

2015

## **State of Utah, Appellee, v. Victoria Fanton, Appellant : Brief of Appellant**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Appellee,

v.

VICTORIA FANTON,

Appellant.

Court of Appeals No.: 20150300

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CONSOLIDATED BRIEF OF APPELLANT

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ON APPEAL TO THE UTAH COURT OF APPEALS  
FROM TWO JUDGMENTS ENTERED BY  
THE FIFTH DISTRICT JUDICIAL COURT,  
IN AND FOR IRON COUNTY, STATE OF UTAH

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ORAL ARGUMENTS/PUBLISHED OPINION REQUESTED FILED  
UTAH APPELLATE COURTS

OCT 01 2015

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**ORAL ARGUMENTS/PUBLISHED OPINION REQUESTED**

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**IN THE UTAH COURT OF APPEALS**

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**STATE OF UTAH,**

Appellee,

**v.**

**VICTORIA FANTON,**

Appellant.

Court of Appeals No.: 20150300

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**BRIEF OF APPELLANT**

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**JURISDICTION**

This Court has jurisdiction pursuant to UTAH CODE ANN. §78A-4-103(2)(e) and UT. R. APP. P. 3 over this appeal from the *Judgment, Sentence, Stay of Execution of Sentence, Order of Probation and Restitution, and Commitment*, dated April 7, 2015, in Criminal No. 141500785; Appellate Case No. 20150300, and the *Judgment, Sentence, Stay of Execution of Sentence, and Order of Probation* dated April 7, 2015, in Criminal No. 141500783; Appellate Case No. 20150301 (collectively the “**Judgments**”), by the Honorable Keith Barnes of the Fifth District Court, Iron County, State of Utah, which Judgments sentenced Fanton to a prison term of one to fifteen (1-15) years on each count, with a stay of the sentence in favor of jail time and probation. A copy of the Judgments are both attached hereto as Addendum “A” and incorporated herein by this reference.



## **STATEMENT OF THE ISSUES**

**ISSUE I:**     *Did the trial court abuse its discretion by denying Fanton's request to serve her remaining suspended sentence (approximately 184 days) in three or four-day weekends so as to enable her to provide child care for her children?*

**STANDARD OF REVIEW:** This court “traditionally afford[s] the trial court wide latitude and discretion in sentencing.” *State v. Helms*, 2002 UT 12, ¶ 8, 40 P.3d 626. “We will reverse only if we determine that a sentencing court has exceeded its permitted range of discretion, or, stated differently, if we determine that the trial court has ‘failed to consider all legally relevant factors, or imposed a sentence that exceeds legally prescribed limits.’” *State v. Moreno*, 2005 UT App 200, ¶8, 113 P.3d 992, *citing State v. Nuttall*, 861 P.2d 454, 456 (Utah App. 1993). “Moreover, our decision is informed by the understanding that ‘the exercise of discretion in sentencing necessarily reflects the personal judgment of the [trial] court and [we] can properly find abuse only if it can be said that no reasonable [person] would take the view adopted by the trial court.’” *Moreno* at ¶8, *citing Nuttall* at 456 (first and third alterations in original)(quotations and citation omitted).

**PRESERVATION:** At the sentencing herein, Fanton requested that she be allowed to serve her remaining suspended sentence of one hundred and eighty-four (184) days, in three (3) or four (4) day weekends in the Iron County Jail so as to enable her to care for her minor children. The trial court denied such argument indicating that the charge was too severe to allow such leniency.



**ISSUE II:** *Was trial counsel ineffective in failing to request that Fanton be transferred to the State of Michigan to serve her sentence so that her family could help care for her children while she was incarcerated?*

**STANDARD OF REVIEW:** “An ineffective assistance of counsel claim raised for the first time on appeal presents a question of law.” *State v. Clark*, 2004 UT 25, ¶6, 89 P.3d 162, citing *State v. Bryant*, 965 P.2d 539, 542 (Utah App. 1998).

**PRESERVATION:** Ineffective assistance of counsel claims do not require preservation where the record is adequate for review of the issue and the defendant has new counsel on appeal. See, *State v. Cook*, 881 P.2d 913, 915 n. 3 (Utah App 1994)(“ineffective assistance claims raise for the first time on appeal can only be reviewed in ‘unusual ... peculiar, narrow circumstances.’” (quoting *State v. Humphries*, 818 P.2d 1027, 1029 (Utah 1991)); *State v. Johnson*, 823 P.2d 484, 487 (Utah App. 1991)(“Those circumstances exist when there is new counsel on appeal and there is an adequate trial record...”).

**ISSUE III:** *Was trial counsel ineffective for failing to request a mental assessment be performed on Fanton when the Presentence Investigation report (“PSI”) indicated that she had been diagnosed with mental illness; or, alternatively, did the trial court commit plain error when it did not order a mental assessment based upon the PSI?*

**STANDARD OF REVIEW:** “An ineffective assistance of counsel claim raised for the first time on appeal presents a question of law.” *State v. Clark*, 2004 UT 25, ¶6, 89 P.3d 162, citing *State v. Bryant*, 965 P.2d 539, 542 (Utah App. 1998). In *State v. Kennedy* it states that, “[t]he plain error standard of review requires an appellant to show the existence of a harmful error that should have been obvious to the district court.” *Ibid.*, 2015 UT App. 152, ¶23, 354 P.3d 775, citing *State v. Waterfield*, 2014 UT App 67, ¶18, 322 P.3d 1194.

**PRESERVATION:** See, *State v. Cook*, 881 P.2d 913, 915 n. 3 (Utah App 1994)(“ineffective assistance claims raise for the first time on appeal can only be reviewed in

‘unusual ... peculiar, narrow circumstances.’” (*quoting State v. Humphries*, 818 P.2d 1027, 1029 (Utah 1991)); *State v. Johnson*, 823 P.2d 484, 487 (Utah App. 1991)(“Those circumstances exist when there is new counsel on appeal and there is an adequate trial record...”).

### **CONTROLLING CONSTITUTIONAL AND STATUTORY PROVISIONS**

#### **A. U.S. CONST. VI states as follows:**

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 defence.

#### **B. UTAH CODE ANN. §62A-4-201 states as follows:**

It is in the best interest and welfare of a child to be raised under the care and supervision of the child's natural parents. A child's need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child's natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected.

#### **C. UTAH CODE ANN. §77-18-1(5) states as follows:**

Before the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant. (b) The presentence investigation report shall include: ... (iii) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1; ... (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.

D. UTAH CODE ANN. §77-18-1.1(2) states as follows:

(2) On or after July 1, 2009, the courts of the judicial districts where the Drug Offender Reform Act under Section 63M-7-305 is implemented shall, in coordination with the local substance abuse authority regarding available resources, order offenders convicted of a felony to: (a) participate in a screening prior to sentencing; (b) participate in an assessment prior to sentencing if the screening indicates an assessment to be appropriate; and (c) participate in substance abuse treatment if: (i) the assessment indicates treatment to be appropriate; (ii) the court finds treatment to be appropriate for the offender; and (iii) the court finds the offender to be an appropriate candidate for community-based supervision.

E. UTAH CODE ANN. §77-28a-1 states as follows:

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of co-operation with one another, thereby serving the *best interests of such offenders* and of society and effecting economies in capital expenditures and operational costs. The purpose of this Compact is to provide for the mutual development and execution of such programs of co-operation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

F. UTAH CODE ANN. §41-6a-501 states as follows:

As used in this part: (a) "Assessment" means an in-depth clinical interview with a licensed mental health therapist: (i) used to determine if a person is in need of: (A) substance abuse treatment that is obtained at a substance abuse program; (B) an educational series; or (C) a combination of Subsections (1)(a)(i)(A) and (B); and (ii) that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

## **PROCEDURAL HISTORY AND STATEMENT OF THE CASE**

On December 29, 2014 Fanton was charged by *Information* with Aggravated Robbery, a first-degree felony, and Theft, a class B misdemeanor. (20150300)<sup>1</sup> R0001. In a separate *Information* also filed on December 29, 2014, Fanton was charged with Possession or Use of a Controlled Substance, a third-degree felony, and Possession of Drug Paraphernalia, a Class B misdemeanor. (20150301) R0001. An *Amended Information* was filed on January 21, 2015, charging Fanton with Robbery, a second-degree felony, and Possession or Use of a Controlled Substance, to wit: Heroin, a third-degree felony. (20150300) R0027; (20150301) R0024. On January 21, 2015, the *Statement of Defendant in Support of Guilty Plea and Certificate of Counsel and Order* (“Plea”) was filed. (20150300) R0029. Under the Plea Fanton pled guilty to Robbery, a second-degree felony, and Possession or Use of a Controlled Substance, to wit: Heroin, a third-degree felony. (20150300) R0030; (20150301) R0028. A Pre-Sentence Investigation Report was filed on February 23, 2015. (20150300), R0040; (20150301) R0039. The Pre-Sentence Investigation Report contained Fanton’s mental history indicating that she had been diagnosed with PTSD and bi-polar disorder. (20150300) R0043; (20150301) R0042.

On March 24, 2015 sentencing was held in this matter. On April 7, 2015 the *Judgment, Sentence, Stay of Execution of Sentence, Order of Probation and Restitution and Commitment* was entered. (20150300) R0073. In this Judgment Fanton was sentenced to one (1) to fifteen (15) years in the Utah State Prison for her conviction of robbery. (20150300) R0074. Fanton was ordered to pay a fine in the amount of \$10,000, a ninety percent (90%)

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<sup>1</sup> There are two (2) cases that have been consolidated into this one appeal. 20150300 refers to the record for trial court no. -0785 and 20150301 refers to the record for trial court no. -0783.

surcharge, and a court security fee in the amount of thirty-three dollars (\$33). *Id.* This sentence was to be served concurrently with the sentence in case no. 1415000785. *Id.* This sentence was stayed in favor of probation. (20150300) R0075. Under the terms of probation Fanton was to execute a formal agreement with Adult Probation and Parole and report to them as ordered, break no laws during her probation, serve two hundred and seventy-two (272) days in the Iron County jail with credit for time served, pay a fine in the amount of fifteen hundred dollars (\$1,500) plus a court security fee in the amount of thirty-three dollars (\$33) dollars, pay restitution, obtain a substance abuse evaluation and file such report with the court within sixty (60) days, reimburse Iron County four hundred dollars (\$400) for her public defender, not use or possess illegal substances, not associate with persons who use illegal substances, write a brief plan of what her life would be like in one (1), five (5), and ten (10) years from now and give it to her probation officer, maintain full-time employment or be in full-time school or a combination of both, complete twenty (20) hours a week of community service for every week she is not employed, and not reside outside the State of Utah. (20150300) R0077.

On April 7, 2015 the *Judgment, Sentence, Stay of Execution, and Order of Probation* was entered. (20150301) R0067. Fanton was sentenced to one (1) to fifteen (15) years in the Utah State Prison and ordered to pay a \$10,000 fine plus a ninety percent (90%) surcharge and court security fee in the amount of thirty-three dollars (\$33). This sentence was to be served concurrently with the sentence in case no. 1415000783. This sentence was stayed and Fanton was ordered to serve 270 days in the county jail and thirty-six (36) months of probation thereafter. The conditions of probation were that Fanton would report as ordered

to Adult Probation and Parole, commit no law violations, pay the court security fee of thirty-three dollars (\$33), and follow the other terms of probation as set forth in case no. 141500783.

On April 13, 2015, the *Notice of Appeal and Notice of Substitution of Counsel and Withdrawal* was filed. (20150300) R0080; (20150301) R0073. Fanton's trial counsel, Jeffery E. Slack withdrew and was replaced by Matthew Carling. *Id.* On May 15, 2015 the court received a letter from Fanton asking that her plea be reviewed and that she be released to treatment. (20150301) R0087. The Court denied the request on May 12, 2015. (20150301) R0091. On May 26, 2015 a hearing was held regarding Fanton's request to withdraw her plea. (20150300) R0105; (20150301) R0096. At such hearing the trial court determined that her plea was entered voluntarily and that her request to withdraw was not made timely. The trial court thus denied her request. *Id.*

### **STATEMENT OF FACTS**

#### **A. Plea and Sentencing Hearing January 21, 2015 and March 24, 2015**

At the plea hearing the State indicated that it was not seeking prison time, that Fanton would cooperate with any prosecution of her co-defendants, and that she was not being pressured into entering a guilty plea in both cases. (20150300) R0103:3; (20150301) R0097:3. Fanton indicated she was not under the influence of alcohol or drugs, and was taking no medication. *Id.* at p. 4. Fanton indicated she had no disabilities and nothing would interfere with her ability to enter into the agreement. *Id.* Fanton indicated to the court that she had reviewed the *Amended Information* and the plea agreement. *Id.* Fanton indicated that she understood the terms of the agreements. *Id.* Fanton pled guilty to the

robbery charge and to possession of a controlled substance. *Id.* at p. 5. The trial court found that there was a sufficient factual basis and that Fanton made her pleas knowingly and voluntarily. *Id.*

**B. Sentencing Hearing on March 24, 2015**

Fanton's attorney indicated that he and Fanton had reviewed the PSI. (20150300) R104:2; (20150301) R8:2. Fanton's counsel indicated that they had no issues with the PSI except the credit for the eighty-six (86) days she had already served. *Id.* at p. 3. Fanton's attorney also argued that Fanton should be allowed to serve her sentence in three or four (3-4) day blocks of time so that she could care for her children and resolve other legal matters still pending in Washington County. *Id.* The State indicated it did not believe a sentence of two hundred and seventy days (270) should be served in three or four (3-4) day blocks and declined Fanton's request. *Id.* at p. 4. The trial court then sentenced Fanton to one (1) to fifteen (15) years on the robbery charge and a ten thousand dollar (\$10,000) fine with a ninety percent (90%) surcharge and thirty-three dollars (\$33) court security fee and zero (0) to five (5) years on the possession charge with a fine of five thousand dollars (\$5,000), (ninety percent) 90% surcharge and a thirty-three dollar (\$33) court security fee. *Id.* Both cases were to run concurrently with one another. *Id.* The court then stayed such sentences in favor of 270 days in the county jail and thirty-six (36) months of probation. *Id.* As a condition of her probation Fanton was given credit for time already served and was ordered to pay one thousand five hundred dollars (\$1,500) in fees and a sixty-six dollar (\$66) court security fee. *Id.* Fanton was also ordered to pay restitution. *Id.* Fanton was to pay four



hundred dollars (\$400) to the Iron County Attorney's Office for the services of her defense attorney. *Id.* Fanton accepted the trial court's terms of probation. *Id.* at p. 6.

### **SUMMARY OF THE ARGUMENT**

At Fanton's sentencing she requested that her remaining suspended sentence of one hundred and eighty-four (184) days be served in three to four (3-4) day increments so she could continue to care for her children. The trial court erred in denying this request because it was a mitigating circumstance that should have been considered by the court. The trial court did not even consider this request but just stated it believed it was not appropriate for a suspended sentence of that length. This denial violated Fanton's due process rights because the court did not act on relevant information in passing sentence.

Fanton's counsel was also ineffective because he did not request that she be transferred to Michigan to serve her sentence so that her family could help care for her children and she could continue to have a relationship with them. His failure to do this caused his performance to fall below the reasonable objective professional standard and prejudiced Fanton because it did not allow her to have family help with her children or be able to continue a relationship with them.

Fanton's counsel was also ineffective for not objecting to the PSI when it indicated that Fanton had been diagnosed with PTSD and bi-polar disorder, and he made no request for a mental assessment prior to sentencing. This fell below the reasonable objective professional standard and prejudiced Fanton because she was sentenced without the trial court taking into consideration her mental illnesses.

Alternatively, the trial court committed plain error in this matter because it did not order that a mental assessment be completed prior to sentencing when it was aware of Fanton's mental illnesses after reading the PSI. Its failure to do so prejudiced Fanton because a mental assessment and its diagnosis would have greatly impacted her sentence. The trial court was aware of the existence of such illnesses and did nothing to further investigate them. Thus, Fanton was prejudiced as is discussed further below.

### **ARGUMENT**

#### **I. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING FANTON'S REQUEST TO SERVE HER REMAINING SUSPENDED SENTENCE IN THREE OR FOUR DAY WEEKENDS SO SHE COULD PROVIDE CHILD CARE FOR HER CHILDREN BECAUSE IT DID NOT TAKE INTO CONSIDERATION THIS MITIGATING CIRCUMSTANCE.**

"Due process 'requires that a sentencing judge act on reasonably reliable and relevant information in exercising discretion in fixing a sentence.'" *State v. Bowers*, 2012 UT App. 353, ¶12, 292 P.3d 711, *citing State v. Howell*, 707 P.2d 115, 118 (Utah 1985). "The Sentencing Matrix compare[s] a defendant's criminal history assessment' score with the degree of the offense of which he ha[s] been convicted." *State v. Harvey*, 2015 UT App 92, ¶3, -- P.3d --, *citing State v. Egbert*, 748 P.2d 558, 561-62 (Utah 1987). *Harvey* continues as follows:

The Sentencing Matrix 'creates a starting point' for sentencing judges by 'reflect[ing] a recommendation for a typical case,' but judges are not bound by the recommendations and are to take both 'aggravating and mitigating circumstances' into account, along with other pertinent considerations, when making sentencing decisions." *Id.* at ¶3; *see* Utah Sentencing Commission, 2014 Adult Sentencing and Release Guidelines 1, available at <http://www.sentencing.utah.gov>.

*Id.* "In general, trial courts base sentencing decisions on 'the totality of the circumstances.'" *State v. Sanchez*, 2015 UT App 58, ¶9, -- P.3d --, *citing State v. Perea*, 2013 UT 68, ¶117, 322

P.3d 624. “Although courts must consider all legally relevant factors in making a sentencing decision, not all aggravating and mitigating factors are equally important, and [o]ne factor in mitigation or aggravation may weigh more than several factors on the opposite scale.” *Id.*, quoting *State v. Killpack*, 2008 UT 49, ¶59, 191 P.3d 17 (alteration in original)(citation and internal quotation marks omitted). “This should not be read to mean that the trial court’s sentencing decision is beyond review. The trial court is charged with identifying, on the record, the aggravating and mitigating circumstances that affect its sentencing decision, because ‘[s]entencing should be conducted with full information and with careful deliberation of all relevant factors.’” *Moreno* at ¶10, citing *State v. Strunk*, 846 P.2d 1297, 1300 (Utah 1993). “A trial court’s failure to discharge this duty will result in the case being remanded for resentencing with instructions that the trial court consider all of the circumstances relevant to the sentencing decision.” *Id.*, citing *Strunk* at 1300. In *State v. Beltran-Felix* it states that, “Utah case law ‘require[s] trial courts to set forth, on the record, aggravating and mitigating factors, ...’” *Ibid.*, 922 P.2d 30, 37 (Utah App 1996)(citing *State v. Gibbons*, 779 P.2d 1133, 1137 (Utah 1989); *State v. Bell*, 754 P.2d 55, 60 (Utah 1988)).

“[A]ny mitigating or aggravating circumstance found by the trial court must be supported by evidence, and the proponent of the circumstance bears the burden of proving its existence by a preponderance of the evidence.” *State v. Moreno*, 2005 UT App 200, ¶13, 113 P.3d 992; cf. *United States v. Spedalieri*, 910 F.2d 707, 712 (10th Cir.1990). “[A]ggravating and mitigating factors are primarily concerned with “the nature and circumstances of the crime” and “the defendant’s character, background [or] history.” *State v. Arguelles*, 2003 UT 1, ¶105, 63 P.3d 731; UTAH CODE ANN. §76–3–207(2)(a)(i–ii). *Black’s Law Dictionary* defines

“mitigating circumstances” as “[s]uch as do not constitute a justification or excuse for the offense in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability.” *Ibid.*, 6<sup>th</sup> Edition, West Publishing 1991, p. 693.

In *State v. Lindsey* the court discusses what makes up an appropriate sentence as follows:

A sentence in a criminal case should be appropriate for the defendant in light of his background and the crime committed and also serve the interests of society which underlie the criminal justice system.” *State v. McClendon*, 611 P.2d 728, 729 (Utah 1980). Thus, “the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence.” UTAH CODE ANN. §77-18-1(7).

*Ibid*, 2014 UT App 288, 340 P.3d 176. “The Supreme Court of the United States’ holding in *United States v. Booker*, ‘requires a sentencing court to consider Guideline ranges, but it permits the court to tailor the sentence in light of other statutory concerns as well.’” *U.S. v. Hernandez-Castillo*, 2007 WL 1302577, \*2 (D.N.M. 2007). The Court recognized that “[u]nder the new advisory Guideline scheme, ‘district courts have a freer hand in determining sentences.’” *Id.*, citing *United States v. Trujillo-Terrazas*, 405 F.3d 814, 819 (10<sup>th</sup> Cir. 2005).

Personal family circumstances do allow for a variance in sentencing as is set forth in *U.S. v. Hernandez-Castillo* as follows:

Hernandez-Castillo argues that, even if his personal family circumstances do not warrant a downward departure under the Guidelines, they do counsel for a variance from the guideline sentence consistent with the Court's authority under *United States v. Booker*. Hernandez-Castillo has cited a case from the United States Court of Appeals for the Sixth Circuit and one from a district court within the United States Court of Appeals for the Seventh Circuit that suggest family circumstances are a factor that a sentencing court may consider in its analysis under *United States v. Booker*. See Sentencing Memorandum at 3 (citing *United States v. Bernal-Aveja*, 414 F.3d 625, 628-29 (6<sup>th</sup> Cir.2005))(remanding to district court for consideration of whether defendant's explanation that he reentered the United States to be closer to his four

American-born children residing in Ohio warranted a variance); *United States v. Galvez-Barrios*, 355 F.Supp.2d 958, 964 (E.D.Wisc.2005)(granting a variance from the guideline sentence, because, in part, the court “considered it significant that defendant returned to the United States to be with and support his family, not to commit crimes or for purely economic reasons”).

The Court agrees that a defendant's family circumstances may reflect upon his personal characteristics in a manner that becomes relevant to sentencing.

*Ibid.*, 2007 WL 1302577.

In the instant matter, Fanton requested that the trial court allow her to serve her sentence in three (3) or four (4) day blocks of time so that she could still care for her children and maintain her relationship with them. The trial court did not take this request into consideration or grant such request when they sentenced Fanton, although such information was relevant to this matter. *Bowers* at ¶12.

Under *Harvey*, Fanton's criminal history assessment score must be compared with the degree of the offense of which she has been convicted. *Id.* at ¶3. *Harvey* indicates that the sentencing matrix creates a starting point for the trial judge by giving them a recommendation and that they are to take both aggravating and mitigating circumstances into account. *Id.* In general, sentencing decisions are based on the totality of the circumstances and all legally relevant factors must be considered. *Id.* However, any factor of mitigating or aggravating circumstances may be given more consideration than another. *Id.* Mitigating factors are those which are concerned with the defendant's character and background. *Arguelles* at ¶105. Fanton's child care circumstances are mitigating as she had no family to care for her children. By serving three-four (3-4) days at a time, Fanton could still care for her children and spend time with them. The young age of her children makes

her being with them even more important. This factor should have been considered when it was determined how Fanton's sentence should be served.

All mitigating or aggravating factors must be placed on the record at sentencing. *Beltran-Felix* at p. 21. The trial court failed to consider the mitigating circumstance of Fanton's child care in passing its sentence. At the sentencing hearing Fanton's attorney asked the court if she could serve her sentence in three to four day increments so that she could care for her children. The court responded that it did not think a two hundred seventy (270) day sentence could be served that way and made no consideration of the mitigating factor. The court did not discuss or make any other mention of this request on the record. It hyper-focused on the length of her sentence to defeat consideration of any other possible solution based on the mitigating evidence and request. The court's failure to do so was not in compliance with *Harvey* or *Beltran-Felix*.

Fanton presented evidence to the court that supported her mitigating circumstances. *Moreno* at ¶13. She told the court why her sentence should be served in three-four (3-4) day increments, yet the court paid no attention. Without any justifiable reason, the court simply refused her request. In doing so the court has shown that it is more concerned about one factor rather than the totality of the circumstances, failing entirely to consider Fanton's children's best interests.

It is not uncommon for courts to consider family circumstances in sentencing. *Booker* required the trial court herein to consider not only Guideline ranges, but other statutory concerns as well. *Hernandez-Castillo* at \*2. The trial court failed to recognize that it had a freer hand in determining sentences. *Id.*, citing *Trujillo-Terrazas* at 819. In *Bernal-Aveja*, the 6<sup>th</sup> Circuit

remanded to district court for consideration of whether defendant's desire to be closer to his four American-born children residing in Ohio warranted a variance. *Id.* at 628-29. In *Galvez-Barrios*, another court granted a variance where the defendant desired to be with and support his family, rather than to commit crimes or for purely economic reasons. *Id.* at 964. In *Hernandez-Castillo*, the Court agreed that a defendant's family circumstances may reflect upon his personal characteristics, which is relevant to sentencing. However, the trial court herein did not acknowledge the request at all, but rather stated that the sentence was too long to be able to order a variance. This is contrary to its duty to consider the totality of the circumstances.

Furthermore, Fanton's sentence must be appropriate based upon her background and the crime she committed while it also serves to protect society. *Lindsey* at ¶12. Fanton provided the court with information as to why she would serve her sentence in three or four (3-4) day blocks of time and why that should be part of her sentence. *Id.* While Fanton's actual sentence was likely appropriate for her background and crime, her reasons for changing how she served her sentence were not considered by the court. The court simply said it did not think it was possible to serve her sentence that way. It held no discussion on the matter. It did not take into consideration her family circumstances although it is clear that courts are directed to do so as a factor in sentencing. *See, Bernal-Aveja* at 628-29; *Galvez-Barrios* at 964; *Hernandez-Castillo*. Family circumstances are grounds for a variation in sentencing and thus, the trial court erred in its sentencing of Fanton.



**II. TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE TO HAVE FANTON TRANSFERRED TO MICHIGAN TO SERVE HER SENTENCE WHERE SHE HAD FAMILY THAT COULD HELP WITH HER CHILDREN DURING HER INCARCERATION.**

UTAH CODE ANN. §77-28a-1 states the purpose of the Interstate Corrections Compact (“**ICC**”) between states regarding inmates, as follows:

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of co-operation with one another, thereby serving the *best interests of such offenders* and of society and effecting economies in capital expenditures and operational costs. The purpose of this Compact is to provide for the mutual development and execution of such programs of co-operation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

(Emphasis added). In *Glick v. Holden* our appellate courts discuss the ICC in more detail as follows:

The ICC was adopted in Utah in 1959 to “improve the range of institutional facilities, confinement, treatment, and rehabilitation programs available for offenders incarcerated by its member states.” *Gibson v. Morris*, 646 P.2d 733, 734 (Utah 1982); *see* UTAH CODE ANN. § 77-28a-1 to -5 (1990). An inmate may request a transfer to take advantage of programs offered in other states or to be closer to family members.

*Ibid.*, 889 P.2d 1389, 1390 (UT App. 1995).

Although located in an area of the code not applicable to these proceedings, a child’s best interests under UTAH CODE ANN. §62A-4-201 is legally described as follows:

It is in the best interest and welfare of a child to be raised under the care and supervision of the child’s natural parents. A child’s need for a normal family life in a permanent home, and for positive, nurturing family relationships is usually best met by the child’s natural parents. Additionally, the integrity of the family unit and the right of parents to conceive and raise their children are constitutionally protected.

A parent's fundamental right to have a relationship with their child is stated as follows:

It is widely recognized that “[a] parent has a fundamental right, protected by the Constitution, to sustain his relationship with his child.” *In re J.P.*, 648 P.2d 1364, 1372 (Utah 1982) (quotations and citation omitted); *see also Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S.Ct. 549, 554, 54 L.Ed.2d 511 (1978) (recognizing the relationship between parent and child as constitutionally protected). This “freedom of personal choice in matters of ... family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.” *Quilloin*, 434 U.S. at 255, 98 S.Ct. at 555 (alteration in original) (quotations and citation omitted); *see also In re S.A.*, 2001 UT App 307, ¶ 12, 37 P.3d 1166 (recognizing parents' interest in the care, custody, and control of their children as a fundamental liberty interest protected by the Fourteenth Amendment). Therefore, we must ensure that “ ‘the custody, care and nurture of the child reside first in the parents.’ ” *In re J.P.*, 648 P.2d at 1372 (*quoting Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944)

*State ex. rel A.H.*, 2004 UT App 39, ¶10, 86 P.3d 745.

A parties' right to the effective assistance of counsel is outlined in *State v. Houston* as follows:

The right to counsel under the Sixth Amendment to the United States Constitution includes “the right to the effective assistance of counsel.” In *Strickland v. Washington*, the United States Supreme Court announced the two-part test for ineffective assistance of counsel claims. First, the defendant must show that “his counsel rendered a deficient performance in some demonstrable manner, which performance fell below an objective standard of reasonable professional judgment.” Second, the defendant must demonstrate “that counsel's performance prejudiced the defendant.” We have acknowledged “the variety of circumstances faced by defense counsel [and] the range of legitimate decisions regarding how best to represent a criminal defendant.” As a result, “we must indulge in a strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance, and that, under the circumstances, the challenged action might be considered sound trial strategy.

*Ibid.*, 2015 UT 40, ¶70, 353 P.3d 55.

In the instant matter, Fanton's counsel was ineffective because he did not ask that Fanton be transferred to Michigan so that she could serve her sentence close to family who

could help care for her children. Thus, allowing her fundamental right to a relationship with the children and the best interests of the children to be ignored.

Under the ICC, the transferring of Fanton would have properly considered not only her best interests, but those of her family, and more particularly her children. UTAH CODE ANN. §77-28a-1; *Glick* at 1390. Fanton's attorney should have requested she be transferred to Michigan so she could maintain a relationship with her children. This could occur because she would have relatives caring for her children who would foster this relationship during her incarceration. As the legal concept is set forth under UTAH CODE ANN. §62A-4-201, it is in the best interests and welfare of Fanton's children to be raised under her care and supervision. Relatives would care for the children during her incarceration and she would then resume their care immediately upon her release. Fanton has a fundamental right under the Constitution to sustain a relationship with her children. *A.H.* at ¶10. If the children went to Michigan and Fanton stayed here with no particular ties to Utah, it would impede her relationship with them.

Fanton's counsel did not raise this matter before the court. He made mention of her wanting to serve her sentence in small increments to care for the children but did not ask the court to transfer her to Michigan to serve her sentence where she had family to assist with the children. Fanton has a constitutional right to raise her children which her attorney did not protect.

Under *Houston*, to prove counsel was ineffective Fanton must prove that her counsel's performance was deficient and fell below an objective standard of reasonable professional judgment and that she was prejudiced by such performance. *Id.* at ¶70. His

failure to raise the issue of transferring her to Michigan for her children fell below the reasonable standard of professional judgment. *Id.* He failed to protect her constitutional rights. U.S. CONST. AMEND. XIV; *J.P.* at 1372; *see also Quilloin*, 434 U.S. at 255, 98 S.Ct. at 554-5; *see also S.A.* at ¶ 12; *A.H.* at ¶10. Had he made this request, it likely would have been granted and her relationship with her children would have been sustained and maintained. Thus, Fanton's counsel was ineffective, and the Judgments should be reversed.

**III. FANTON'S COUNSEL WAS INEFFECTIVE FOR NOT REQUESTING THAT AN ASSESSMENT BE CONDUCTED UPON RECEIPT OF THE PSI THAT DISCLOSED FANTON'S MENTAL ILLNESS; OR, ALTERNATIVELY, THE TRIAL COURT COMMITTED PLAIN ERROR IN FAILING TO REQUIRE THE MANDATORY ASSESSMENT BE CONDUCTED BY AP&P.**

Under *State v. Thurston* it discusses why a judge should be provided background information on the defendant at sentencing as follows:

Utah law contemplates that the sentencing judge be provided with complete background information on the defendant and the crime so that he or she might impose a sentence more intelligently. For example, UTAH CODE ANN. §64-13-20(1)(b) (1986) (amended 1989) requires the Department of Corrections to "provide investigative functions and prepare reports to assist the courts in sentencing functions," including the provision for "recommendations concerning appropriate measures to be taken on behalf of offenders."

*Ibid.*, 781 P.2d 1296, 1299 (UT App. 1989). UTAH CODE ANN. §77-18-1.1(2) indicates as follows:

On or after July 1, 2009, the courts of the judicial districts where the Drug Offender Reform Act under Section 63M-7-305 is implemented shall, in coordination with the local substance abuse authority regarding available resources, order offenders convicted of a felony to: (a) participate in a screening prior to sentencing; (b) participate in an assessment prior to sentencing if the screening indicates an assessment to be appropriate; and (c) participate in substance abuse treatment if: (i) the assessment indicates treatment to be appropriate; (ii) the court finds treatment to be appropriate for

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

UTAH CODE ANN. §41-6a-501 defines “assessment” as follows:

As used in this part: (a) "Assessment" means an in-depth clinical interview with a licensed mental health therapist: (i) used to determine if a person is in need of: (A) substance abuse treatment that is obtained at a substance abuse program; (B) an educational series; or (C) a combination of Subsections (1)(a)(i)(A) and (B); and (ii) that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105.

UTAH CODE ANN. §77-18-1(5) states as follows:

Before the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant. (b) The presentence investigation report shall include: ... (iii) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1; ... (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.

A parties' right to the effective assistance of counsel is discussed in *State v. Houston* as

follows:

The right to counsel under the Sixth Amendment to the United States Constitution includes “the right to the effective assistance of counsel.” In *Strickland v. Washington*, the United States Supreme Court announced the two-part test for ineffective assistance of counsel claims. First, the defendant must show that “his counsel rendered a deficient performance in some demonstrable manner, which performance fell below an objective standard of reasonable professional judgment.” Second, the defendant must demonstrate “that counsel's performance prejudiced the defendant.” We have acknowledged “the variety of circumstances faced by defense counsel [and] the range of legitimate decisions regarding how best to represent a criminal defendant.” As a result, “we must indulge in a strong presumption that

counsel's conduct [fell] within the wide range of reasonable professional assistance, and that, under the circumstances, the challenged action might be considered sound trial strategy.

2015 UT 40, ¶70, 353 P.3d 55. “The party seeking the benefit of the plain error exception “must demonstrate that (i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, *i.e.*, absent the error, there is a reasonable likelihood of a more favorable outcome.” *Meadow Valley Contractors, Inc. v. State Dept. of Transp.*, 2011 UT 35, ¶17, 266 P.3d 671.

Herein, a PSI was prepared for both of Fanton’s cases. It indicated that Fanton had been diagnosed with PTSD and bi-polar disorder. Although armed with this information, no drug or mental assessment was performed or even determined to be unnecessary. Fanton’s counsel should have noted this information and objected to the PSI, requesting that the mandatory assessments be conducted on Fanton prior to sentencing.

The trial court herein was not provided with complete background information on Fanton so as to be able to “impose [her] sentence more intelligently.” *Thurston* at 1299. The Department of Corrections has a duty to “provide investigative functions and prepare reports to assist the courts in sentencing functions” including conducting assessments where it is clear that one is needed. *Id.* The Drug Offender Reform Act under §63M-7-305 was implicated herein requiring that Fanton be submitted to screening prior to sentencing, having plead to a felony charge. UTAH CODE ANN. §77-18-1.1(2). It appears some sort of screening occurred through AP&P since the PSI indicates the mental health and drug issues faced by Fanton; however, there is no indication as to their findings regarding a needed assessment or substance abuse treatment and the appropriateness of those resources for

Fanton. *Id.* Having provided insufficient information in the PSI, the trial court was not only lacking in complete information to make a more intelligent decision in sentencing Fanton, but also unable to find whether treatment or community-based supervision would have been appropriate for Fanton or not.

An in-depth clinical interview with a licensed mental health therapist would have been appropriate given the drug charges and Fanton's PTSD and bi-polar disorder. UTAH CODE ANN. §41-6a-501(a). Since PTSD and bi-polar can be treated with medication and therapy, it was necessary to provide sufficient information to the court as to Fanton's existing access to resources during the commission of the crimes to determine her mental health impact on having committed them. *Thurston* at 1299. It is quite possible that the results of an assessment would have found Fanton eligible for release into either drug or mental health treatment or community-based supervision. UTAH CODE ANN. §41-6a-501(a)(i).

The court was capable of continuing the date for the imposition of sentence if Fanton's counsel had spoken up after receiving the PSI about the lack of assessment for his client who was diagnosed with PTSD and bi-polar disorder. UTAH CODE ANN. §77-18-1(5). The PSI was statutorily required to contain information from other sources about Fanton, including any screenings or assessments. *Id.* However, none were listed in the PSI as having occurred.

Upon receiving the PSI, Fanton's counsel had the duty to review it for inaccuracies, immediately contacting AP&P and the State's attorney in an attempt to resolve them. UTAH CODE ANN. §77-18-1(6)(a). If no resolution could be reached, the matter should have been



presented to the trial court, which court maintained authority to grant an additional 10 working days to resolve them. *Id.* However, with it being an assessment that was omitted, it likely would have taken a longer period of time than 10 days to conduct the proper assessments on Fanton. This is precisely why AP&P is statutorily directed to conduct them without court order and include them in the PSI. The PSI was thus rendered deficient by them not having done so, with Fanton's counsel egregiously supporting the lack of information being presented to the trial court by failing to request it.

Fanton's right to counsel is protected under the Sixth Amendment. *Houston* at ¶70. Fanton's counsel rendered deficient performance by not requiring AP&P to abide the statutes directing that a screening and assessment be conducted on his client who plead to drug charges and suffered with a mental illness. *Id.* The code is clear on this matter; however, counsel overlooked it to Fanton's prejudice. *Id.* Such egregious omission is demonstrated by the record wherein Fanton's counsel accepted the PSI, only requesting application of credit for time served. *Id.* This fell below an objective standard of reasonable professional judgment. *Id.* It is not within the wide range of reasonable professional assistance to allow AP&P to present only partial information, and exclude significant information with regard to a client's mental health that could impact sentencing. *Id.* There is no sound trial strategy that would support keeping Fanton's mental health information—which is by nature mitigating—from a court prior to sentencing. *Id.*

Alternatively, the trial court should have recognized the error and corrected it. *Meadow Valley Contractors* at ¶17. An error clearly existed in failing to hold AP&P to the statutes governing the process and contents of Fanton's PSI, upon which the trial court

relied heavily herein. *Id.* The trial court is charged with application of the statutory requirements pertaining to PSIs and sentencing and, upon reviewing the PSI that indicated Fanton suffered from a mental illness, should have at a minimum discussed it on the record through inquiring of the State why it was absent. *Id.*

The error should have been obvious to the trial court. *Meadow Valley Contractors* at ¶17. Such error significantly harmed Fanton since it had a direct impact on the information upon which the trial court relied in sentencing. *Id.* She would likely have been eligible for release to treatment, a lesser sentence due to the mitigating circumstances of her mental illness (providing her the requested relief of serving 3-4 day increments challenged *supra*), or even a suspension in favor of community-based supervision only. *See*, UTAH CODE ANN. §41-6a-501(a)(i). Instead, Fanton was ordered to serve one year in the county jail, with probation to follow.

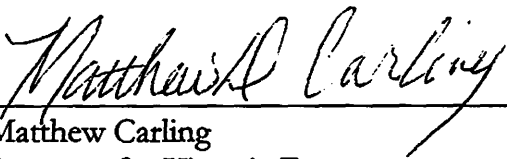
Fanton's counsel was aware of her mental illnesses as soon as he looked at the PSI. This told him that an assessment needed to be done prior to sentencing. He failed to request one. This failure prejudiced Fanton because she was sentenced without any accounting of her mental state or how such state may have affected her plea or her sentencing. *Id.* Had her counsel objected and requested an assessment, her mental illness would have been addressed in sentencing—as it should have been—providing the court with full information to determine her sentence and appropriate treatment. Thus, her counsel was ineffective because of his failure to object and request the mandatory assessment under the code. Alternatively, the trial court committed plain error in the same regard, having just as much knowledge of the omission in the PSI as Fanton's counsel, and being charged with

upholding the statutory process for PSIs and sentencing. Either way, the Judgments need to be reversed and the matter remanded with direction that the PSI be corrected with the appropriate assessments conducted and addressing Fanton's mental health and drug issues.

### **CONCLUSION**

WHEREFORE, based upon the foregoing, Fanton respectfully requests that this Court reverse both the *Judgment, Sentence, Stay of Execution of Sentence, Order of Probation and Restitution, and Commitment*, dated April 7, 2015 and the *Judgment, Sentence, Stay of Execution of Sentence, and Order of Probation* dated April 7, 2015, and take any such further action as this Court deems necessary.

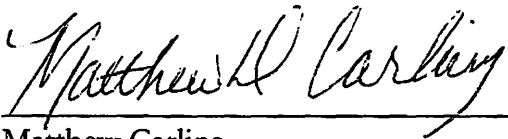
DATED this 2nd day of October, 2015.

  
Matthew Carling  
Attorney for Victoria Fanton

### **CERTIFICATE OF COMPLIANCE WITH UT. R. APP. P. 24(f)(1)(C)**

Counsel hereby certifies the *Brief of Appellant* complies with the type-volume limitation: 8,040 words are contained herein, in compliance with UT. R. APP. P. 24(f)(1)(A) and was determined by the word processing system used to prepare *Brief of Appellant*.

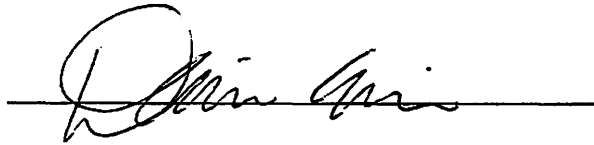
DATED this 2nd day of October, 2015.

  
Matthew Carling  
Attorney for Victoria Fanton

**CERTIFICATE OF MAILING**

I hereby certify that I mailed a true and correct copy, postage pre-paid, of the foregoing *Brief of Appellant* with attachments, on this 2nd day of October, 2015 to the following:

Utah Attorney General's Office  
Attn. Criminal Appellate Division  
160 East 300 South  
P.O. Box 140811  
Salt Lake City, Utah 84114-0811



# **Addendum ~A~**

*Judgment, Sentence, Stay of Execution of Sentence, Order of Probation and  
Restitution, and Commitment*, dated April 7, 2015, in Criminal No.  
141500785; Appellate Case No. 20150300,

and

*Judgment, Sentence, Stay of Execution of Sentence, and Order of Probation*  
dated April 7, 2015, in Criminal No. 141500783;  
Appellate Case No. 20150301.

The Order of Court is stated below:

Dated: April 07, 2015  
03:58:36 PM

/s/ KEITH C BARNES  
District Court Judge



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IN THE FIFTH JUDICIAL DISTRICT, IN AND FOR IRON COUNTY,  
STATE OF UTAH

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STATE OF UTAH,

Plaintiff,

vs.

VICTORIA FANTON,

Defendant.

**JUDGMENT, SENTENCE, STAY OF  
EXECUTION OF SENTENCE, ORDER  
OF PROBATION AND RESTITUTION,  
AND COMMITMENT**

Criminal No. 141500783

Judge Keith Barnes

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The Defendant, VICTORIA FANTON, having entered a plea of guilty to the offense of ROBBERY, a Second-Degree Felony; on January 21, 2015, and the Court having accepted said plea of guilty and thereafter having ordered the preparation of a Presentence Investigation Report, and after said report was prepared and presented to the Court, the above-entitled matter having come on for sentencing on March 24, 2015, in Cedar City, Utah, and the Defendant, VICTORIA FANTON, having appeared in person, together with her attorney of record Jeffery E. Slack, and the State of Utah having appeared by and through Deputy Iron County Attorney G. Tyler Romeril, and the Court having reviewed the Presentence Investigation Report and the file

in detail, and thereafter having heard statements from all parties, and the Court being fully advised in the premises now makes and enters the following Judgment, Sentence, Stay of Execution of Sentence, Order of Probation and Restitution, and Commitment as follows:

### **JUDGMENT**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, VICTORIA FANTON, and pursuant to her plea of guilty, has been convicted of the offense of ROBBERY, a Second-Degree Felony; and the Court having asked whether the Defendant had anything to say in regard to why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, it is adjudged that the Defendant is guilty as charged and convicted.

### **SENTENCE**

IT IS HEREBY ORDERED that the Defendant, VICTORIA FANTON, and pursuant to her conviction of ROBBERY, a Second-Degree Felony, shall serve a term of imprisonment for a period of one (1) to fifteen (15) years in the Utah State Prison, and the Defendant is hereby placed in the custody of the Utah Department of Corrections.

IT IS FURTHER ORDERED that the Defendant, VICTORIA FANTON, and pursuant to her conviction of ROBBERY, a Second-Degree Felony, shall pay a fine in the sum and amount of ten thousand dollars (\$10,000), plus a ninety percent (90%) surcharge, and a court security fee in the sum and amount of thirty-three dollars (\$33).

IT IS FURTHER ORDERED that the sentence imposed herein shall be served concurrently with the sentence imposed in Criminal Case No. 141500785.



### **STAY OF EXECUTION OF SENTENCE**

IT IS HEREBY ORDERED that the execution of the terms of incarceration imposed and the fines imposed in this case are hereby stayed, pending the Defendant's strict adherence to and compliance with the following terms and conditions of probation.

### **ORDER OF PROBATION AND RESTITUTION**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, VICTORIA FANTON, is hereby placed on probation for a period of thirty-six (36) months under the supervision of the Utah Department of Adult Probation and Parole, strictly within the following terms, provisions, and conditions:

1. The Defendant shall forthwith make and execute a formal agreement provided by the Utah Department of Adult Probation and Parole, and during the period of probation set forth herein, shall strictly conform with all the terms, provisions, and conditions, and the same are hereby made a part of this Order by means of incorporation.

2. The Defendant shall report as ordered and required by the Court and the Department of Adult Probation and Parole during the period of this probation.

3. The Defendant shall commit no law violations during the period of this probation.

4. The Defendant shall serve a term of incarceration in the Iron County Jail for a period of two hundred and seventy (270) days with credit for time served.

5. The Defendant shall pay a fine and fee in the amount of one thousand five hundred dollars (\$1,500), plus a court security fee in the amount of thirty-three dollars (\$33), during the period of probation and under the direction of Adult Probation and Parole. Further,

the Defendant may receive credit towards the fine for costs associated with the successful completion of a substance abuse evaluation and recommended aftercare, as long as she successfully completes probation without any violations.

6. The Defendant shall pay restitution to the victims in this matter, (1) Suman Singh, in the sum and amount of one hundred and ninety-two dollars (\$192); and (2) Lindsay Hold, Altius Health Plans, in the sum and amount of one hundred and fifty dollars (\$150). Said restitution to be paid joint and several with the co-Defendants in this matter and paid under the direction of Adult Probation and Parole.

7. The Defendant shall obtain a substance abuse evaluation and file the substance abuse evaluation report with the Court within sixty (60) days. Further, the Defendant shall enter, complete, and pay for any and all aftercare recommended as a result of said evaluation.

8. The Defendant shall reimburse Iron County four hundred dollars (\$400) for costs associated with the public defender.

9. The Defendant shall not consume or possess illegal narcotics or mind-altering substances, including marijuana and any synthetic forms thereof, nor associate with people that consume or possess said substances.

10. The Defendant shall not consume or possess alcohol, nor visit establishments where alcohol is the chief item of sale or where consumption of alcohol is the primary activity. Further, the Defendant shall not consume or possess energy drinks, other drinks, or medications that contain alcohol.

11. The Defendant shall sign a consent form to release treatment information for any

and all treatment providers of mental and/or physical health to the Office of Adult Probation and Parole and the Iron County Attorney's Office.

12. The Defendant shall write a brief plan to be presented to her probation officer detailing where she envisions her life 1, 5, and 10 years from now. Said plan to be submitted within thirty (30) days.

13. The Defendant shall maintain full-time employment, be enrolled in school full-time, or a combination of both, during the period of probation.

14. The Defendant shall complete twenty (20) hours of community service per week if she is unemployed for more than three (3) weeks until full time employment is gained.

15. The Defendant shall not establish residence outside the State of Utah without an approved Interstate Compact or travel outside the State without an approved Travel Permit from Adult Probation and Parole.

16. The Defendant is hereby notified that there shall be zero tolerance for any probation violations.

#### **COMMITMENT**

**TO THE SHERIFF OF IRON COUNTY, STATE OF UTAH:**

**YOU ARE HEREBY COMMANDED** to take the Defendant, VICTORIA FANTON, and deliver her to the Iron County Jail in Cedar City, Utah, there to be kept and confined in accordance with the above and foregoing Judgment, Sentence, Stay of Execution of Sentence, Order of Probation and Restitution, and Commitment.

**END OF ORDER**

The Order of Court is stated below:

Dated: April 07, 2015  
02:03:39 PM

/s/ KEITH C BARNES  
District Court Judge



G. TYLER ROMERIL (#11954)  
Deputy Iron County Attorney  
82 North 100 East, Suite 201  
P.O. Box 428  
Cedar City, Utah 84720  
Telephone: (435) 865-5310

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IN THE FIFTH JUDICIAL DISTRICT, IN AND FOR IRON COUNTY,  
STATE OF UTAH

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STATE OF UTAH,  
  
Plaintiff,

**JUDGMENT, SENTENCE, STAY OF  
EXECUTION OF SENTENCE, AND  
ORDER OF PROBATION**

vs.

VICTORIA FANTON,  
  
Defendant.

Criminal No. 141500785  
  
Judge Keith Barnes

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The Defendant, VICTORIA FANTON, having entered a plea of guilty to the offense of POSSESSION OR USE OF A CONTROLLED SUBSTANCE, a Third-Degree Felony; on January 21, 2015, and the Court having accepted said plea of guilty and thereafter having ordered the preparation of a Presentence Investigation Report, and after said report was prepared and presented to the Court, the above-entitled matter having come on for sentencing on March 24, 2015, in Cedar City, Utah, and the Defendant, VICTORIA FANTON, having appeared in person, together with her attorney of record Jeffery E. Slack, and the State of Utah having appeared by and through Deputy Iron County Attorney G. Tyler Romeril, and the Court having

reviewed the Presentence Investigation Report and the file in detail, and thereafter having heard statements from all parties, and the Court being fully advised in the premises now makes and enters the following Judgment, Sentence, Stay of Execution of Sentence, and Order of Probation as follows:

### **JUDGMENT**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, VICTORIA FANTON, and pursuant to her plea of guilty, has been convicted of the offense of POSSESSION OR USE OF A CONTROLLED SUBSTANCE, a Third-Degree Felony; and the Court having asked whether the Defendant had anything to say in regard to why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court, it is adjudged that the Defendant is guilty as charged and convicted.

### **SENTENCE**

IT IS HEREBY ORDERED that the Defendant, VICTORIA FANTON, and pursuant to her conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE, a Third-Degree Felony, shall serve a term of imprisonment for a period of one (1) to fifteen (15) years in the Utah State Prison, and the Defendant is hereby placed in the custody of the Utah Department of Corrections.

IT IS FURTHER ORDERED that the Defendant, VICTORIA FANTON, and pursuant to her conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE, a Third-Degree Felony, shall pay a fine in the sum and amount of ten thousand dollars (\$10,000), plus a ninety percent (90%) surcharge, and a court security fee in the sum and amount of thirty-three dollars

(\$33).

IT IS FURTHER ORDERED that the sentence imposed herein shall be served concurrently with the sentence imposed in Criminal Case No. 141500783.

#### **STAY OF EXECUTION OF SENTENCE**

IT IS HEREBY ORDERED that the execution of the terms of incarceration imposed and the fines imposed in this case are hereby stayed, pending the Defendant's strict adherence to and compliance with the following terms and conditions of probation.

#### **ORDER OF PROBATION**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, VICTORIA FANTON, is hereby placed on probation for a period of thirty-six (36) months under the supervision of the Utah Department of Adult Probation and Parole, strictly within the following terms, provisions, and conditions:

1. The Defendant shall forthwith make and execute a formal agreement provided by the Utah Department of Adult Probation and Parole, and during the period of probation set forth herein, shall strictly conform with all the terms, provisions, and conditions, and the same are hereby made a part of this Order by means of incorporation.
2. The Defendant shall report as ordered and required by the Court and the Department of Adult Probation and Parole during the period of this probation.
3. The Defendant shall commit no law violations during the period of this probation.
4. The Defendant shall pay a court security fee in the amount of thirty-three dollars (\$33), during the period of probation and under the direction of Adult Probation and Parole.

5. The Defendant shall abide by all terms and conditions of probation as ordered in Criminal Case No. 141500783.

**END OF ORDER**