

2015

## **The State of Utah, Plaintiff/Respondent, vs. Ryan Mooers and Darron Laven Becker, Defendants/Petitioners**

Utah Supreme Court

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IN THE UTAH SUPREME COURT

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THE STATE OF UTAH,

Plaintiff/Respondent,

vs.

RYAN MOOERS AND  
DARRON LAVEN BECKER,

Defendants/Petitioners.

Case No. 20150996-SC

Defendants/Petitioners are not  
incarcerated.

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**BRIEF OF PETITIONERS  
ON CERTIORARI REVIEW**

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Case No. 20150996-SC

Defendants/Petitioners are not  
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**Jurisdictional Statement**

The court of appeals issued *State v. Mooers*, 2015 UT App 266, 362 P.3d 282, on November 5, 2015, and it issued *State v. Becker*, 2015 UT App 304, 365 P.3d 173, on December 24, 2015. In both cases, the court of appeals dismissed the appeal for lack of jurisdiction. The opinions are provided in Addendum A (Mooers) and Addendum B (Becker). This Court granted Petitioners Mooers's and Becker's petitions for writ of certiorari and consolidated the cases on the Court's own motion pursuant to Rule 3(b) of the Utah Rules of Appellate Procedure. The orders granting certiorari and consolidating the cases are provided in Addendum C. This Court has jurisdiction to review the court of appeals' jurisdictional holding pursuant to Utah Code section 78A-3-102(5).



## **Opinions Below**

*State v. Mooers*, 2015 UT App 266, 362 P.3d 282, and *State v. Becker*, 2015 UT App 304, 365 P.3d 173, are provided in Addenda A and B.

## **Statement of the Issue, Standard of Review, and Preservation**

*Issue:* The district court in both cases ordered restitution after accepting a plea in abeyance. Petitioners filed a timely appeal of the restitution order. This Court granted certiorari to review the following issue:

“Whether the court of appeals erred in concluding it lacked jurisdiction over Petitioner’s appeal.”

*Standard of Review:* On certiorari, this Court reviews the decision of the court of appeals for correctness. *State v. Hansen*, 2002 UT 125, ¶ 25, 63 P.3d 650. This Court also reviews jurisdictional questions for correctness. *State v. Smith*, 2014 UT 33, ¶ 9, 344 P.3d 573.

*Preservation:* In both cases, jurisdiction was challenged for the first time in the Brief of Appellee in the Utah Court of Appeals. Subject matter jurisdiction “is not subject to waiver and may be raised at any time, even if first raised on appeal.” *J.M.W. v. T.I.Z. (In re Adoption of Baby E.Z.)*, 2011 UT 38, ¶ 25, 266 P.3d 702.

## **Relevant Statutes**

Article I, Section 12 and Article VIII, section 5 of the Utah Constitution and the following Utah Code sections are relevant to this appeal: 78A-4-102, 78A-4-103, 77-13-6, 77-2a-3, 77-2a-4, 77-38a-102, 77-38a-301, 77-38a-302, and 77-38a-401. Their text is provided in full in Addendum D.

## **Statement of the Case and Nature of the Proceedings**

Petitioners in the two consolidated cases entered pleas in abeyance which required them to pay restitution. Petitioner Becker pleaded guilty to attempted aggravated assault, a class A misdemeanor. R:23-31. Petitioner Mooers pleaded guilty to theft, a third degree felony. R:21-27.

In both cases, the court subsequently held a restitution hearing and entered a contested order of restitution. R:135 (Mooers); R:96:10-14 (Becker).

Petitioners appealed the restitution orders within the thirty-day timeframe for filing an appeal. R:101-02 (Mooers); R:91-92 (Becker). The court of appeals decided Petitioner Mooers's case first — it dismissed the appeal for lack of jurisdiction. *State v. Mooers*, 2015 UT App 266, ¶¶ 18-19, 362 P.3d 282. A separate panel subsequently dismissed Petitioner Becker's appeal, explaining that “*Mooers* control[led] the outcome” and it had “no choice but to dismiss for lack of jurisdiction.” *State v. Becker*, 2015 UT App 304, ¶¶ 9-10, 365 P.3d 173.

This Court granted and consolidated Petitioners' petitions for certiorari review. Addendum C.

## **Statement of Facts**

### **I. Facts Relating to Petitioner Mooers**

While a family was on vacation, their house was broken into through a bedroom window in the basement and several items were missing. R:138:4-5, 13. According to the declaration of probable cause, the thieves had “stolen approximately \$3,200 of

jewelry and coins.” R:2. The basement bedroom belonged to R.R., who was eighteen years old. R:138:15. R.R. became “very withdrawn” and “wouldn’t go . . . into her room.” R:138:15. About a month later, her parents decided to install bars in the basement bedroom window. R:138:16. The family installed the bars to “give her security.” R:138:16-17. The bars and installation cost \$1,100. R:17.

Mooers entered a plea in abeyance to theft. R:21-27. The plea in abeyance document has a section for facts describing the conduct for which he was criminally liable. R:22. That section states, “On 11/8/12, in SL County Mr. Mooers aided others in entering a home and taking coin and jewelry worth between 1,500 and 5,000.” R:22. Mooers agreed to pay restitution. R:24. Under the terms of the plea in abeyance, failure to pay would result in “zero to five years in the Utah State Prison and a \$5,000 fine.” R:137:5.

The State requested \$4,660.50 in restitution for costs such as the value of the stolen items, window repair, and carpet replacement. R:69. Mooers was “anxious to recompense [the victims] fairly” and did not dispute that these costs could be included in restitution. R:128:7. His only objection was to the \$1,100 window bars “which are not a loss or property that’s damaged, which are not related to the crime that he pled to.” R:128:7.

The district court found “that defendant has accepted responsibility for all the pecuniary damages arising from the break-in . . . including the installation of security bars” and ordered restitution in the amount of \$5,760.50. R:135.

The court of appeals dismissed Mooers's appeal for lack of jurisdiction, reasoning that a plea in abeyance is not a final order, and directed future defendants to file for interlocutory appeal, request extraordinary relief under rule 65B of the Utah Rules of Civil Procedure, or possibly to seek certification under rule 54(b) of the Utah Rules of Civil Procedure. *Mooers*, 2015 UT App 266, ¶¶ 18 & n.4, 19.

## II. Facts Relating to Petitioner Becker

Becker entered a plea in abeyance to one count of attempted aggravated assault, a class A misdemeanor. R:23-24, 25-31. Becker admitted that he “attempted to hit his neighbor with the handle of a shovel during an argument regarding loose dogs.” R:25-31. The plea required Becker to pay restitution. R:23-24; 99:9-10. The State made a motion for restitution, attaching for support a subrogated claim from the Utah Office for Victims of Crime (UOVC), which paid C.T., the victim, \$663.01 for a “Medically Necessary Device.” R:32-33, 35-36. Without explanation, supporting documentation or receipts, the Restitution/Subrogation Notice (Notice) states that C.T. incurred expenses for a “Medically Necessary Device” for \$39.00 and \$624.01. R:32-33; 35-36.

Becker objected and the court held a hearing. R:38-39, 44; 95. Neither C.T. nor a representative from UOVC attended the hearing. R:44; 95. C.T. had been subpoenaed to attend the hearing and the prosecutor did not know why he was absent. R:95:6.

At the hearing, Becker argued that the UOVC's Notice was insufficient documentation alone to support an order of restitution. R:95:3-5. The Notice referred only an unspecified “Medically Necessary Device” and lacked information about what

this “device” was or who provided any services to C.T. R:95:4-5. The prosecutor informed the court that he had called and left a message for C.T. and, in response, C.T. had faxed him a handwritten note requesting \$624 in restitution for the replacement of glasses, \$39 for a vision exam and \$480 in lost wages. R:95:5, 9. The prosecutor assumed the “Medically Necessary Device” was for the vision exam and glasses because the amounts matched. R:95:15. The prosecutor argued that the handwritten note was sufficient for an order of restitution because UOVC paid C.T.’s claim in the amount of \$663.01. R:95:5-6. None of the documentation the State relied on specified the date of service, provider, clinic or the reason why C.T. was seen.

Becker argued that additional documentation was needed to support C.T.’s requested amount other than a note he handwrote on notebook paper and UOVC’s payment. R:95:7-8. Otherwise, “anybody could just bill out any sort of number they wanted on a piece of notebook paper and submit it to Crime Victims and hope that [it] gets paid.” R:95:8. Becker requested the opportunity to review additional documentation UOVC would have relied on to pay C.T.’s claim including information regarding “which clinic provided the services, which doctor saw him, [and] why [he was seen].” R:95:8, 14.

The prosecutor contended that he was the one that had provided UOVC with C.T.’s handwritten note and did not believe they had “any additional information beyond that.” R95:9. The judge asked the prosecutor if UOVC “would have just paid based on that handwritten [note]?” R:95:9. Based on his review of the file, the prosecutor believed that UOVC paid C.T. based on his handwritten note along with the police report. R:95:9.

Becker “strenuously object[ed]” to an order of restitution, whether UOVC paid it or not, that is “based on just a handwritten piece of notebook paper.” R:95:9-11. The judge initially agreed with Becker, determining that UOVC’s list of payments was not “sufficient for [the court] to even determine whether this is directly connected to this case or . . . more importantly, to the criminal conduct of Mr. Becker.” R:95:11-12. But the court ultimately agreed to continue the hearing to allow time for Becker to receive additional documentation. R:95:16-20.

Becker subpoenaed UOVC to provide “copies of claims submitted by [C.T.] and all documentation in support of payment,” however, UOVC did not respond and no additional information was provided. R:45-46, 47-83; 96:4. Becker filed a motion objecting to the imposition of restitution for the “unspecified ‘Medically Necessary Device,’ without further testimony or documentation from the victim or [U]OVC” and requested an evidentiary hearing. R:47-83. Because no additional information was provided, Becker argued that the evidence remained insufficient “for the Court to determine that the requested restitution is specifically based on pecuniary damage resulting from Mr. Becker’s criminal conduct.” R:47.

As with the earlier hearing, neither the victim nor any representative from UOVC appeared at the follow-up hearing. R:96:4. Becker maintained his objection to the State’s requested restitution amount. R:96:5. Although no additional evidence was provided to the court, the judge denied Becker’s objection concluding that while, “[i]n theory, what the Defense is arguing is accurate . . . what I have in front of me is sufficient foundation and nexus.” R:96:10. The judge determined that because Becker pleaded

guilty to attempting to hit C.T. in the head he could not challenge whether that offense “broke [C.T.’s] glasses and required an eye examine to see if there was any injury.”

R:96:13. The judge concluded a sufficient nexus had been shown and Becker was ordered to pay restitution in the amount requested—\$663.01, plus interest. R:85; 96:14.

The court of appeals was “bound to follow *Mooers* as a matter of stare decisis” and had “no choice but to dismiss [Becker’s appeal] for lack of jurisdiction.” *Becker*, 2015 UT App 304, ¶ 10.

### **Summary of the Argument**

The court of appeals incorrectly held that a final restitution order is not directly appealable in the plea in abeyance context. Utah’s appellate courts have long treated restitution as separate from conviction for purposes of appellate jurisdiction. Conviction and restitution have separate timeframes, separate purposes, and can involve separate parties. The finality of a restitution order in the plea in abeyance context does not depend on the finality of the defendant’s conviction — the restitution order is final regardless of what happens to the plea. But the contrary can be true: a defendant who cannot satisfy the court’s restitution order faces conviction and imprisonment. For these reasons, the Crime Victims Restitution Act explains that a plea in abeyance is treated as a conviction. The legislature intended that a restitution order be separately appealable to ensure it is proper and that defendants are not imprisoned when they cannot pay improper restitution orders.

## Argument

### **I. The Court of Appeals Erred in Concluding It Lacked Jurisdiction over Petitioners' Direct Appeal of Their Restitution Orders.**

Article I, Section 12 of the Utah Constitution guarantees a defendant in a criminal prosecution the “right to appeal in all cases.” Utah Const. art. I, § 12. This constitutional provision “shows that the drafters of our constitution considered the right of appeal essential to a fair criminal proceeding.” *State v. Tuttle*, 713 P.2d 703, 704 (Utah 1985). The “failure to provide a direct appeal from a criminal case implicates the guarantee of due process under article I, section 7 of the Utah Constitution, when a defendant has ‘been prevented in some meaningful way from proceeding’ with a first right of appeal.” *Manning v. State*, 2005 UT 61, ¶ 26, 122 P.3d 628 (internal citation omitted).

The court of appeals’ conclusion that it lacks jurisdiction to review a final order of restitution pursuant to the Crime Victims Restitution Act because it was imposed as part of a plea in abeyance agreement is incorrect in light of Utah case law, rules, statutes, and constitutional provisions. The court’s determination that interlocutory review under rule 5, Utah Rules of Appellate Procedure, or extraordinary relief under rule 65B, Utah Rules of Civil Procedure, provide avenues for defendants seeking to challenge erroneous restitution orders is incorrect and creates an unnecessary and inadequate remedy. The court’s holding denies criminal defendants seeking to challenge restitution awards, imposed months after they have entered their pleas, the constitutional right to directly appeal restitution that was awarded in violation of the restitution statute’s criteria.



*A. A Defendant Can Appeal a Final Restitution Order Independently from a Final Criminal Conviction.*

The Utah Court of Appeals “has appellate jurisdiction” over “appeals from the court of record in criminal cases” except first degree felonies, which invoke the Utah Supreme Court’s jurisdiction. Utah Code § 78A-4-103(2)(e); *id.* § 78A-3-102(3)(h). “An appeal may be taken from a district . . . court to the appellate court with jurisdiction over the appeal from all final orders and judgments.” Utah R. App. P. 3(a). Unlike an ordinary civil case, “a criminal proceeding may result in several final orders.” *State v. Johnson*, 2009 UT App 382, ¶ 27, 224 P.3d 720; *see State v. Garner*, 2005 UT 6, ¶ 16, 106 P.3d 729. This Court explained in 1978, before the Crime Victims Restitution Act or the plea in abeyance statute was enacted, that it “is the sentence itself which constitutes a final judgment from which appellant has the right to appeal.” *State v. Gerrard*, 584 P.2d 885, 886 (Utah 1978). The Court later held that “where orders for restitution remain open to be decided at a later date, the subsequent entry of the amount of restitution is not a new and final judgment for purposes of appealing the underlying merits of a criminal conviction.” *Garner*, 2005 UT 6, ¶ 17; *see also State v. Hanigan*, 2002 UT App 424 (mem.) (“pending issues regarding restitution do not suspend the time for appeal”).

This holding was based in part on the often sizeable time gap between a conviction and a restitution order. *Garner*, 2005 UT 6, ¶ 15; *see Utah Code* § 77-38a-302(2)(b) (2013) (giving the court one year from sentencing to make restitution determination); H.B. 404, 61st Leg., Gen. Sess. (Utah 2016) (amending the statute to eliminate the one-year jurisdictional deadline). As the United States Supreme Court put it, “it is not

surprising to find instances where a defendant has appealed from the entry of a judgment containing an initial sentence that includes a term of imprisonment; that same defendant has subsequently appealed from a later order setting forth the final amount of restitution.” *Dolan v. United States*, 560 U.S. 605, 618 (2010).<sup>1</sup> In Petitioners’ cases, the district courts held restitution hearings well after the thirty-day timeframe for moving to withdraw the plea had passed. Utah Code § 77-13-6(2)(b) (“For a plea held in abeyance, a motion to withdraw the plea shall be made within 30 days of pleading guilty or no contest.”); R:23-24, 85; 96; 99 (Becker’s restitution hearing held about six months after plea); R:15-18; 38-39; 45-46 (Mooers’s restitution hearing held about five months after plea). And the restitution orders were final while the court still held the pleas in abeyance. R:99:8 (Becker’s plea held for twenty-four months); R:137:5 (Mooers’s plea held for eighteen months).

Restitution is on a separate timeline from conviction, and it can involve separate parties, as well. A victim has standing to request restitution without the State. *State v. Brown*, 2014 UT 48, ¶¶ 17-20, 342 P.3d 239. And the purpose of restitution is different from conviction and incarceration. When the Board orders restitution, “restitution is not a ‘punishment’ but a civil penalty whose purpose is entirely remedial, i.e., to compensate

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<sup>1</sup> *E.g.*, *United States v. Munzio*, 757 F.3d 1243, 1250 (11th Cir. 2014) (“If a subsequent judgment is entered ordering restitution, the defendant may separately appeal that order”); *State v. French*, 801 P.2d 482, 483 n.3 (Ariz. Ct. App. 1990) (“The order of restitution is a separately appealable order.”); *People v. Denham*, 222 Cal. App. 4th 1210, 1213-14 (2014) (“Therefore, when the trial court held a postjudgment hearing on victim restitution in this case, the resulting order setting the amount of victim restitution became an order after judgment that was appealable separately from the judgment itself.”); *Sanoff v. People*, 187 P.3d 576, 578 (Colo. 2008) (“As a separate, final judgment, however, an order for a specific amount of restitution is itself an appealable order.”).

victims for the harm caused by a defendant and whose likely intent is to spare victims the time, expense, and emotional difficulties of separate civil litigation to recover their damages from the defendant.” *Monson v. Carver*, 928 P.2d 1017, 1027 (Utah 1996). When the court orders restitution, the award “has a two-fold purpose. One purpose is to compensate the victim for pecuniary damages. The other purpose, as part of a criminal sanction, is to rehabilitate and deter the defendant, and others, from future illegal behavior.” *State v. Laycock*, 2009 UT 53, ¶ 18, 214 P.3d 104. Therefore, restitution appeals often resemble civil appeals more than criminal appeals, leaving untouched the conviction and prison sentence and focusing on issues of civil recovery, fair market value, and causation. *E.g.*, *Brown*, 2014 UT 48, ¶ 22 (holding that travel costs were not pecuniary damages recoverable in a civil action); *State v. Ludlow*, 2015 UT App 146, 353 P.3d 179 (holding that fair market value, and not purchase price, is the measure of restitution for used electronics); *State v. Harvell*, 2009 UT App 271, ¶ 13, 220 P.3d 174 (applying proximate cause analysis to hold that awarded restitution was “too attenuated both factually and temporally”).

A restitution order is thus a separately appealable final order over which Utah’s appellate courts have jurisdiction, regardless of their jurisdiction to address the underlying merits of the criminal conviction. *E.g.*, *State v. Birkeland*, 2011 UT App 227, ¶¶ 4-6, 258 P.3d 662 (defendant pleaded no contest and appealed only the restitution order).<sup>2</sup> Restitution is “an independent component of the sentence decreed in the

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<sup>2</sup> See also *State v. Abbott*, 2000 UT App 342 (per curiam) (defendant “did not file a timely appeal from the conviction and sentence” but “the appeal was taken from a signed

judgment.” *State v. Dickey*, 841 P.2d 1203, 1207 (Utah Ct. App. 1992); *see State v. Allen*, 2000 UT App 340, ¶ 9, 15 P.3d 110 (“Utah law provides an independent legal basis for restitution”).

The Utah Court of Appeals therefore erred when it determined that because it lacked jurisdiction to address the underlying merits of the criminal conviction, it must also lack jurisdiction to address the final restitution order. *Mooers*, 2015 UT App 266, ¶ 10 (“we conclude that a plea in abeyance is neither a sentence nor a final judgment, and therefore does not give rise to a right to appeal”). The *Mooers* court reasoned that “if the Utah Legislature intended to create an exception to the final-judgment rule for restitution orders imposed as a condition in a plea in abeyance agreement, it would have done so explicitly, but it did not.” *Id.* ¶ 15. But the court of appeals did not need to search for an exception to the final-judgment rule in the Crime Victims Restitution Act because a restitution order is already a final judgment. *Johnson*, 2009 UT App 382, ¶ 27 (“a criminal proceeding may result in several final orders”); *Garner*, 2005 UT 6, ¶ 17; *State v. McBride*, 940 P.2d at 539, 541 (Utah Ct. App. 1997).

The rationale behind exercising independent jurisdiction over criminal convictions and criminal restitution is every bit as strong when the plea is held in abeyance until

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minute entry that was intended to serve as the court’s final order on restitution” and the appellate court thus had “jurisdiction to consider the merits of the appeal”); *State v. Larsen*, 2009 UT App 293, ¶¶ 2-3, 221 P.3d 277 (defendant pleaded guilty and appealed only the restitution order); *T.W. v. State (State ex rel. T.W.)*, 2006 UT App 259, ¶ 6, 139 P.3d 312 (defendant pleaded guilty and appealed only the restitution order); *State v. Weeks*, 2000 UT App 273, ¶¶ 1, 6, 12 P.3d 110 (defendant pleaded guilty and appealed the restitution process and findings); *State v. McBride*, 940 P.2d 539, 541 (Utah Ct. App. 1997) (defendant pleaded guilty and appealed only the restitution order).

successful payment of restitution. *Garner* reasoned that “piecemeal appeals are not in the interest of judicial economy” in civil cases but “the same considerations mean little in the context of criminal cases” where “a criminal defendant . . . would frequently be disadvantaged by staying the time for an appeal until an exact amount for restitution could be determined.” 2005 UT 6, ¶ 16. A defendant whose restitution order will not alter his criminal conviction need not wait for the restitution order to be final to appeal; similarly, a defendant whose conviction will not alter his restitution order need not wait for the conviction to be final to appeal.

A defendant who enters a plea in abeyance, like any criminal defendant, has “more at stake than a civil defendant.” *Id.* Petitioners Mooers and Becker could not withdraw their pleas of guilty, even though they challenged the restitution orders. *State v. Gibson*, 2009 UT App 108, ¶ 16, 208 P.3d 543. If they failed to make restitution payments, the court would enter their pleas and sentence them to criminal sanctions including incarceration. Utah Code § 77-2a-4(1). This is the case even if the failure to pay was not willful. *State v. Pantelakis*, 2014 UT App 113, ¶¶ 6-7, 327 P.3d 586; *State v. Wimberly*, 2013 UT App 160, ¶¶ 7-16, 305 P.3d 1072. There is no cap on restitution, and case law provides examples of significant sums, as well as significant errors in the trial courts’ restitution orders. *See, e.g., State v. Poulsen*, 2012 UT App 292, ¶ 17, 288 P.3d 601 (“Poulsen thus walked out of a restitution hearing lasting several minutes subject to a civil judgment of \$168,400 without ever having the opportunity to test the factual

underpinnings of that award.”).<sup>3</sup> Under *Mooers* and *Becker*, a district court can award damages a defendant could not anticipate and imprison a defendant who cannot pay. Once the defendant is convicted, sentenced, and imprisoned, Utah Code § 77-2a-4(1), only then does he have the right to appeal the restitution order. This defies the logic and holding in *Garner*, which set forth the separate appellate tracks for criminal restitution and criminal conviction so as not to “significantly delay[]” “a defendant’s right to appeal in criminal cases.” 2005 UT 6, ¶¶ 15-16.

It is for this reason that the court of appeals wrote in *Gibson*, a plea in abeyance case, that a “defendant has all the due process rights inherent in [a restitution] hearing and also has the right to appeal the resulting determination.” *Gibson*, 2009 UT App 108, ¶ 15; *see also Salt Lake City v. Ausbeck*, 2011 UT App 269, ¶ 4 n.2, 274 P.3d 991 (per curiam) (citing *Gibson* and reaffirming that “an order of restitution is a separate appealable order.”). The defendant in *Gibson* entered a plea in abeyance that, like the ones in Petitioners’ cases, included restitution as one of its terms. 2009 UT App 108, ¶ 3. Also like Petitioners, the defendant’s conviction in *Gibson* was not final at the time that

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<sup>3</sup> *See also, e.g., State v. Williams*, 2013 UT App 101, ¶ 10, 300 P.3d 788 (remanding improper restitution award of \$250,000); *State v. Udy*, 2012 UT App 244, ¶ 2, 286 P.3d 345 (“The State calculated that Udy owed nearly \$14.7 million in restitution, an amount that Udy challenged.”); *Gibson*, 2009 UT App 108, ¶ 4 (the disputed restitution amount the court of appeals stated could have been independently appealed was \$238,184.92); *State v. Johnson*, 2009 UT App 382, ¶¶ 45, 48, 224 P.3d 720 (reversing and remanding a restitution award of \$120,000); *State v. Brown*, 2009 UT App 285, ¶ 12, 221 P.3d 273 (“we agree with Brown that the restitution award must be amended to remove the costs of Girlfriend’s relocation”); *State v. Watson*, 1999 UT App 273, ¶ 5, 987 P.2d 1289 (defendant did not admit guilt to a crime requiring restitution, but was ordered to pay restitution for murder).

the district court denied her motion to amend the restitution order. *Id.* ¶¶ 4-7 (explaining that the restitution hearing was held in October 2004 and the defendant was not convicted and sentenced until sometime after June 2006). Unlike Petitioners, however, the defendant in *Gibson* “ultimately chose not to exercise her right to appeal the district court’s denial of her motion to amend” the restitution order. *Id.* ¶ 15. Instead, she moved to withdraw her plea, “arguing that her plea was not knowing and voluntary because neither the total restitution amount nor the required monthly payment was fixed at the time of her plea.” *Id.* ¶ 6. The district court denied the motion, and the defendant appealed the denial of the motion to withdraw her plea. *Id.* ¶ 7.

The court of appeals held that “an otherwise knowing and voluntary plea is not affected by a dispute over the amount of restitution.” *Id.* ¶ 10. A guilty plea can only be withdrawn upon “a showing that it was not knowingly and voluntarily made.” Utah Code § 77-13-6(2)(a). “To show that a plea was not knowing and voluntary, a defendant must show either that he did not in fact understand the nature of the constitutional protections that he was waiving by pleading guilty, or that he had such an incomplete understanding of the charge that his plea cannot stand as an intelligent admission of guilt.” *State v. Alexander*, 2012 UT 27, ¶ 23, 279 P.3d 371 (internal quotation marks omitted). *Gibson*’s holding hinged on a parallel holding that the restitution order was independently appealable. 2009 UT App 108, ¶ 15. “When a defendant has any objection to ‘the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.’” *Id.* (quoting Utah Code § 77-38a-302(4)). “A defendant has all the due process rights inherent in such a hearing and also has the right to appeal the

resulting determination.” *Id.* *Mooers* disavowed this language as “dicta.” *Mooers*, 2015 UT App 266, ¶ 13. But *Gibson* is well reasoned and all the parties below took it at its word. R:135 (the district court in *Mooers*’s case wrote that its restitution order “is the final order of the Court and no other order needs to be prepared”). *Gibson* made explicit that restitution is final and appealable in the plea in abeyance context because otherwise restitution in that context would be appealed too late — because a knowing and voluntary plea had already been entered under Utah Code section 77-2a-4(1) — or not at all — because restitution had already been paid and the case dismissed under Utah Code section 77-2a-3(2)(b). Under *Gibson*, a final restitution order with the same effect “as an ordinary judgment” could be appealed like one. *Gibson*, 2009 UT App 108, ¶ 15 n.5 (citing Utah Code § 77-38a-401(4)).

Criminal restitution is more serious than a civil judgment. A defendant who cannot pay faces incarceration. Utah Code § 77-2a-4(1) (the district court may enter the plea and sentence the defendant in the plea in abeyance context); *State v. Nones*, 2000 UT App 211, ¶ 13, 11 P.3d 709 (failure to pay restitution can be treated as contempt of court or result in the extension or violation of probation). Additionally, restitution survives the civil eight-year statute of limitations, Utah Code § 77-38a-401(4), *State v. Flygare*, 2015 UT App 188, ¶ 5, 356 P.3d 698; it survives bankruptcy, *State v. Cabrera*, 2007 UT App 194, ¶¶ 8-9, 163 P.3d 707; and it survives death, *State v. Christensen*, 866 P.2d 533, 536-37 (Utah 1993). But it is “a legal judgment, enforceable under the Utah Rules of Civil Procedure,” Utah Code § 77-38a-401(2), with “the same effect . . . as a judgment in a civil action.” *Id.* § 77-38a-401(4). And even a defendant in civil court has an appeal of



right from a final judgment. Utah Const. art VIII, § 5 (“there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the case”). If the victims in these cases had prevailed in independent civil suits, Petitioners Mooers and Becker would have a direct appeal of right. The court of appeals erred when it held that Petitioners did not have a direct appeal in the restitution context, where the criminal underpinnings of the order make appellate review more urgent.

Furthermore, the Crime Victims Restitution Act contemplates that final, appealable restitution orders may accompany pleas in abeyance. It provides that in “a criminal action, the court may require a convicted defendant to make restitution.” Utah Code § 77-38a-301. “As used in this chapter: (1) ‘Conviction’ includes a: (a) judgment of guilt; (b) a plea of guilty; or (c) a plea of no contest.” Utah Code § 77-38a-102(1). The same statute defines “[p]lea in abeyance” as “an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.” *Id.* § 77-38a-102(9).<sup>4</sup> In *Meza v. State*, 2015 UT 70, ¶ 17, 359 P.3d 592, this Court therefore called the Crime Victims Restitution Act a “Utah statute[] in which a plea in abeyance is considered a conviction.” This, too, the *Mooers* court dismissed as “dicta and . . . not binding.” *Mooers*, 2015 UT App 266, ¶ 14. But the

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<sup>4</sup> If the defendant complies with the terms, a court may “reduce the degree of offense” or “allow withdrawal of defendant’s plea and order the dismissal of the case.” *Id.* § 77-2a-3(2)(a), (b). If he does not comply, the court may “enter judgment of conviction and impose sentence against the defendant for the offense to which the original plea was entered.” *Id.* § 77-2a-4(1). Neither result would affect the restitution order.

language in *Meza* was controlling case law from this Court, which the court of appeals was not free to disregard. *State v. Menzies*, 889 P.2d 393, 399 n.3 (Utah 1994), (“lower courts are obliged to follow the holding of a higher court, as well as any ‘judicial dicta’ that may be announced by the higher court.”); *Eldridge v. Johndrow*, 2015 UT 21, ¶¶ 20 n.3, 25 n.4, 345 P.3d 553. Like the court of appeals in *Gibson*, this Court in *Meza* understood that the legislature intended to treat the restitution order accompanying a plea in abeyance the way it would treat the restitution order accompanying a conviction. *Meza*, 2015 UT 70, ¶ 17.

In summary, a restitution order is a separate appealable order. This result follows naturally where the legislature has put the two on separate timeframes. Utah Code § 77-38a-302(2)(b) (Supp.2016) (eliminating language codifying a jurisdictional deadline for restitution one year after sentencing and allowing even longer); *id.* § 77-38a-102(9) (Crime Victims Restitution Act explaining pleas can be held in abeyance). The court of appeals erred when it searched the Crime Victims Restitution Act for an explicit right of appeal instead of following the sound guidance of *Gibson* and *Meza*. *Mooers*, 2015 UT App 266, ¶¶ 13-14.

*B. Alternate Methods of Review Are a Poor Fit.*

The court of appeals held that, instead of a direct appeal, a defendant in a plea in abeyance case could request interlocutory review of the restitution order under rule 5 of the Utah Rules of Appellate Procedure, request extraordinary relief under rule 65B of the Utah Rules of Civil Procedure, or possibly seek certification under rule 54(b) of the Utah

Rules of Civil Procedure. *State v. Mooers*, 2015 UT App 266, ¶ 18 & n.4. These methods are unnecessary, *see supra* Part I, inadequate, and they are a poor fit for a final restitution order.

Interlocutory review is for interlocutory orders. Utah R. App. P. 5(a). As argued above, a restitution order is a final order. And because it is final, discretionary review is insufficient — if it were not granted, review would come either too late or not at all. Petitioning for review of an interlocutory order creates additional delay and wastes resources while the parties brief the petition and wait for a decision on whether the court of appeals will hear the case. Utah R. App. P. 5(a), (g). The process is designed to “materially advance the termination of the litigation,” Utah R. App. P. 5(c)(1)(D), but because the restitution order is independent of the conviction, an interlocutory appeal will not speed up the ultimate disposition of the case. And a defendant who cannot convince the court “why the appeal may materially advance the termination of the litigation” is unlikely to convince the court to grant the requested permission to appeal. *Id.*

Extraordinary relief under rule 65B of the Utah Rules of Civil Procedure is likewise problematic. First, the burden of convincing the court to exercise its discretionary authority to grant relief is on the defendant. “Unlike a party filing a direct appeal, a petitioner seeking rule 65B(d) extraordinary relief has no right to receive a remedy that corrects a lower court’s mishandling of a particular case. . . . Because a party petitioning for rule 65B(d) extraordinary relief is not entitled to receive relief, even if that party successfully establishes that a lower court abused its discretion, such relief will be, naturally, more difficult to obtain.” *State v. Barrett*, 2005 UT 88, ¶ 23, 127 P.3d 682

("[W]hether relief is ultimately granted is left to the sound discretion of the court hearing the petition.").

"Indeed, in a particular case, relief may very well be available under the terms of rule 65B(d) itself — which states that a petitioner has established adequate grounds for relief upon showing that a lower court 'abused its discretion,' Utah R. Civ. P. 65B(d)(2)(A)—but a court may nevertheless withhold relief." *Id.* ¶ 24. This Court compared the "exercise of the court's discretion when deciding whether to grant rule 65B(d) extraordinary relief" to its discretion when deciding whether to grant a writ of certiorari. *Id.* Incorrect restitution awards are critical to defendants who will be convicted if they fail to pay them, but defendants will face an uphill battle convincing the court that the common legal errors that occur in restitution hearings are egregious, significant, and severe enough to merit extraordinary relief. *See id.*

Next, appellate courts "will issue an extraordinary writ only when 'no other plain, speedy[,] and adequate remedy is available.'" *Meza v. State*, 2015 UT 70, ¶ 21, 359 P.3d 592 (quoting Utah R. Civ. P. 65B(a)). As *Meza* noted, "extraordinary relief is not available [if the defendant] has another remedy available for challenging his plea in abeyance." *Id.* ¶ 22 (directing defendants who wish to challenge dismissed pleas in abeyance to Utah Rule of Civil Procedure 60(b)(6)). And as argued above, a direct appeal has ordinarily been available to defendants who wish to challenge restitution orders. *See, supra*, Part I n.2.

Finally, the court of appeals suggested that seeking review under rule 54(b) of the Utah Rules of Civil Procedure "may not be available in a criminal case. But even if it is,

it is not clear that an order of restitution is one that would qualify for certification.”

*Mooers*, 2015 UT App 266, ¶ 18 n.4. Again, requesting unprecedented certification in a criminal case is not necessary. Restitution is traditionally treated as final and appealable. *Salt Lake City v. Ausbeck*, 2011 UT App 269, ¶ 4 n.2, 274 P.3d 991 (per curiam) (“An order of restitution is a separate appealable order”); *State v. Abbott*, 2000 UT App 342 (per curiam) (defendant “did not file a timely appeal from the conviction and sentence” but “the appeal was taken from a signed minute entry that was intended to serve as the court’s final order on restitution” and the appellate court thus had “jurisdiction to consider the merits of the appeal”).

The three alternative avenues for seeking review that *Mooers* suggests are unnecessary when the legislature has already set restitution on the simple and direct appellate track. The court of appeals erred when it held that it lacked jurisdiction to review Petitioners’ appeals.

### Conclusion

For the reasons set forth above, Petitioners respectfully request that this Court reverse the court of appeals’ jurisdictional holding dismissing their appeals.

SUBMITTED this 16<sup>th</sup> day of May, 2016.



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CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I certify that this brief contains 6,181 words, excluding the table of contents, table of authorities, addenda, and certificates of compliance and delivery. In compliance with the typeface requirements of Utah R. App. P. 27(b), I certify that this brief has been prepared in a proportionally spaced font using Microsoft Word 2010 in Times New Roman 13 point.

  
\_\_\_\_\_  
NATHALIE SKIBINE

CERTIFICATE OF DELIVERY

I, NATHALIE S. SKIBINE, certify that I have caused to be hand-delivered the original and nine copies of the foregoing brief to the Utah Supreme Court, 450 South State, 5th Floor, Salt Lake City, Utah 84114-0230, and three copies to the Utah Attorneys General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 16<sup>th</sup> day of May, 2016.

  
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NATHALIE S. SKIBINE

DELIVERED this    day of May, 2016.

## ADDENDUM A

2015 UT App 266

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THE UTAH COURT OF APPEALS

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STATE OF UTAH,  
Appellee,  
*v.*  
RYAN MOOERS,  
Appellant.

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Opinion  
No. 20140170-CA  
Filed November 5, 2015

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Third District Court, West Jordan Department  
The Honorable Charlene Barlow  
No. 131400410

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Nathalie S. Skibine and Heather J. Chesnut,  
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for Appellee

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JUDGE KATE A. TOOMEY authored this Opinion, in which JUDGES  
GREGORY K. ORME and JAMES Z. DAVIS concurred.

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TOOMEY, Judge:

¶1 Ryan Mooers appeals from an order to pay restitution. The primary issue on appeal is whether a restitution order imposed as a condition of a plea in abeyance agreement, where the defendant's plea has not been entered and the defendant has not been sentenced, is a final and appealable order. We conclude that it is not. We therefore dismiss Mooers's appeal for lack of jurisdiction.

BACKGROUND

¶2 In November 2012, a family returned from vacation and discovered that someone had broken into their house through a



basement window and had taken jewelry and coins. For his role in the crime, Mooers was charged with burglary, a second degree felony, and theft, a third degree felony.

¶3 Mooers ultimately pled guilty to theft and admitted to aiding “others in entering a home” and to taking items worth between \$1,500 and \$5,000. As part of the plea deal, Mooers agreed to attend a theft class, to pay “costs as ordered by the court,” and to pay restitution. The court signed Mooers’s plea form but did not enter his plea. Instead, it held the plea in abeyance for eighteen months and ordered Mooers to “pay restitution jointly and severally with the other co-defendants.” It gave the State ninety days to determine the amount of restitution.

¶4 Later, as requested by the State, the court ordered Mooers to pay \$5,760.50 in restitution. This sum included \$1,100 for installing security bars on the basement window through which the thieves entered the family’s house. Mooers agreed to pay everything except for this cost and requested an evidentiary hearing to establish the grounds for making him responsible for this expense.

¶5 At the evidentiary hearing, Mooers argued that he was not responsible for the cost of installing bars on the broken window and, in any event, those costs were not pecuniary damages as defined by Utah Code section 76-3-201. The court disagreed and again ordered Mooers to pay \$5,760.50.<sup>1</sup> Mooers now appeals the restitution order.

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1. Although the court indicated that “[t]his is the final order of the Court and no other order needs to be prepared,” such language is not dispositive. In context, the order is properly viewed as the last order with regard to restitution, apparently intended to comply with the Utah Supreme Court’s direction in *Giusti v. Sterling Wentworth Corp.*, 2009 UT 2, 201 P.3d 966. *See id.*

(continued...)

## ISSUES AND STANDARD OF REVIEW

¶6 Mooers’s primary contention on appeal is that the trial court erred in concluding that the cost of installing the security bars constitutes “pecuniary damages” under the Crime Victims Restitution Act. *See* Utah Code Ann. § 77-38a-102(6) (LexisNexis 2012). But before we reach this issue, we must address the State’s preliminary argument that this court “lacks jurisdiction to consider [Mooers’s] appeal because the restitution order is not a final judgment or sentence.”

¶7 Whether we have jurisdiction is a question of law requiring us to examine the “plain meaning of the [relevant] statute.” *Housing Auth. of County of Salt Lake v. Snyder*, 2002 UT 28, ¶ 10, 44 P.3d 724. “[O]ur primary goal is to effectuate the intent of the Legislature. . . . [W]e read . . . the statute as a whole, and interpret its provisions in harmony with other statutes in the same chapter and related chapters.” *Meza v. State*, 2015 UT 70, ¶ 10 (second alteration in original) (citations and internal quotation marks omitted).

## ANALYSIS

### I. A Plea in Abeyance Is Not a Final Judgment of Conviction.

¶8 “A defendant may, as a matter of right, appeal from . . . a final judgment of conviction, whether by verdict or plea . . . .”

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(...continued)

¶ 32 (indicating that “whenever” a court intended for any document to constitute a final action, “the court must explicitly direct that no additional order is necessary” (citation and internal quotation marks omitted)). But the order’s language does not control whether this court has appellate jurisdiction over an appeal from a restitution order issued while the district court is holding a plea in abeyance.

Utah Code Ann. § 77-18a-1(1) (LexisNexis 2012); *see also* Utah R. App. P. 3(a). “In the technical legal sense, sentence is ordinarily synonymous with judgment . . . .” *State v. Fedder*, 262 P.2d 753, 755 (Utah 1953). Accordingly, in criminal cases, “[i]t is the sentence itself which constitutes a final judgment from which appellant has the right to appeal.” *State v. Gerrard*, 584 P.2d 885, 886 (Utah 1978).

¶9 A plea in abeyance, as the word “abeyance” itself suggests, is not a sentence or a final judgment of conviction. Rather, it is

an order by a court, upon motion of the prosecution and the defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

Utah Code Ann. § 77-2a-1(1) (LexisNexis 2012). If a defendant successfully completes the conditions specified in the plea in abeyance agreement, a court may “reduce the degree of the offense and enter judgment of conviction,” *id.* § 77-2a-3(2)(a), or “allow withdrawal of defendant’s plea and order the dismissal of the case,” *id.* § 77-2a-3(2)(b). If, during the term of the agreement,

the court finds that the defendant has failed to substantially comply with any term or condition of the plea in abeyance agreement, it may terminate the agreement and enter judgment of conviction and impose sentence against the defendant for the offense to which the original plea was entered.

*Id.* § 77-2a-4(1).

¶10 As Utah appellate courts have consistently explained, the plain language of these statutes provides that “[a]cceptance of a

plea in abeyance and the entry of judgment of conviction and the imposition of sentence are not simultaneous events.” *State v. Moss*, 921 P.2d 1021, 1025 n.7 (Utah Ct. App. 1996). “Had the Legislature intended a plea in abeyance to constitute a conviction . . . , it would have so provided in the statute authorizing such pleas. But it did not. Rather, the statute provides to the contrary.” *Meza*, 2015 UT 70, ¶ 18; *see also id.* ¶¶ 7–8 (holding that “no judgment of conviction is entered pending completion of a plea-in-abeyance agreement,” and that a successfully completed plea in abeyance, where the court allows the defendant to withdraw his plea and dismisses the case, is not a conviction); *State v. Millward*, 2014 UT App 174, ¶ 4, 332 P.3d 400 (explaining that the Utah Code plainly provides that a plea in abeyance is not a final adjudication); *Salzl v. Department of Workforce Servs.*, 2005 UT App 399, ¶ 14, 122 P.3d 691 (providing that a plea in abeyance for a crime “constitutes an admission, . . . not a conviction, to that crime” for the purpose of making an individual ineligible for unemployment benefits); *State v. Hunsaker*, 933 P.2d 415, 416 (Utah Ct. App. 1997) (per curiam) (dismissing an appeal from a trial court’s order regarding a plea in abeyance agreement for lack of jurisdiction for not being a final judgment); *Moss*, 921 P.2d at 1025 n.7 (providing that the plain language of the plea in abeyance statutes “reveals that a plea in abeyance is not a final adjudication”). Consistent with these cases, we conclude that a plea in abeyance is neither a sentence nor a final judgment, and therefore does not give rise to a right to appeal.

## II. A Restitution Order Entered as a Condition of a Plea in Abeyance Agreement Is Not an Exception to the Final Judgment Rule.

¶11 Mooers argues that restitution orders under the Crime Victims Restitution Act are exceptions to the final-judgment rule and are “appealable orders independent of conviction.” This issue has not been directly addressed by any Utah appellate court.

¶12 Mooers’s argument relies heavily on *State v. Gibson*, 2009 UT App 108, 208 P.3d 543, in which we reviewed a trial court’s denial of a defendant’s motion to withdraw her guilty plea. *Id.* ¶¶ 7–8, 10. As part of a plea in abeyance agreement, the defendant was ordered to pay restitution. *Id.* ¶¶ 3–4. She disputed the amount and requested a hearing, after which the court set restitution at nearly \$240,000. *Id.* The defendant later moved to amend the order, arguing that the total figure was incorrect. *Id.* ¶ 4. Although the court denied her motion, the defendant did not appeal and instead sought to withdraw her plea. *Id.* ¶¶ 4–6. The trial court denied her request and imposed a sentence for failing to pay restitution as required by the conditions of the plea in abeyance agreement. *Id.* ¶¶ 6–7. We upheld the trial court’s decision, noting that the defendant could have appealed the restitution order after the restitution hearing, *id.* ¶¶ 15–16, and in a footnote, stated, “The Crime Victims Restitution Act specifies that a judgment under that act has the same effect as an ordinary judgment,” *id.* ¶ 15 n.5 (citing Utah Code Ann. § 77-38a-401(4) (2008)).

¶13 Mooers argues that *Gibson*’s “parallel holding that the restitution order was independently appealable” is precedent that affords him the right to appeal the restitution order in this case. We disagree. The opinion’s brief statement on this point was “not within the issue of that case, and is therefore not authoritative here.” *See Lagoon Jockey Club v. Davis County*, 270 P. 543, 549 (Utah 1928). The *Gibson* court was asked to consider whether the trial court “misapplied the law when determining that [the defendant’s] guilty plea was knowing and voluntary.” *Gibson*, 2009 UT App 108, ¶ 8. In seven paragraphs, we thoroughly discussed this question. *See id.* ¶¶ 9–15. Only in passing—supported by a single footnote—did we address whether the defendant could have appealed the restitution order. *See id.* ¶ 15 & n.5. We therefore conclude that *Gibson*’s statement about the right to appeal a restitution order is dicta, in which case, it

may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated.

*See Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399–400 (1821).

¶14 Similarly, the Utah Supreme Court’s decision in *Meza* includes dicta that might suggest that a plea in abeyance is an exception to the final-judgment rule under the Crime Victims Restitution Act. *See Meza v. State*, 2015 UT 70, ¶ 17. There, the court was asked to consider whether a successfully completed plea in abeyance agreement, where the case was dismissed after the defendant met the conditions of the agreement, is a conviction for the purposes of the Post-Conviction Remedies Act. *Id.* ¶¶ 7–8. It concluded that a case dismissed under these circumstances is not a conviction. *Id.* ¶ 18. In reaching this conclusion, the court identified examples in which the legislature designated pleas in abeyance in certain contexts as the same as convictions, which included pleas in abeyance under the Crime Victims Restitution Act. *See id.* ¶ 17. This discussion of the Act begins and ends in two sentences and does not go to the matter decided. *See id.* Thus, the *Meza* court’s statement on this hypothetical situation is also dicta and is not binding.<sup>2</sup>

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2. Although a plea in abeyance is “a ‘plea of guilty or of no contest,’” as *Meza v. State* suggests, it is explicitly *not* a conviction under the Crime Victims Restitution Act. *See* 2015 UT 70, ¶ 17 (quoting Utah Code Ann. § 77-38a-109(2)). The Act defines a “plea in abeyance” as “an order by a court . . . accepting a plea of guilty or of no contest from the defendant but not, at that time,  
(continued...) ”

¶15 Statutes that treat a plea in abeyance agreement as an exception to the usual rule that a plea in abeyance is not the equivalent of a conviction do so explicitly.<sup>3</sup> This feature of other statutes bolsters our conclusion that if the Utah Legislature intended to create an exception to the final-judgment rule for restitution orders imposed as a condition in a plea in abeyance agreement, it would have done so explicitly, but it did not.

¶16 The only language in the Crime Victims Restitution Act that suggests a restitution order is a final judgment lies in section 77-38a-401, which states that a restitution order “shall be considered a legal judgment, enforceable under the Utah Rules of Civil Procedure,” Utah Code Ann. § 77-38a-401(2) (LexisNexis

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(...continued)

entering judgment of conviction against him nor imposing sentence upon him.” Utah Code Ann. § 77-38a-102(8) (LexisNexis 2012). When a court accepts a plea in abeyance and orders restitution under the Act, it does not enter judgment of conviction or impose sentence at that time. *See id.* Thus, *Meza’s* brief statement on this issue is not controlling.

3. Several statutes explicitly treat a plea in abeyance as a conviction. *See, e.g.,* Utah Code Ann. § 77-36-1.1(3) (LexisNexis 2012) (providing that “a plea of guilty or no contest to any qualifying domestic violence offense in Utah which plea is held in abeyance . . . is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed”); *id.* § 17-16-10.5(2)(c) (2013) (providing that “[e]ntry of a plea in abeyance [in malfeasance in office cases] is the equivalent of a conviction . . . even if the charge is later dismissed pursuant to a plea in abeyance agreement”); *id.* § 76-9-301.7 (2012) (providing that a conviction in cruelty to animal cases “means a conviction by plea or by verdict, including a plea of guilty or no contest that is held in abeyance . . . regardless of whether the charge was, or is, subsequently reduced or dismissed in accordance with the plea in abeyance agreement”).

2012), and “shall have the same [e]ffect . . . as a judgment in a civil action,” *id.* § 77-38a-401(4). But we are not convinced the legislature intended to make a restitution order in this context an order appealable by the defendant. Rather, this section refers to whether the order may be enforced by the victim, the court, or creditors. *Id.* § 77-38a-401. In relevant part, it states,

The order shall be considered a legal judgment, enforceable under the Utah Rules of Civil Procedure. In addition, the [Department of Corrections] may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure. . . . If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover collection and reasonable attorney fees. . . . [A] judgment ordering restitution when entered on the civil judgment docket shall have the same [e]ffect and is subject to the same rules as a judgment in a civil action and expires only upon payment in full, which includes applicable interest, collection fees, and attorney fees.

*Id.* § 77-38a-401(2) to (4).

¶17 This section of the Act does not refer to the right to appeal, nor does it indicate that a restitution order is considered a conviction or sentence for purposes of appeal. Instead, the finality in the Act invokes a victim’s, court’s, or creditor’s ability to enforce the payment of restitution. This enforcement provision helps fulfill the purposes of restitution—to “compensate the victim for pecuniary damages” and “rehabilitate and deter the defendant, and others, from future illegal behavior.” *See State v. Laycock*, 2009 UT 53, ¶ 18, 214 P.3d 104. Without this provision, which requires the court to enter the



restitution order on a civil docket, there is no judgment entered by which a victim can hold the defendant accountable for restitution.

¶18 Mooers is concerned that not being able to directly appeal the restitution order puts him in the untenable situation of either paying an “improper restitution amount” or facing the consequences of not fulfilling the conditions of the agreement. But as our court has explained, “relief may still be attainable for a defendant who enters into a plea in abeyance agreement even if there is no appeal as of right from that plea agreement.” *State v. Millward*, 2014 UT App 174, ¶ 6, 332 P.3d 400. Indeed, we recognize that, without the legislature’s express consent, there are available at least two of the “[t]hree avenues . . . for securing review of a nonfinal order.” *Tyler v. Department of Human Servs.*, 874 P.2d 119, 120 (Utah 1994) (per curiam). The first is a petition requesting interlocutory review pursuant to rule 5 of the Utah Rules of Appellate Procedure. The second is to request extraordinary relief under rule 65B of the Utah Rules of Civil Procedure. Although “[t]he bases for proceeding under these [rationales] differ from each other, . . . each provides a method for seeking review of a lower tribunal’s order at a time prior to entry of a final appealable judgment.”<sup>4</sup> *Id.* “Our rules allowing discretionary review provide parties an opportunity to convince an appellate court that the issue raised is so important that review prior to full adjudication of the case is justified or that the order will escape review altogether if an appeal is not allowed.” *Id.*

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4. The third avenue mentioned in *Tyler v. Department of Human Services*, 874 P.2d 119, 120 (Utah 1994) (per curiam)—seeking certification of an order under rule 54(b) of the Utah Rules of Civil Procedure—may not be available in a criminal case. But even if it is, it is not clear that an order of restitution is one that would qualify for certification.

CONCLUSION

¶19 Because we conclude that a plea in abeyance is not a final judgment, and that the restitution order imposed as a condition to the plea in abeyance agreement is not an exception to the final-judgment rule, we do not reach the merits of Mooers's appeal and dismiss his appeal.

---

CERTIFICATE OF MAILING

I hereby certify that on the 5<sup>th</sup> day of November, 2015, a true and correct copy of the attached DECISION was sent by standard or electronic mail to be delivered to:

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HONORABLE CHARLENE BARLOW  
THIRD DISTRICT, WEST JORDAN

THIRD DISTRICT, WEST JORDAN  
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A handwritten signature in black ink, appearing to read "Stephanie Sheriff", written over a horizontal line.

Judicial Secretary

TRIAL COURT: THIRD DISTRICT, WEST JORDAN, 131400410  
APPEALS CASE NO.: 20140170-CA

## ADDENDUM B

2015 UT App 304

DEC 24 2015

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THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Appellee,

*v.*

DARRON LAVEN BECKER,

Appellant.

---

Memorandum Decision

No. 20131151-CA

Filed December 24, 2015

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Third District Court, Salt Lake Department

The Honorable Ann Boyden

No. 131902981

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Debra M. Nelson and Lacey C. Singleton, Attorneys  
for Appellant

Sean D. Reyes and Tera J. Peterson, Attorneys  
for Appellee

---

JUDGE STEPHEN L. ROTH authored this Memorandum Decision, in  
which JUDGES MICHELE M. CHRISTIANSEN and JOHN A. PEARCE  
concurred.

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ROTH, Judge:

¶1 Darron Laven Becker appeals an order of restitution. We dismiss the appeal for lack of jurisdiction.

¶2 Becker was charged with third degree felony aggravated assault based on allegations that he had attacked and struck his neighbor. Becker entered into a plea-in-abeyance agreement on a reduced charge of class A misdemeanor attempted aggravated assault. The agreement described the factual basis for the assault to be that “on or about March 2, 2013, . . . Becker attempted to hit his neighbor with the handle of a shovel during an argument regarding loose dogs.” Among other things, the plea agreement

required Becker to pay restitution for damages suffered by the neighbor. The parties agreed to reserve the amount of restitution for a later hearing. The district court accepted the plea and held it in abeyance for twenty-four months. It also ordered the State to submit documentation supporting an order of restitution within ninety days.

¶3 Two months later, the State filed a motion for restitution, to which it attached a “Restitution/Subrogation Notice” from the Utah Office for Victims of Crime (OVC). The notice listed Becker as the defendant and identified the date, location, and type of crime. It then stated that OVC had paid the neighbor \$663.01 to replace a “Medically Necessary Device” and that OVC requested reimbursement for that pay-out. Attached to the notice was a list of payments indicating that OVC had paid the neighbor \$39 for a “Medically Necessary Device” received on March 4, 2013, and \$624.01 for a “Medically Necessary Device” received on March 6, 2013. No other documentation or description of the damages was included with the motion for restitution. Becker objected to the motion, arguing that the documentation was insufficient to support the requested restitution. The court set the matter for a restitution hearing.

¶4 At the hearing, the State explained to the court that the medically necessary devices listed in OVC’s notice appeared to be for an eye exam and eyeglasses, respectively. In support, the State presented a handwritten document submitted by the neighbor. The document, which was addressed to the prosecutor, identified Becker’s case number and then listed two categories of “Monetary Damages”: \$39 for an eye exam and \$624 for eyeglasses.<sup>1</sup> After the State represented that OVC had

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1. These figures total \$663, and the breakdown very nearly aligns with OVC’s itemization of the medically necessary devices. It is not apparent why OVC paid an additional \$0.01 on the eyeglasses.

paid the claim “just based on [the handwritten documentation before the court] in conjunction with the police report,” Becker “strenuously object[ed],” arguing that restitution, whether paid by OVC or not, could not be “based on a handwritten piece of notebook paper.” Accordingly, Becker argued that there was not “enough information right now . . . [to] know what exactly this claim was” and how it related to his attempted aggravated assault charge.

¶5 Although the district court expressed doubt that the State would be able to produce more restitution information, it agreed to set another restitution hearing six weeks later “to give [the parties] some time to see if in fact [the OVC payment] is not what it claims to be.” The court explained that unless Becker came up with something that undercut OVC’s decision to reimburse the neighbor, it planned to order restitution in the amount of \$663.01.

¶6 By the time of the second restitution hearing, the State had not received any further documentation. Over Becker’s objection that there was insufficient evidence to find that the “damage was directly caused by Mr. Becker’s criminal conduct,” the court determined that the documentation included “sufficient foundation and nexus” between the requested damages and the criminal conduct. Accordingly, the court ordered Becker to pay restitution in the amount of \$663.01 plus interest. Becker appeals.

¶7 As a threshold matter, we must determine whether we have jurisdiction to consider Becker’s appeal. *See Robinson v. Baggett*, 2011 UT App 250, ¶ 12, 263 P.3d 411. The State contends that this court does not have jurisdiction to consider Becker’s appeal because “a plea in abeyance does not result in a final judgment unless and until a conviction is entered or a case is dismissed.” Generally, “[a]n appeal is improper if it is taken from an order or judgment that is not final . . .” *Bradbury v. Valencia*, 2000 UT 50, ¶ 9, 5 P.3d 649 (citation omitted). “Where

an appeal is not properly taken, [an appellate] court lacks jurisdiction and . . . must dismiss.” *Id.* ¶ 8.

¶8 While this case was under advisement, another panel of this court decided *State v. Mooers*, 2015 UT App 266, *petition for cert. filed*, Dec. 2, 2015 (No. 20150996). *Mooers* held that we lack jurisdiction to consider appeals regarding restitution orders under the Crime Victims Restitution Act (the Act) when a defendant appeals that restitution order during the plea-in-abeyance period. *Id.* ¶ 19; *see also* Utah Code Ann. §§ 77-38a-101 to -601 (LexisNexis 2012). In *Mooers*, the defendant appealed a trial court’s determination that all of the ordered restitution fell within the scope of amounts recoverable, contending that over \$1,000 of the ordered restitution monies did not constitute “pecuniary damages” under the Act. *Mooers*, 2015 UT App 266, ¶¶ 5–6; *see also* Utah Code Ann. § 77-38a-102(6). The defendant in *Mooers* filed his appeal while his plea-in-abeyance probationary period was still in effect. *Mooers*, 2015 UT App 266, ¶¶ 3–6. A panel of this court determined that we lacked jurisdiction to consider the appeal because there was no final judgment, particularly holding that a restitution order under the Act, as a condition of the plea-in-abeyance agreement, was not an exception to the final order rule. *Id.* ¶ 19. The court reasoned first, that the plain language of the Utah Code, corroborated by our cases, precludes a plea in abeyance from generally operating as or being considered a final adjudication, *id.* ¶¶ 8–10, and, second, that the plain language of the Act prevented a restitution order entered as a condition of a plea-in-abeyance agreement from being an exception to the final judgment rule, *id.* ¶¶ 11–17. In particular, *Mooers* concluded that the language in the Act that might have suggested that a restitution order is final—a restitution order “shall be considered a legal judgment, enforceable under the Utah Rules of Civil Procedure” with “the same [e]ffect . . . as a judgment in a civil action”—referred to the enforceability of a restitution order “by the victim, the court, or creditors,” not the order’s appealability by a defendant. *Id.*



¶¶ 16–17 (alteration and omission in original) (quoting Utah Code Ann. § 77-38a-401(2), (4)). Additionally, *Mooers* determined that statements from *State v. Gibson*, 2009 UT App 108, 208 P.3d 543, and *Meza v. State*, 2015 UT 70, 359 P.3d 592, which suggest that a restitution order entered as a condition of a plea in abeyance under the Act is final and appealable are dicta and therefore not binding. *Mooers*, 2015 UT App 266, ¶¶ 12–14.

¶9 The circumstances in this case are indistinguishable from *Mooers*. Becker has appealed a restitution order entered by the district court under the Act as a condition of his plea in abeyance, and he has appealed during his plea-in-abeyance period. Thus, *Mooers* controls the outcome here: Because Becker has not been sentenced and a conviction has not yet been entered against him, there is no final order from which Becker may appeal.

¶10 Though Becker contends that *Mooers* is inconsistent with prior case law, *Mooers* analyzed the plea-in-abeyance statute and the Act in light of relevant precedent, and we are bound to follow *Mooers* as a matter of stare decisis. See *State v. Thurman*, 846 P.2d 1256, 1269 (Utah 1993) (“[S]tare decisis has equal application when one panel of a multi-panel appellate court is faced with a prior decision of a different panel.”); *id.* (stating that horizontal stare decisis requires that “the first decision by a court on a particular question of law governs later decisions by the same court”); *State v. Tenorio*, 2007 UT App 92, ¶ 9, 156 P.3d 854 (explaining that the Utah Court of Appeals is “bound by [its] previous decisions as well as the decisions of the Utah Supreme Court.”); see also *State v. Shoulderblade*, 905 P.2d 289, 292 (Utah 1995) (per curiam) (“Stare decisis forges certainty, stability, and predictability in the law. It also reinforces confidence in judicial integrity and lays a foundation of order upon which individuals and organizations in our society can conduct themselves.” (citations omitted)). Accordingly, we have no choice but to dismiss for lack of jurisdiction.

¶11 We note, as did *Mooers*, that a defendant desiring to challenge a restitution order in the context of a plea in abeyance is not left entirely without options. He or she may seek interlocutory review pursuant to rule 5 of the Utah Rules of Appellate Procedure or file a petition for extraordinary relief under rule 65B of the Utah Rules of Civil Procedure.<sup>2</sup> We recognize that both these avenues of relief are discretionary and may not be had as a matter of right. However, as *Mooers* points out, in the absence of a final, appealable order, these avenues place the burden on the defendant to show that “review prior to the full adjudication of the case is justified or that the order will escape review altogether if an appeal is not allowed.” *Mooers*, 2015 UT App 266, ¶ 18 (quoting *Tyler v. Department of Human Servs.*, 874 P.2d 119, 120 (Utah 1994) (per curiam)).

¶12 The appeal is dismissed for lack of jurisdiction.

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2. *Mooers* also noted that rule 54(b) of the Utah Rules of Civil Procedure may provide another possible avenue of relief but that rule 54(b) did not appear to apply to the circumstances in that case. See *State v. Mooers*, 2015 UT App 266, ¶ 18 n.4, petition for cert. filed, Dec. 2, 2015 (No. 20150996); cf. *Tyler v. Department of Human Servs.*, 874 P.2d 119, 120 (Utah 1994) (per curiam).

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of December, 2015, a true and correct copy of the attached DECISION was sent by standard or electronic mail to be delivered to:

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\_\_\_\_\_  
Judicial Secretary

TRIAL COURT: THIRD DISTRICT, SALT LAKE, 131902981  
APPEALS CASE NO.: 20131151-CA

## ADDENDUM C

FEB - 1 2016

IN THE SUPREME COURT OF THE STATE OF UTAH

----oo0oo----

STATE OF UTAH,  
Respondent,

ORDER

*v.*

Appellate Case No. 20150996-SC

RYAN COREY MOOERS,  
Petitioner.

---

This matter is before the court upon a Petition for Writ of Certiorari, filed on December 2, 2015.

The Petition for Writ of Certiorari is granted as to the following issue:

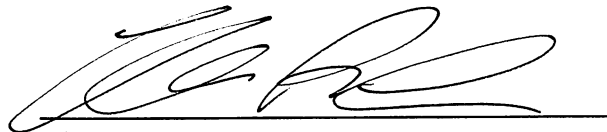
Whether the court of appeals erred in concluding it lacked jurisdiction over Petitioner's appeal.

A briefing schedule will be established hereafter. Pursuant to Rule 2 of the Rules of Appellate Procedure, the Court suspends the provision of Rule 26(a) that permits the parties to stipulate to an extension of time to submit their briefs on the merits. The parties shall not be permitted to stipulate to an extension. Additionally, absent extraordinary circumstances, no extensions will be granted by motion. The parties shall comply with the briefing schedule upon its issuance.

FOR THE COURT:

*Feb. 1, 2016*

Date



Thomas R. Lee  
Associate Chief Justice

CERTIFICATE OF SERVICE

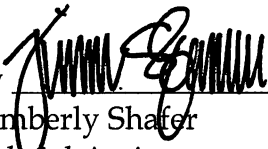
I hereby certify that on February 1, 2016, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

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By  \_\_\_\_\_  
Kimberly Shafer  
Judicial Assistant

Utah Supreme Court Case No. 20150996  
THIRD DISTRICT, WEST JORDAN Case No. 131400410  
Court of Appeals Case No. 20140170

MAR 14 2016

IN THE SUPREME COURT OF THE STATE OF UTAH

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STATE OF UTAH,  
Respondent,

ORDER

*v.*

Appellate Case No. 20160043-SC

DARRON LAVEN BECKER,  
Petitioner.

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STATE OF UTAH,  
Respondent,

*v.*

Appellate Case No. 20150996-SC

RYAN COREY MOOERS,  
Petitioner.

---

This matter of *State v. Darron Laven Becker* is before the Court upon a Petition for Writ of Certiorari, filed on January 21, 2016. The Petition for Writ of Certiorari is granted as to the following issue:

Whether the court of appeals erred in concluding it lacked jurisdiction over Petitioner's appeal.

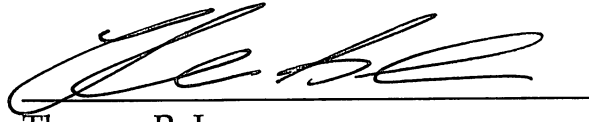
The petition for writ of certiorari filed in *State v. Ryan Corey Mooers*, 20150996-SC, was granted by the Utah Supreme Court by order issued on February 1, 2016.

These matters are before the Court on its own motion to consolidate pursuant to Rule 3(b) of the Utah Rules of Appellate Procedure. Because these two criminal appeals involve similar issues, judicial economy will result by consolidating the cases for a single determination. Supreme Court Case No. 20160043-SC and Supreme Court Case No. 20150996-SC are consolidated into Supreme Court Case No. 20150996-SC. The parties are advised that all future filings shall be filed under Supreme Court Case No. 20150996-SC.

A briefing schedule will be established hereafter. The parties shall comply with the briefing schedule upon its issuance.

FOR THE COURT:

March 14, 2016  
Date

  
Thomas R. Lee  
Associate Chief Justice



CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2016, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

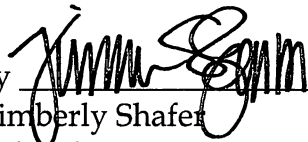
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By  \_\_\_\_\_  
Kimberly Shafer  
Judicial Assistant

Case No. 20150996 and 20160043  
THIRD DISTRICT, WEST JORDAN, 131400410 and 131902981

MAR 14 2016

IN THE SUPREME COURT OF THE STATE OF UTAH

-----oo0oo-----

STATE OF UTAH,  
Respondent,

ORDER

*v.*

Appellate Case No. 20160043-SC

DARRON LAVEN BECKER,  
Petitioner.

---

STATE OF UTAH,  
Respondent,

*v.*

Appellate Case No. 20150996-SC

RYAN COREY MOOERS,  
Petitioner.

---

This matter of *State v. Darron Laven Becker* is before the Court upon a Petition for Writ of Certiorari, filed on January 21, 2016. The Petition for Writ of Certiorari is granted as to the following issue:

Whether the court of appeals erred in concluding it lacked jurisdiction over Petitioner's appeal.

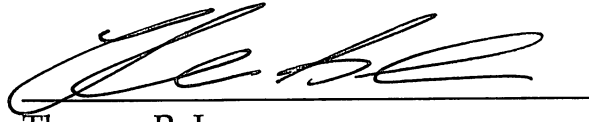
The petition for writ of certiorari filed in *State v. Ryan Corey Mooers*, 20150996-SC, was granted by the Utah Supreme Court by order issued on February 1, 2016.

These matters are before the Court on its own motion to consolidate pursuant to Rule 3(b) of the Utah Rules of Appellate Procedure. Because these two criminal appeals involve similar issues, judicial economy will result by consolidating the cases for a single determination. Supreme Court Case No. 20160043-SC and Supreme Court Case No. 20150996-SC are consolidated into Supreme Court Case No. 20150996-SC. The parties are advised that all future filings shall be filed under Supreme Court Case No. 20150996-SC.

A briefing schedule will be established hereafter. The parties shall comply with the briefing schedule upon its issuance.

FOR THE COURT:

March 14, 2016  
Date

  
Thomas R. Lee  
Associate Chief Justice

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2016, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

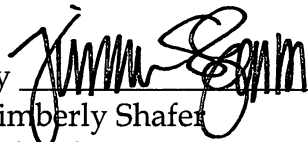
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By  \_\_\_\_\_  
Kimberly Shafer  
Judicial Assistant

Case No. 20150996 and 20160043  
THIRD DISTRICT, WEST JORDAN, 131400410 and 131902981

## ADDENDUM D

## **Utah Const. art. I, § 12**

### **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. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.

## Utah Const. art. VIII, § 5

### Sec. 5. [District courts, how constituted. Terms. Jurisdiction. Judge *pro tempore*.]

The State shall be divided into seven judicial districts, for each of which, at least one, and not exceeding three judges, shall be chosen by the qualified electors thereof. The term of office of the district judges shall be four years. Except that the District Judges elected at the first election shall serve until the first Monday in January, AD 1901, and until their successors shall have qualified. Until otherwise provided by law, a district court at the county seat of each county shall be held at least four times a year. All civil and criminal business arising in any county, must be tried in such county, unless a change of venue be taken, in such cases as may be provided by law. Each judge of a District Court shall be at least twenty-five years of age, a member of the bar, learned in the law, a resident of the Territory or State of Utah three years next preceding his election, and shall reside in the district for which he shall be elected. Any District Judge may hold a District Court in any county at the request of the judge of the district, and upon a request of the Governor, it shall be his duty to do so. Any cause in the District Court may be tried by a judge *pro tempore*, who must be a member of the bar, sworn to try the cause, and agreed upon by the parties, or their attorneys of record.

**U.C.A. 1953 § 78A-4-102**  
**Formerly cited as UT ST § 78-2a-2**

**§ 78A-4-102. Number of judges--Terms--Functions--Filing fees**

(1) The Court of Appeals consists of seven judges. The term of appointment to office as a judge of the Court of Appeals is until the first general election held more than three years after the effective date of the appointment. Thereafter, the term of office of a judge of the Court of Appeals is six years and commences on the first Monday in January, next following the date of election. A judge whose term expires may serve, upon request of the Judicial Council, until a successor is appointed and qualified. The presiding judge of the Court of Appeals shall receive as additional compensation \$1,000 per annum or fraction thereof for the period served.

(2) The Court of Appeals shall sit and render judgment in panels of three judges. Assignment to panels shall be by random rotation of all judges of the Court of Appeals. The Court of Appeals by rule shall provide for the selection of a chair for each panel. The Court of Appeals may not sit en banc.

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

- (a) administer the rotation and scheduling of panels;
- (b) act as liaison with the Supreme Court;
- (c) call and preside over the meetings of the Court of Appeals; and
- (d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court.

**Credits**

[Laws 2008, c. 3, § 349, eff. Feb. 7, 2008.](#)



**U.C.A. 1953 § 78A-4-103**  
**Formerly cited as UT ST § 78-2a-3**

**§ 78A-4-103. Court of Appeals jurisdiction**

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a)(i) a final order or decree resulting from:

- (A) a formal adjudicative proceeding of a state agency; or
- (B) a special adjudicative proceeding, as described in [Section 19-1-301.5](#); or

(ii) an appeal from the district court review of an informal adjudicative proceeding of an agency other than the following:

- (A) the Public Service Commission;
- (B) the State Tax Commission;
- (C) the School and Institutional Trust Lands Board of Trustees;
- (D) the Division of Forestry, Fire, and State Lands, for an action reviewed by the executive director of the Department of Natural Resources;
- (E) the Board of Oil, Gas, and Mining; or
- (F) the state engineer;

(b) appeals from the district court review of:

- (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
- (ii) a challenge to agency action under [Section 63G-3-602](#);

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative proceedings.

## **Credits**

Laws 2008, c. 3, § 350, eff. Feb. 7, 2008; Laws 2008, c. 382, § 2210, eff. May 5, 2008; Laws 2009, c. 344, § 42, eff. May 12, 2009; Laws 2012, c. 333, § 6, eff. May 8, 2012; Laws 2015, c. 441, § 7, eff. May 12, 2015.

U.C.A. 1953 § 77-13-6

§ 77-13-6. Withdrawal of plea

(1) A plea of not guilty may be withdrawn at any time prior to conviction.

(2)(a) A plea of guilty or no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made.

(b) A request to withdraw a plea of guilty or no contest, except for a plea held in abeyance, shall be made by motion before sentence is announced. Sentence may not be announced unless the motion is denied. For a plea held in abeyance, a motion to withdraw the plea shall be made within 30 days of pleading guilty or no contest.

(c) Any challenge to a guilty plea not made within the time period specified in Subsection (2)(b) shall be pursued under Title 78B, Chapter 9, Postconviction Remedies Act, and [Rule 65C, Utah Rules of Civil Procedure](#).

**Credits**

Laws 1980, c. 15, § 2; Laws 1989, c. 65, § 1; [Laws 1994, c. 16, § 1](#); Laws 2003, c. 290, § 1, eff. May 5, 2003; [Laws 2004, c. 90, § 91, eff. May 3, 2004](#); Laws 2008, c. 3, § 251, eff. Feb. 7, 2008.

## U.C.A. 1953 § 77-2a-3

### § 77-2a-3. Manner of entry of plea--Powers of court

(1)(a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be done in full compliance with the provisions of [Rule 11, Utah Rules of Criminal Procedure](#).

(b) In cases charging offenses for which bail may be forfeited, a plea in abeyance agreement may be entered into without a personal appearance before a magistrate.

(2) A plea in abeyance agreement may provide that the court may, upon finding that the defendant has successfully completed the terms of the agreement:

(a) reduce the degree of the offense and enter judgment of conviction and impose sentence for a lower degree of offense; or

(b) allow withdrawal of defendant's plea and order the dismissal of the case.

(3) Upon finding that a defendant has successfully completed the terms of a plea in abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not invoke [Section 76-3-402](#) to further reduce the degree of the offense.

(4) The court may require the Department of Corrections to assist in the administration of the plea in abeyance agreement as if the defendant were on probation to the court under [Section 77-18-1](#).

(5) The terms of a plea in abeyance agreement may include:

(a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in the same manner as if paid as a fine for a criminal conviction under [Section 78A-5-110](#) and a surcharge under Title 51, Chapter 9, Part 4, Criminal Conviction Surcharge Allocation, and which may not exceed in amount the maximum fine and surcharge which could have been imposed upon conviction and sentencing for the same offense;

(b) an order that the defendant pay restitution to the victims of the defendant's actions as provided in Title 77, Chapter 38a, Crime Victims Restitution Act;

(c) an order that the defendant pay the costs of any remedial or rehabilitative program required by the terms of the agreement; and

(d) an order that the defendant comply with any other conditions which could have been imposed as conditions of probation upon conviction and sentencing for the same offense.

(6) A court may not hold a plea in abeyance without the consent of both the prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a plea in abeyance is final.

(7) No plea may be held in abeyance in any case involving a sexual offense against a victim who is under the age of 14.

(8) Beginning on July 1, 2008, no plea may be held in abeyance in any case involving a driving under the influence violation under [Section 41-6a-502](#).

### **Credits**

[Laws 1993, c. 82, § 5](#); [Laws 1995, c. 301, § 2, eff. May 1, 1995](#); [Laws 2002, c. 35, § 5, eff. May 6, 2002](#); [Laws 2004, c. 203, § 2, eff. May 3, 2004](#); [Laws 2004, c. 228, § 7, eff. July 1, 2006](#); [Laws 2006, c. 341, § 9, eff. July 1, 2006](#); [Laws 2008, c. 3, § 247, eff. Feb. 7, 2008](#); [Laws 2008, c. 339, § 27, eff. July 1, 2008](#); [Laws 2008, c. 382, § 2191, eff. May 5, 2008](#).

## U.C.A. 1953 § 77-2a-4

### § 77-2a-4. Violation of plea in abeyance agreement--Hearing--Entry of judgment and imposition of sentence--Subsequent prosecutions

(1) If, at any time during the term of the plea in abeyance agreement, information comes to the attention of the prosecuting attorney or the court that the defendant has violated any condition of the agreement, the court, at the request of the prosecuting attorney, made by appropriate motion and affidavit, or upon its own motion, may issue an order requiring the defendant to appear before the court at a designated time and place to show cause why the court should not find the terms of the agreement to have been violated and why the agreement should not be terminated. If, following an evidentiary hearing, the court finds that the defendant has failed to substantially comply with any term or condition of the plea in abeyance agreement, it may terminate the agreement and enter judgment of conviction and impose sentence against the defendant for the offense to which the original plea was entered. Upon entry of judgment of conviction and imposition of sentence, any amounts paid by the defendant as a plea in abeyance fee prior to termination of the agreement shall be credited against any fine imposed by the court.

(2) The termination of a plea in abeyance agreement and subsequent entry of judgment of conviction and imposition of sentence shall not bar any independent prosecution arising from any offense that constituted a violation of any term or condition of an agreement whereby the original plea was placed in abeyance.

### Credits

[Laws 1993, c. 82, § 6.](#)

## U.C.A. 1953 § 77-38a-102

### § 77-38a-102. Definitions

As used in this chapter:

(1) “Conviction” includes a:

- (a) judgment of guilt;
- (b) a plea of guilty; or
- (c) a plea of no contest.

(2) “Criminal activities” means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(3) “Department” means the Department of Corrections.

(4) “Diversion” means suspending criminal proceedings prior to conviction on the condition that a defendant agree to participate in a rehabilitation program, make restitution to the victim, or fulfill some other condition.

(5) “Party” means the prosecutor, defendant, or department involved in a prosecution.

(6) “Pecuniary damages” means all demonstrable economic injury, whether or not yet incurred, which a person could recover in a civil action arising out of the facts or events constituting the defendant’s criminal activities and includes the fair market value of property taken, destroyed, broken, or otherwise harmed, and losses including lost earnings and medical expenses, but excludes punitive or exemplary damages and pain and suffering.

(7) “Plea agreement” means an agreement entered between the prosecution and defendant setting forth the special terms and conditions and criminal charges upon which the defendant will enter a plea of guilty or no contest.

(8) “Plea disposition” means an agreement entered into between the prosecution and defendant including diversion, plea agreement, plea in abeyance agreement, or any agreement by which the defendant may enter a plea in any other jurisdiction or where charges are dismissed without a plea.

(9) “Plea in abeyance” means an order by a court, upon motion of the prosecution and the

defendant, accepting a plea of guilty or of no contest from the defendant but not, at that time, entering judgment of conviction against him nor imposing sentence upon him on condition that he comply with specific conditions as set forth in a plea in abeyance agreement.

(10) “Plea in abeyance agreement” means an agreement entered into between the prosecution and the defendant setting forth the specific terms and conditions upon which, following acceptance of the agreement by the court, a plea may be held in abeyance.

(11) “Restitution” means full, partial, or nominal payment for pecuniary damages to a victim, including prejudgment interest, the accrual of interest from the time of sentencing, insured damages, reimbursement for payment of a reward, and payment for expenses to a governmental entity for extradition or transportation and as may be further defined by law.

(12)(a) “Reward” means a sum of money:

- (i) offered to the public for information leading to the arrest and conviction of an offender; and

- (ii) that has been paid to a person or persons who provide this information, except that the person receiving the payment may not be a codefendant, an accomplice, or a bounty hunter.

(b) “Reward” does not include any amount paid in excess of the sum offered to the public.

(13) “Screening” means the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted.

(14)(a) “Victim” means any person or entity, including the Utah Office for Victims of Crime, who the court determines has suffered pecuniary damages as a result of the defendant’s criminal activities.

(b) “Victim” may not include a codefendant or accomplice.

## **Credits**

Laws 2001, c. 137, § 3, eff. April 30, 2001; Laws 2003, c. 278, § 2, eff. May 5, 2003; Laws 2005, c. 96, § 3, eff. May 2, 2005; Laws 2015, c. 147, § 4, eff. May 12, 2015.



**U.C.A. 1953 § 77-38a-301**

**§ 77-38a-301. Restitution--Convicted defendant may be required to pay**

In a criminal action, the court may require a convicted defendant to make restitution.

**Credits**

[Laws 2001, c. 137, § 7, eff. April 30, 2001.](#)

## U.C.A. 1953 § 77-38a-302

### § 77-38a-302. Restitution criteria

(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this chapter, or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection 77-38a-102(14) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(a) “Complete restitution” means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) “Court-ordered restitution” means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing or within one year after sentencing.

(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall allow the defendant a full hearing on the issue.

(5)(a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(iii) the cost of necessary physical and occupational therapy and rehabilitation;

(iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim;

(v) up to five days of the individual victim's determinable wages that are lost due to theft of or damage to tools or equipment items of a trade that were owned by the victim and were essential to the victim's current employment at the time of the offense; and

(vi) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider:

(i) the factors listed in Subsections (5)(a) and (b);

(ii) the financial resources of the defendant, as disclosed in the financial declaration described in [Section 77-38a-204](#);

(iii) the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(iv) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(v) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(vi) other circumstances that the court determines may make restitution inappropriate.

(d)(i) Except as provided in Subsection (5)(d)(ii), the court shall determine complete restitution and court-ordered restitution, and shall make all restitution orders at the time of sentencing if feasible, otherwise within one year after sentencing.

(ii) Any pecuniary damages that have not been determined by the court within one year after sentencing may be determined by the Board of Pardons and Parole.

(e) The Board of Pardons and Parole may, within one year after sentencing, refer an order of judgment and commitment back to the court for determination of restitution.

### **Credits**

Laws 2001, c. 137, § 8, eff. April 30, 2001; Laws 2002, c. 35, § 13, eff. May 6, 2002; Laws 2002, c. 185, § 51, eff. May 6, 2002; Laws 2003, c. 285, § 1, eff. May 5, 2003; Laws 2005, c. 96, § 5, eff. May 2, 2005; Laws 2013, c. 74, § 10, eff. May 14, 2013.

## U.C.A. 1953 § 77-38a-401

### § 77-38a-401. Entry of judgment--Interest--Civil actions--Lien

(1) Upon the court determining that a defendant owes restitution, the clerk of the court shall enter an order of complete restitution as defined in [Section 77-38a-302](#) on the civil judgment docket and provide notice of the order to the parties.

(2) The order shall be considered a legal judgment, enforceable under the Utah Rules of Civil Procedure. In addition, the department may, on behalf of the person in whose favor the restitution order is entered, enforce the restitution order as judgment creditor under the Utah Rules of Civil Procedure.

(3) If the defendant fails to obey a court order for payment of restitution and the victim or department elects to pursue collection of the order by civil process, the victim shall be entitled to recover collection and reasonable attorney fees.

(4) Notwithstanding Subsection 77-18-6(1)(b)(v) and [Sections 78B-2-311](#) and [78B-5-202](#), a judgment ordering restitution when entered on the civil judgment docket shall have the same affect and is subject to the same rules as a judgment in a civil action and expires only upon payment in full, which includes applicable interest, collection fees, and attorney fees. Interest shall accrue on the amount ordered from the time of sentencing, including prejudgment interest. This Subsection (4) applies to all restitution judgments not paid in full on or before May 12, 2009.

(5) The department shall make rules permitting the restitution payments to be credited to principal first and the remainder of payments credited to interest in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

#### Credits

[Laws 2001, c. 137, § 9, eff. April 30, 2001; Laws 2008, c. 382, § 2208, eff. May 5, 2008; Laws 2009, c. 111, § 1, eff. May 12, 2009; Laws 2011, c. 37, § 1, eff. May 10, 2011.](#)