Provisions

Utah Code Ann. § 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.

...

(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.

...

Tab C

ADDENDUM C
Sentencing Proceeding

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

| | | |
|----------------------|---|--------------------|
| STATE OF UTAH, |) | |
| |) | |
| |) | |
| PLAINTIFF, |) | |
| |) | Case No. 151900384 |
| VS. |) | |
| |) | Transcript of: |
| ROGER WAYNE SIMMONS, |) | |
| |) | SENTENCING |
| |) | |
| DEFENDANT. |) | |

BEFORE THE HONORABLE RICHARD MCKELVIE

SCOTT M. MATHESON COURTHOUSE
450 SOUTH STATE STREET
SALT LAKE CITY, UTAH 84111

NOVEMBER 9, 2015

TRANSCRIBED BY: Susan S. Sprouse, RPR, CSR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE PLAINTIFF:

Victoria A. Turner
SALT LAKE COUNTY DISTRICT ATTORNEY'S OFFICE
111 East Broadway, #400
Salt Lake City, Utah 84111

FOR THE DEFENDANT:

Jeffrey N. Clark
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South
Salt Lake City, Utah 84111

1 November 9, 2015

2 P R O C E E D I N G S

3 * * *

4 **MR. CLARK:** Can you quick call Roger Simmons? He's
5 in custody.

6 **THE COURT:** This is State vs. Roger Simmons. It's
7 case No. 151900384, calendared here for sentencing. Mr. Clark
8 is here with the defendant. Ms. Turner is here for the State.

9 Mr. Clark, you ready to proceed?

10 **MR. CLARK:** Well, I -- you know, I think there are
11 certainly some outstanding issues that need to be addressed,
12 your Honor. I realize there was a letter. So what happened
13 previously was the Court continued sentencing in order to
14 reorder to have Mr. Simmons interviewed and a new report
15 prepared. Then there was a letter that was issued by AP&P in
16 the interim that is --

17 **THE COURT:** The October 16th letter?

18 **MR. CLARK:** I believe that's the one, yes, claiming
19 that Mr. Simmons had refused to complete the packet and get the
20 interview. I know Mr. Simmons disputes that. My intent was to
21 have him address that in person. Certainly I wasn't there. I
22 don't know the specifics other than what he is telling me, and
23 so --

24 **THE COURT:** And I'm sure you're aware that
25 Mr. Simmons has already -- has also submitted several

1 voluminous documents to the court outlining his view of the
2 sentencing process --

3 **MR. CLARK:** Yes.

4 **THE COURT:** -- and the interactions he's had with
5 AP&P, together with his own drafted proposed presentence
6 report?

7 **MR. CLARK:** And I realize the obvious disconnect that
8 that would appear to the Court that he's represented by myself
9 most of -- I think I did file one short response to one -- to
10 something in the interim. Other than that, certainly I have
11 not filed any of those. And we've spoken about whether he's in
12 turn asking to go pro se on this sentencing matter. You know,
13 I think that's something that probably in turn Mr. Simmons
14 would need to address with the Court directly.

15 You know, I -- the only thing I wanted to express
16 regarding that letter, and I did call AP&P Agent Gibbons
17 (phonetic) a couple of weeks or so after this was continued
18 because it looked like maybe something hadn't been filed to
19 have AP&P officially do the follow-up that was ordered for the
20 reason it was continued. And I am concerned that she said it
21 wouldn't -- it wouldn't change anything. She made a lot of
22 conclusory statements to me to the effect of he's been
23 incarcerated, absolutely nothing will change, which I found
24 very curious and concerning. Because certainly there is
25 information of what could be going on, things such as classes,

1 and I pointed that out to Agent Gibbons is it would at least be
2 relevant to put in a new report. And she seemed to very
3 quickly dismiss any of those notions, not think they were at
4 the least bit important.

5 So I am concerned about that conversation I had. I
6 think that was before the letter went out. Because I think
7 right after that, or soon after, I had called the court to make
8 sure that something had been sent to AP&P. That was my only
9 role there, was to simply ensure that something was going on in
10 the process.

11 And so -- because I wanted him to get the interview,
12 of course. And so that was my role there. So I was concerned
13 about that attitude. Otherwise, as I've said, I wasn't -- I
14 know that the letter refers to things having to do with
15 interactions with Mr. Simmons' case worker, and I don't know if
16 necessarily any interactions were directly attempted with him.

17 I also know that Agent Gibbons was very quick to
18 point out that no interview was required. However, I do
19 think -- it's reflected in the letter that AP&P did get an
20 order to have the interview, so I think that still leaves an
21 open question about what happened there.

22 **THE COURT:** So what are you asking with respect to
23 sentencing? Do you want to go forward on sentencing today?
24 Are you asking that sentencing be continued? The first
25 question I have is, procedurally where do you believe we are

1 right now?

2 **MR. CLARK:** Well, I certainly think the -- because
3 Mr. Simmons is disputing what -- the information from the
4 letter, I think that -- certainly that would be -- I'm inclined
5 to have that addressed first.

6 **THE COURT:** All right. Well, let me hear from
7 Mr. Simmons on that issue then.

8 **THE DEFENDANT:** So basically I'm filing these motions
9 to help sentencing of the law. I hope it's not interpreted as
10 a way to delay it. What I am looking for in the motion that I
11 filed is just to be dealt with some level of integrity by AP&P
12 to get the court correct, honest PSI or PSR.

13 Before the last sentencing date on September 28th, I
14 sent a letter directly to Officer Gibbons requesting her to
15 pick up the information that I had and to conduct an interview.
16 I've never refused an interview from them. And I've requested
17 of them on four separate occasions, advice through my case
18 worker, once for a direct letter saying I had it and once to my
19 attorney. And every indication I've gotten a message back they
20 had no [inaudible] intention of conducting an interview. And
21 based on the PSR that I got last time, I put in a motion -- I
22 don't know if you've had time to read it -- but I outlined it,
23 and there's four sections of the PSR. And the errors that I
24 indicated that are in the section.

25 And so I'm drawing the conclusion -- I drew the

1 conclusion that before my attorney even told me that they
2 picked a destination where they wanted to be. And that they
3 worked the PSR to get towards that goal. There are errors in
4 the sentencing calculation in the matrix. There's some things
5 in there that are not true. There are some things that are not
6 true in the probative portion here. There are things that are
7 not true in the NLSI. So I've outlined all of those errors.

8 And I've also indicated in the past they've told me,
9 no one has ever given us, you know, so much good and quality
10 information before. They had 60 pages of written information
11 from me that were answering 200 questions in that PSI
12 questionnaire. They had that before September 28th. I also
13 sent them an additional 50 pages. They have 110 pages in all,
14 and I requested an interview four times.

15 If they've already picked their destination, and they
16 don't see budging from that, that destination not be data
17 driven of putting in what they have and getting input from me,
18 then I -- you know, that lines up with what, you know, my
19 attorney has said, that they have no obligation -- I've been
20 told twice they have no obligation to do an interview.

21 They've left out essential things. It's not just the
22 sentencing matrix that goes into sentencing, it's also
23 mitigating circumstances, aggravating circumstances, and other
24 issues. There are aggravating circumstances that they checked
25 that could only be determined if they did have an interview

1 with me and spoke with me.

2 And so this isn't the first time this has happened to
3 me or anyone else, and it's not specific to me or anyone. In
4 the previous -- in the case that I'm incarcerated on, it was
5 much, much worse, but did not have a chance to address that.
6 And that's why I'm concerned, is that it isn't enough to
7 verbally update that, that PSI in court if there are
8 significant errors. Decisions are made at a later date based
9 on that PSR beyond sentencing. It's a long-lived document.
10 And it's just essential to me that I be dealt with, you know,
11 at some level of integrity there with respect to that. And I'm
12 asking for that.

13 And so -- and there's nothing that's true in the
14 letter. I've never -- they've never come to the prison and
15 called me for an interview. So I've never denied an interview.
16 I've never refused an interview. I haven't refused
17 information. It's in my benefit to get the positive things
18 that I've done and the mitigating circumstances in there. And
19 I think that's -- that's the problem, is that they want to deny
20 me that for some reason. I don't know what influence they have
21 there, but I've attempted to do that.

22 So in the motion, I'm respectfully requesting that
23 the incorrect PSR be removed from the file, not just here in
24 the court but from AP&P's file as well, if it is incorrect and
25 it is, and the calculation of the matrix and score [inaudible]

1 it gets confusing. I'm not asking that another PSR be done; we
2 can address that later.

3 But as far as this motion goes, given that it's
4 incorrect, it's a long-lived document, decisions are made later
5 after sentencing. Based on that, I'm just asking that that be
6 removed from the file.

7 **THE COURT:** Ms. Turner, what's the State's position?

8 **MS. TURNER:** I believe I'd spoken to both Officer
9 Diehl (phonetic), who his case worker out at the prison, and
10 also Agent Gibbons. So in addition to the letter that was
11 admitted to the court, I've apparently emailed him, Officer
12 Diehl, and he indicated that he had Mr. Simmons fill out the
13 PSI packet without giving it to him by fax or mail. He said he
14 would only hand it to Cory Gibbons personally [inaudible]. He
15 then contacted Agent Gibbons to let her know Mr. Simmons'
16 position.

17 I think ultimately the PS -- the underlying PSR was
18 used in the sentencing before Judge Kouris all the way back in
19 March of -- earlier this year, the reason why he's in prison on
20 his current sentence. I believe in looking and reading through
21 his copious memos, I don't believe that anything -- I don't
22 know how to put this, that having an additional PSR, an amended
23 PSR would be beneficial or necessary. He certainly has all of
24 those documents on the record. And, your Honor, has had an
25 opportunity anyway. I suppose it's to read through those

1 regarding the defendant's position. I think those are now part
2 of the record, and able to supplement the presentence report.

3 I think that additional measure of -- [inaudible]
4 attempted several times to get the packets. I think this has
5 been mentioned previously and I have these in emails as well.
6 Officer Diehl has attempted to give him multiple packets, all
7 of which have disappeared [inaudible] ways so he's unable to
8 get them out. I'm not sure what the delay is or [inaudible]
9 I'm willing to fill this out, but I think that he's now had an
10 opportunity through the filings to state his position very
11 clearly on the record and let your Honor know any mitigating or
12 mitigating factors that he's -- believe are relevant to his
13 sentence.

14 **THE COURT:** Mr. Simmons, I will indicate to you that
15 I have reviewed the documents that you filed, together with
16 both your objections to the presentence report, your objections
17 to the process of conducting the presentence investigation that
18 led to the report as well as the presentence report that you
19 submitted on your own behalf, the so called corrected
20 presentence report.

21 It appears that most or all of what you complain
22 about has to do with the process by which the presentence
23 report has been both investigated and prepared as opposed to
24 any of the factual underpendings. The thing that struck me
25 about the pre- -- the pleadings that you filed, is that nowhere

1 in the pleadings that I reviewed did I see any indication that
2 you believe that the underlying facts were incorrect. I know
3 that you believe that they -- that the calculations were
4 incorrect. I think that by and large, it's much ado about not
5 much.

6 I understand your concern about this document being a
7 record that follows you along, but the bottom line of it is the
8 offense of conviction is a third-degree felony, driving under
9 the influence, together with a couple of Class B misdemeanors.

10 You've previously been sentenced by Judge Kouris to a
11 term of imprisonment on a different conviction, for a different
12 felony DUI. And really as I see it, the only substantive
13 question for me to answer under these circumstances is whether
14 or not you receive a sentence of prison that be ordered to be
15 served concurrently or consecutively to the sentence that you
16 are currently serving. Because quite frankly, no other
17 sentence other than that makes any sense under the
18 circumstances. It doesn't make sense for me to send you to
19 jail or to probation or anything else because you are currently
20 serving a period of up to five years in prison in the Utah
21 State Prison.

22 So given that as a backdrop, what practical conflicts
23 are there between what you view as where this sentencing should
24 go and what AP&P is telling me I should do?

25 **THE DEFENDANT:** With regards to the PSR, as I said,

1 decisions are made later on based on that PSR, which is
2 incorrect. I score that -- or they claim that I committed this
3 offense while I was under supervision. That's not the case.
4 That's significant. Okay? The Board will look at that later
5 and say, oh, he offended while under supervision. But I did
6 not. That is incorrect.

7 With regards to my case worker, my case worker and
8 other officers at the prison, they don't have a responsibility
9 to be part of my PSR or the process. It's AP&P's job and
10 responsibility to get that information.

11 My case worker, if I go into his office and start
12 talking to him about something, he says don't talk to me about
13 your legal case, don't talk to me about your healthcare, don't
14 talk about -- he says, I don't need access do that. But when I
15 did give him information of the PSR, facts to AP&P, he read it
16 all and then talked to me about it. There's things about my
17 legal case that I don't want my case worker looking at the
18 [inaudible] information.

19 So my -- when I said to my case worker, I will give
20 this to AP&P when it comes to the interview, there was every
21 indication on the letter, on the front of the questionnaire,
22 that they were coming and that they would do it. Furthermore,
23 they didn't need another questionnaire because they had one
24 from April, and they had it and they had mitigating
25 circumstances. Getting the mitigating circumstances into the

1 PSR is essential not only for sentencing but also for anyone
2 that sees it later.

3 I am sentenced to prison right now on a PSR that's
4 grossly incorrect, that did not contain anything that I
5 provided to AP&P. And now you submit it on your case, and you
6 are going on that information, but it's wrong. And I didn't
7 have an opportunity. I really did it to address the
8 incorrectness in that PSR.

9 So from that, I gather these PSR's are long-lived,
10 they are going to different judges and to different people.
11 And if they are incorrect or they indicate anything at all
12 about, you know, me or anything that it should be correct. So
13 I'm pleading that AP&P -- AP&P be held accountable to get a
14 correct PSR, to do one that's honest, complete and correct.

15 **THE COURT:** How do you propose that I order them to
16 do that and in the aftermath of your apparent noncompliance
17 with the request that they've made up until now?

18 **THE DEFENDANT:** Well, I've been compliant. I've
19 given them 110 pages of information. I would challenge them to
20 find any other individual that's given more information --

21 **THE COURT:** Well, but it's not just a question of the
22 volume of information you've given them, it's whether or not
23 you've been cooperative and --

24 **THE DEFENDANT:** I've never contact -- I've never been
25 in contact with them. I've never had interaction with them.

1 They've never come to the prison and said, "Will you please
2 bring him out for an interview." I don't know how they can say
3 the things they've said in the interview when I've been giving
4 them information. I've answered the PSI. I wrote in the
5 margins. I've provided some valid information. And I've never
6 refused. I sent them a letter direct saying, "Please come
7 interview me." That was before September 28th.

8 **THE COURT:** Have you had an opportunity to review the
9 letter that was sent by AP&P to the court regarding this issue?

10 **THE DEFENDANT:** I did. And the motion that I filed
11 was in direct response with that. In it I said I never had
12 contact with Mr. Avis. I've never seen his name before.

13 **THE COURT:** But would you dispute the claim that the
14 presentence report -- Mr. Avis says he contacted your case
15 worker who reported that you would provide the presentence --
16 only to the investigating agent with your attorney present
17 during the AP&P interview?

18 **THE DEFENDANT:** For the reason that I did not want my
19 case worker reading the report --

20 **THE COURT:** Okay. I'm not asking you for the reason.
21 I'm asking whether or not that statement is accurate.

22 **THE DEFENDANT:** I did not give to my case worker.
23 But even if I didn't, they already had 60 pages of information
24 I'd given them in response to the questionnaire. I wanted to
25 force an interview and say I want to give it to AP&P, I want

1 them to come to the interview. I was given every indication on
2 the front page that they would come to do an interview as I
3 filed my motion. It says time and date of appointment. We
4 will pick up the packet when we come to do the interview.

5 **THE COURT:** Did you tell the case worker that you
6 would do the interview only in the presence of your attorney?

7 **THE DEFENDANT:** I said after I saw the PSR that I saw
8 on September 28th, I said they are being dishonest here. I
9 said I would like to do the PSR with a witness present and with
10 you or my attorney to be present.

11 So I hadn't refused them information and I haven't
12 declined an interview. That was not a hard requirement saying
13 I will only do it. But I would feel more open to talk if I had
14 a witness there because the PSI investigation seems to be a
15 fishing expedition where they try to catch you on things and do
16 different things as I've described. I'm willing to talk freely
17 and openly to them; I just want them to be honest and to
18 include my input into the PSR.

19 It's not complete. It's going to the Board not being
20 complete. And I'm not proposing that they do one. I don't
21 think I'm going to get a fair shake from them. I'm just --
22 I've just submitted a PSR that I believe is honest, fair and
23 correct and it goes above the guidelines as far as
24 recommendation or sentencing. And I'm just asking that my
25 input be into the PSR. I don't think you can order them to be

1 honest. I think they picked their destination. They've
2 decided what they wanted to do. They've denied my voice in the
3 PSR and I'm fighting to get that in. Like I say, it's
4 important.

5 **THE COURT:** Well, you have filed your documents,
6 including your version of the PSR which is part of the Court's
7 record. And I think that given the fact that AP&P has
8 prepared, presented a PSR, you've obviously objected to its
9 contents, your objections are on the record, your objections
10 can also be made to the Parole Board. Your objections not only
11 are on the record, but you've provided documentation regarding
12 why you believe the PSR is inaccurate and unfair. Those are
13 documents and arguments that you can also present to the Board
14 of Pardons if that becomes necessary. Therefore, I'm not
15 inclined to continue the sentencing in this matter. I want to
16 go forward with the sentencing today. And so I'd like you to
17 address that issue specifically.

18 **MR. CLARK:** Okay, your Honor. If the Court's ruling
19 is to go forward today, the defense's request would be, you
20 know, I think you've framed the issue as far as whether it be
21 concurrent or consecutive, we would ask the Court order this
22 zero to five concurrent.

23 Regardless of what matrix we are using, even under
24 the old, as was prepared I think before, it calls for an
25 intermediate sanction, not even prison, you know, even if --

1 even not addressing all these disputes, okay, that's worse case
2 scenario is that we'd be asking for the intermediate sanction.

3 I certainly -- when it comes -- obviously he's in
4 prison for a DUI. I realize how that looks to the Court, that
5 this was picked up when it was picked up. And I think
6 Mr. Simmons realizes how serious that looks and how serious it
7 is.

8 I did notice a real attitude shift with Roger when we
9 were at -- when he -- the day he waived his preliminary
10 hearing. I anticipated this would, you know, be an all out
11 fight and we would go forward. And he had a real attitude
12 shift about taking accountability for that case and for taking
13 this deal. And so, you know -- and I think that's also
14 reflected and he can speak to this, and he has indicated he's
15 done AA and LDS 12-step classes while in prison. I know he
16 wants to get into a more -- significant treatment there and is
17 having a difficult time doing that, which he can address as
18 well. He's also indicated he's been doing life skill classes
19 at the prison as well.

20 And those are things that I think would have been
21 important if, you know, if an addendum had been done after the
22 interview, he could have discussed those things. And that's
23 what I took issue with, with Agent Gibbons. But, you know, I
24 think those are certainly relevant with what's happened since
25 he's been sentenced to prison on the other case.

1 He's also indicated that he's hoping to, you know, at
2 some point get back to his family roots in North Carolina, to
3 have, to have a fresh start. He certainly has advanced
4 education in his background that he can address as well. He's
5 indicated he has a computer engineering degree.

6 And I did get a letter on -- from his mom that
7 addresses that as well, if I may approach. This is from
8 [inaudible] relevance.

9 **THE COURT:** Thank you, Mr. Clark. You may proceed.

10 **MR. CLARK:** And, your Honor, so -- so I'd ask the
11 Court to consider that.

12 I'd also ask -- with the two misdemeanor charges, I
13 would ask the Court to close those and credit for time served
14 today, given that he has that zero to five, very significant
15 penalty before the Court. I'd rather it be -- even if it is
16 just concurrent compared to consecutive, it's a very
17 significant, potentially effect on his situation at the prison.

18 I would ask that the -- so the ignition interlock
19 devise, Count III as of May 12th, that was part of the new law
20 where it was changed to a Class C misdemeanor. So I believe
21 under the case law through cases such as Yeates, that the
22 detective provide, if necessary, the Court is obligated, I
23 believe under the law, to sentence him as a Class C instead of
24 a Class B on that case. So I would ask the Court to do that as
25 well. And then I would give Mr. Simmons the opportunity to

1 talk as well.

2 **THE COURT:** Mr. Simmons, you have a right to speak to
3 the Court before sentencing. You are not required to. But
4 I'll certainly consider anything you have to say. I want to
5 make clear that right now we're just discussing the issue of
6 sentencing itself, not your objections to the preparation of
7 the presentence report.

8 **THE DEFENDANT:** Okay. Thank you, your Honor.

9 Before these offenses occurred in 2014, I was
10 experiencing a period of toxic stress in my life, dealing with
11 life situations, dealing with things. I took responsibility
12 for that. I clamored to get into Valley Mental Health. I went
13 to vocational rehab to try to get some funding there. I was
14 turned away because of the funding. I think I mentioned that
15 in a letter before. And I also went to the University of Utah.

16 I was between jobs at the time and I had several
17 other life crises that I was juggling that I won't go into. I
18 recognized at that time what usually happens in my life when
19 I'm in that mode, that I would use alcohol incorrectly to cope
20 with that toxic stress. And I did try and I failed. There's
21 some things that I did not know. And I was hoping to get that
22 from, from Valley Mental Health through personal counseling or
23 something.

24 After I failed there, I just -- I began trying to
25 help myself. I've been going to the library checking out

1 books, reading everything that I could, looking at AA, doing
2 all those things. All the offenses under my criminal history
3 stem from one core issue. It's not unemployment. It's not a
4 bad childhood. It's not anything -- it's from one core issue
5 of having to deal with things in life that I haven't had the
6 skills to deal with. But I've never stopped trying. I've
7 never wanted to offend or hurt anyone. I consider myself, you
8 know, based on the things I've been involved in, a passionate
9 person, and I never wanted to be a problem like that.

10 And over the last year, I've, I've learned some
11 things that I wish I'd been directed to in the beginning. And
12 I think I've mentioned that I did stumble across, I got lucky
13 and I found a couple of things explained to me on the level I
14 could understand what was going on in my mind and body and
15 things like that when I would do things that would compromise
16 my values. And I'm ashamed of that.

17 But I -- just having that knowledge has helped. I
18 don't partake of alcohol in the prison. I have over a year of
19 sobriety now. And prior to that I had -- you know, I would go
20 six months to a year before that. But I would always rely on
21 the willpower of all to do that. But I've learned through the
22 readings that I've done that that isn't enough. That you need
23 some extra knowledge and extra things there.

24 A concurrent sentence adds years to my sentence.
25 Right now I'm doing largely dead time. There's no program that

1 I can take advantage of there at the prison due to medical
2 issues the way they have their policies set up, other than the
3 volunteer programs: LDS Recovery and AA, and I do that every
4 opportunity I have. The only books that I've checked out from
5 the library have been self-help books or books on alcoholism to
6 try to address this issue. And I don't want to go into detail
7 of other things that I've learned there, but I prefer to that,
8 reading documents that I have.

9 I'm really fighting for my life to be able to
10 recover. There is a period of time in which I can get back
11 into the job market, continue my career. Every day I become
12 more and more knowledgable.

13 So I'm pleading with the Court under the correctness
14 of the sentencing guidelines, that the matrix that I have now
15 with the new matrix, if you add up the three felonies and
16 [inaudible] submitted, it's six month's probation. And the
17 directive there is to before incarceration, get people into
18 help, see how they do and give graduated sanctions above that
19 if they don't comply.

20 I don't have an opportunity to be subject to that
21 because I've already [inaudible]. The only thing I'm pleading
22 with the Court is not to add significant time to my case.
23 Concurrent is already there. I'm doing everything I possibly
24 can. I have certificates and things I'm doing above and beyond
25 anything I'm asked to do at the prison. This is all

1 [inaudible]. So I'm just pleading with the Court just not to
2 add to the time [inaudible] from getting out [inaudible].

3 My life, I'm really fighting for that now. And I
4 have a commitment to take those things I've learned, to share
5 that with others to make a difference, because it's made a
6 difference with me. Like I say, I have had access to drugs and
7 alcohol, you know, in the prison. I haven't partaken of that
8 given the stress that I have. I don't believe that I'm a risk
9 to myself and I don't believe that I'm a risk to anyone else
10 either. And I've talked with individuals that did have --
11 caused harm and I don't want to be that person. So I guess
12 that's all I have to say.

13 **THE COURT:** All right. Thank you, Mr. Simmons.
14 Ms. Turner.

15 **MS. TURNER:** Your Honor, Mr. Simmons has been
16 committing DUI's all the way back since 2000. This is his 16th
17 charged DUI. Eighth DUI conviction [inaudible] pending.

18 I've heard from defense counsel and the defendant
19 that he's taken accountability and he's taking it very
20 seriously. That is inaccurate because he was found guilty by
21 jury, the words out of his mouth was, "Well, I didn't think
22 they'd find me guilty." He's appealing that case.

23 There's a case that happened after this in November
24 of 2014 of -- that is still pending, for a preliminary hearing
25 at this point.

1 In looking at all of his history and all the
2 opportunities that he's been given, plea in abeyances, his
3 opportunity for probation, a myriad of treatment facilities
4 that he's in and out of, nothing has stuck through this person.
5 In his own presentence report, he said the only way to keep
6 basically society safe from me, to keep me from drinking and
7 driving is to lock me behind bars.

8 And the State is concerned about the pleadings that
9 the defendant has submitted. In reading through these, he
10 indicates that he -- he ultimately is not accepting any kind of
11 responsibility. He thinks he's a medium risk needs, someone
12 who is at a .210 while they were supposed to have an ignition
13 interlock devise on their car, while they hit a car, was
14 followed by another individual for quite some time because he
15 was driving so recklessly, to fight with officers. I think
16 that this is pattern of conduct where Mr. Simmons does not take
17 any responsibility.

18 In the original PSR, the person who did the interview
19 indicated that he takes a victim's stance and apparently he's a
20 victim in all of this and everyone else is basically at fault.
21 The prosecutor for, you know, overcharging or being aggressive.
22 It's the Court's fault for not listening. It's [inaudible] he
23 wants to file. In all of this, he has taken no accountability.
24 He's not taken this seriously, and he hasn't over literally 16
25 DUI's. And those are just charged offenses. The Court knows

1 that there's probably hundred of times that Mr. Simmons drove
2 while intoxicated and just never got caught.

3 There was -- in the PSR there was a letter from a
4 Mr. Johnny Mack, an individual who's a friend of Mr. Simmons,
5 that he submitted [inaudible] PSR. I don't know if the Court
6 has had an opportunity to read it.

7 And I think this is very telling from someone who's
8 [inaudible] over a decade that he will literally say and do
9 anything to get out of prison. He accepts no responsibility.
10 He's not going to do any kind of treatment or monitoring.

11 Ultimately, he doesn't take this problem seriously.
12 And I think that's evident from both his history of cases and
13 also his own writing that he submitted to the Court. The fact
14 that he doesn't mention the fact he has a drinking problem,
15 whether he chooses to drive while intoxicated over and over
16 again, I think illustrates the point that he does not accept
17 responsibility and does not take this seriously.

18 I think that a consecutive/concurrent -- when Judge
19 Kouris sentenced him initially but the sentence -- for the
20 commitment that he's on in March, Judge Kouris made that
21 consecutive finding.

22 The State is requesting that each and every one of
23 these counts also run consecutively. With the new court
24 charges rules, he's going to get credit for the time served
25 that he's already been in. So he's already going to receive

1 the benefit. There's a benefit for him doing the courses that
2 he is doing.

3 He's going to receive benefit if he has to work with
4 us, and that is why the State is asking for consecutive because
5 it's a miracle at this point that he hasn't killed someone.
6 There's been accidents in several of these cases, including the
7 new one. But with a history like this and attitude that he's
8 shown the Court, I -- I think for public safety stance,
9 consecutive is the only way.

10 And he mentions the guidelines. And that's
11 specifically there. They are just guidelines. We can't, you
12 know -- we can't leave our common sense at the door. This
13 is -- Mr. Simmons is a danger to society. And I feel like with
14 his history and his repeated actions and his attitude, I think
15 that's illustrated [inaudible] illustrative of that.

16 **THE COURT:** Thank you, Ms. Turner.

17 **MR. CLARK:** If I may, this is an anonymous letter. I
18 don't know how much it's considered. It's part of that
19 previous PSR. And yet -- and Roger can address that if the
20 Court would like -- give me just a minute, okay?

21 **THE COURT:** I'll just indicate, Mr. Clark, that I'm
22 not going to consider the contents of this letter as it relates
23 to the sentencing.

24 **MR. CLARK:** Okay. Thank you, your Honor.

25 **THE COURT:** I really haven't even taken an

1 opportunity to read it. So...

2 **MR. CLARK:** Okay. And the other thing I wanted to
3 point out, is Ms. Turner agreed to specifically recommend
4 Counts 1, 2 and 3 run concurrent with each other but
5 consecutive to his other prison commitments. I'm reading
6 straight from the plea form. So that's inconsistent with the
7 plea agreement.

8 **THE COURT:** Is that correct?

9 **MS. TURNER:** That is correct, your Honor. [Inaudible]

10 **THE COURT:** I appreciate that correction.

11 **MR. CLARK:** I know Mr. Simmons had wanted to dispute
12 a couple of other points, but I'll leave that up to the Court
13 on --

14 **THE COURT:** I'm ready to impose sentence at this
15 time.

16 **THE DEFENDANT:** Can I just say one thing?

17 **THE COURT:** Go ahead.

18 **THE DEFENDANT:** That letter was written by someone
19 that I hired three weeks before.

20 **THE COURT:** As I've indicated, I haven't looked at
21 the letter; I'm not considering it.

22 **THE DEFENDANT:** With regards to the previous PSR,
23 they asked me 200 questions. And in it, I specifically wrote
24 to them, I said I do not consider myself a victim. When you
25 consider yourself a victim, you don't see yourself as the

1 problem and you don't take responsibility. I wrote that. And
2 I wrote everything that I need to take responsibility.

3 In that PSR, they wrote I take the victim stance.
4 This is the big problem is where -- that the PSR comes from. I
5 did take responsibility. Okay? And the fact that I pled
6 guilty in this case speaks volumes of that.

7 I don't want to be a problem to myself or to anyone
8 else. I never have. I have tried in the past. I've been
9 given wrong information sometimes, but with treatment care
10 programs, I take full responsibility for it.

11 I reject the idea -- I've never been involved in an
12 accident where there's been damage to a car or vehicle. Okay?
13 That information is incorrect. Okay? A lot of other things
14 are incorrect.

15 Referencing the previous PSR, I wanted to file that
16 previous PSR removed, because in it I outlined all of these
17 things that I've done. Programs that I'd done, going
18 [inaudible] doing things that I need -- I just need [inaudible]

19 And in the past that hasn't been offered. I haven't
20 had a myriad of treatment programs. I've had one. And it
21 worked for about four years. I didn't understand the concept,
22 the disease concept of the necessity of maintenance of relapse
23 prevention. It does work. But I didn't realize it then. I
24 thought that, you know, you go to a treatment program, you're
25 done. That's not the case.

1 And I have a commitment to keep doing that, not only
2 to do that, but to share with other people. The chapter zero,
3 the first -- or the first chapter of the book that I've been
4 missing all along. I think a lot of other people are missing
5 that chapter too.

6 I'm asking for an opportunity to recover my life.
7 And a concurrent sentence is -- it's a significant blow. It
8 adds years to my time to begin with based on how things are
9 calculated. It's not credit for time served concurrent.

10 So there's a lot of other issues that I could go
11 through and describe, but I just I think a lot of things
12 haven't been fair in the PSR based on information that I've
13 provided. And I mean, I have certificates of things I've
14 completed. And, you know, I don't know of anyone else at the
15 prison that's done more than me. And I don't know anyone else,
16 who like me, that has done more before to try to remove
17 themself [inaudible]. I don't.

18 **THE COURT:** All right. Thank you, Mr. Simmons.

19 The case before the Court is a one third-degree
20 felony, a Class B misdemeanor, and Ms. Turner, you would
21 acknowledge that sentencing with respect to the interlock
22 should be as a Class C misdemeanor?

23 **MS. TURNER:** Yes, your Honor.

24 **THE COURT:** All right. It will be the sentence of
25 the Court that the defendant serve a term of imprisonment of up

1 to five years as it relates to Count 1, a term of up to six
2 months as it relates to Count 2, a term of up to 90 days as it
3 relates to Count 3. Counts 1, 2 and 3, the sentences of those
4 three counts are ordered to be served concurrently with one
5 another and not consecutively with one another.

6 Mr. Simmons, you present both in court and in your
7 writings as a very intelligent, articulate well educated man.
8 You understand, I think, the problems that you are facing.

9 There are two issues that the Court has to address or
10 it has to consider. The first is your issue with respect to
11 alcohol, which I think is an internal struggle that you are
12 going to have to come to grips with one way or another.
13 Whether or not you ever overcome that is entirely up to you.
14 And it's my concern, quite frankly, only as it relates to my
15 compassion as a human being and my, my hope that you get a
16 handle on that.

17 The other and more compelling issue, though, is your
18 desire to drive while you're under the influence of alcohol.
19 And that is my compelling concern because I have an obligation
20 to protect the community. You can stand here and perhaps
21 accurately address the fact that you've never been in an
22 accident that's caused damage or injury, but that's a matter of
23 happenstance over which you've had little control. It's just a
24 matter of luck. It's not because you've been so skillful as an
25 intoxicated driver that you've managed to evade accidents, but

1 haven't managed to evade arrest.

2 I think that it's incumbent upon the Court under
3 these circumstances to give the Board of Pardons as much leeway
4 as I can under the circumstances. It's a difficult call to
5 make, and it's not one that I do easily or lightly, but I think
6 that under the circumstances, I'm compelled to order that the
7 sentence be ordered consecutive to the sentence that you are
8 previously serving.

9 I hope that you continue to take advantage of
10 everything that you have both in custody and out to continue to
11 fight what you are fighting and to get back on your feet
12 professionally and otherwise, because I think you have a lot to
13 offer. And the record that you've created here reflects that.
14 It seems you'll have every opportunity to present the issues
15 that you have presented to the Board of Pardons. And it may
16 sound inconsistent for me to say this, but I wish you luck and
17 I wish you success with respect to this. But I have to balance
18 the considerations that I have with you and with society and
19 that will be the order of the Court. Thank you and best of
20 luck to you, sir.

21 **MS. TURNER:** Your Honor, we also have the district
22 court [inaudible] other case.

23 **THE COURT:** Oh, the arraignment on that case? Hang
24 on just a minute. We have an arraignment in that matter. This
25 is the case that's pending, 151906508. And what do we need to

1 do with this? Has there been a preliminary hearing?

2 **MR. CLARK:** We are just coming off the preliminary
3 hearing. This is our first date after that. I'm asking for --
4 until one month, maybe around mid-December for the
5 opportunity -- I haven't received -- I know the CD has been
6 ordered -- or the transcript at the preliminary hearing. I
7 just wanted an opportunity to review that before I set the
8 trial date.

9 **THE COURT:** Do you want to just set a scheduling
10 conference?

11 **MR. CLARK:** If we can.

12 **THE COURT:** All right. In that matter we'll set a
13 scheduling conference for December 21st.

14 **MR. CLARK:** Okay.

15 **THE COURT:** At 8:30 a.m.

16 **MR. CLARK:** I'm actually off that day. Can we have
17 the 14th, perhaps?

18 **THE COURT:** I can do the 7th. We can do this
19 December 7th, if that gives you enough time.

20 **MR. CLARK:** Okay. What would be the first date after
21 that?

22 **THE COURT:** January 4th. If you can't do -- you have
23 December 7th, December 21st, or January 4th is the dates I can
24 offer you.

25 **MR. CLARK:** If we could have January 4th.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: All right. We'll set it for January 4th
then at 8:30 a.m.

MR. CLARK: Okay. Thank you your Honor.

(Court was adjourned on this matter at 12:25 p.m.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF UTAH)
) SS
COUNTY OF UTAH)

I, Susan S. Sprouse, a Certified Shorthand Reporter
in and for the State of Utah, do hereby certify that I received
the audio recording in the matter of State of Utah vs. Roger
Wayne Simmons, hearing date November 9, 2015, and that I
transcribed it into typewriting and that a full, true and
correct transcription of said hearing so recorded and
transcribed is set forth in the foregoing pages numbered from 3
through 32, inclusive except where it is indicated that the
tape recording was inaudible.

DATED this 7th day of January, 2016.

SUSAN S. SPROUSE, RPR, CSR
LICENSE NO. 5965543-7801

| | | |
|--------------------------------------|---|---|
| 210 [1] 23/12 | add [3] 21/15 21/22 22/2 | attorney [6] 6/19 7/1 7/19 14/16 15/6 15/10 |
| 1 | addendum [1] 17/21 | ATTORNEY'S [1] 2/3 |
| 110 [2] 7/13 13/19 | addition [1] 9/10 | audio [1] 33/7 |
| 111 [1] 2/4 | additional [3] 7/13 9/22 10/3 | Avis [2] 14/12 14/14 |
| 12-step [1] 17/15 | address [12] | aware [1] 3/24 |
| 12:25 [1] 32/4 | addressed [2] 3/11 6/5 | away [1] 19/14 |
| 12th [1] 18/19 | addresses [1] 18/7 | |
| 14th [1] 31/17 | addressing [1] 17/1 | B |
| 151900384 [2] 1/6 3/7 | adds [2] 20/24 28/8 | back [6] 6/19 9/18 18/2 21/10 22/16 30/11 |
| 151906508 [1] 30/25 | adjourned [1] 32/4 | backdrop [1] 11/22 |
| 16 [1] 23/24 | admitted [1] 9/11 | background [1] 18/4 |
| 16th [2] 3/17 22/16 | ado [1] 11/4 | bad [1] 20/4 |
| 2 | advanced [1] 18/3 | balance [1] 30/17 |
| 200 [2] 7/11 26/23 | advantage [2] 21/1 30/9 | bars [1] 23/7 |
| 2000 [1] 22/16 | advice [1] 6/17 | based [7] 6/21 8/8 9/5 12/1 20/8 28/8 28/12 |
| 2014 [2] 19/9 22/24 | after [10] | basically [3] 6/8 23/6 23/20 |
| 2015 [3] 1/18 3/1 33/8 | aftermath [1] 13/16 | be [41] |
| 2016 [1] 33/15 | again [1] 24/16 | because [19] |
| 21st [2] 31/13 31/23 | agent [7] 4/16 5/1 5/17 9/10 9/15 14/16 17/23 | become [1] 21/11 |
| 28th [4] 6/13 7/12 14/7 15/8 | aggravating [2] 7/23 7/24 | becomes [1] 16/14 |
| 3 | aggressive [1] 23/21 | been [33] |
| 32 [1] 33/12 | agreed [1] 26/3 | before [20] |
| 4 | agreement [1] 26/7 | began [1] 19/24 |
| 400 [1] 2/4 | ahead [1] 26/17 | begin [1] 28/8 |
| 424 [1] 2/7 | alcohol [5] 19/19 20/18 22/7 29/11 29/18 | beginning [1] 20/11 |
| 450 [1] 1/15 | alcoholism [1] 21/5 | behalf [1] 10/19 |
| 4th [4] 31/22 31/23 31/25 32/1 | all [28] | behind [1] 23/7 |
| 5 | along [2] 11/7 28/4 | being [5] 11/6 15/8 15/19 23/21 29/15 |
| 50 [1] 7/13 | already [7] 3/25 7/15 14/23 21/21 21/23 24/25 24/25 | believe [14] |
| 500 [1] 2/7 | also [17] | beneficial [1] 9/23 |
| 5965543-7801 [1] 33/18 | always [1] 20/20 | benefit [4] 8/17 25/1 25/1 25/3 |
| 6 | am [4] 4/20 5/5 6/10 13/3 | best [1] 30/19 |
| 60 [2] 7/10 14/23 | amended [1] 9/22 | between [2] 11/23 19/16 |
| 7 | anonymous [1] 25/17 | beyond [2] 8/9 21/24 |
| 7801 [1] 33/18 | another [6] 9/1 12/23 23/14 29/5 29/5 29/12 | big [1] 27/4 |
| 7th [4] 31/18 31/19 31/23 33/15 | answer [1] 11/13 | bit [1] 5/4 |
| 8 | answered [1] 14/4 | blow [1] 28/7 |
| 84111 [3] 1/15 2/4 2/8 | answering [1] 7/11 | Board [6] 12/4 15/19 16/10 16/13 30/3 30/15 |
| 8:30 a.m [2] 31/15 32/2 | anticipated [1] 17/10 | body [1] 20/14 |
| 9 | any [11] | book [1] 28/3 |
| 90 [1] 29/2 | anyone [8] 8/3 8/3 13/1 20/7 22/9 27/7 28/14 28/15 | books [4] 20/1 21/4 21/5 21/5 |
| A | anything [10] | both [6] 9/8 10/16 10/23 24/12 29/6 30/10 |
| a.m [2] 31/15 32/2 | anyway [1] 9/25 | bottom [1] 11/7 |
| AA [3] 17/15 20/1 21/3 | AP [19] | bring [1] 14/2 |
| abeyances [1] 23/2 | apparent [1] 13/16 | Broadway [1] 2/4 |
| able [2] 10/2 21/9 | apparently [2] 9/11 23/19 | budding [1] 7/16 |
| about [18] | appealing [1] 22/22 | |
| above [3] 15/23 21/18 21/24 | appear [1] 4/8 | C |
| absolutely [1] 4/23 | appears [1] 10/21 | calculated [1] 28/9 |
| accept [1] 24/16 | appointment [1] 15/3 | calculation [2] 7/4 8/25 |
| accepting [1] 23/10 | appreciate [1] 26/10 | calculations [1] 11/3 |
| accepts [1] 24/9 | approach [1] 18/7 | calendared [1] 3/7 |
| access [2] 12/14 22/6 | April [1] 12/24 | call [3] 3/4 4/16 30/4 |
| accident [2] 27/12 29/22 | are [45] | called [3] 5/7 8/15 10/19 |
| accidents [2] 25/6 29/25 | arguments [1] 16/13 | calls [1] 16/24 |
| accountability [3] 17/12 22/19 23/23 | around [1] 31/4 | can [21] |
| accountable [1] 13/13 | arraignment [2] 30/23 30/24 | can't [3] 25/11 25/12 31/22 |
| accurate [1] 14/21 | arrest [1] 30/1 | car [3] 23/13 23/13 27/12 |
| accurately [1] 29/21 | articulate [1] 29/7 | care [1] 27/9 |
| acknowledge [1] 28/21 | as [43] | career [1] 21/11 |
| across [1] 20/12 | ashamed [1] 20/16 | Carolina [1] 18/2 |
| actions [1] 25/14 | ask [6] 16/21 18/10 18/12 18/13 18/18 18/24 | case [33] |
| | ask that [1] 18/18 | cases [3] 18/21 24/12 25/6 |
| | asked [2] 21/25 26/23 | catch [1] 15/15 |
| | asking [13] | caught [1] 24/2 |
| | ASSOCIATION [1] 2/7 | caused [2] 22/11 29/22 |
| | attempted [4] 5/16 8/21 10/4 10/6 | CD [1] 31/5 |

| | | |
|---|--|---|
| <p>certainly [11] certificates [2] 21/24 28/13 Certified [1] 33/5 certify [1] 33/6 challenge [1] 13/19 chance [1] 8/5 change [2] 4/21 4/23 changed [1] 18/20 chapter [3] 28/2 28/3 28/5 charged [2] 22/17 23/25 charges [2] 18/12 24/24 checked [2] 7/24 21/4 checking [1] 19/25 childhood [1] 20/4 chooses [1] 24/15 circumstances [11] CITY [3] 1/15 2/4 2/8 claim [2] 12/2 14/13 claiming [1] 3/18 clamored [1] 19/12 Clark [5] 2/6 3/7 3/9 18/9 25/21 Class [6] 11/9 18/20 18/23 18/24 28/20 28/22 classes [3] 4/25 17/15 17/18 clear [1] 19/5 clearly [1] 10/11 close [1] 18/13 come [7] 8/14 14/1 14/6 15/1 15/2 15/4 29/12 comes [3] 12/20 17/3 27/4 coming [2] 12/22 31/2 commitment [3] 22/4 24/20 28/1 commitments [1] 26/5 committed [1] 12/2 committing [1] 22/16 common [1] 25/12 community [1] 29/20 compared [1] 18/16 compassion [1] 29/15 compelled [1] 30/6 compelling [2] 29/17 29/19 complain [1] 10/21 complete [4] 3/19 13/14 15/19 15/20 completed [1] 28/14 compliant [1] 13/18 comply [1] 21/19 compromise [1] 20/15 computer [1] 18/5 concept [2] 27/21 27/22 concern [3] 11/6 29/14 29/19 concerned [5] 4/20 5/5 5/12 8/6 23/8 concerning [1] 4/24 conclusion [2] 6/25 7/1 conclusory [1] 4/22 concurrent [9] concurrently [2] 11/15 29/4 conduct [2] 6/15 23/16 conducting [2] 6/20 10/17 conference [2] 31/10 31/13 conflicts [1] 11/22 confusing [1] 9/1 consecutive [8] 16/21 18/16 24/18 24/21 25/4 25/9 26/5 30/7 consecutive/concurrent [1] 24/18 consecutively [3] 11/15 24/23 29/5 consider [7] 18/11 19/4 20/7 25/22 26/24 26/25 29/10 considerations [1] 30/18 considered [1] 25/18 considering [1] 26/21 contact [3] 13/24 13/25 14/12</p> | <p>contain [1] 13/4 contents [2] 16/9 25/22 continue [4] 16/15 21/11 30/9 30/10 continued [4] 3/13 4/17 4/20 5/24 control [1] 29/23 conversation [1] 5/5 conviction [3] 11/8 11/11 22/17 cooperative [1] 13/23 cope [1] 19/19 copious [1] 9/21 core [2] 20/3 20/4 correct [8] 6/12 13/12 13/14 13/14 15/23 26/8 26/9 33/10 corrected [1] 10/19 correction [1] 26/10 correctness [1] 21/13 Cory [1] 9/14 could [7] 4/25 7/25 17/22 20/1 20/14 28/10 31/25 counsel [1] 22/18 counseling [1] 19/22 Count [4] 18/19 29/1 29/2 29/3 counts [4] 24/23 26/4 29/3 29/4 COUNTY [3] 1/2 2/3 33/3 couple [4] 4/17 11/9 20/13 26/12 course [1] 5/12 courses [1] 25/1 court [37] Court's [3] 16/6 16/18 23/22 COURTHOUSE [1] 1/14 created [1] 30/13 credit [3] 18/13 24/24 28/9 criminal [1] 20/2 crises [1] 19/17 CSR [2] 1/22 33/18 curious [1] 4/24 current [1] 9/20 currently [2] 11/16 11/19 custody [2] 3/5 30/10</p> <p>D</p> <p>damage [2] 27/12 29/22 danger [1] 25/13 data [1] 7/16 date [7] 6/13 8/8 15/3 31/3 31/8 31/20 33/8 DATED [1] 33/15 dates [1] 31/23 day [4] 17/9 21/11 31/16 33/15 days [1] 29/2 dead [1] 20/25 deal [3] 17/13 20/5 20/6 dealing [2] 19/10 19/11 dealt [2] 6/11 8/10 decade [1] 24/8 December [5] 31/4 31/13 31/19 31/23 31/23 December 21st [2] 31/13 31/23 December 7th [2] 31/19 31/23 decided [1] 16/2 decisions [3] 8/8 9/4 12/1 declined [1] 15/12 defendant [6] 1/9 2/5 3/8 22/18 23/9 28/25 defendant's [1] 10/1 DEFENDER [1] 2/7 defense [1] 22/18 defense's [1] 16/19 degree [3] 11/8 18/5 28/19 delay [2] 6/10 10/8 denied [2] 8/15 16/2 deny [1] 8/19</p> | <p>described [1] 15/16 desire [1] 29/18 destination [4] 7/2 7/15 7/16 16/1 detail [1] 21/6 detective [1] 18/22 determined [1] 7/25 devise [2] 18/19 23/13 did [22] didn't [6] 12/23 13/6 14/23 22/21 27/21 27/23 Diehl [3] 9/9 9/12 10/6 difference [2] 22/5 22/6 different [5] 11/11 11/11 13/10 13/10 15/16 difficult [2] 17/17 30/4 direct [3] 6/18 14/6 14/11 directed [1] 20/11 directive [1] 21/17 directly [3] 4/14 5/16 6/14 disappeared [1] 10/7 disconnect [1] 4/7 discussed [1] 17/22 discussing [1] 19/5 disease [1] 27/22 dishonest [1] 15/8 dismiss [1] 5/3 dispute [2] 14/13 26/11 disputes [2] 3/20 17/1 disputing [1] 6/3 district [3] 1/1 2/3 30/21 do [40] document [3] 8/9 9/4 11/6 documentation [1] 16/11 documents [6] 4/1 9/24 10/15 16/5 16/13 21/8 does [4] 23/16 24/16 24/17 27/23 doesn't [3] 11/18 24/11 24/14 doing [10] don't [31] done [10] door [1] 25/12 drafted [1] 4/5 drawing [1] 6/25 drew [1] 6/25 drinking [2] 23/6 24/14 drive [2] 24/15 29/18 driven [1] 7/17 driver [1] 29/25 driving [3] 11/8 23/7 23/15 drove [1] 24/1 drugs [1] 22/6 due [1] 21/1 DUI [4] 11/12 17/4 22/17 22/17 DUI's [2] 22/16 23/25 during [1] 14/17</p> <p>E</p> <p>each [2] 24/22 26/4 earlier [1] 9/19 easily [1] 30/5 East [2] 2/4 2/7 educated [1] 29/7 education [1] 18/4 effect [2] 4/22 18/17 Eighth [1] 22/17 either [1] 22/10 else [7] 8/3 11/19 22/9 23/20 27/8 28/14 28/15 emailed [1] 9/11 emails [1] 10/5 engineering [1] 18/5 enough [3] 8/6 20/22 31/19</p> |
|---|--|---|

| | | |
|--|--|---|
| <p>ensure [1] 5/9 entirely [1] 29/13 errors [4] 6/23 7/3 7/7 8/8 essential [3] 7/21 8/10 13/1 evade [2] 29/25 30/1 even [8] 7/1 14/23 16/23 16/25 16/25 17/1 18/15 25/25 ever [2] 7/9 29/13 every [7] 6/19 12/20 15/1 21/3 21/11 24/22 30/14 everyone [1] 23/20 everything [4] 20/1 21/23 27/2 30/10 evident [1] 24/12 except [1] 33/12 expedition [1] 15/15 experiencing [1] 19/10 explained [1] 20/13 express [1] 4/15 extra [2] 20/23 20/23</p> <p>F</p> <p>facilities [1] 23/3 facing [1] 29/8 fact [5] 16/7 24/13 24/14 27/5 29/21 factors [1] 10/12 facts [2] 11/2 12/15 factual [1] 10/24 failed [2] 19/20 19/24 fair [3] 15/21 15/22 28/12 family [1] 18/2 far [3] 9/3 15/23 16/20 fault [2] 23/20 23/22 fax [1] 9/13 feel [2] 15/13 25/13 feet [1] 30/11 felonies [1] 21/15 felony [3] 11/8 11/12 28/20 fight [3] 17/11 23/15 30/11 fighting [4] 16/3 21/9 22/3 30/11 file [6] 4/9 8/23 8/24 9/6 23/23 27/15 filed [8] 4/11 4/18 6/11 10/15 10/25 14/10 15/3 16/5 filing [1] 6/8 filings [1] 10/10 fill [2] 9/12 10/9 find [2] 13/20 22/22 finding [1] 24/21 first [8] 5/24 6/5 8/2 28/3 28/3 29/10 31/3 31/20 fishing [1] 15/15 five [4] 11/20 16/22 18/14 29/1 follow [1] 4/19 follow-up [1] 4/19 followed [1] 23/14 follows [1] 11/7 force [1] 14/25 foregoing [1] 33/11 form [1] 26/6 forth [1] 33/11 forward [4] 5/23 16/16 16/19 17/11 found [3] 4/23 20/13 22/20 four [4] 6/17 6/23 7/14 27/21 framed [1] 16/20 frankly [2] 11/16 29/14 freely [1] 15/16 fresh [1] 18/3 friend [1] 24/4 front [2] 12/21 15/2 full [2] 27/10 33/9 funding [2] 19/13 19/14 Furthermore [1] 12/22</p> | <p>gather [1] 13/9 get [24] gets [1] 9/1 getting [3] 7/17 12/25 22/2 Gibbons [8] 4/16 5/1 5/17 6/14 9/10 9/14 9/15 17/23 give [9] given [13] gives [1] 31/19 giving [2] 9/13 14/3 go [13] goal [1] 7/3 goes [3] 7/22 9/3 15/23 going [15] good [1] 7/9 got [3] 6/21 20/12 24/2 gotten [1] 6/19 graduated [1] 21/18 grips [1] 29/12 grossly [1] 13/4 guess [1] 22/11 guidelines [4] 15/23 21/14 25/10 25/11 guilty [3] 22/20 22/22 27/6</p> <p>H</p> <p>had [33] hadn't [2] 4/18 15/11 hand [1] 9/14 handle [1] 29/16 Hang [1] 30/23 happened [5] 3/12 5/21 8/2 17/24 22/23 happens [1] 19/18 happenstance [1] 29/23 hard [1] 15/12 harm [1] 22/11 has [29] hasn't [3] 23/24 25/5 27/19 have [58] haven't [10] having [5] 5/14 9/22 17/17 20/5 20/17 he [48] he's [32] Health [2] 19/12 19/22 healthcare [1] 12/13 hear [1] 6/6 heard [1] 22/18 hearing [7] 17/10 22/24 31/1 31/3 31/6 33/8 33/10 held [1] 13/13 help [4] 6/9 19/25 21/5 21/18 helped [1] 20/17 her [2] 6/14 9/15 here [8] 3/7 3/8 3/8 7/6 8/23 15/8 29/20 30/13 hereby [1] 33/6 him [12] hired [1] 26/19 his [25] history [5] 20/2 23/1 24/12 25/7 25/14 hit [1] 23/13 honest [5] 6/12 13/14 15/17 15/22 16/1 Honor [12] HONORABLE [1] 1/12 hope [3] 6/9 29/15 30/9 hoping [2] 18/1 19/21 how [9] However [1] 5/18 human [1] 29/15 hundred [1] 24/1 hurt [1] 20/7</p> | <p>I'd [8] 9/8 14/24 16/16 18/10 18/12 18/15 20/11 27/17 I'll [3] 19/4 25/21 26/12 I'm [43] I've [48] idea [1] 27/11 ignition [2] 18/18 23/12 Ill [1] 18/19 illustrated [1] 25/15 illustrates [1] 24/16 illustrative [1] 25/15 important [3] 5/4 16/4 17/21 impose [1] 26/14 imprisonment [2] 11/11 28/25 inaccurate [2] 16/12 22/20 inaudible [24] incarcerated [2] 4/23 8/4 incarceration [1] 21/17 inclined [2] 6/4 16/15 include [1] 15/18 including [2] 16/6 25/6 inclusive [1] 33/12 inconsistent [2] 26/6 30/16 incorrect [11] incorrectly [1] 19/19 incorrectness [1] 13/8 incumbent [1] 30/2 indicate [3] 10/14 13/11 25/21 indicated [10] indicates [1] 23/10 indication [4] 6/19 11/1 12/21 15/1 individual [3] 13/20 23/14 24/4 individuals [1] 22/10 influence [3] 8/20 11/9 29/18 information [20] initially [1] 24/19 injury [1] 29/22 input [3] 7/17 15/18 15/25 instead [1] 18/23 integrity [2] 6/11 8/11 intelligent [1] 29/7 intent [1] 3/20 intention [1] 6/20 interaction [1] 13/25 interactions [3] 4/4 5/15 5/16 interim [2] 3/16 4/10 interlock [3] 18/18 23/13 28/21 intermediate [2] 16/25 17/2 internal [1] 29/11 interpreted [1] 6/9 interview [26] interviewed [1] 3/14 intoxicated [3] 24/2 24/15 29/25 investigated [1] 10/23 investigating [1] 14/16 investigation [2] 10/17 15/14 involved [2] 20/8 27/11 is [75] isn't [3] 8/2 8/6 20/22 issue [11] issued [1] 3/15 issues [6] 3/11 7/24 21/2 28/10 29/9 30/14 it [65] it's [40] its [1] 16/8 itself [1] 19/6</p> <p>J</p> <p>jail [1] 11/19 January [5] 31/22 31/23 31/25 32/1</p> |
|--|--|---|

| | | |
|---|--|--|
| January... [1] 33/15 January 4th [3] 31/23 31/25 32/1 Jeffrey [1] 2/6 job [2] 12/9 21/11 jobs [1] 19/16 Johnny [1] 24/4 Judge [4] 9/18 11/10 24/18 24/20 judges [1] 13/10 JUDICIAL [1] 1/1 juggling [1] 19/17 jury [1] 22/21 just [29] | managed [2] 29/25 30/1 March [2] 9/19 24/20 margins [1] 14/5 market [1] 21/11 MATHESON [1] 1/14 matrix [6] 7/4 7/22 8/25 16/23 21/14 21/15 matter [8] 4/12 16/15 29/22 29/24 30/24 31/12 32/4 33/7 may [5] 18/7 18/9 18/19 25/17 30/15 May 12th [1] 18/19 maybe [2] 4/18 31/4 MCKELVIE [1] 1/12 me [34] mean [1] 28/13 measure [1] 10/3 medical [1] 21/1 medium [1] 23/11 memos [1] 9/21 Mental [2] 19/12 19/22 mention [1] 24/14 mentioned [3] 10/5 19/14 20/12 mentions [1] 25/10 message [1] 6/19 mid [1] 31/4 mid-December [1] 31/4 mind [1] 20/14 minute [2] 25/20 30/24 miracle [1] 25/5 misdemeanor [4] 18/12 18/20 28/20 28/22 misdemeanors [1] 11/9 missing [2] 28/4 28/4 mitigating [6] 7/23 8/18 10/11 10/12 12/24 12/25 mode [1] 19/19 mom [1] 18/6 monitoring [1] 24/10 month [1] 31/4 month's [1] 21/16 months [2] 20/20 29/2 more [8] 13/20 15/13 17/16 21/12 21/12 28/15 28/16 29/17 most [2] 4/9 10/21 motion [6] 6/10 6/21 8/22 9/3 14/10 15/3 motions [1] 6/8 mouth [1] 22/21 Mr. [30] Mr. Avis [2] 14/12 14/14 Mr. Clark [4] 3/7 3/9 18/9 25/21 Mr. Johnny [1] 24/4 Mr. Simmons [21] Mr. Simmons' [2] 5/15 9/15 Ms. [6] 3/8 9/7 22/14 25/16 26/3 28/20 Ms. Turner [6] 3/8 9/7 22/14 25/16 26/3 28/20 much [7] 7/9 8/5 8/5 11/4 11/5 25/18 30/3 multiple [1] 10/6 my [40] myriad [2] 23/3 27/20 myself [6] 4/8 19/25 20/7 22/9 26/24 27/7 | no [11] No. [1] 3/7 No. 151900384 [1] 3/7 noncompliance [1] 13/16 North [1] 18/2 not [58] nothing [3] 4/23 8/13 23/4 notice [1] 17/8 notions [1] 5/3 NOVEMBER [4] 1/18 3/1 22/23 33/8 now [11] nowhere [1] 10/25 numbered [1] 33/11 |
| K keep [3] 23/5 23/6 28/1 killed [1] 25/5 kind [2] 23/10 24/10 know [42] knowledgable [1] 21/12 knowledge [2] 20/17 20/23 knows [1] 23/25 Kouris [4] 9/18 11/10 24/19 24/20 | me [34] mean [1] 28/13 measure [1] 10/3 medical [1] 21/1 medium [1] 23/11 memos [1] 9/21 Mental [2] 19/12 19/22 mention [1] 24/14 mentioned [3] 10/5 19/14 20/12 mentions [1] 25/10 message [1] 6/19 mid [1] 31/4 mid-December [1] 31/4 mind [1] 20/14 minute [2] 25/20 30/24 miracle [1] 25/5 misdemeanor [4] 18/12 18/20 28/20 28/22 misdemeanors [1] 11/9 missing [2] 28/4 28/4 mitigating [6] 7/23 8/18 10/11 10/12 12/24 12/25 mode [1] 19/19 mom [1] 18/6 monitoring [1] 24/10 month [1] 31/4 month's [1] 21/16 months [2] 20/20 29/2 more [8] 13/20 15/13 17/16 21/12 21/12 28/15 28/16 29/17 most [2] 4/9 10/21 motion [6] 6/10 6/21 8/22 9/3 14/10 15/3 motions [1] 6/8 mouth [1] 22/21 Mr. [30] Mr. Avis [2] 14/12 14/14 Mr. Clark [4] 3/7 3/9 18/9 25/21 Mr. Johnny [1] 24/4 Mr. Simmons [21] Mr. Simmons' [2] 5/15 9/15 Ms. [6] 3/8 9/7 22/14 25/16 26/3 28/20 Ms. Turner [6] 3/8 9/7 22/14 25/16 26/3 28/20 much [7] 7/9 8/5 8/5 11/4 11/5 25/18 30/3 multiple [1] 10/6 my [40] myriad [2] 23/3 27/20 myself [6] 4/8 19/25 20/7 22/9 26/24 27/7 | O objected [1] 16/8 objections [6] 10/16 10/16 16/9 16/9 16/10 19/6 obligated [1] 18/22 obligation [3] 7/19 7/20 29/19 obvious [1] 4/7 obviously [2] 16/8 17/3 occasions [1] 6/17 occurred [1] 19/9 October [1] 3/17 October 16th [1] 3/17 off [2] 31/2 31/16 offend [1] 20/7 offended [1] 12/5 offense [2] 11/8 12/3 offenses [3] 19/9 20/2 23/25 offer [2] 30/13 31/24 offered [1] 27/19 office [2] 2/3 12/11 Officer [4] 6/14 9/8 9/11 10/6 officers [2] 12/8 23/15 officially [1] 4/19 oh [2] 12/5 30/23 okay [14] old [1] 16/24 once [2] 6/18 6/18 one [19] only [16] open [2] 5/21 15/13 openly [1] 15/17 opportunities [1] 23/2 opportunity [14] opposed [1] 10/23 order [7] 3/13 5/20 13/15 15/25 16/21 30/6 30/19 ordered [5] 4/19 11/14 29/4 30/7 31/6 original [1] 23/18 other [21] others [1] 22/5 otherwise [2] 5/13 30/12 our [2] 25/12 31/3 out [18] outlined [3] 6/22 7/7 27/16 outlining [1] 4/1 outstanding [1] 3/11 over [7] 20/10 20/18 23/24 24/8 24/15 24/15 29/23 overcharging [1] 23/21 overcome [1] 29/13 own [4] 4/5 10/19 23/5 24/13 |
| L LAKE [6] 1/2 1/15 2/3 2/4 2/7 2/8 large [1] 11/4 largely [1] 20/25 last [3] 6/13 6/21 20/10 later [6] 8/8 9/2 9/4 12/1 12/4 13/2 law [4] 6/9 18/19 18/21 18/23 LDS [2] 17/15 21/3 learned [4] 20/10 20/21 21/7 22/4 least [2] 5/1 5/4 leave [2] 25/12 26/12 leaves [1] 5/20 led [1] 10/18 leeway [1] 30/3 left [1] 7/21 legal [3] 2/7 12/13 12/17 let [3] 6/6 9/15 10/11 letter [22] level [3] 6/11 8/11 20/13 library [2] 19/25 21/5 LICENSE [1] 33/18 life [9] lightly [1] 30/5 like [11] line [1] 11/7 lines [1] 7/18 listening [1] 23/22 literally [2] 23/24 24/8 little [1] 29/23 lived [3] 8/9 9/4 13/9 lock [1] 23/7 long [3] 8/9 9/4 13/9 long-lived [3] 8/9 9/4 13/9 look [1] 12/4 looked [2] 4/18 26/20 looking [5] 6/10 9/20 12/17 20/1 23/1 looks [2] 17/4 17/6 lot [6] 4/21 27/13 28/4 28/10 28/11 30/12 luck [3] 29/24 30/16 30/20 lucky [1] 20/12 | N name [1] 14/12 necessarily [1] 5/16 necessary [3] 9/23 16/14 18/22 necessity [1] 27/22 need [9] needs [1] 23/11 never [19] new [6] 3/14 5/2 18/19 21/15 24/23 25/7 | P P's [2] 8/24 12/9 p.m [1] 32/4 packet [3] 3/19 9/13 15/4 packets [2] 10/4 10/6 page [1] 15/2 |
| M Mack [1] 24/4 made [8] 4/21 8/8 9/4 12/1 13/17 16/10 22/5 24/20 mail [1] 9/13 maintenance [1] 27/22 make [5] 5/7 11/18 19/5 22/5 30/5 makes [1] 11/17 | | |

| | | |
|---|--|---|
| <p>pages [6] 7/10 7/13 7/13 13/19 14/23 33/11</p> <p>Pardons [3] 16/14 30/3 30/15</p> <p>Parole [1] 16/10</p> <p>part [5] 10/1 12/9 16/6 18/19 25/18</p> <p>partake [1] 20/18</p> <p>partaken [1] 22/7</p> <p>passionate [1] 20/8</p> <p>past [3] 7/8 27/8 27/19</p> <p>pattern [1] 23/16</p> <p>penalty [1] 18/15</p> <p>pending [3] 22/17 22/24 30/25</p> <p>people [4] 13/10 21/17 28/2 28/4</p> <p>perhaps [2] 29/20 31/17</p> <p>period [3] 11/20 19/10 21/10</p> <p>person [5] 3/21 20/9 22/11 23/4 23/18</p> <p>personal [1] 19/22</p> <p>personally [1] 9/14</p> <p>phonetic [2] 4/17 9/9</p> <p>pick [2] 6/15 15/4</p> <p>picked [5] 7/2 7/15 16/1 17/5 17/5</p> <p>PLAINTIFF [2] 1/5 2/2</p> <p>plea [3] 23/2 26/6 26/7</p> <p>pleading [4] 13/13 21/13 21/21 22/1</p> <p>pleadings [3] 10/25 11/1 23/8</p> <p>please [2] 14/1 14/6</p> <p>pled [1] 27/5</p> <p>point [6] 5/18 18/2 22/25 24/16 25/5 26/3</p> <p>pointed [1] 5/1</p> <p>points [1] 26/12</p> <p>policies [1] 21/2</p> <p>portion [1] 7/6</p> <p>position [4] 9/7 9/16 10/1 10/10</p> <p>positive [1] 8/17</p> <p>possibly [1] 21/23</p> <p>potentially [1] 18/17</p> <p>practical [1] 11/22</p> <p>pre [1] 10/25</p> <p>prefer [1] 21/7</p> <p>preliminary [5] 17/9 22/24 31/1 31/2 31/6</p> <p>preparation [1] 19/6</p> <p>prepared [4] 3/15 10/23 16/8 16/24</p> <p>presence [1] 15/6</p> <p>present [6] 14/16 15/9 15/10 16/13 29/6 30/14</p> <p>presented [2] 16/8 30/15</p> <p>presentence [11]</p> <p>prevention [1] 27/23</p> <p>previous [5] 8/4 25/19 26/22 27/15 27/16</p> <p>previously [4] 3/13 10/5 11/10 30/8</p> <p>prior [1] 20/19</p> <p>prison [22]</p> <p>pro [1] 4/12</p> <p>probably [2] 4/13 24/1</p> <p>probation [3] 11/19 21/16 23/3</p> <p>probative [1] 7/6</p> <p>problem [7] 8/19 20/9 24/11 24/14 27/1 27/4 27/7</p> <p>problems [1] 29/8</p> <p>procedurally [1] 5/25</p> <p>proceed [2] 3/9 18/9</p> <p>process [5] 4/2 5/10 10/17 10/22 12/9</p> <p>professionally [1] 30/12</p> <p>program [2] 20/25 27/24</p> <p>programs [4] 21/3 27/10 27/17 27/20</p> <p>propose [1] 13/15</p> <p>proposed [1] 4/5</p> <p>proposing [1] 15/20</p> <p>prosecutor [1] 23/21</p> <p>protect [1] 29/20</p> <p>provide [2] 14/15 18/22</p> | <p>PS [1] 9/17</p> <p>PSI [6] 6/12 7/11 8/7 9/13 14/4 15/14</p> <p>PSR [37]</p> <p>PSR's [1] 13/9</p> <p>public [1] 25/8</p> <p>put [3] 5/2 6/21 9/22</p> <p>putting [1] 7/17</p> <p>Q</p> <p>quality [1] 7/9</p> <p>question [4] 5/21 5/25 11/13 13/21</p> <p>questionnaire [4] 7/12 12/21 12/23 14/24</p> <p>questions [2] 7/11 26/23</p> <p>quick [2] 3/4 5/17</p> <p>quickly [1] 5/3</p> <p>quite [3] 11/16 23/14 29/14</p> <p>R</p> <p>rather [1] 18/15</p> <p>rather it [1] 18/15</p> <p>read [5] 6/22 9/25 12/15 24/6 26/1</p> <p>reading [6] 9/20 14/19 20/1 21/8 23/9 26/5</p> <p>readings [1] 20/22</p> <p>ready [2] 3/9 26/14</p> <p>real [2] 17/8 17/11</p> <p>realize [4] 3/12 4/7 17/4 27/23</p> <p>realizes [1] 17/6</p> <p>really [5] 11/12 13/7 21/9 22/3 25/25</p> <p>reason [5] 4/20 8/20 9/19 14/18 14/20</p> <p>receive [3] 11/14 24/25 25/3</p> <p>received [2] 31/5 33/6</p> <p>recklessly [1] 23/15</p> <p>recognized [1] 19/18</p> <p>recommend [1] 26/3</p> <p>recommendation [1] 15/24</p> <p>record [8] 9/24 10/2 10/11 11/7 16/7 16/9 16/11 30/13</p> <p>recorded [1] 33/10</p> <p>recording [2] 33/7 33/13</p> <p>recover [2] 21/10 28/6</p> <p>Recovery [1] 21/3</p> <p>Referencing [1] 27/15</p> <p>refers [1] 5/14</p> <p>reflected [2] 5/19 17/14</p> <p>reflects [1] 30/13</p> <p>refused [6] 3/19 6/16 8/16 8/16 14/6 15/11</p> <p>regarding [4] 4/16 10/1 14/9 16/11</p> <p>Regardless [1] 16/23</p> <p>regards [3] 11/25 12/7 26/22</p> <p>rehab [1] 19/13</p> <p>reject [1] 27/11</p> <p>relapse [1] 27/22</p> <p>relates [5] 25/22 29/1 29/2 29/3 29/14</p> <p>relevance [1] 18/8</p> <p>relevant [3] 5/2 10/12 17/24</p> <p>rely [1] 20/20</p> <p>remove [1] 28/16</p> <p>removed [3] 8/23 9/6 27/16</p> <p>reorder [1] 3/14</p> <p>repeated [1] 25/14</p> <p>report [13]</p> <p>reported [1] 14/15</p> <p>Reporter [1] 33/5</p> <p>represented [1] 4/8</p> <p>request [2] 13/17 16/19</p> <p>requested [2] 6/16 7/14</p> <p>requesting [3] 6/14 8/22 24/22</p> <p>required [2] 5/18 19/3</p> <p>requirement [1] 15/12</p> <p>respect [5] 5/22 8/11 28/21 29/10 30/17</p> | <p>response [3] 4/9 14/11 14/24</p> <p>responsibility [11]</p> <p>review [2] 14/8 31/7</p> <p>reviewed [2] 10/15 11/1</p> <p>RICHARD [1] 1/12</p> <p>right [12]</p> <p>risk [3] 22/8 22/9 23/11</p> <p>ROGER [6] 1/7 3/4 3/6 17/8 25/19 33/7</p> <p>role [2] 5/9 5/12</p> <p>roots [1] 18/2</p> <p>RPR [2] 1/22 33/18</p> <p>rules [1] 24/24</p> <p>ruling [1] 16/18</p> <p>run [2] 24/23 26/4</p> <p>S</p> <p>safe [1] 23/6</p> <p>safety [1] 25/8</p> <p>said [15]</p> <p>SALT [6] 1/2 1/15 2/3 2/4 2/7 2/8</p> <p>sanction [2] 16/25 17/2</p> <p>sanctions [1] 21/18</p> <p>saw [2] 15/7 15/7</p> <p>say [10]</p> <p>saying [3] 6/18 14/6 15/12</p> <p>says [4] 12/12 12/14 14/14 15/3</p> <p>scenario [1] 17/2</p> <p>scheduling [2] 31/9 31/13</p> <p>score [2] 8/25 12/2</p> <p>SCOTT [1] 1/14</p> <p>se [1] 4/12</p> <p>section [1] 6/24</p> <p>sections [1] 6/23</p> <p>see [5] 7/16 11/1 11/12 21/18 26/25</p> <p>seemed [1] 5/2</p> <p>seems [2] 15/14 30/14</p> <p>seen [1] 14/12</p> <p>sees [1] 13/2</p> <p>self [1] 21/5</p> <p>self-help [1] 21/5</p> <p>send [1] 11/18</p> <p>sense [3] 11/17 11/18 25/12</p> <p>sent [5] 5/8 6/14 7/13 14/6 14/9</p> <p>sentence [14]</p> <p>sentenced [4] 11/10 13/3 17/25 24/19</p> <p>sentences [1] 29/3</p> <p>sentencing [26]</p> <p>separate [1] 6/17</p> <p>September [4] 6/13 7/12 14/7 15/8</p> <p>September 28th [4] 6/13 7/12 14/7 15/8</p> <p>serious [2] 17/6 17/6</p> <p>seriously [4] 22/20 23/24 24/11 24/17</p> <p>serve [1] 28/25</p> <p>served [5] 11/15 18/13 24/24 28/9 29/4</p> <p>serving [3] 11/16 11/20 30/8</p> <p>set [6] 21/2 31/7 31/9 31/12 32/1 33/11</p> <p>several [4] 3/25 10/4 19/16 25/6</p> <p>shake [1] 15/21</p> <p>share [2] 22/4 28/2</p> <p>she [3] 4/20 4/21 5/2</p> <p>shift [2] 17/8 17/12</p> <p>short [1] 4/9</p> <p>Shorthand [1] 33/5</p> <p>should [4] 11/23 11/24 13/12 28/22</p> <p>shown [1] 25/8</p> <p>significant [7] 8/8 12/4 17/16 18/14 18/17 21/22 28/7</p> <p>SIMMONS [25]</p> <p>Simmons' [2] 5/15 9/15</p> <p>simply [1] 5/9</p> <p>since [2] 17/24 22/16</p> <p>sir [1] 30/20</p> |
|---|--|---|

| | | |
|---|--|--|
| <p>situation [1] 18/17 situations [1] 19/11 six [3] 20/20 21/16 29/1 skill [1] 17/18 skillful [1] 29/24 skills [1] 20/6 so [42] sobriety [1] 20/19 society [3] 23/6 25/13 30/18 some [13] someone [4] 23/11 24/7 25/5 26/18 something [7] 4/10 4/13 4/18 5/8 5/9 12/12 19/23 sometimes [1] 27/9 soon [1] 5/7 sound [1] 30/16 SOUTH [2] 1/15 2/7 speak [2] 17/14 19/2 speaks [1] 27/6 specific [1] 8/3 specifically [4] 16/17 25/11 26/3 26/23 specifics [1] 3/22 spoke [1] 8/1 spoken [2] 4/11 9/8 Sprouse [3] 1/22 33/5 33/18 SS [1] 33/2 stance [3] 23/19 25/8 27/3 stand [1] 29/20 start [2] 12/11 18/3 state [13] State's [1] 9/7 statement [1] 14/21 statements [1] 4/22 stem [1] 20/3 step [1] 17/15 still [2] 5/20 22/24 stopped [1] 20/6 straight [1] 26/6 STREET [1] 1/15 stress [3] 19/10 19/20 22/8 struck [1] 10/24 struggle [1] 29/11 stuck [1] 23/4 stumble [1] 20/12 subject [1] 21/20 submit [1] 13/5 submitted [7] 3/25 10/19 15/22 21/16 23/9 24/5 24/13 substantive [1] 11/12 success [1] 30/17 such [2] 4/25 18/21 supervision [2] 12/3 12/5 supplement [1] 10/2 suppose [1] 9/25 supposed [1] 23/12 sure [3] 3/24 5/8 10/8 Susan [3] 1/22 33/5 33/18</p> | <p>Thank [8] 18/9 19/8 22/13 25/16 25/24 28/18 30/19 32/3 that [301] that's [24] the one [1] 3/18 their [4] 7/15 16/1 21/2 23/13 them [20] themselves [1] 28/17 then [8] 3/15 6/7 7/18 9/15 12/16 18/25 27/23 32/2 there [34] there's [12] Therefore [1] 16/14 these [11] they [44] they'd [1] 22/22 they've [9] thing [5] 4/15 10/24 21/21 26/2 26/16 things [32] think [44] thinks [1] 23/11 third [3] 1/1 11/8 28/19 third-degree [2] 11/8 28/19 this [51] those [15] though [1] 29/17 thought [1] 27/24 three [3] 21/15 26/19 29/4 through [11] time [18] times [3] 7/14 10/4 24/1 today [4] 5/23 16/16 16/19 18/14 together [3] 4/5 10/15 11/9 told [3] 7/1 7/8 7/20 too [1] 28/5 took [2] 17/23 19/11 towards [1] 7/3 toxic [2] 19/10 19/20 transcribed [3] 1/22 33/9 33/11 transcript [2] 1/7 31/6 transcription [1] 33/10 treatment [6] 17/16 23/3 24/10 27/9 27/20 27/24 trial [1] 31/8 tried [1] 27/8 true [5] 7/5 7/6 7/7 8/13 33/9 try [5] 15/15 19/13 19/20 21/6 28/16 trying [2] 19/24 20/6 turn [2] 4/12 4/13 turned [1] 19/14 Turner [7] 2/3 3/8 9/7 22/14 25/16 26/3 28/20 twice [1] 7/20 two [2] 18/12 29/9 typewriting [1] 33/9</p> | <p>using [1] 16/23 usually [1] 19/18 UTAH [11]</p> |
| | | <p>V</p> <p>valid [1] 14/5 Valley [2] 19/12 19/22 values [1] 20/16 vehicle [1] 27/12 verbally [1] 8/7 version [1] 16/6 very [9] victim [4] 23/20 26/24 26/25 27/3 victim's [1] 23/19 Victoria [1] 2/3 view [2] 4/1 11/23 vocational [1] 19/13 voice [1] 16/2 volume [1] 13/22 volumes [1] 27/6 voluminous [1] 4/1 volunteer [1] 21/3</p> |
| | | <p>W</p> <p>waived [1] 17/9 want [13] wanted [11] wants [2] 17/16 23/23 was [46] wasn't [2] 3/21 5/13 way [7] 6/10 9/18 21/2 22/16 23/5 25/9 29/12 WAYNE [2] 1/7 33/8 ways [1] 10/7 we [18] we'd [1] 17/2 we'll [2] 31/12 32/1 we're [1] 19/5 we've [1] 4/11 weeks [2] 4/17 26/19 well [17] went [3] 5/6 19/12 19/15 were [8] 5/3 5/16 7/11 11/2 11/3 12/22 17/9 23/12 what [23] what's [2] 9/7 17/24 when [13] where [9] whether [7] 4/11 11/13 13/22 14/21 16/20 24/15 29/13 which [9] while [8] 12/3 12/5 17/15 23/12 23/13 24/2 24/15 29/18 who [5] 9/9 14/15 23/12 23/18 28/16 who's [2] 24/4 24/7 why [4] 8/6 9/19 16/12 25/4 will [10] willing [2] 10/9 15/16 willpower [1] 20/21 wish [3] 20/11 30/16 30/17 without [1] 9/13 witness [2] 15/9 15/14 won't [1] 19/17 words [1] 22/21 work [2] 25/3 27/23 worked [2] 7/3 27/21 worker [12] worse [2] 8/5 17/1 would [31] wouldn't [2] 4/21 4/21 writing [1] 24/13 writings [1] 29/7</p> |
| | | |
| <p>T</p> <p>take [11] taken [4] 22/19 23/23 23/24 25/25 takes [1] 23/19 taking [3] 17/12 17/12 22/19 talk [6] 12/12 12/13 12/14 15/13 15/16 19/1 talked [2] 12/16 22/10 talking [1] 12/12 tape [1] 33/13 tell [1] 15/5 telling [3] 3/22 11/24 24/7 term [4] 11/11 28/25 29/1 29/2</p> | <p>U</p> <p>ultimately [3] 9/17 23/10 24/11 unable [1] 10/7 under [14] underlying [2] 9/17 11/2 underpendings [1] 10/24 understand [4] 11/6 20/14 27/21 29/8 unemployment [1] 20/3 unfair [1] 16/12 University [1] 19/15 until [2] 13/17 31/4 up [15] update [1] 8/7 upon [1] 30/2 us [2] 7/9 25/4 use [1] 19/19</p> | |

| |
|--|
| <p>..</p> <p>written [2] 7/10 26/18 wrong [2] 13/6 27/9 wrote [5] 14/4 26/23 27/1 27/2 27/3</p> |
| Y |
| <p>year [4] 9/19 20/10 20/18 20/20 years [5] 11/20 20/24 27/21 28/8 29/1 Yeates [1] 18/21 yes [3] 3/18 4/3 28/23 yet [1] 25/19 you [100] you'll [1] 30/14 you're [3] 3/24 27/24 29/18 you've [12] your [33] yourself [2] 26/25 26/25</p> |
| Z |
| <p>zero [3] 16/22 18/14 28/2</p> |

Tab D

ADDENDUM D

Portions of Mr. Simmons' Filings

R. 172-237

From: Roger Simmons
To: 3rd District Court

Protected/Private

2015-10-28

IN THE THIRD DISTRICT COURT
STATE OF UTAH
IN AND FOR SALT LAKE COUNTY
SALT LAKE DEPARTMENT

State of Utah
v.
Roger Simmons

RESPONSE: STATES MOTION
CHALLENGING THE ACCURACY OF
THE PSR & ADDENDUM

Case No. 151900384

Honorable: Richard D. McKelvie

This document is in response to the States
motion Challenging the accuracy of the
PSR (Submitted April 2015) & the
Addendum filed Sep 2015, and a request to
deny based on the information provided.

I am under a constant barrage of
misinformation submitted in the PSR's
by AP&P. I agree that the PSR's are
not correct - both that have been
submitted to date have ~~one~~ multiple
errors in each of the individual
sections - however not due to
information submitted in the States
motion.

Information in the States motion:

- 1) Is not correct
- 2) Includes things irrelevant to
Sentencing, Further complicating things
- 3) Is not necessary ~~even~~ to change even

00172

Altering the PSR according to the states motion would introduce additional errors that I would need to respond to - Also it is highly distracting to include info that would draw attention away from the sentencing goals outlined in the sentencing guidelines.

Due to the numerous mistakes in the PSR's submitted, I did some work to obtain as much information as possible regarding the Sentencing Process (From The Sentencing Commission), I have spent 20+ hours with the Sentencing guidelines & con/will document some, but not all errors & provide more information here.

I would request of the court to read in ~~detail~~ detail the: (referenced here)

"2015 Adult Sentencing & Release Guidelines"

In my reading I did not skim over any section, but understand very clearly, I am asking that ~~we all~~ everyone be on the same page here & understand the intent of the Sentencing Commission, respect their hard work, have faith in what they are doing or read every reference in Full on page 68+69 that led to the guidelines & Follow their recommendation strictly, Their Findings are evidence-based 200173

Items Incorrect in Status Motion.

I pulled my BCI File in 2011 & counted over twenty errors - the errors in the status motion are clearly understandable because the information was pulled From my BCI file which has errors.

The balk of the errors deal with misdemeanors (BS, Cs) - I do not have the Full BCI File in front of me & the twenty errors would be painful to document, but I can provide a few corrections.

1) Final Disposition not correct (does not reflect Plea in abeyance & others)

With some items, where I was over charged, I disagreed & would not accept a plea agreement to drop the charges. In these instances the prosecutor dropped the charges & refiled ^{as} ~~issue~~ I was assured that the charges would not appear in my criminal record - ~~as~~ This was important to me & the reason I would not accept a plea agreement For dismissal - In so many cases it was wrong to File in the First place as is ~~the~~ the case with 2011 - eight charges dropped at no concession from me - I was over charged. Dismissed charges I was told in this case, (Dropped when refiled) would

In other words - dropped & dismissed charges listed on a background check creates ~~a~~ a bias - overcharging creates problems that never go away - even those are near impossible to get expunged due to a new law passed in 2006.

2) Sentence not correct/

I have had only one prior commitment (2004) all others are in error - it should say - Jail time suspended with successful probation but does not - ~~over~~ I have never failed to complete probation successfully

3) Some items listed were Plea in abeyance, but not reflected in the BCI - these items should not be in my history - I successfully completed probation.

One such issue (there are others) is a Simple Assault ~~Class B~~ Class B from 2000 - several errors here

- There was no jail time posed but BCI report is misleading & does not correct this - I was to pay a fine of \$150 & take a one day class, instead I spent \$2,500 & went to Highland Ridge self imposing a higher sentence (Education/Correction)

~~All~~ All offenses from 1998 forward are alcohol related - ~~There are many charges but a singular problem & a singular solution -~~ There are many charges but a singular problem & a singular solution - I desire to have no problem, I now know the driving factors - what is at play here & I can provide detailed information on what I have done & the success there. I have never wanted or desired to be a problem to anyone

ITEMS Irrelevant In the States Motion

The history presented in the states motion muddys the water making only the essential information less clear. The State wishes to list:

- 1) Dismissed Charges
 - 2) Acquitted Charges
 - 3) Plea in Abeyance that are 15+ years old that should not be in the BCI File as I understand it
 - 4) Infractions
 - 5) Duplicate charges that make it look like I have many more charges than truthful - there are several cases that were dropped & then refiled under another case #
 - 6) Diversion - there was one case where no crime or infraction was committed - no conviction - I can re-litigate this to the court if necessary - It was a pointless, non-issue (seriously - hence the diversion offered, I would have challenged otherwise),
- Important to know (From history presented)

I have never been involved in an accident where there was damage in the least to either/any vehicle - I have never been involved in an accident/no victim. I have never been charged with or convicted of Domestic Violence contrary to what the PSR From APDP says - I have had several long term relationships lasting three years or more - ~~76~~ 76

I would request that nothing be included in any future PSR that falls into the above six categories. I would insist rather that all convictions only be included - this is fair & puts focus on what is really relevant here, otherwise it is distracting & I feel that this motion is an intent to distract from the sentencing guidelines. To do so leads to a bias & incorrect conclusion in one specific area.

With this document, in no way ~~can~~ do I minimize anything - I will address in a separate document a summary of things I have done to take responsibility that is not the focus here. I have done things & discovered things & reduced my risk ~~bec~~ so that I never reoffend again.

I am not & have never been an aggressive person - I fall into the category of "non-violent alcohol offender" - never having done or dealt in illicit drugs or street crime.

No correction to history necessary

The addendum need not include the history since it is already included & referenced in the addendum itself.

At the top of the addendum:
All cops

"THIS ADDENDUM IS PROVIDED AS AN UPDATE TO THE ATTACHED PRESENTENCE/POSTSENTENCE REPORT, WHICH HAS BEEN COMPLETED WITHIN THE PREVIOUS 36 MONTHS. THIS ADDENDUM DOES NOT CONSTITUTE A COMPLETE REPORT WITHOUT THE ATTACHED PRESENTENCE/POSTSENTENCE REPORT"

The referenced report which was submitted twice, once by the prosecutor & once by the AP&P officer already has this complete history - it's not in the addendum but everything needed is in the referenced report, therefore it is not necessary as it duplicates information already there. It further confuses things drawing attention away from the essentials.

On multiple occasions I have heard the prosecutor cite incorrect counts verbally & on paper of convictions. Requesting to make things

History - ~~What is relevant to sentencing recommendation~~

(What is relevant to sentencing recommendation)

There are only three line items in my history that are relevant to the sentencing matrix & involve:

- 1) Prior Felonies
- 2) Class A's
- 3) Successful Prior Probations (2), never revoked.

Prior Felonies: 2

2004 - 3rd Degree Other DUI

2011 - 3rd Degree Other DUI

In both cases there was no accident or other party involved (no victim) therefore the assigned crime category according to the guidelines is "3rd degree Other"

I was initially charged with a felony in 2000 - 3rd Degree Other & put on probation - it was my understanding that a 402 reduction was in place & that it was reduced to a Class B (two levels below). I have never been on Parole & the above probation terminated early - successful.

THERE ARE NOT FOUR FELONIES IN MY HISTORY - three at best & if the third one is counted, it does not change in the least the sentencing matrix recommendation. (Same Crime History Row in the matrix either way)

Prior Class A's: 1

I have one prior class A From 2004 - There is nothing else in my history. 00180

that is counted in the sentencing matrix,

Addressing the issue at hand in detail is outside of the scope of this document, I am however on top of it - in a serious way,

The sentencing commission provided guidelines to focus on more serious offenses (Class A & above) therefore Class B's, C's, infractions ~~are~~ are not considered in the guidelines. This is to put focus & more resources on the more serious offenses through treatment/education especially with non-violent offenders.
Reference: 2015 Sentencing Guidelines

<http://sentencing.utah.gov>

The bulk of my criminal history consists of charges (not convictions) that fall into the previous six categories & Class B's, C's, infractions.

All offenses point to a single problem - not many. In any risk assessment I do not cross multiple categories of risk - only one & the recommendation there is treatment not prison as they are mutually exclusive. Anything available to me come 01/21/2018

Criminal History & Sentencing Guidelines

From the "2015 Sentencing Guidelines"

1) History is not an accurate predictor or indicator of future behaviour (as w) ^{markets} Finance)
(it is only an accounting - immutable)

2) History is accounted for in the sentencing matrix, in the 2014 sentencing guidelines there were faults such that some items in the history were counted twice - leading to purely punitive (Jail/prison) time that was much longer than originally anticipated - this has been corrected in the 2015 version.

As history is accounted for in the sentencing matrix & is not an indicator of future behaviour, history should not be double counted & used as a reason to go above the guidelines.

I am requesting that everyone please not only read the document slowly, but also the references cited - in their entirety - I am trying to remedy something here but blocked in a big way from taking advantage of very helpful things - as I am under purely punitive measures at the moment - The goals of sentencing are not one dimensional → Purely punitive, but

Predictors of Risk to Reoffend / Supervision Risk

The Level of Service Inventory (LSI), Listing employment, education etc has been deprecated by the DOC as they are not primary indicators of supervision risk or risk to reoffend (although they are very strong secondary indicators & should not be ignored).

A 4th generation tool has been put into place & is part of the 2015 guidelines - The 4th generation tool therefore replaces the LSI with acknowledgement that Criminal History is not an indicator of future behaviour - The new tool goes deeper to smartly identify & address Criminogenic

Risk Factors, of which I score medium in one area only & low in all others → Treatment remedy.

Given that Criminal History is accounted for in the sentencing matrix & should not be used as a factor beyond that with risk to reoffend - as instructed & detailed in the new guidelines - it is no longer relevant to include every misdemeanor & detail - we all agree on the things that count for sentencing

1) Prior Felonies

2) Class A misdemeanors

Everything else (Fine points of dispositions, ~~and~~ misdemeanors, dismissed, infractions) ~~are~~ are not taken, counted in the matrix.

Conclusion

For all the reasons listed & described

- 1) Already done, not necessary to change Criminal history
- 2) Would introduce more errors than already present, that would obligate review/response,
- 3) The bulk of items listed in the motion are not relevant (dismissal, abeyance, infractions)

I would ask that the motion be denied - there are already enough errors with the PSR because of other reasons sent in previous information documents filed. Those PSRs should be removed from file.

Introducing more errors would obligate me to respond to each & every problem further complicating & delaying things & I would respond because while each error is not significant in and of itself - the errors ~~are~~ add up & make a difference.

Also why include items in the irrelevant six categories I listed? (Dismissed, Plea in abeyance, infractions ...)

I am ~~asking~~ asking for simplicity without more complications that would force a response.

Prior felonies, Class A's & prior successful supervision count - simple & hopefully we can come to an agreement on that.

I would request that the prosecutor & my attorney meet & fill out the sentencing forms 1, 2, 5, 6 - it would take 10-20 minutes ~~and~~ I would be accurate. 00184

Sincerely,

Roger Simmons

From: Roger Simmons
Defendant

Protected/Private

2015-10-28

IN THE THIRD DISTRICT COURT
STATE OF UTAH
IN AND FOR SALT LAKE COUNTY
SALT LAKE DEPARTMENT

State of Utah
v.
Roger Simmons

MOTION (Conditional)
Criminal History
Clean up in any
Future PSR,
Case No.: 151900384

Honorable: Richard D. McKelvie

This motion is to request that:
IF a future pre-sentence report
is created for any reason in this
case - & only if that all charges
that fall into the categories below
be excluded From the Criminal
History section:

- 1) Dismissed charges
- 2) Plea in abeyance - successful
- 3) Acquitted
- 4) Infractions
- 5) Diversion - no conviction
- 6) Class Cs
- 7) Class Bs

Rationale:

A pre-sentence report is for the
purposes of sentencing - the bulk of
the line items above (all of them)
play no role in determining the

00186

Sentencing recommendation. The
"2015 Adult Sentencing & Release
Guidelines" only count - From a
Criminal History.

- 1) Felonies
- 2) Class A's

as such dismissed, acquitted etc are
a distraction to clearly seeing
more serious offenses & the issues
to be addressed,

the
Clearly items ~~are~~ are irrelevant & play
no role in the accounting in the
latest guidelines. The latest guidelines
can be printed from here:

<http://sentencing.utah.gov>

~~2015~~ p.19 FORM 1 GENERAL MATRIX

The goal of the guidelines is to focus
resources (supervision, risk management, treatment)
to be directed at more serious offenses,
in order to make the most efficient
use of limited correctional resources,
controlling costs while at the same
time holding offenders accountable.

Studies have shown that reducing
recidivism (through treatment, education,
addressing risk factors through supervision/
sanctions) protects the public.

p.1 Criminal History scoring was modified
to include eliminating double-counting
(a fault in the 2014 guidelines) and focusing
on factors relevant to the accurate

00187

determination of risk to re-offend
→ Those Factors are described on FORM 6 & instructions & do not include Criminal History as a factor to re-offend. Criminal History is an immutable accounting & is not to be used, according to the guidelines to suppose future reoffense & is not to be used as a reason to go beyond the guidelines rather the eight risk factors described are to be used as an indication of areas that need attention.

The Findings, to not use history as an aggravating circumstance is evidence based, references that led to these Findings are found on pages 68, 69 of the guidelines.

P.2 "Evidence-based" practices are also referred to as "principles of effective intervention" and "what works in corrections".

P.2 "It is a body of knowledge based on over thirty years of research conducted by numerous scholars in North America and Europe (universal independent Findings reached the same conclusion).

Such research has demonstrated empirically that theoretically sound, well-designed programs implemented with fidelity can appreciably reduce recidivism"

"The 2015 guidelines incorporate the concept of evidence-based practices comprehensively and represent significant revisions to the philosophical approach, revisions to the current Forms, the addition of new forms and addenda."

Unwarranted disparity, equity & fairness in sentencing is achieved with strict adherence to the guidelines.

This motion has intents to achieve that some goal by drawing attention to things that count & eliminating things that do not. The guidelines are based on the most current research & data available.

The Sentencing Framework addresses, risk management, risk reduction & consistent, proportionate & fundamentally fair sentencing.

As such I would ask the court to focus efforts on & within the sentencing guidelines & not be distracted by any attempt to draw away from the intended goals & process outlined in the framework.

Including things in the PSR not relevant to the Framework should be left out, certainly not

emphasized as is being done ~~as~~
as a diversion tactic - purely
punitive measures are sought by
APPD & the prosecutor - more time,

The guidelines are about:
"Punishing smarter not harder"

"Incarceration for non-violent offenders
have the unintended consequence of
increasing an offenders criminal
risk factors"

p.5 "The previous (Failed) Philosophy was to
achieve deterrence through the use
of incarceration. Research does not
support commonly-held assumptions
regarding deterrence - Incarceration
increased recidivism rates for non-violent
offenders putting the community
at risk.

"To the extent possible, non-violent, low
risk offenders should be excluded from
higher risk populations - in all settings"

"Incarceration is not a risk reduction
tool"

The point of the motion, which I
pray is granted is to get a PSR
that focuses on the issues according

to the guidelines, Before sentencing,
I would ask that section III - Evidence-
Based Sentencing Framework" be
carefully thought about, reviewed
& factored in. (Pages 2-10) of
the sentencing guidelines,

I respectfully request that all
erroneous PSRs be destroyed & that
IF & only IF a new criminal
history is generated For any reason
that it focus only on things counted
under the matrix "Criminal History"
section & exclude items that fall in the
six/seven categories defined in the beginning.

I request that criminal history not
be used as a determination as to
risk to reoffend but rather the
eight risk factors in the guidelines
(FORM 6).

I further request that history not
be used to go beyond the guidelines
& only focus on the defined
list of mitigating factors in
conjunction with the matrix
recommendation.

Respectfully Submitted

Roger Simmons
Roger

2015-10-28

00191

Roger Simmons
Defendant

Private/Protected

2015-10-28

IN THE THIRD DISTRICT COURT
STATE OF UTAH
IN AND FOR SALT LAKE COUNTY
SALT LAKE DEPARTMENT

State of Utah
v.
Roger Simmons

ORDER:
EXCLUDE CRIMINAL HISTORY
IRRELEVANT TO SENTENCING
(Dismissed charges etc)
Case No.: 151900384
Judge: Richard D. McKelvie

Defendant having filed information
regarding criminal history relevant to
the 2015 Sentencing Guidelines,

It is hereby ordered that any Future
Pre-sentence report created exclude items
from the defendants criminal history
that fall into any of the following
categories:

- 1) ALL Dismissed charges / Duplicates refiled (Dismissed)
- 2) Acquitted charges 2.) Diversion (1)
- 3) Plea in abeyance
- 4) Infractions
- 5) Class C's
- 6) Class B's

This will assist the court to focus
& draw more attention to the more
relevant charges/convictions that are
considered under the sentencing guidelines,

00192

DATE: _____

DISTRICT COURT JUDGE: _____

From: Roger Simmons
Defendant

Private/Protected

2015-11-2

IN THE THIRD DISTRICT COURT
STATE OF UTAH
IN AND FOR SALT LAKE COUNTY
SALT LAKE DEPARTMENT

State of Utah
v.
Roger Simmons

MOTION TO ACCEPT
Corrected / Fair Pre-Sentence
Report (attached)

Case No: 151900384
Honorable: Richard D. McKelvie

This is a motion to sincerely ask the court to accept the enclosed Pre-Sentence report in this case - It represents:

- 1) Fairness
- 2) Completeness
- 3) Correctness

All three of these very important items have been missing from every previous PSR.

IF the enclosed PSR is accepted & all previous incorrect, incomplete & unfair PSR's are rejected & removed from my case file, we can move forward with sentencing with no further delays.

I put in the effort here in order to not impede sentencing - it has been delayed due to my input being left out.

00194

I have been denied a voice & fair input
as required under the sentencing process.

As outlined in previous correspondence
with the court, I have to date provided
a substantial amount of information
(110 handwritten pages) & prepared for an
interview but no interview was ever
planned or attempted (no original intent)
despite repeated requests through my
case worker, my appointed attorney had
a phone conversation with the investigator
where it was relayed that there was
"no obligation" to conduct an interview
& also in September 2015, I sent a letter
direct to the investigator requesting
that they pick up the information I had.

Please reference:

My response to AP&P letter (Oct 16th 2015)
that I sent on 2015-10-28)

There was ample opportunity for them
to do what was needed, I would ask
now that I be allowed to submit - in
the same format - it is a process of
simply plugging in the facts.

Seeking Fundamental Fairness

I do not like writing, I do not like being angry, I do not like the complications & problems that have been caused with the PSR - the petty-ness & simply not plugging in the facts so we can move along - no one should have to go through this, file motions requesting honesty & fairness.

I do not like being confrontational, I would very much like to work with AP&P for a common interest, a common goal - all I have experienced with this & a previous PSR has been antagonistic & verbally assaulting.

This started back in April when I went through the sentencing process on the case in which I am now incarcerated - I had a recommendation from the old guidelines of "Intermediate Sanctions" - the investigator did as is being done now & covered my voice - I had no opportunity to respond, correct falsehoods & off to prison losing a very hard ~~one~~ won job - none of the efforts & progress I had made - none of the things I had done to take responsibility was mentioned to the court. So many things I had struggled to accomplish were undone with a false PSR & that document continues to cause damage. 0196

In the 2015 Sentencing Guidelines,
p. 7 - this says it all

2. Fundamental Fairness

"Beyond basic concepts of swift, certain, and proportionate responses is the goal that both sentencing and enforcement of supervision terms should be imposed through a process which is fundamentally fair. Utah Supreme Court Justice Matthew B. Durrant explained the concept of

"Procedural Fairness" in his 2014 State of the Judiciary Address:

"The elements of procedural fairness are voice, neutrality, and respect. Voice means the ability of court participants to express their viewpoints. In other words the judge asks for input and actively listens. Neutrality means just that - consistently applied legal principles, unbiased decision makers, and a 'transparency' in how decisions are made. Lastly, respect, meaning individuals are treated with dignity and their rights are affirmatively protected. It means that judges not only protect the rights of litigants, but explain that is what they are doing. It makes a difference."

The guidelines continue:

"Extensive research confirms that how people are treated in court affects not only attitudes about the court experience but also

Conts: Fundamental Fairness

their willingness to comply with court orders. People who perceive they have been treated in procedurally fair ways demonstrate significantly higher levels of compliance with court orders."

And most importantly

"These principles apply equally to anyone in a position of authority, whether a Judge, the Board of Pardons and Parole, probation and parole officers, or others seeking compliance with orders or laws"

When I read this, I primarily have APSP in mind - specifically I only with the sentencing process I the PSR. Everyone should have the above from APSP, but do not - I only know of one parole officer that I met outside of any legal issues that was good, fair I tried to help people - the more he helped I worked within his capacity the longer time he had within the APSP organization due to the culture I he eventually left.

I am not going to get a fair I honest treatment from APSP through the sentencing process - even if it is ordered from the bench. I would respectfully request that they

be removed from the process - the only things that are needed are the four forms (1, 2, 3, 6) filled out correctly that can be done in a meeting with my attorney & the prosecutor, & we can move forward with Sentencing.

Any false information in a PSR is long lived, follows me & negatively affects me in the short & long term beyond sentencing - Everyone knows this & this is of great concern to me to get the document corrected before sentencing & not go through with verbal updates in court only.

The one thing APSP knows & counts on is that once something is written & submitted by them it is accepted by the Court as fact, the defendant, most of the time will never see the report & if they do, it will only be a few moments before seeing the judge (the day of) & the defendant is silenced so they can write anything at all to achieve an end - there are no consequences for them when false damaging information is submitted, it's been done (repeatedly).

I would ask the court to silence them, based on their behaviour. ~~to silence them~~ ~~provide a proportionate, equitable, uniform sentence based on the guidelines, not "eye for an eye"~~

Seeking Correctness

The sentencing matrix was not scored correctly in the previous submission.

I was not under supervision when the offense occurred - this is only one example.

Because of errors I was subjected to with the April 2015 sentencing, I filed GRAMA requests to get as much sentencing material as I could - I obtained the 2014 Sentencing guidelines - I was not under any type of supervision ~~that~~ at the time of the offense that qualifies under the 2014 sentencing guidelines - I verified this.

I also have proof (letter) of prior successful probation - the old guidelines (2014) would penalize for a prior successful supervising, the new guidelines give a credit for this as it suggests an attitude amenable to supervision as indeed it is.

It is extremely important to get correct documents before sentencing & to not follow through with sentencing until they are - it

is extremely detrimental to simply do a verbal correction leaving the document in place.

The documents are long-lived & future decisions are made based on those documents long after sentencing.

For this reason & more, it is extremely important to remove & destroy incorrect documents - sentencing matrices, assessments etc.

I am successful under supervision because I have access to healthcare resources that I would not have access to otherwise - I have never consumed alcohol under supervision - never failed a random test - The things required of me with regards to treatment programming have been successful in the past & would be successful going forward.

As part of an ongoing self-imposed program, I use a text "How to ~~be~~ be your own therapist" & am also involved in daily maintenance activities to be successful outside of formal supervision.

Seeking Completeness

Previous PSR's submitted would phrase things with the most negative slant possible & leave out entirely half of the story - This approach is a form of lying.

Examples:

In the risk assessment that would determine if I am a candidate for supervision or not, I was put at high risk in areas that, by any standard, I am not at risk.

(1) Education:

He claims he has a high ~~area~~ school diploma, but he did not provide verification.

I provided info & validation of everything with an online link

1) MC Honor Scholar H.S.

2) BYU & U of U B.S. Computer Engineering

They errantly claimed I am a risk in the Education category, but this is not true.

(2) I was identified being at risk for Employment - They failed to mention that I have an exceptional career, lot professional contacts - and That I was employed prior to incarceration

with opportunities of employment out of the prison gate - they were sent this information in the 110 pages I sent them - I disclosed everything as it was in my interest to do so.

I have many more examples - the PSR left out many things that were originally intended to be summarized & included under the sentencing guidelines that were left out.

Programs, treatment & things I have done & accomplished were left out entirely.

Risk assessments were based on an attempt to reach a pre-supposed & pre-determined destination - Picking the destination & working backwards from there - Clearly this was not the original intent with the sentencing process.

I do not expect everything I provided in answering questions (~200+) in the PSI questionnaire - only relevant, summarized information. Despite all my efforts not even that has been possible.

PROTECTED
PRIVATE

2015-11-2

PROTECTED
PRESENTENCE REPORT
(FINAL / ADDENDUM)

This report does not constitute a complete report without attaching two previous documents submitted as "INFORMATION"

- (1) Level of Service Inventory (LSI)
Risk/Needs Assessment (30 pages)
- (2) Aggravating v. Mitigating Circumstances
(20 pages)

To: Third District Court, State of Utah
Salt Lake County
SALT Lake Department

Date Submitted: 2015-11-2

Sentencing Date: Continuance requested until
motions can be reviewed
(3)

Name: Roger Simmons
Birth Date: 5/27/68 Age: 47
Def. Atty.: JEFFRY N. Clark
Interpreter: No
Language: English
Codefendants: None

| <u>Court Case</u> | <u>OFFENSE</u> | <u>Judgement</u> |
|-------------------|-------------------------------|------------------|
| 151900384 | (1) DUI Alcohol, 3rd degree | Guilty |
| | (2) Alcohol Restricted Driver | |
| | (3) Ignition Inter lock | |

00204

2/34

RECOMMENDATION:

It is recommended that Roger be sentenced in adherence to the 2015 Adult Sentencing and Release Guidelines

- 1) Concurrent Sentence w/ credit for time served
↳ Given mitigating circumstances, institutional progress & more as outlined in this document
- 2) Additional Sanctions & Supervision
Through Salt Lake County - Criminal Justice Services (Restrictions, Treatment, testing)
- 3) A deterministic sentence w/ incarceration as a condition of probation

EVALUATIVE ASSESSMENT/

Appearing before the court for sentencing is 47-year old Roger Simmons who has pled Guilty of Driving Under the Influence of Alcohol, a Third Degree Felony.

UTAH 2015 SENTENCING GUIDELINES

RECOMMENDATION:

- Six months Presumptive Probation

Crime History: Row II

Crime Category: 3rd Degree Other

The guidelines recommendation takes into account 1) Criminal History

2) Current Offense

3) Aggravating and Mitigating Circumstances

Services Inventory Category: Low risk for Supervision

00205

SUPERVISION RISK ASSESSMENT

3/34

The Level of Service Inventory (LSI) previously submitted consisted of two or more pages that addressed each category below.

This is provided as a summary only - The LSI has been replaced with another similar but more advanced assessment tool (attached as well).

| <u>Category</u> | <u>Risk</u> |
|----------------------------|--------------------------------|
| (1) Employment | Very low risk |
| (2) Education | Very low risk |
| (3) Financial | Low risk |
| (4) Family/Marital | Very low risk |
| (5) Housing/Accommodations | Very low risk |
| (6) Leisure/Recreation | Very low risk |
| (7) Social/Companion | Very low risk |
| (8) Alcohol | Medium - as currently assessed |
| (9) Emotional/Personal | Low risk |
| (10) Attitude/Orientation | Very low risk |

Total! (Average)

Low

Alcohol is the only identifiable area of concern. The LSI is not to be used for punitive measures, but to identify needs under supervision.

Roger scores in the probation section of the sentencing matrix. While Roger does not present any type of risk to the community, supervision w/ sanctions is

00206

4/34

STATUS

The defendant has been incarcerated since March 18th, 2015 (9 months ending Dec 2015)

Prior to incarceration, Roger worked as a software engineer, living & working in Sandy, UT. He resigned upon being sentenced.

Roger has substantial support in Utah with exceptional employment opportunities, career contacts, employment out of the prison gate, friends, church & family support.

There are no victims or restitution owed in this case

Attachments: 2015 Sentencing Guidelines
Forms & references

2014 Sentencing Guidelines Faults

5/34

The 2015 Sentencing guidelines should be used - the previous PSR submitted (Sep), 2015 used the 2014 guidelines.

There were many faults in the 2014 guidelines, the most significant of which dealt with "double-counting" errors - that led to higher matrix sentencing recommendations giving more time than was originally anticipated.

The 2014 faults are only referenced because a previous PSR using it was submitted - also counting & assessment errors were made.

SUPERVISION HISTORY FAULTS

In the 2014 matrix, offenders were penalized for having prior successful supervisions (points added) - this was removed from the 2015 guidelines and credit (not penalties) are given for prior successful supervisions as that is also a good indicator of how the offender does under supervision. Whether they are a supervision risk or not - and if not less likely to reoffend under supervision.

6/34

SUPERVISION RISK

This category was removed from the 2015 guidelines as it essentially duplicated SUPERVISION HISTORY leading to double counting - the two were combined in the 2015 guidelines.

September PSR scoring errors

In the PSR submitted in September 2015, points were errantly added under Supervision history - this is one reason sentencing was delayed (of many)

This offense did not occur under Supervision & no points should have been added - the 2014 guidelines were consulted for verification.

Prior Misdemeanor Convictions

The 2015 guidelines put emphasis on more serious offenses - Class A's only to be specific. Class B's, C's, infractions are not counted - the primary reason being to focus resources in areas that need it most

7/34

Weapons used in current offense

The Scoring section ~~deals~~ deals with history - or should only - this item was removed from the 2015 guidelines because it was confusing & out of place in the criminal history section.

If a weapon was used in the current offense, it is ~~counted~~ accounted for in the crime category -

This item was also removed from ~~the~~ the aggravating circumstances form as it is accounted for in the crime category & to use it as an aggravating circumstance would constitute double-counting (the same was done with criminal history as an aggravating circumstance because it is fully counted for in the criminal history scoring)

* Note: No weapon was used in the current offense or any past offense of any kind.
UT Code 976-1-601

The vehicle was not used as a weapon.

8/34

00211

Deterministic sentence, concurrent, w) credit time served

RATIONALE FOR NO ADDITIONAL TIME

9/34

A sentence that involves no additional time (purely punitive) is sought & requested for the following additional reasons:

Roger has a "12 month Intermediate Sanctions" matrix & is at the Utah State Prison for two to five years (at a minimum double his matrix).

PROCESSES OF CHANGE

There are various processes of change that have been identified across fields (science, economics & more)

The Law of Diminishing Returns

If one type of input (for example punitive time), after a certain point there will be ever smaller increases to output or improvement - leading to significant degradation all around as time is increased.

Doubling punitive time does not produce a person that is doubly better or doubly rehabilitated - there is a point where things are much worse than at the very beginning -

In Roger's case more time significantly affects a degradation of health in a prison setting, degradation of technical skills becoming more irrelevant ~~over~~ with 00212

10/34

every passing day

RATIONALENegative Feedback loop

Incarceration ignites a series of events that causes ever increasing damage over time.

ExampleEmployment

Roger lost his employment, resigned suddenly. Future barriers to employment now exist - Future employers will want references, reasons for leaving a previous job - this leads to being denied at future employment.

The loss of income leads to a loss of property, digital pictures, storage unit, journals, books & equipment needed to return back to work. Creating more barriers.

Having a stable job at 47, being incarcerated & released after 50, if that creates additional problems of being irrelevant in the work place - these years are or could be high income years to save for retirement - it puts a ~~ear~~ earning and saving enough for retirement beyond reach - the next three years are extremely crucial.

Tipping Point

Due to a negative Feedback loop there exists a point in time beyond which, due to age, there is no opportunity to return to the workforce in a previously established career - leading to more problems:

- homelessness
- Family gone & no support (elderly parents)
- Requires public service assistance - significantly more & for significantly longer than would be needed if Roger were allowed to work, recover a position of employment, use those very crucial years where income can be maximized to save for the future avoiding the need for public assistance.

There are many other areas of negative Feedback loops leading to tipping points beyond recovery including health

~~My family~~ My Family is having financial difficulty as well because of a loss of income. ~~there~~ If I could only work, a curfew or weekend lockdowns would be welcome - Just need to 00215.

RATIONALE

13
0024

The strongest arguments for a sentence that does not add more punitive time comes from the "2015 Adult Sentencing & Release Guidelines" pages 1-10. The document can be printed from here:

<http://sentencing.utah.gov>

I am requesting of the court to review, at a minimum pages 1-10 of the 2015 sentencing guidelines for the primary rationale of adherence to the guidelines.

There is a more Focused effort to address factors relevant to the accurate determination of risk to re-offend.

An appropriate balance between risk management & risk reduction measures are sought.

The guidelines seek equity & to limit disparity of responses to violations (uniform sentencing) (Proportionate, Fair, Consistency).

Risk reduction through treatment programming reduces recidivism & increases public safety.

Most that are incarcerated are denied treatment at the USP ~~through~~ due

00216

14
12/04

to limited resources - It is a long wait - the goals of punitive incarceration are in direct contradiction with the goals of treatment.

Offenders are best served with outside programs not run by the government - Treatment programs in an incarcerated setting provide a toxic environment - many people do not want to be there & it only takes a few to bring everyone down. Alcohol & drugs are prevalent - unfortunately,

The harassment from other inmates makes it difficult for those who wish to better themselves.

If ever there is an opportunity for sanctions (GPS or sobriety device) that would be preferable to allow outside higher quality treatment with an environment outside a prison environment - even better if the offender can self-fund the program not using state resources.

Incarceration alone has shown to provide minimal deterrence - primarily due to the lack of education & the toxic environment which is prison. Incarceration itself may actually increase criminal risk factors, thereby contributing to recidivism rates.

00217

FORM 1 - GENERAL MATRIX CRIMINAL HISTORY ASSESSMENT

15

These are guidelines only. They do not create any right or expectation on behalf of the offender. Matrix frames refer to imprisonment only. Refer to the categorization of offenses. Capitol offenses are not considered within the context of the sentencing guidelines.

PRIOR FELONY CONVICTIONS
(SEPARATE ADULT CONVICTIONS)

0 NONE
2 ONE
4 TWO
6 THREE
8 FOUR +

PRIOR PERSON CRIME CONVICTIONS
(PRIOR ADULT OR JUVENILE CONVICTION)

0 NONE
2 PERSON CRIME
4 PERSON CRIME WITH INJURY

PRIOR CLASS A MISDEMEANOR
CONVICTIONS
(SEPARATE ADULT CONVICTIONS)

0 NONE
1 ONE OR TWO
2 THREE - FIVE
3 SIX +

PRIOR JUVENILE ADJUDICATIONS WITHIN
PAST 10 YEARS
(OFFENSES THAT WOULD HAVE BEEN
FELONIES IF COMMITTED BY AN ADULT)
(THREE CLASS A MISDEMEANOR ADJUDS
EQUAL ONE FELONY)

0 NONE
1 ONE
2 TWO - FOUR
3 FIVE +

SUPERVISION HISTORY
(ADULT OR JUVENILE)(SUCCESSFUL
INCLUDES ALL FORMS OF PRO-
BATION; OTHERWISE, DO NOT
COUNT PRETRIAL OR COURT
SUPERV.)

0 NO PRIOR SUPERV.
2 PRIOR REVOCATION
3 CURRENT OFFENSE ON SUPERV.

-1 SUCCESSFUL COMPLETION
0 NO SUCCESSFUL COMPLETION

TOTAL SCORE: **4-6 points**

6pts Counting F3 2000-402 Reduction
4pts Not Counting reduced charge
No change in history row either way

| | | | |
|---|--|-----------------------------------|--|
| OFFENDER'S NAME: Roger Simmons | SCORER'S NAME: From BCIF File | DATE SCORED: 2015/10/28 | CRIMINAL HISTORY ROW V 16+ IV 12-15 III 8-11 II 4-7 I 0-3 |
| ACTIVE CONVICTIONS (MOST SERIOUS FIRST): F3 - DUI Class B | CRIME CATEGORY: 3rd Degree Other | TIME: Sep | |
| TOTAL: | | | |
| | | | |

| | A | B | C | D | E | F | G | H | I | J | K | L |
|-----|----------------------|---------------------|---------------------|----------------------|---------------------|---------------------|----------------------|----------------------|---------------------|--------------------------|---------------------|--------------------------|
| | 1st Degree Murder | 1st Degree Death | 2nd Degree Death | 1st Degree Person | 3rd Degree Death | 1st Degree Other | 2nd Degree Person | 3rd Degree Person | 2nd Degree Other | 2nd Degree Possession | 3rd Degree Other | 3rd Degree Possession |
| V | 24 YRS | 10 YRS | | 10 YRS | 48 MOS | 84 MOS | 54 MOS | 32 MOS | 26 MOS | 16 MOS | 16 MOS | 14 MOS |
| IV | 22 YRS | 9 YRS | | 9 YRS | 42 MOS | 78 MOS | 42 MOS | 26 MOS | 20 MOS | 14 MOS | 14 MOS | 12 MOS |
| III | 20 YRS | 8 YRS | | 8 YRS | 36 MOS | 72 MOS | 30 MOS | 20 MOS | 16 MOS | 12 MOS | 8 MOS | 8 MOS |
| II | 20 YRS | 7 YRS | | 7 YRS | 24 MOS | 66 MOS | 24 MOS | 16 MOS | 14 MOS | 10 MOS | 6 MOS | 6 MOS |
| I | 20 YRS | 6 YRS | | 6 YRS | 20 MOS | 60 MOS | 18 MOS | 14 MOS | 12 MOS | 8 MOS | 5 MOS | 4 MOS |

* The statutory range for this category is 1 to 15 years. The Board of Pardons and Parole will consider all aggravating and mitigating factors in determining length of stay. Because the facts of the cases in this crime category are widely divergent, and criminal history is less determinative than in other categories, a single guideline recommendation is not helpful in determining length of stay of an offender.
Consecutive Enhancements: 40% of the shorter sentence is to be added to the full length of the longer sentence.
Concurrent Enhancements: 10% of the shorter sentence is to be added to the full length of the longer sentence.

Revised: 10/2015

00218

17/

FORM 5 – JAIL AS A CONDITION OF PROBATION MATRICES

Numbers in **unshaded cells** are presumptive probation sentences, meaning jail time should NOT necessarily be recommended to the court by the supervising agency. Alternative sanctions and/or non-incarceration sanctions are encouraged in these cells.

Lighter shaded cells are indicative of intermediate sanctions / intensive supervision, which may include increased monitoring or supervision, electronic monitoring, referral to treatment resource centers, participation in residential programming, special conditions of probation, etc.

The **upper number in each cell** is the maximum incarceration period of jail time which should be imposed by the court at the time of sentencing. The mid-point in each cell is generally recommended for the supervising agency to begin the analysis with aggravating/mitigating factors to be considered in addition to validated assessment scores and the impact of incarceration upon risk to reoffend.

These notations apply to both forms 5 and 5a.

GENERAL MATRIX

(To be used with Form 1)

| | 2 nd Death | 1 st Person | 3 rd Death | 1 st Other | 2 nd Person | 3 rd Person | 2 nd Other | 2 nd Poss | * 3 rd Other | 3 rd Poss |
|-----|--------------------------|---------------------------|--------------------------|--------------------------|---------------------------|---------------------------|--------------------------|-------------------------|----------------------------|-------------------------|
| V | 365 | 365 | 365 | 365 | 365 | 365 | 300 | 300 | 270 | 150 |
| IV | 300 | 300 | 300 | 300 | 300 | 300 | 300 | 300 | 270 | 120 |
| III | 270 | 300 | 270 | 270 | 270 | 180 | 180 | 180 | 150 | 0-90 |
| II | 180 | 270 | 180 | 210 | 240 | 150 | 0-120 | 0-120 | 0-90 | 0-60 |
| I | 150 | 240 | 150 | 210 | 210 | 120 | 0-90 | 0-60 | 0-60 | 0-30 |

SEX & KIDNAP OFFENSE MATRIX

(To be used with Form 3)

| | 1 st | 2 nd | 3 rd |
|-----|-----------------|-----------------|-----------------|
| III | 365 | 270 | 180 |
| II | 270 | 210 | 180 |
| I | 210 | 210 | 120 |

N/A

Form 5 - Jail as a Condition of Felony Probation Matrix Instructions

Form 5 is to be used in addition to **Form 1** and **Form 3** of the Adult Sentencing Guidelines and should only be used when the recommendation resulting from **Form 1** or **Form 3** is to suspend the prison sentence. When the guidelines indicate that an offender's prison sentence should be suspended, **Form 5** should be used to assist in the determination of whether an offender should serve some time in jail as an initial condition of probation and if so, the length of the jail sentence.

The shaded areas of **Form 5** generally correspond with the shading of **Form 1** and **Form 3**. Columns that require Mandatory Imprisonment are not included on **Form 5**.

Dark shaded cells: This area corresponds with the "Imprisonment" recommendation of **Form 1** and **Form 3**. If an offender falls into one of these areas and does not receive a prison recommendation, jail time is generally recommended for these offenses.

Light shaded cells: This area corresponds with the "Intermediate Sanctions" area of **Form 1** and **Form 3**. If an offender falls into one of these areas, AP&P may recommend jail as a condition of the offender's probation. Light shaded cells are more indicative of the need for Intensive Supervision, which is recommended for these offenses. Intensive Supervision may include increased monitoring or supervision, electronic monitoring, referral to treatment resource centers, participation in residential programming, special conditions of probation, or other alternatives as available.

Unshaded cells: This area corresponds with the "Presumptive Probation" area of **Form 1**. If an offender falls into this area, a typical recommendation from the supervising agency would not include jail as a condition of probation. However, these guidelines are not intended to limit judicial discretion: while jail as a condition of probation should not typically be recommended in these cases, the court may sentence an offender to jail as a condition of probation if there are aggravating factors or other circumstances that warrant a jail sentence.

All cells: The number of days in the individual cells includes the maximum jail time recommended to the court by the Sentencing Commission at the time of sentencing to address the goal of risk management. Neither the number of days, nor the shading of cells, should be considered mandatory. The maximum should not be presumed to be the starting point in formulating a recommendation to the court. Recommendations should generally presume the mid-point between 0 and the number indicated to begin the calculation (for instance, the midpoint of 0-270 = 135). Completed criminogenic risk and needs assessment(s), scores from validated tool(s), compliance with court orders prior to sentencing, aggravating and mitigating factors on **Form 2** and/or **Form 4**, as well as the impact of incarceration upon risk to reoffend should all then be considered in determining the final recommendation to the court at sentencing. The use of the jail time for behavior modification purposes (risk reduction as opposed to risk management) is addressed in **Forms 6 – 10 and corresponding addenda**.

Mitigating Circumstances Summary

- (1) Twenty pages were previously submitted providing details of each mitigating circumstance - this PSR is not complete without that attached - This serves as a summary only.

Summary (2) Roger's attitude suggests amenability to supervision: 1) Low supervision risk as assessed
2) Prior successful supervision

- (3) Roger has made herculean efforts to obtain education in additional life skills, completing seven classes with distinction - all efforts have been made at relevant programming (enrollment, participation, completion, commitment to ongoing maintenance)

- (4) Exceptional Institutional Behaviour (no disciplinary violations, no alcohol use/no drug use), Full compliance, completion of programming.

- (5) Degree of meaningful support system (family, church work, friends)

- (6) Degree of meaningful re-entry plan.

- (7) Institutional vulnerability (age, health issues that are being ignored or treated ineffectively, Roger wishes to return to work & obtain employer provided insurance to address health issues before forced disability occurs) 0221

- (8) Roger has exceptionally good employment opportunities upon release, exceptional employment history.
- (9) Roger's traits at the time of the offense, characteristics of the offense - AUD - Alcohol Use Disorder is impulsive, reactionary not premeditated, or no malicious intent towards anyone.
- (10) Additional time added to a current long sentence (2-5 yrs) would entail excessive & unnecessary hardship on Roger & his family.
- (11) Roger is very low risk to reoffend if he follows his very well laid out aftercare & maintenance plan - he has committed to do so.
- (12) Acceptance of Responsibility / Remorse For Offense
Complete acceptance, demonstrates remorse, motivation to remove himself as a risk, recognizes seriousness of offense, no minimization

Cont'd: Mitigating Circumstances

21

Under the guidelines

- (1) Mitigating circumstances may justify departure from the guidelines,
- (2) The weight of each factor whether aggravating or mitigating varies.
- (3) Any one mitigating factor (or taken as a whole) could outweigh some or all other aggravating factors.

To avoid double-counting, ~~any~~ history which is accounted for in the sentencing matrix is not to be used as an aggravating circumstance to deviate from the sentencing guidelines.

Another primary reason history is not to be used as an aggravating circumstance is that criminal history is not an aspect of the current offense - only aspects of the current offense are considered - and only if the circumstance is not an element of the offense that is accounted for in the crime category.

Time Incarcerated: 9 Months ending with 2015

P.22 2015 guidelines

"The totality of the mitigating factors should be compared against the totality of the aggravating factors."

00223

SENTENCING RECOMMENDATION

23

Sentencing Guidelines:

FORM 1
FORM 5

General Matrix:

6 months Probation

Tail as a condition of Probation 90 days

DUI F3 AT CODE

62.5 days

Crime Category

3rd degree other

Recommendation:

Deterministic Sentence based on the
guidelines (not recommending ~~an~~ indeterminate)

Incarceration: 90 days to 6 months as phrases the court
Concurrent w/ Credit For
time served.

Probation : Three years Probation
through Salt Lake County
Criminal Justice Services (CJS)
with sanctions:

- no alcohol use - zero tolerance
- random testing
- no driving unless license reinstated
- interlock- ignition
- maintain employment
- other conditions imposed
by CJS, classes, Programming, Treatment
- Ongoing maintenance, self Funded
as directed by CJS

The recommendation is above & beyond

00225

all
the guidelines & meets ~~the~~ goals
of sentencing to sanction & hold the
defendant accountable while not adding
time to his current sentence (In that
case defendant is incarcerated beyond
the guidelines. ~~with no meaning~~
~~destruction~~)

Goals of Sentencing:

- (1) Risk Management
- (2) Risk Reduction
- (3) Restitution

(1) Risk Management

Incarceration is not risk management for
a non-violent offender it is 100% risk
avoidance for a period of time.

The risk management goal is met through
sanctions & supervision - 3yrs the max
allowable.

By following the guidelines, punishment &
penalty is imposed that is proportionate to
the gravity of the offense (up to 6 months
Jail/prison - purely punitive) - through this
appropriate incapacitation & punishment is
administered while allowing Roger an
opportunity to be supervised later &
recover employment, liberty and life.

Cont'd SENTENCING RECOMMENDATION

25

(2) Risk Reduction

The risk reduction requirement is met in numerous ways

- 1) Keeping the defendant out of Jails & prisons where it has been shown that ~~incarceration~~ incarceration increases recidivism

This is referred to in the sentencing guidelines & in numerous references as "Evidence-based"

"Principles of effective intervention

"What works in corrections"

p. 2 Sentencing Guidelines

Numerous references of research is cited on p. 66, 69 of the sentencing guidelines.

- (2) Using risk/needs assessments as described in this document - appropriately identifying the treatment & services for Roger.

(a) Life Skills

(b) Treatment Program

Effective/High Quality

(c) Ongoing aftercare, maintenance & relapse prevention plan in place

- AA/LDS Recovery - ongoing meeting

- Bridge the Gap program

00227

(5) Restitution

There are no victims or restitution owed in this case.

Adhering to the guidelines also satisfies other goals

- unwarranted disparity, equity, Fairness
- Consistent punishment equal to the offense, minimize disparity in statewide sentencing, address drivers of an increasing prison population & using resources to target & reduce recidivism thereby reducing risk to the community over time

p. 5 of the guidelines encourages a balance between punishment (punitive) & risk reduction as often mutually exclusive

"Incarceration itself may actually increase criminal risk factors (i.e. Felon status, employment) thereby contributing to recidivism rates" - For non-violent, low risk offenders,

Risk reduction is a legitimate goal but often overlooked & avoided goal of sentencing

Risk reduction seeks to reduce the likelihood of future criminal activity through appropriate programming/treatments. Risk reduction is largely ignored in the LSP system due to a variety of factors (funding, limited space competing with other issues & more)

Roger's Comments on Sentencing

I plead with the Court for a sentence that would not add additional time to what I currently have. The existing sentence I have is a significant life blow & financially devastating for my family.

There is really nothing required of me here at the prison day to day - it is mostly dead time. I have tried & tried to get into a program here but have been denied due to USP policy - medical related. I have pulled all resources available to me to make the best use of my time.

While I believe in punishment that leads to change - this is far from the answer - I do not deserve some things that I am subjected to here day to day - no one does.

There is a big disconnect as to what people think prison is & reality. My mother mailed me some info from the DOC/USP website about a variety of things - she has an idea far from reality because of that.

The guards here do not even have a close idea of what it is like to be locked up - the boredom, not being able to work, provide for yourself - It can only be known by those who experience it.

A concurrent sentence adds significant time in years to my existing sentence & creates an even bigger barrier to success - as I become irrelevant in my career field with each passing day - I am 47 - will not be released until I am past 50 & face discrimination in my domain with age alone.

A deterministic, concurrent, with credit for time served is within the guidelines & the power of the Court.

Not only is this recommended under the sentencing guidelines but also the majority of the Utah public would prefer such a sentence → help not hindrance & punish smarter not harder. HB348 aims to achieve smarter punishment but as there is no provision there as far as treatment or time-cuts that apply to me - with a long re-hearing any time cut can be effectively denied - even if I were allowed to enter & complete treatment, a time cut would not apply. The only programming & treatment I have access to are those things run by volunteers & self-imposed efforts & study that I maintain to get access to. These are not credited by the board even

though those programs are significantly more effective & life changing.

You would not be faulted for sentencing under the guidelines & not adding additional time.

There is a 2015 report that finds 74 percent of Utahns agree with getting alcohol offenders in to programs, sentencing them to less time & redirecting to health facilities instead.

UtahPolicy.com

Article by Bob Bernick

Date March 11, 2015

Citing a Utah Policy Poll regarding reforms for health care instead of Prison

From the report:

70 percent of those who said they are "very active" in their LDS Faith favor more treatment, less prison time.

63 percent of those who said they are "very conservative" politically favor the reforms.

79 percent of those who said they are politically "moderates" favor the changes.

68 percent of those who defined themselves as Republicans favor the reforms.

71 percent of those who said they are political independents want more treatment and less punishment

96 percent of Democrats approve the reforms

98 percent of the "very liberal" are supportive of the reforms.

This is not about not punishing or not holding them accountable - it is about doing what the data shows to solve the problem.

I am asking for that data driven decision -

The reforms require state agencies such as the Division of Substance Abuse & Mental Health collect data & track outcomes - it is my hope that I would be able to help with that task - I have expertise in that area & would have ~~been~~ an interest in helping there.

While I will not benefit access to programming ~~and~~ therefore no sentence reduction, I can help implement the requirements under the bill - if time is not added to my sentence - I have little hope as it is getting released.

A Concurrent prison sentence going beyond the recommendation which is already beyond the guidelines to the maximum extent possible would add significant time to an already existing sentence.

Additional time would short-circuit & circumvent the goals of sentencing (Risk Management & Risk Reduction) as it would result in a purely punitive outcome.

Additional time blocks me from progressing in every area imaginable, there are an overwhelming number of mitigating circumstances to justify, at a very minimum, sticking to a sentence within the guidelines & the recommendation.

I am not asking for leniency or mercy or anything I do not deserve. - I am asking @ not to be sentenced to purely punitive measures beyond what I already face - I face substantial already - In the end, with the current sentence, I will do 5X the 2014 matrix as is - I am doing & have done all things within my power to pull together the knowledge resources I need for self-help but I am limited - I ask to not be blocked from additional progression that would keep me from doing what is needed 00233

This tool/Form replaces the Level of Services Inventory (LSI)

33
22

FORM 6 – SUPERVISION & TREATMENT LEVELS FRAMEWORK (Felony & Misdemeanor Offenses)

Form 6 incorporates the risk, need, responsivity research principles into a comprehensive framework to assist in determining the appropriate level of supervision and treatment based upon the results of a validated screening and assessment. See Addendum D for further explanation of the Central Eight Criminogenic Factors and Addendum E for further explanation of Responsivity Factors. It should be noted that supervision services should be targeted towards moderate and high risk level offenders. It should also be noted that criminogenic treatment services are preferred for moderate and high risk level offenders. Criminogenic treatment services refer to those programs which address the eight dynamic factors, which utilize cognitive behavioral therapy, pro-social modeling, and preferably have been evaluated pursuant to the Correctional Program Checklist. Clinical treatment refers to clinical evidence-based treatment modalities generally targetted at symptom-specific behavior (which may not address the eight criminogenic risk and need factors). Responsivity factors are identified potential barriers which, if addressed, will increase the likelihood of reducing the dynamic criminal risk factors. Responsivity factors should be used to tailor appropriate services and interventions, but should not be used punitively.

| | Functional Ability | | | | | | | | | | | | | | | | | | |
|-----------------|--------------------|---|---|---|---|---|---|---|---|------------|--------------|---|---|---|---|---|---|---|---|
| | Language | | | | | | | | | | | | | | | | | | |
| | Motivation Level | | | | | | | | | | | | | | | | | | |
| | Mental Health | | | | | | | | | | | | | | | | | | |
| | Housing | | | | | | | | | | | | | | | | | | |
| | Gender | | | | | | | | | | | | | | | | | | |
| | Physical Health | | | | | | | | | | | | | | | | | | |
| | Transportation | | | | | | | | | | | | | | | | | | |
| | Minimization | | | | | | | | | | | | | | | | | | |
| | Functional Ability | | | | | | | | | | | | | | | | | | |
| Treatment | | | | | | | | | | | | | | | | | | | |
| Supervision | | | | | | | | | | | | | | | | | | | |
| Dynamic Factors | | | | | | | | | | | | | | | | | | | |
| Need Level | | | | | | | | | | | | | | | | | | | |
| Risk Level | | | | | | | | | | | | | | | | | | | |
| Low | Low | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | Court | None | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| | Moderate | | | | | | | | | Court | Clinical | | | | | | | | |
| | High | | | | | | | | | Court | Clinical | | | | | | | ✓ | |
| | | | | | | | | | | | | | | | | | | | |
| Mod | Low | | | | | | | | ✓ | Supervised | Criminogenic | | | | | | | | |
| | Moderate | | | | | | | | | Supervised | Criminogenic | | | | | | | | |
| | High | | | | | | | | | Supervised | Criminogenic | | | | | | | | |
| High | Low | | | | | | | | | Supervised | Criminogenic | | | | | | | | |
| | Moderate | | | | | | | | | Supervised | Criminogenic | | | | | | | | |
| | High | | | | | | | | | Supervised | Criminogenic | | | | | | | | |

10/2015

Low Supervision Risk As Assessed

Target Areas:

- 1) Continued Maintenance (Alcohol)
- 2) Physical Health

Utah Sentencing Commission 35

00235

Refer to page 6 for further explanation regarding the proportionality principle as to why a moderate response is generally presumed.

Form 9 - Graduated Incentives and Form 10 - Graduated Sanctions identify a range of potentially available incentives and sanctions at both the administrative and Court/Board of Pardons and Parole level. The incentives and sanctions listed with "Probation Officer" or "P.O. With Supervisor Approval" on either **Form 9** or **Form 10** were developed in coordination with AP&P in a pilot project and are subject to change. County or private probation agencies may or may not have the same available options. All options are dependent upon available resources and do not create a right on behalf of the offender.

- Where "Court/BOPP" is designated on either **Form 9** or **Form 10**, the standard hearing process is anticipated. The supervising agency may still make a recommendation, but the ultimate decision rests with the Court or the Board of Pardons and Parole.
- Where a range of incarceration sanctions is indicated on **Form 10** for the "Court/BOPP," the upper number is a cap or maximum amount recommended. Exceptions to the maximum amount recommended are listed specifically and findings should be entered accordingly if exercised.
- Where "Court/BOPP Approved" is designated on **Form 10** for less than five (5) day incarceration sanctions, the standard hearing process is not anticipated. One, two or three day incarceration sanctions are intended to be utilized as swift and certain responses for behavior modification purposes explained previously, but are still subject to Court/BOPP approval. An expedited process for such approval is anticipated in coordination with AP&P, the Administrative Office of the Courts and the Board of Pardons and Parole.

This replaces the ~~current~~ service inventory assessment tool. It points to the same area (one) of need under supervision.

35
000

Central Eight Criminal Risk Factors & Treatment Targets

Each area assessed. Thirty pages of details addressing each area was submitted.

| | Criminogenic Need | Treatment Targets | |
|---|--|---|----------|
| ① | Antisocial Behavior Exploitive, aggressive, or harmful behavior toward others <i>Very Low need/ Low No Risk</i> | Increase pro-social behaviors, reinforce prosocial beliefs, support crime-free lifestyle. Develop clear, consistent, and proximate reward and consequences for behavior. Teach, model, and reinforce pro-social skills in high-risk situations. | BIG FOUR |
| ② | Antisocial Personality Pattern Impulsive, sensation seeking, risk-taking, aggressive, manipulative and exploitive. <i>Very Low Need/ Low No Risk</i> | Increase self-control and delayed gratification skills, anger and conflict management, problem solving. Reinforce prosocial interpersonal interactions. | |
| ③ | Antisocial Cognition Values, beliefs, feelings, and cognitions (thinking) that contribute to personal identity that favors and reinforces criminal behavior. <i>Life Skills - Low/ No Risk</i> | Address cognitive distortions and rationalizations that maintain a criminal identity. Build, practice, and reinforce new cognitions and attributions through cognitive restructuring and cognitive-behavior therapies. | |
| ④ | Antisocial Peers Preferring to associate with pro-criminal peers and isolation from anti-criminal peers and social contexts. <i>Low/ No Risk</i> | Reduce and eliminate association with delinquent peers and increase opportunities for regular association with anti-criminal peers and institutions (school, church, clubs, sports teams, and other structured and supervised activities). | |
| ⑤ | Family Chaotic and poor-quality family relationships that have minimal or no pro-social expectations regarding crime and substance abuse. <i>Low/ No Risk</i> | Increase pro-social communication, nurturance, structure, supervision, and monitoring in the family. Address dysfunctional boundaries and role confusion. Provides for consistent rewards for pro-social family interactions. | MOD FOUR |
| ⑥ | School/Work Poor performance and limited engagement with school or work resulting in dissatisfaction and avoidance of them. <i>Low/ No Risk</i> | Increase school and/ or work performance through education, vocational training, or alternative placement. Provide rewards and consequences to increase consistent attendance and progress at school and/or work. | |
| ⑦ | Leisure & Recreation Limited involvement in anti-criminal leisure activities. <i>Low/ No Risk</i> | Expose to a variety of pro-social leisure and recreational activities. Increase opportunities for regular involvement in preferred activities and reward progress. | |
| ⑧ | Substance Abuse Use and abuse of alcohol and/or drugs. <i>All areas addressed</i> <i>Ongoing Maintenance</i> <i>Medium risk as assessed (Current Maintenance)</i> | Reduce substance use through <u>targeted treatment, supervision and access</u> . Reduce exposure to substance abusing peers. Increase <u>capacity to cope with stressors</u> through lifestyle changes in <u>exercise, sleep, and nutrition</u> . | |

Adapted from Butters, R.P. (2014) *Community Based Treatment Interventions*. W. Church & D. Springer (Eds.), *Juvenile Justice Sourcebook*. New York, NY: Oxford University Press 2014.

To date three programs (two completed, one in progress - Self efforts as all help while incarcerated has been denied - no resources offered)

1. LDS Recovery / - Completed/ Ongoing maintenance/ 12-step
2. Beyond The Influence - Completed/ Ongoing maintenance
3. RDAP/Conquest/Metamorph - Completion 2016

All address ~~the~~ a common set of factors as listed in the Treatment Targets above - each in a different way -

Utah Sentencing Commission 58

00237