

2016

State of Utah, Plaintiff/Appellee, v. Johnny Martinez, Defendant/ Appellant

Utah Court of Appeals

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Case No. 20150193-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

v.

JOHNNY MARTINEZ,
Defendant/Appellant.

Brief of Appellee

Consolidated appeal from sentences for two counts of receiving stolen property, in the Third Judicial District, Salt Lake County, the Honorable Deno Himonas presiding

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Oral Argument Not Requested

FILED
UTAH APPELLATE COURTS

APR 20 2016

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Case No. 20150193-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

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JOHNNY MARTINEZ,
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Brief of Appellee

STATEMENT OF JURISDICTION

Defendant appeals his sentences for two counts of receiving stolen property. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West Supp. 2015).

STATEMENT OF THE ISSUE

Defendant was arrested for his possession of two stolen vehicles over the course of four days. He knew that one of the vehicles had to be started with a screwdriver. Both crimes were committed while Defendant was on probation and were two of at least five cases pending against him before he entered his plea. Defendant was charged separately for his theft of both vehicles and pled guilty to both crimes in exchange for dismissal of two other charges and three other cases. The thirty-eight year old Defendant

had a seriously long criminal history and repeated failures at probation and parole.

Was it an abuse of discretion to give Defendant prison instead of probation?

Standard of Review. A trial court's sentencing decision is reviewed for an abuse of discretion. *State v. Patience*, 944 P.2d 381, 389 (Utah App. 1997).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

There are no relevant constitutional provisions, statutes, or rules.

STATEMENT OF THE CASE

A. Summary of facts.¹

Case No. 141912194. On August 27, 2014, officers discovered a stolen Isuzu Rodeo attached to a stolen camping trailer. R73. Troy Gomez and Defendant's daughter Jazzmine Martinez were in the trailer. *Id.* They claimed that Defendant had parked the vehicles there the night before and then gave the two permission to stay in the trailer. *Id.* Defendant had left the trailer shortly before the police arrived and subsequently texted Jazzmine, telling her the police were there and asking her to get his keys and his phone and to tell police the vehicles belonged to friends. *Id.* The

¹ Because Defendant pleaded guilty, the facts are taken from the factual basis contained in his written plea statement and from his pre-sentence investigation report (PSI). Defendant did not order a transcript of the plea hearing.

officers found the Rodeo key in the trailer on a keychain Jazzmine claimed belonged to Defendant. *Id.*

Case No. 141910665. On August 30, 2014, auto theft detectives conducting surveillance in Salt Lake County saw a green Honda Civic that matched the description of a stolen vehicle. *Id.* They watched as it pulled into a parking lot and saw Troy Gomez walk away from it. *Id.* They arrested Gomez, returned to the vehicle, and found Defendant standing near it. *Id.* When they ordered him to hold still, he turned, jumped a fence, and fled. *Id.* Officers later learned from Gomez and Jazzmine Martinez that Defendant was the driver of the Honda. *Id.* To drive the car, Defendant first had to start it with a screwdriver. R3, 56, 63.

B. Summary of proceedings.

Guilty plea. For the August 27 Isuzu Rodeo incident, Defendant was charged with theft by receiving stolen property, a second degree felony, in violation of Utah Code Ann. § 76-6-408 (West 2015), and receiving a stolen motor vehicle trailer or semi-trailer, a second degree felony, in violation of Utah Code Ann. § 41-1a-1316 (West 2013).² R72. For the August 30 Honda Civic incident, Defendant was charged with theft by receiving stolen

² The record for the Isuzu Rodeo case (Case No. 141912194) was not requested prior to briefing. Counsel has notified the court clerk, who confirmed she will resolve the problem.

property, a second degree felony, and failure to stop at an officer's command, a class A misdemeanor, in violation of Utah Code Ann. § 76-8-305.5 (West 2015). R1-2, 73. As part of a global settlement of several cases, Defendant pleaded guilty to the theft charge in each of these cases. R55-61, 72-73. In exchange, the second count in each of these two cases was dismissed, as were the charges in three other cases. R55-61, 77-78. The State agreed to recommend that the sentences in the two cases run concurrent to each other and to the sentence in yet another case. R55-61.

PSI report. Adult Probation and Parole [AP&P] recommended prison. R71. The presentence investigation report [PSI] notes Defendant's "[e]xtensive criminal history" and his history of failed community and AP&P supervision. R72, 81. It also shows that his criminal history score placed him well within a recommended prison sentence on the sentencing matrix. *Id.*

Defendant's juvenile record began at age 12 and ended at 17, with a total of 11 charged offenses. *See* R72, 75. His juvenile offenses were nearly all class B misdemeanors, including shoplifting, attempted assault, theft, possession of alcohol, and interfering with arrest. R75. He also had a second degree felony offense of car theft at age 13. *Id.*

His adult record began in 1994, at age 18, and includes 41 charges including this case. R76-77. The offenses include first, second, and third degree felonies and class A, B, and C misdemeanors. *Id.* The charges involve alcohol, controlled substances, paraphernalia, assault, aggravated assault, theft, theft by receiving, theft by deception, domestic violence, child endangerment, concealed weapons, dangerous weapons, forgery, criminal mischief, criminal trespass, interfering with arrest, giving false information to police, and multiple failures to appear. *Id.* His plea negotiations in this case resolved five cases against him, the earliest having been filed in June 2014. R77-78.

Six months before that, Defendant was placed on probation with AP&P for a third degree felony possession charge. R77-78. He never reported to AP&P and absconded supervision. R78. In fact, Defendant has been supervised by both AP&P and Salt Lake County Probation Services and has been given multiple opportunities at Court probation. R75. AP&P reported that, despite having been given ample opportunity to change his behavior, he had failed to do so. R75, 78-79. The investigator opined that Defendant was "not amenable to supervision, is a threat to society, and is an extremely poor candidate for the privilege of further probation opportunities." R75. Consequently, the officer concluded, "there is nothing

treatment programs, the Court, or AP&P can do except to incarcerate him for the protection of the public." *Id.*

Defendant's letter. Before entering his guilty plea in this case, Defendant wrote two letters to the court. In the first letter, Defendant asked the trial judge to treat his outstanding charges with those for which he had been put on probation, and to revoke and reinstate probation. R33 (in Addendum A). He explained that he had recently been in a motorcycle accident that resulted in an injury to his left hand that required surgery. *Id.* Probation, he claimed, would serve his medical needs and would permit him to use "the structure and stability of AP&P to help better my life and keep me on the right path...." *Id.* He claimed that he was "done" with his "old ways, habits, and thinking," and that he now viewed AP&P for the first time as "a positive structure" to help him change his ways. R34.

His second letter explained that his motorcycle accident resulted in major injuries, that he could not get the required surgery in jail, and that he could not take the standard pain medications available in jail. R46 (in Addendum B). He also explained that his father recently had a stroke that left him impaired, and his mother had cancer and liver failure. R46-47. He claimed that his hand injury and the threat of more jail time together provided the necessary incentive for him to succeed on probation. R47. He

also claimed that his motorcycle accident, which required that he be resuscitated twice, provided the “reality check” necessary to change his point of view. *Id.* In support, he told the court that he was using his jail time well: he had met with three agencies to “help meet the requirements of AP&P,” help him find needed resources, and help him create “release plans,” none of which he had pursued in the past. R47-48. He also waived the need for a PSI, candidly admitting that AP&P would reject his probation preference and that he had been unsuccessful at dealing with AP&P in the past. R49.

Defendant's mother's letter. Defendant's mother also wrote a letter to the court prior to entry of Defendant's plea. She asked the judge to help her son by allowing him to return home to serve his sentence. R41-42 (in Addendum C). She mentioned her son's problems with his arm, her husband's stroke, and her own problems with cancer and depression. R41. She also explained how her family had always supported each other and how important their support and prayers were during these difficult times. R41-42.

Sentencing hearing. At a consolidated sentencing hearing, defense counsel sought probation, explaining Defendant's clear understanding of AP&P's recommendation, the reasons therefor, and the part his past

decisions played in putting him in this position. Sentencing Transcript [TR.] 3-4.³ He outlined Defendant's jailhouse efforts to prepare himself to make better choices and to succeed following his release, and stressed Defendant's need for an opportunity to put those plans into action. Tr. 4-5. He also remarked on Defendant's need to have his wrist injury addressed and noted that Defendant had impetus to succeed due to his knowledge of the prison sentence awaiting him if he failed. Tr. 6-7.

Defendant asked for "one final last chance" to be with his family and to succeed on probation. *Id.* He told the judge about the reality check he received from his motorcycle accident and the need for multiple resuscitations. Tr. 5. He explained that he could not get in jail what he needed for his wrist injury from the accident but was prepared to deal with it if he was given probation. Tr. 6. He touted all his efforts in prison to prepare for his release, noting that he'd never done such things before but that he was now willing to admit he needed the help. Tr. 5-6. Finally, he reasoned that because AP&P would ultimately supervise him after his

³ The transcript of the sentencing hearing was filed only in Case No. 141912194 and, hence, remains in the district court until requested by the appellate clerk. *See* footnote 2, *supra*. Both parties have briefed the appeal using a copy of the certified transcript. *See* Aplt.Br. Addendum D; Aple.Br. Addendum D.

incarceration, that supervision should begin now on whatever restrictions the court required. Tr. 6-7.

The sentencing judge immediately sentenced Defendant to one-to-fifteen years in prison for each of the two felony counts, ran them concurrently with each other, dealt with Defendant's outstanding order to show cause in another case, and advised Defendant of the time he had in which to file an appeal. Tr7-9. Defendant timely appealed his sentence in each case. R86-95. By order dated April 13, 2015, this Court consolidated his appeals.

SUMMARY OF ARGUMENT

The sentencing court did not abuse its discretion when it gave Defendant prison instead of probation. Defendant presented his mitigating factors to the sentencing judge at least twice before sentencing and again through his mother and his trial counsel, and they were included in the PSI. This Court assumes the court appropriately considered the mitigating factors presented to it, and Defendant does not show otherwise. Further, Defendant committed the offenses in these consolidated cases while he was on probation for an earlier crime. Given Defendant's extensive list of criminal charges over the previous twenty years, his multiple failed attempts at probation and parole, and AP&P's concern that Defendant

presented a threat to society, the sentencing court could reasonably conclude that Defendant was not a good candidate for continuing on probation. Certainly, it cannot be said that no reasonable sentencer would have taken the view adopted by the sentencing court here.

ARGUMENT

THE TRIAL COURT WAS FULLY WITHIN ITS DISCRETION TO SENTENCE DEFENDANT TO PRISON INSTEAD OF PROBATION

Defendant asserts that the sentencing court abused its discretion by sending him to prison. Aplt.Br. 6-8. Essentially, he argues that the sentencing judge did not fully consider his mitigating factors. *Id.* at 7-8. The judge implicitly considered and rejected them, however. And given Defendant's lengthy criminal record and multiple proven failures on probation, the sentencing judge properly denied his request for "one final last chance" to succeed on probation.

Sentencing courts traditionally have "wide latitude and discretion in sentencing." *State v. Woodland*, 945 P.2d 665, 671 (Utah 1997). A sentence will not be overturned "unless it exceeds statutory or constitutional limits, the judge failed to consider all the legally relevant factors, or the actions of the judge were so inherently unfair as to constitute abuse of discretion." *State v. Sotolongo*, 2003 UT App 214, ¶3, 73 P.3d 991 (internal quotation

marks and citations omitted). See also *State v. Helms*, 2002 UT 12, ¶8, 40 P.3d 626; *State v. Rhodes*, 818 P.2d 1048, 1051 (Utah App. 1991). A sentencing court abuses its discretion only when “no reasonable [person] would take the view adopted by the trial court.” *State v. Valdovinos*, 2003 UT App 432, ¶14, 82 P.3d 1167 (alteration in original) (internal quotation marks and citations omitted); accord *State v. Thorkelson*, 2004 UT App 9, ¶12, 84 P.3d 854.

A court’s sentencing discretion is at its broadest when deciding whether to grant probation. This is because “‘granting or withholding’” probation involves balancing “‘intangibles of character, personality and attitude, of which the cold record gives little inkling.’” *Rhodes*, 818 P.2d at 1049 (quoting *State v. Sibert*, 310 P.2d 388, 393 (Utah 1957)). Thus, “whether to grant probation is within the complete discretion of the trial court.” *Id.* Indeed, a “defendant is not entitled to probation, but rather the [trial] court is empowered to place the Defendant on probation if it thinks that will best serve the ends of justice and is compatible with the public interest.” *Id.* at 1051. A reviewing court may overturn the denial of probation only when it is “‘clear that the actions of the judge were so *inherently unfair* as to constitute abuse of discretion.’” *Id.* (quoting *State v. Gerrard*, 584 P.2d 885, 887 (Utah 1978)) (emphasis in original).

A sentencing court does not abuse its discretion merely because it views a defendant's situation differently than the defendant does. *Helms*, 2002 UT 12, ¶14. Yet that is the crux of Defendant's complaint here. Defendant does not contend that his sentence exceeds statutory or constitutional limits. He complains only that he offered numerous relevant mitigating factors and contends that the sentencing judge failed to fully consider them. Aplt.Br. 7–8.

But choosing which factors matter most in sentencing is entirely within the sentencer's discretion. See *State v. Russell*, 791 P.2d 188, 192 (Utah 1990) (trial courts have discretion in weighing minimum-mandatory sentences because "one factor in mitigation or aggravation may weigh more than several factors on the opposite scale"); see also *Rhodes*, 818 P.2d at 1049 (recognizing that "subtleties" of sentencing are often not apparent on "face of a cold record"). A sentencing judge need not make specific findings in support of its sentencing decision or articulate what information was considered. *State v. Nichols*, 2016 UT App 52, ¶10, ___ P.3d ___ (citing *State v. Moa*, 2012 UT 28, ¶40, 282 P.3d 985 and *State v. Helms*, 2002 UT 12, ¶11, 40 P.3d 626). The appellate court "assumes that 'the mitigating factors presented to the [sentencing] court were appropriately considered.'" *Id.* (quoting *Moa*, 2012 UT 28, ¶41, n.65).

Here, the sentencing court had Defendant's mitigating factors before it but chose to follow AP&P's recommendation of prison instead of granting Defendant's request for probation. On this record, there was nothing "inherently unfair" about that call. When Defendant committed these crimes, he was already on probation for another offense. He absconded from supervision and committed several offenses in the course of nine weeks, resulting in the filing of five different felony cases, including these two. R72, 77-78. This was the latest rash of crimes in an exceedingly long list of adult charges dating back twenty years. *Id.* (noting "41 entries as an adult"). His long and lengthy criminal history fully supports the PSI determination that Defendant presented a "threat to society" that could only be neutralized by incarceration. R75.

Further, despite his claim that, at sentencing, he "merely wanted a second chance to prove himself with AP&P," Defendant had a lengthy history of probation and parole, had been supervised by various services and courts, and had failed to use even one of his "many opportunities" to change his criminal conduct. *Id.* For over twenty years, Defendant repeatedly squandered those opportunities and committed more crimes. The sentencing court could have reasonably concluded that Defendant's

criminal conduct showed no likelihood of changing and that he was not a good candidate for yet another probation opportunity. R47; Tr. 5-6.

Defendant nevertheless complains that the sentencing court did not consider the changes wrought by his motorcycle accident—both physically and mentally—the efforts he had taken for the first time while incarcerated to arrange for help should he be given probation, his professed willingness to comply with any and all restrictions imposed upon him, and his desire to be “done with” his criminal conduct. Tr. 5-7; *see* Aplt.Br. 7-8. Defendant is wrong. He placed this mitigating information before the court multiple times—through numerous letters from Defendant and his mother, through Defendant’s statement submitted as part of the PSI, and through his own statements to the sentencing court. Defense counsel repeated much of the information at the sentencing hearing when asking for probation instead of prison. Tr. 4. The assumption, then, is that the sentencing judge considered the factors, and Defendant has not shown otherwise. The judge implicitly and properly found that Defendant’s post-arrest claim of a reality check was less than credible and did not warrant a suspended sentence, especially in light of more than 20 years of repetitious criminal conduct and probation violations.

In sum, Defendant has not shown that no reasonable person would agree with the trial court's sentence. *See Thorkelson*, 2004 UT App 9, ¶12; *State v. Montoya*, 929 P.2d 356, 358 (Utah App. 1996).

CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted on April 20, 2016 .

SEAN D. REYES
Utah Attorney General

A handwritten signature in black ink, appearing to read "Kris C. Leonard", written over a horizontal line.

KRIS C. LEONARD
Assistant Attorney General
Counsel for Appellee

CERTIFICATE OF SERVICE

I certify that on April 20, 2016, two copies of the Brief of Appellee were ☒ mailed ☐ hand-delivered to:

Herschel Bullen
369 East 900 South, No. 302
Salt Lake City, UT 84111

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

☒ was filed with the Court and served on appellant.

☐ will be filed and served within 14 days.

Lee Nakamura

Addendum A

Dear, Judge Himonas

OCT 30 2014
SANTA CLAY COUNTY

Hello your honor, I was ^{Deputy Clerk} told that you would not receive this letter and if you did you probably would not read it, so as the odds may be againsts me I'm hoping this letter by the grace of god finds its way into your hands...

My name is "Johnny Jr Martinez" and I am coming before you on Oct 31, 2014 I am coming before you on a probation violation of not checking in with A.P. & P. as well as new charge. I have recently been into a motorcycle accident and have a severe injury that needs operation ASAP or all function of my left hand maybe lost, it is already starting to become discolored and harder to use just in the 2 months I have been incarcerated as you can distinctavely see my injury with the naked eye "as you will see in court"

The reason for this letter is to ask the court to please consider rolling the charges wich I plead to, into or with the charges that I am already on A.P. & P for, and Revoke and reenstate my probation, not only to take care of medical needs, but most important to Utilize the structure and stability of A.P. & P to help better my life and keep me on the right path as I have never done before. The difference from now and then

(2)

I no longer see A.P.&P as a vice or negative thing. I now see it as a positive structure that I may need in my life to help me change my ways. Sending me to prison or keeping me in custody, I believe will not help me for the better. I have done time as well as programs, but I have never looked at or tried A.P.&P to better my self and use the help that they do offer.

Your honor I have a son at 15 a daughter at 17 and a granddaughter at 1 1/2...

I don't know if its maturity or dying in an accident that gave me a whole new perspective on life and everything in it. Your honor there is a time in everyones life when they are done with something your honor, and I can truly say I am done with my old ways, habits, and thinking.

If I am given a chance at A.P.&P I will prove to the court as well as AP&P that change is possible, cuz your honor failer is not an option at this point in my life, and no matter the outcome of your decision you will never see me standing before you again.

(Thank You For Your Time)

Johnny Martinez

Addendum B

(My Court Date Is On 12-12-14)

FILED DISTRICT COURT
Third Judicial District

DEC 12 2014

SALT LAKE COUNTY

141908492

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141910168

141912194

Judge: Himonas

By

Capli

I am writting this letter hoping it finds its way into your hands, as you are healthy and in good spirits. Your honor the hopes of this letter is to give more clarity and understanding of my situation and to ask the court for its mercy. Your honor i have resently lost my life in a motorcycle accident and have subtained major injurys, one of wich needs surgery A.S.A.P or function of my hand will be lost. Disfunction, Discolorment, aswell as numness has already taken place and is getting worse as time passes. The Jai has already told me they will not take any action toward getting the surgery done. As you will see in court for yourself that medical attention is needed. I am in constant agonizing pain, do to the fact they will not give me any pain medication. The problem is im alergic to tylonale and cant take Ibuprofin, the only alternitive would be Altrams wich they cant give to me because it causes gesure's to people with head injurys like mine. Your honor to add to this my father has had a stroke

recently & has lost some function of his left side. My mother has her medical problems as well do to her cancer and her liver failure. I am terrified of possibly not being there if god forbid something happens, they need me at home.

Your honor i understand and accept the fact that punishment for my mistake & bad decision making is do. I have been incarcerated for over 90 days. I also understand that in the eyes of A.P & P. i may not "deserve" a chance to redeem myself for my past wrong doing's. But at the same time your honor i believe i don't "deserve" (to loose my hand) either!!! Not only will i have my handycap to deal with everyday to remind me to make better decisions, i would have A.P & P. and more jail time hanging over my head for more of a reason to not fail. I have been more than slapped in the face with a realization of reality check, i hit a wall going 75mph on a bullet bike cuz the front tire blew, & i was broke back to life twice.

Your honor i am asking not for any justification for my mistakes, but only

a little sympathy and leniency to my sentence. Your honor, I am asking to please give me one final & absolutely last chance at A.P. & P., and the opportunity to utilize the structure & stability it gives. Your honor, I have not just been doing time, I have met with three different agency's which is the first step to help meet the requirements of A.P. & P. & also guidance to the resources I need. I have a release plan with "Leo" from Valley Mental Health, Also with "Bree" from the reentry program from state, And also a new Mental Health release program from the Jail with "Mary Ann". All of these offer everything from Housing, Work, Social Security, Medical help(ect). To be honest this is something I have never done, and is regretfully one of my biggest mistakes. So your honor failure is not an option for me as I am too old & too tired, my primary focus will be to fill these words with action & with the guidance & help that has been offered, this new inexpressible confidence of success will bring me to the satisfaction of meeting all my goals & ambitions. So Your

honor i am pleading for one final chance
at A.P. & P not only to get the medical needs
to save my hand, but most importantly to
save what little left i have of my life

So i ask to please consider to revoke &
reenstate and roll my charges in with
A.P. & P, I have been incarcerated for over
90 days now.

And your honor i will humbly ask to
wave any P.S.I. report and be sentenced
for the simple fact your honor to not
wast your time aswell as mine becouse
AP & P will just say they dont want me
& i was unseccesful at completing
A.P. & P i will talk in more detail to my
attorraney about the above matters.

As i have taken up much of
your time i thank you and god
bless

Johnny Martinez

Addendum C

141908492
141916168
141910665
141912194

Dec 1 - 14

Dear Honorable Judge Himones,

My Name is Carol, I pray you will
take the time to read this letter concerning
my son Johnny, Jr. Martinez. That you can
try and understand from a broken mom's
heart. I NO you have heard from
lots of mom's. I NO you being a
Judge must be very hard. God choose
you to help him Judge, and put alot
in your hands the choice to make.

The best answer to help or have
faith the choice for all the people
you see and hear every day, and
some lie's and some the truth.
And Judge Himones you are really
one under God. I'm a mom with a hurt
heart right now. My husband has had a stroke
our son is really hurting to. Not only for
he's dad, but also. He needs to get he's
arm operated on or my son will loose he's
arm, I also have cancer and Depen'sion
prombles. Because of all and more. I NO
my son has NOT been good. But our family
has always loved and cared, then some really
bad times. But we allways got thru it.
Because we are allways here for each

Honorable Judge Himones, a family sticks together stays to the end. We need our son home. We don't know if it will get better or worse please help us with bringing our son home to each other. If nothing else we can hold hands and pray. I pray you let him get his arm fixed and send our son home. My son has a address and phone number, maybe he can get out on ankle monitor or House arrest. But we really need him here with us. Our son has one mom and Dad.

My son is really worried about us.

Please have some faith in my son. This has to be rock bottom for him to change.

He might lose both his parents and his arm. Please give us this chance to be

together and pray together we all get stronger. Our son has a address & phone

I beg you have some hope and faith in us. Please let him come home for what lays ahead of us to deal with.

God Bless you

Johanny Martinez

mom and Dad

Addendum D

CERTIFIED COPY

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

-o0o-

STATE OF UTAH,)	
)	
Plaintiff,)	Case No. 141912194
vs.)	
)	<u>SENTENCING</u>
JOHNNY MARTINEZ,)	
)	
Defendant.)	

-o0o-

BE IT REMEMBERED that on the 30th day of January,
2015, commencing at the hour of 9:51 a.m., the above-entitled
matter came on for hearing before the HONORABLE DENO HIMONAS,
sitting as Judge in the above-named Court for the purpose of
this cause and that the following proceedings were had.

-o0o-



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A P P E A R A N C E S

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* * *

P R O C E E D I N G S

(Transcriber's Note: Speaker identification
may not be accurate with audio recordings.)

THE COURT: All right. This is the time and date
set for sentencing. You've had an opportunity to look over
the pre-sentence report?

MS. CORDOVA: Yes, your Honor.

THE COURT: Are there any changes or corrections
that need to be made?

MS. CORDOVA: No.

THE COURT: Go right ahead, please.

MS. CORDOVA: Your Honor, we are going to ask that
you deviate from the recommendations from Adult Probation &
Parole. The recommendation is that Mr. Martinez go forthwith
to the Utah State Prison and I believe the last time that we
did the plea, I think that Mr. Martinez understands because of
his criminal history and because of the order to show cause
and the third-degree felony that we are also before you on and
that the recommendation was going to be prison, that he wrote
the statement that is included in the--in the pre-sentence
report and I think that he has become very aware and that he
is very sincere and that he understands exactly where he is in
his life and what position he is in and what the choices have

1 done to him and what it's going to do to his life.

2 He has been very pro-active while he's been
3 incarcerated. He is in minimum, he's been able to attend
4 several classes, substance abuse classes and he has met with
5 several organizations, Valley Mental Health, the County
6 Justice re-entry programs, he's got lists of housing
7 referrals, going to Social Security, getting back on his
8 medications, he has plans made up as to how he's going to re-
9 enter the community and to be successful and to get housing
10 and to get on his meds and to get a job and to go to meetings
11 and to address his substance abuse issues and so he hasn't
12 just been sitting in jail and just wasting time. He's been
13 using his time to allow him to make better choices as he's in
14 the community.

15 And so what he is asking for is that you allow him
16 to have another chance, to go on probation so that he can be
17 successful in the community and continue and he would still
18 have the one-to-fifteen prison sentence that he is very well
19 aware of.

20 Mr. Martinez, at his point in his life, I mean, he
21 does have a long criminal history, he can do time, he can go
22 to the prison, he can do his, you know, three to five years,
23 and he's going to eventually be supervised again by Parole,
24 which is the same agency and--but he's just asking that you
25 give him the opportunity to better his life, to make better

1 choices, to not come back to this life, that he--of
2 incarceration and of--of being in trouble with the law.

3 THE COURT: Mr. Boehm--sorry.

4 MS. CORDOVA: He also has--

5 I'm sorry.

6 He also has his wrist issue that he would like to--
7 he has seen the wrist--he has been seen at the jail, I've got
8 those medical records, but he would like a second opinion
9 about his wrist.

10 THE COURT: Mr. Boehm?

11 MR. BOEHM: My agreement in regards to the
12 sentencing--sentencing is contained in the--the waiver. I
13 have no--nothing further to add.

14 THE COURT: Mr. Martinez, this is your opportunity
15 to talk to me about your proposed sentence.

16 MR. MARTINEZ: Your Honor, I just, you know, like--
17 like--like she mentioned, you know, I'm at this point in my
18 life, I'm 37 years old, you know, there's a point in life
19 when--in everyone's life when they're done with something.
20 I'm--I'm truly done with this.

21 I got in a--in a motorcycle accident recently and
22 that's where my wrist injury. I--I passed away twice, they
23 brought me back. You know, I don't know if that was a--being
24 more than just a slap in the face of reality and a check of
25 where I'm at in my life, you know, I have a granddaughter out

1 there now that I just--I need to get out to. But like she
2 says, I've done things that I've never done before during my
3 incarceration and that's trying to look and find the help that
4 I need or someone to kinda lean on, something to lean on to
5 help me out there. I'm not going to lie, I've always just
6 done my time, you know, figured oh, well, I'll just do my
7 time, get out and--and that's it, you know, I've never
8 utilized the structure of A P & P to--to my benefit, I've
9 always just thought of them as a vice of--of keeping me from
10 what I want to do. But as time goes by, as time has gone by,
11 I see them more as a--as a, you know, as an opportunity to
12 help me in things that I need to do to be out there with my
13 family, to be successful.

14 As far as my medical situation goes, I'm in jail
15 right now, they--they gave me a splint and that's all that
16 they'll do for me. As far as pain medications, they can't
17 give me any pain medications because the pain medication that
18 they can give me, with my head injuries from the accident,
19 will give me seizures.

20 I wasn't sure on what was going to go on today or
21 not, but I do have an appointment on the 2nd of next month for
22 my surgery and everything to get done and, you know, just in
23 case I was blessed with another chance.

24 Now, I know I--I've got a bad record with A P & P
25 and in their eyes, I may not deserve another chance, maybe in

1 yours and as--as mentioned, you know, either way, no matter
2 what the decision is, where I stand is where I stand, whether
3 I do time in ADC, whether I go to prison, eventually, you
4 know, if that does happen, hopefully, they don't expire (?)
5 me and--and if I do get out, that's who's going to supervise
6 me anyway is A P & P.

7 So I'm just asking for a chance now rather than
8 then, you know, one final last chance, you know, I'm willing
9 to take no tolerance, ankle monitor, whatever it--whatever it
10 has to take to try to get back out there.

11 I do have a re-entry, I've met with a couple people,
12 programs that help people get out and with housing and medical
13 needs and stuff like that. I've already got all the forms for
14 Social Security and stuff to--'cause I'm not going to be able
15 to work construction, so I don't--I'm not sure how that goes
16 but I would just like to ask for another chance at--at
17 A P & P.

18 THE COURT: Thank you.

19 Any legal reason why I shouldn't sentence?

20 MS. CORDOVA: No.

21 THE COURT: With respect to case ending 665 and the
22 charge of theft by receiving stolen property, a second-degree
23 felony, I'm sentencing you to one to 15 years at the state
24 prison. You have 30 days in which to appeal.

25 With respect to case ending 194, theft by receiving

1 stolen property, a second-degree felony, I'm sentencing you to
2 one to 15 years at the state prison. You have 30 days in
3 which to appeal.

4 Those will run concurrent with one another.

5 With respect to 221, we need to deal with the OSC at
6 this point in time.

7 MR. BOEHM: I hadn't told Ms. Cordova that, but
8 given the Court's ruling, decision on that, I'm fine to
9 dispose of that with time served.

10 THE COURT: All right. It's alleged that you
11 violated the terms and conditions of your probation as we've
12 discussed before.

13 MR. BOEHM: I think he's already handled the
14 addition in the filing--

15 MS. CORDOVA: He did.

16 MR. BOEHM: --and it's set for sentencing.

17 THE COURT: Is that right?

18 MS. CORDOVA: Yes.

19 THE COURT: It's just OSC sentencing? All right.
20 Based--all right. At this point in time, it's a sanction, I'm
21 just going to credit you with time served, close this matter
22 unsuccessful. Fines and fees will be sent to the Office of
23 State Debt Collection, order Mr. Martinez's immediate release
24 on Case 141900221.

25 Again, you have 30 days in which to appeal your

1 sentences, Mr. Martinez.

2 MS. CORDOVA: Thank you.

3 THE COURT: Thank you.

4 (Whereupon, this hearing was concluded.)

5 * * *

TRANSCRIBER'S CERTIFICATE

STATE OF UTAH :
COUNTY OF SALT LAKE : ss.
:

I, Toni Frye, do hereby certify:

That I am a Certified Court Transcriber of Tape Recorded Court Proceedings; that I received the electronically recorded files of the within matter and have transcribed the same into typewriting, and the foregoing pages, to the best of my ability, constitute a full, true and correct transcription, except where it is indicated the Electronically Recorded Court Proceedings were inaudible.

Dated this 18th day of March, 2015.

Toni Frye
Toni Frye, Transcriber

I, RENEE L. STACY, Registered Professional Reporter, Certified Realtime Reporter and Notary Public for the State of Utah, do hereby certify that the foregoing transcript, prepared by Toni Frye, was transcribed under my supervision and direction.

Renee L. Stacy
Renee L. Stacy, RPR, CRR

My Commission Expires:

11-9-2015

