

2015

**The State of Utah, Plaintiff/Appellee v. Dennis J. Garcia,  
Defendant/Appellant**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH, :  
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 Plaintiff/Appellee, :  
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 v. : No. 20141009-CA  
 :  
 DENNIS J. GARCIA, :  
 :  
 Defendant/Appellant. :

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Appeal from the Final Order of the Third Judicial District Court in and for  
Salt Lake County, State of Utah, Honorable Randall N. Skanchy, Presiding

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BRIEF OF APPELLEE

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Nancy L. Kemp (5498)  
Assistant Utah Attorney General  
Sean D. Reyes (7969)  
Utah Attorney General  
160 East 300 South, Fifth Floor  
P. O. Box 140858  
Salt Lake City, Utah 84114-0858  
Telephone: 801-366-0533  
Email: [nkemp@utah.gov](mailto:nkemp@utah.gov)  
Attorneys for Appellee

Stephen G. Homer (1536)  
2877 West 9150 South  
West Jordan, Utah 84088  
Telephone: 801-569-2409  
Email: [shomerlaw@netzero.com](mailto:shomerlaw@netzero.com)  
Attorney for Appellant

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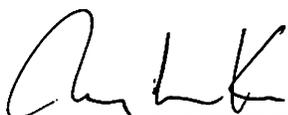
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Nancy L. Kemp (5498)  
Assistant Utah Attorney General  
Sean D. Reyes (7969)  
Utah Attorney General  
160 East 300 South, Fifth Floor  
P. O. Box 140858  
Salt Lake City, Utah 84114-0858  
Telephone: 801-366-0533  
Email: [nkemp@utah.gov](mailto:nkemp@utah.gov)  
Attorneys for Appellee

Stephen G. Homer (1536)  
2877 West 9150 South  
West Jordan, Utah 84088  
Telephone: 801-569-2409  
Email: [shomerlaw@netzero.com](mailto:shomerlaw@netzero.com)  
Attorney for Appellant

**CERTIFICATE OF COMPLIANCE WITH RULES 24(f)(1) and 27(b)**

1. This brief complies with the type-volume limitation of Utah R. App. P.24(f)(1) because: this brief contains 2,242 words, excluding the parts of the brief exempted by Utah R. App. P.24(f)(1)(B).
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Nancy L. Kemp  
Assistant Attorney General

Dated: 5/11/2014

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PRIOR AND RELATED APPEALS

Appellee is aware of no prior or related appeals in this matter.

IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH, :  
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BRIEF OF APPELLEE

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JURISDICTION AND NATURE OF PROCEEDINGS

Defendant appeals from the Third District Court's order denying his several motions to set aside and preclude enforcement of a restitution order of the Utah Board of Pardons (Board). The district court concluded that it was divested of subject matter jurisdiction over defendant's criminal case once it imposed a valid sentence; it further concluded that Utah Code Ann. § 77-38a-302(5)(d) foreclosed the criminal court from making orders respecting restitution more than one year after sentencing, but instead, vested restitution determinations after that time in the Board. Utah Code Ann. § 78A-4-103(2)(e) (West Supp. 2014) gives this Court jurisdiction over "appeals from a court of record in criminal cases" not involving capital or first degree felonies.

## ISSUE PRESENTED UPON APPEAL

Defendant raises five issues on appeal, four of which challenge the validity of the Board's restitution order. The district court did not reach those issues because it determined that it was without subject matter jurisdiction to address the propriety of the Board's order. Consequently, the sole issue properly before this Court is whether the district court correctly denied the motions on the ground that its jurisdiction was not properly invoked.

Preservation: After the district court entered its initial ruling on defendant's motion to set aside the restitution order, R. 279-83, defendant moved the court for a new trial, R. 284-85. In the memorandum supporting that motion, defendant argued that the court's denial of the motion as not within its subject matter jurisdiction was an error of law. R. 296-99.

Standard of Review: "Whether a court has subject matter jurisdiction is 'a question of law, which we review for correctness, granting no deference to the district court.'" *State v. Stone*, 2013 UT App 148, ¶ 4, 305 P.3d 167 (quoting *State v. Nicholls*, 2006 UT 76, ¶ 3, 148 P.3d 990).

## DETERMINATIVE PROVISIONS OF LAW

All relevant text of constitutional provisions, statutes, and rules pertinent to the issue before the Court is contained in the body of this brief. Determinative provisions include Utah Code Ann. §§ 77-27-6(4) and 77-38a-302(5)(d) (West Supp. 2014).

## STATEMENT OF THE CASE

### A. Nature of the Case

Defendant, a former inmate who expired his term of confinement for automobile homicide, sought to avoid the payment of Board-ordered restitution by filing a motion in the underlying criminal case to have the sentencing court set aside the Board's order.

After that court properly rejected defendant's attempt as beyond the scope of its subject matter jurisdiction, defendant filed additional motions attacking the validity of the Board's order on statutory and constitutional grounds. But the sentencing court declined to reach those issues, concluding that in large part, they simply restated the arguments made in support of the original motion, and that defendant's new arguments again fell outside the scope of the court's subject matter jurisdiction. In this appeal, defendant seeks to have this Court decide the issues that the district court correctly declined to consider.

### B. Course of Proceedings and Disposition Below

Defendant filed his motion to set aside the Board's restitution order, R. 122-25 (motion) and 131-48 (memorandum), after the Board submitted the order to the sentencing court for docketing and collection, as directed by Utah Code Ann. § 77-27-6(4). R. 119-20. Following responses filed by the Board, R. 155-218, and the Office of State Debt Collection (OSDC), R. 221-75, the district court held a hearing, R. 278, and entered a memorandum decision and order denying the motion. R. 279-83. The court observed that in the underlying criminal action, it had not determined the

amount of restitution owed within one year of sentencing defendant, under section 77-38a-302(d)(i). R. 279. It further noted that on October 7, 2010, after defendant's original parole hearing, the Board issued its final decision ordering defendant to expire his five-year sentence and to pay restitution of \$7,000.00. R. 280; *see also* R. 188 and 270 (Board decision). The court pointed to precedent establishing that a sentencing court loses subject matter jurisdiction over the case once it imposes a valid sentence, and determined that section 77-38a-302(5)(d)(i)'s one-year limitation on court-ordered restitution explicitly deprived the court of continuing jurisdiction over restitution. Consequently, the court concluded that it was without power to set aside the Board's order. R. 281. For that reason, it denied defendant's motion.

Defendant responded by filing three additional motions attacking the validity of the Board's order: (1) a motion for new trial, R. 284-85; (2) a motion for a judicial determination that Utah Code Ann. § 77-27-5(3), which prohibits judicial review of the Board's restitution orders, is unconstitutional, R. 288-89; and (3) a motion to set aside the civil judgment implementing the restitution order. R. 545-46. The district court observed that the new motions were essentially a "rehash of [defendant's] prior arguments [that] adds no persuasive authority to change the Court's decision." R. 594, 606. The court denied all three motions and concluded that its loss of subject matter jurisdiction after sentencing foreclosed it from proceeding on defendant's "additional arguments that (a) the Order of Restitution is void for being served beyond the 60-day rule, Utah Code Ann.

§ 77-27-6(4), (b) the Order of Restitution is barred by the statute of limitations, and (c) the Order of Restitution is void as based on an unconstitutional statute." R. 595, 606.

Defendant then filed his notice of appeal. R. 611-12.

C. Statement of Relevant Facts

The relevant facts are primarily those reflected in the course of proceedings detailed above, and can best be understood in light of brief background information. On June 2, 2008, defendant was convicted on a plea of guilty to automobile homicide, a third degree felony, and sentenced to an indeterminate term not to exceed five years in the Utah State Prison. R. 169. The Presentence Report, under the caption Victim Impact Statement and Restitution, states that "[a]ccording to the Utah Office of Crime Victim Reparations they paid \$7,000 for funeral expenses in this offense. Reference CVR # 151627 for restitution payments." R. 176. At no time during the criminal proceedings did defendant challenge the restitution amount listed in the report.

At defendant's original parole hearing on October 5, 2010, the Board's hearing officer noted the \$7,000 paid for funeral expenses by the state agency, and defendant made no response. R. 185. When asked whether there "was anything else you'd like to talk about[,]" R. 186, defendant replied, "Not that I could think of, I think we've covered it." R. 186. The Board's order, dated October 7, 2010, stated that "[t]he restitution owed of \$7,000.00 on Case# [sic] 06-1607 will be forwarded to the sentencing Court for a Civil

Judgement [sic]." R. 188.<sup>1</sup> Later, in response to a letter from defendant's family, the Board's Senior Hearing Officer, Kent Jones, advised,

If [defendant] is working inside, it is hoped he has already started to pay the \$7,000 burial expenses. As you have now brought that to our attention, I will send a copy of this to Crime Victims Reparations who will be seeking that restitution amount (CVR # 151627) as we will pursue a Civil Judgment against him.

R. 192. Defendant was sent a copy of the letter. But despite being put on notice of restitution by the Board's order and correspondence, defendant neither objected to the imposition of restitution nor made any restitution payments during his incarceration. Not until his sentence expired and the Board requested the Third District Court to enter the order on its docket as a civil judgment, R. 194-95, did defendant attempt to challenge it.

#### SUMMARY OF ARGUMENT

Under this Court's precedents, a district court loses subject matter jurisdiction over a criminal case once it imposes a valid sentence. Defendant does not dispute the validity of his sentence in this case. Because defendant's motions did not address the validity of his sentence, the jurisdiction of the sentencing court was not properly invoked. For this reason, the district court correctly rejected defendant's attempts to challenge the Board's order of restitution in the context of his criminal case.

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<sup>1</sup>Three days later, the Board entered an amended order acknowledging the Board's awareness that the April 15, 2013 expiration of defendant's sentence "is not a regular release date. CLERICAL ERROR CORRECTED." R. 190. No substantive changes were made to the earlier order.

Utah Code Ann. § 77-27-6(4) governs the collection of Board-ordered restitution. Once the order is forwarded to the sentencing court, it is entered on the judgment docket and subject to the same rules and procedures available to enforce any civil judgment for money. The ministerial act of docketing the judgment in the sentencing court does not reopen the criminal case for substantive challenges.

Because the district court had no authority to address the merits of defendant's motions in the context of the criminal case, it had no choice but to deny them on jurisdictional grounds. Its decision warrants this Court's affirmance.

#### ARGUMENT

#### THE DISTRICT COURT'S JURISDICTION IN DEFENDANT'S CRIMINAL CASE DID NOT EXTEND TO ADJUDICATING THE VALIDITY OF BOARD-ORDERED RESTITUTION

The motions defendant filed in his criminal case after the expiration of his sentence all have the same objective: to attack the validity of the Board's restitution order. And they all rest on the same unstated premise: that the sentencing court, by virtue of its statutory duty to docket the Board's order for collection as a civil judgment, may rule on the validity of the order. That premise is erroneous.

This Court's precedents make clear that in a criminal action, "[o]nce a court imposes a valid sentence, it loses subject matter jurisdiction over the case." *State v. Montoya*, 825 P.2d 676, 679 (Utah App. 1991); *see also State v. Vaughn*, 2011 UT App 411, ¶11, 266 P.3d 202 (quoting *Montoya*). While Utah Code Ann. § 77-38a-302(d)(i)

(West Supp. 2014) confers on that court a duty to "determine complete restitution and court-ordered restitution, and [to] make all restitution orders at the time of sentencing if feasible, otherwise within one year after sentencing[,]" that duty is subject to divestment: "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." *Id.*

§ 77-38a-302(d)(ii). Because the sentencing court in this case did not determine defendant's restitution within the statute's one-year deadline, its authority to do so was divested by statute in favor of the Board.<sup>2</sup>

Consistent with the statute, the Board, in its October 10, 2010 order, determined that defendant owed \$7,000.00 in restitution. R. 188. And consistent with Utah Code Ann. § 77-27-6(4) (West Supp. 2014), once it did so, it "referred [its order] to the district court for civil collection remedies." *See* R. 194-95. The purely ministerial act of docketing the Board order does not reinvest the sentencing court with jurisdiction that has lapsed by operation of statute. Rather, "[t]he entry **shall** constitute a lien and is subject to the same rules as a judgment for money" in a civil action." *Id.* § 77-27-6(4) (emphasis added). The statute's mandatory language does not authorize the sentencing court to second-guess the order's validity.

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<sup>2</sup>As the district court correctly noted in its order, defendant's reliance on *State v. Laycock*, 2009 UT 53, 214 P.3d 104, is misplaced. While *Laycock* permitted the trial court to order restitution beyond one year from sentencing, the statute did not contain the one-year limit when the *Laycock* decision was rendered. *See* R. 595, 606.

To the extent that defendant complains of alleged procedural defects in the Board's actions, he is not without a remedy. Utah R. Civ. P. 65B(d)(2)(D) governs claims that "the Board of Pardons and Parole has exceeded its jurisdiction or failed to perform an act required by constitutional or statutory law." But defendant did not invoke the district court's jurisdiction under Rule 65B, which empowers that court to consider his substantive claims. Although Utah's district courts possess jurisdiction over all civil and criminal matters not excluded by Utah's constitution or prohibited by law, *see* Utah Code Ann. § 78A-5-102 (West Supp. 2014), when that jurisdiction has been lost—as has happened here—the court may nonetheless lack the authority to proceed. "[A] court may have jurisdiction in the strict sense, but nevertheless lack jurisdiction (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites." *Berman v. Yarbrough*, 2011 UT 79, ¶ 13 n.5, 267 P.3d 905 (quoting *People v. Lara*, 48 Cal. 4th 216, 226 P.3d 322, 328 (Cal. 2010) (internal quotation marks omitted)). *Accord Atwood v. Cox*, 88 Utah 437, 55 P.2d 377, 381 (Utah 1936) (proper invocation of jurisdiction includes both the power to entertain a cause of action and the filing of a proper pleading that shows the action relates to subject matter over which the court has jurisdiction to proceed). As the *Atwood* court observed, "Jurisdiction can never depend upon the merits of the case brought before the court, but only upon its right to hear and decide at all." *Id.*

The sentencing court's imposition of a lawful sentence, and its failure to determine restitution within one year thereafter, divested it of further subject matter jurisdiction in defendant's criminal case. Consequently, the court correctly ruled that it had no authority to proceed on the merits of defendant's motions. Defendant's failure to overcome that fundamental premise deprives this Court of grounds to disturb the sentencing court's decision.

CONCLUSION

For the reasons explained above, the State respectfully requests this Court to affirm the decision of the district court in this matter.



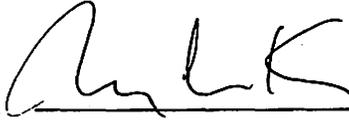
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Nancy L. Kemp  
Assistant Attorney General  
Attorney for Plaintiff/Appellee

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11th day of May, 2015, I caused to be mailed, first class postage prepaid, two true and correct copies of the foregoing BRIEF OF APPELLEE to the following:

Stephen G. Homer (1536)  
2877 West 9150 South  
West Jordan, Utah 84088

  
\_\_\_\_\_