

2016

**State of Utah, Plaintiff/Appellee vs. Dalton Thomas, Defendant/
Appellant**

Utah Court of Appeals

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Brief of Appellant, *State of Utah v Dalton Thomas*, No. 201500624 (Utah Court of Appeals, 2016).
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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff / Appellee,

vs.

DALTON THOMAS,

Defendant / Appellant.

Case No: 201500624-CA

REPLY BRIEF OF APPELLANT

APPEAL FROM THE FOURTH DISTRICT COURT, UTAH COUNTY, STATE OF
UTAH, FROM A RESTITUTION ORDER FOLLOWING A CONVICTION OF
BURGLARY AND CRIMINAL MISCHIEF, THIRD DEGREE FELONIES,
BEFORE THE HONORABLE JUDGE JAMES TAYLOR

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Appellant is not currently incarcerated on this case

**FILED
UTAH APPELLATE COURTS**

APR 01 2016

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IN THE UTAH COURT OF APPEALS

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Case No: 20150624-CA

REPLY BRIEF OF APPELLANT

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION BY ORDERING THOMAS TO MAKE COMPLETE RESTITUTION AS COURT-ORDERED RESTITUTION

The State's brief succinctly argues that the trial court's court-ordered restitution order was proper, and asserts that Thomas only appeals because the court "merely came to a different conclusion than Thomas would have liked." Appellee's Brief at 6. Thomas now acknowledges the almost impossible task created by the appellate standards of review. It cannot be doubted that when a trial court decides an issue, regardless of how much impact that issue may have in a defendant's life, if it is an issue to which the trial court will be afforded discretion, that decision is in reality all but beyond the scope of appellate review. It is in the face of these dismal odds that Thomas asserts that the trial

court abused its discretion when it ordered Thomas to pay, as a condition of his probation, the entire amount of complete restitution.

The trial court did not adequately consider Thomas's financial resources, the burden of restitution, or the other circumstances making complete restitution inappropriate as a condition of probation.

Thomas's initial brief argued that the trial court did not consider Thomas's financial resources in any reasonable way because a reasonable person could not have found that \$125 per month out of \$1000 gross income was reasonable. Appellant's Brief at 10. The State contests that because the record reveals the trial court was made aware of "Thomas's present earnings" that it therefore "took full account" of the financial resources required by the statute. Appellee's Brief at 8. But this simplistic view of a trial court's discretion leads to an unreasonable dilemma. If a trial court is always presumed to have acted within its discretion whenever it is made aware of the facts it must consider then there defendants are placed in a no-win situation. If the defendant fails to bring these facts to the trial court's attention then the issues are not preserved, but if the facts are raised then the trial court's decision cannot be reviewed. This cannot be the meaning of appellate review. Instead, as explained in Thomas's opening brief, the question on review is whether any reasonable person would conclude that Thomas's limited financial resources should not have any effect upon the court-ordered restitution. See Appellant's Brief at 9. The amounts of complete restitution and court-ordered restitution are only identical if the statutory factors that must be considered when a court makes the court-ordered amount have no effect.

Thomas asserts that no reasonable person would conclude that the court-ordered restitution should not be affected by his limited financial resources, his part-time \$10/hour job, his financial obligations to pay fines, supervision fees, and medication, and his mental health concerns and treatment needs. Any reasonable person, under the circumstances, would find that the court-ordered restitution should be less than the complete amount of restitution. The trial court ignored the real world considerations it was statutorily obligated to consider and instead ruled that despite all these concerns it wanted Thomas to pay complete restitution or risk violating probation and being sent to prison. This is not a question of whether or not Thomas owed the victim the money damages, that much was established by stipulation. This is a question about what conditions can be ordered by the court as a condition of probation, as a legal requirement for Thomas to avoid a violation of the terms of his suspended sentence. This is why the legislature made the distinction between the two kinds of restitution, because Thomas should not run the risk of being sent to prison because he is too poor to pay the monthly restitution amount ordered by the court. That is why the legislature made consideration of these factors a requirement before the trial court can make a court-ordered restitution part of probation conditions. And this is why the trial court's order was an abuse of its discretion.

CONCLUSION AND PRECISE RELIEF SOUGHT

Because the district court abused its discretion in ordering Thomas to pay the full amount of complete restitution as the amount of court-ordered restitution this Court

should reverse the restitution order and remand for a determination of court-ordered restitution consistent with the statutory factors.

RESPECTFULLY submitted this 29th day of March, 2016.

D. J. Thompson

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing postage prepaid to the Utah State Attorney General, Appeals Division, P.O. Box 140854, Salt Lake City, Utah 84114-0854 on this 29th day of March, 2016.

D. J. Thompson

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Attorney's or Party's Name

Dated: 3/29/2016