

2015

**Salt Lake City, Plaintiff/Appellee, v. Samuel Lorin Jenkins,
Defendant/Appellant**

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

Recommended Citation

Brief of Appellant, *Salt Lake City v Jenkins*, No. 20141058 (Utah Court of Appeals, 2015).
https://digitalcommons.law.byu.edu/byu_ca3/3455

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007–) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

AMY N. FOWLER (13987)
 SALT LAKE LEGAL DEFENDER ASSOCIATION
 424 East 500 South, Suite 300
 Salt Lake City, Utah 84111
 Telephone: (801) 532-5444
 Attorney for Defendant/Appellant

IN THE UTAH COURT OF APPEALS

SALT LAKE CITY,	:	
	:	
Plaintiff/Appellee,	:	
	:	
v.	:	
	:	Case No. 2014 <u>1058</u> -CA
SAMUEL LORIN JENKINS,	:	Dist. Ct. Case No. 141909145MO
	:	
Defendant/Appellant.	:	Defendants is not incarcerated

BRIEF OF APPELLANT

Appeal from the sentence following a plea to one count of Violation of Protective Order, a class A misdemeanor, in violation of Utah Code § 76-5-108, in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Vernice Trease, presiding.

AMY N. FOWLER (13987)
 SALT LAKE LEGAL DEFENDER ASSOC.
 424 East 500 South, Suite 200
 Salt Lake City, Utah 84111

Attorneys for Defendant/Appellant

PADMA VEERU-COLLINGS (7005)
 Salt Lake City Prosecutor
 349 South 200 East, Suite 500
 Salt Lake City, Utah 84114-5500

Attorneys for Plaintiff/Appellee

FILED
 UTAH APPELLATE COURTS

JUL 02 2015

AMY N. FOWLER (13987)
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 532-5444
Attorney for Defendant/Appellant

IN THE UTAH COURT OF APPEALS

SALT LAKE CITY, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 : Case No. 2014_____ -CA
 SAMUEL LORIN JENKINS, : Dist. Ct. Case No. 141909145MO
 :
 Defendant/Appellant. : Defendants is not incarcerated

BRIEF OF APPELLANT

Appeal from the sentence following a plea to one count of Violation of Protective Order, a class A misdemeanor, in violation of Utah Code § 76-5-108, in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Vernice Trease, presiding.

AMY N. FOWLER (13987)
SALT LAKE LEGAL DEFENDER ASSOC.
424 East 500 South, Suite 200
Salt Lake City, Utah 84111

Attorneys for Defendant/Appellant

PADMA VEERU-COLLINGS (7005)
Salt Lake City Prosecutor
349 South 200 East, Suite 500
Salt Lake City, Utah 84114-5500

Attorneys for Plaintiff/Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

JURISDICTIONAL STATEMENT 1

STATEMENT OF ISSUES, STANDARD OF REVIEW, PRESERVATION 2

RELEVANT STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS 1

STATEMENT OF THE CASE 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT..... 2

I. The Trial Court Abused Its Discretion When It Sentenced
Mr. Jenkins To Supervised Probation For A Period Of 24
Months..... 2

CONCLUSION 4

INDEX TO ADDENDA

Addendum A: Sentence, Judgment, and Commitment

Addendum B: Utah Code §76-1-104

TABLE OF AUTHORITIES

Cases

LeBeau v. State, 2014 UT 39, 337 P.3d 254 3

State v. Holgate, 2000 UT 74, 10 P.3d 346..... 1

State v. Houk, 906 P.2d 907 (Utah Ct. App. 1995) 3

State v. McCovey, 803 P.2d 1234 (Utah 1990) 2

State v. Valdovinos, 2003 UT App 432, 82 P.3d 1167..... 1

Statutes

Utah Code § 76-1-104 2, 3

Utah Code §76-5-108 1, 2

Utah Code §78A-4-103 1

IN THE UTAH COURT OF APPEALS

SALT LAKE CITY, :
Plaintiff/Appellee, :
v. :
SAMUEL LORIN JENKINS, : Case No. 20141058 -CA
Dist. Ct. Case No. 141909145MO
Defendant/Appellant. :

JURISDICTIONAL STATEMENT

This is an appeal from the sentence following a plea to one count of Violation of a Protective Order, a class A misdemeanor in violation of Utah Code §76-5-108, in the Third Judicial District, Salt Lake County, Utah, the Honorable Vernice Trease, presiding. R. 26-28. A copy of the Sentence, Judgment, and Commitment is attached as Addendum A. This Court has jurisdiction under Utah Code §78A-4-103(2)(e).

STATEMENT OF ISSUES, STANDARD OF REVIEW, PRESERVATION

Issue I: Whether the trial court abused its discretion when it sentenced Mr. Jenkins to supervised probation for a period of 24 months.

Standard of Review and Preservation: “The sentencing decision of a trial court is reviewed for abuse of discretion.” *State v. Valdovinos*, 2003 UT App 432, ¶ 14, 82 P.3d 1167. Unpreserved claims may be reached under the doctrine of plain error. *State v. Holgate*, 2000 UT 74, ¶ 11, 10 P.3d 346.

RULES, STATUTES, AND CONSTITUTIONAL PROVISIONS

Utah Code §76-1-104 is relevant to this appeal and included as Addendum B.

STATEMENT OF THE CASE

The City charged Mr. Jenkins with one count of Violation of a Protective Order, a class A misdemeanor, in violation of Utah Code §76-5-108. R. 1. On October 24, 2014 Mr. Jenkins pled guilty to that charge. R.33-34. Mr. Jenkins was sentenced that day to 365 days in the Salt Lake County Jail and an \$800 fine. R. 26-28, Addendum A. The district court stayed the imposition of the jail and placed Mr. Jenkins on supervised probation through Adult Parole & Probation (“AP&P”) for a period of 24 months. *Id.* The court imposed the fines, fees, and numerous other conditions of probation. *Id.* Mr. Jenkins timely appealed. R. 37.

SUMMARY OF THE ARGUMENT

Mr. Jenkins claims that the trial court abused its discretion when it sentenced him to 24 months of supervised probation.

ARGUMENT

I. The Trial Court Abused Its Discretion When It Sentenced Mr. Jenkins To Supervised Probation For A Period Of 24 Months.

Mr. Jenkins feels strongly that the trial court abused its discretion when it sentenced him to supervised probation for a period of 24 months. “An abuse of discretion results when the judge ‘fails to consider all legally relevant factors’ or if the sentence imposed is ‘clearly excessive.’” *State v. McCovey*, 803 P.2d 1234, 1235 (Utah 1990). “An appellate court may only find abuse ‘if it can be said that no reasonable

[person] would take the view adopted by the trial court.” *State v. Houk*, 906 P.2d 907, 909 (Utah Ct. App. 1995). Utah Code section 76-1-104 “sets forth four general goals of Utah’s criminal code,” and includes the important goal to “[p]rescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.” *LeBeau v. State*, 2014 UT 39, ¶ 34, 337 P.3d 254 (emphasis in original) (quoting Utah Code §76-1-104(3)) (brackets omitted).


Mr. Jenkins maintains that the trial court’s sentence of 24 months of supervised probation was too harsh in light of his positive accomplishments on previous probation and the non-violent nature of his crime. R. 34 (showing that Mr. Jenkins pled guilty to a violation of protective order because he was purposefully in the vicinity of the protected party). Further, the judge’s decision was inherently unfair because it failed to credit the positive accomplishments that Mr. Jenkins had made. For example, Mr. Jenkins had successfully completed the Prime for Life Program for a prior case and had positive achievements on prior probation. R. 48:7-8.

In light of these achievements and the non-violent character of the charge, Mr. Jenkins strongly believes that the trial court should have been more lenient and should have allowed him to serve a lesser probationary term. It is Mr. Jenkins’s position that the trial court’s decision to impose 24 months of supervised probation was an abuse of discretion. Mr. Jenkins further maintains that this sentence was clearly excessive given the nature of the charge. Should the Court have given him a shorter probationary period, Mr. Jenkins would be well on his way toward successful completion.

CONCLUSION

For the reasons set forth herein, Mr. Jenkins respectfully requests that this Court reverse the district court's sentence of a 24-month probationary period. He requests that his case be remanded with instructions to impose a shorter probationary period. In the alternative, he asks for the case to be remanded for a new sentencing hearing.

SUBMITTED this 2nd day of July, 2015.



AMY N. FOWLER
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, AMY N. FOWLER, certify that I have caused to be hand-delivered the original and seven copies of the foregoing brief to the Utah Court of Appeals, 450 South State, 5th Floor, Salt Lake City, Utah 84114-0230, and four copies to the Salt Lake City Prosecutor's Office, 349 South 200 East, Salt Lake City, Utah 84114, this 2nd day of July, 2015.

Loi Sygi (for Amy Fowler)

CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I certify that this brief contains 724 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.

Loi Sygi for
AMY N. FOWLER

DELIVERED this 2 day of July, 2015.

SA

INDEX TO ADDENDA

Addendum A: Sentence, Judgment, and Commitment

Addendum B: Utah Code §76-1-104

ADDENDUM A

Tab A

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY, : MINUTES
Plaintiff, :
: SENTENCE, JUDGMENT, COMMITMENT
: CHANGE OF PLEA
:
vs. : Case No: 141909145 MO
SAMUEL LORIN JENKINS, : Judge: VERNICE TREASE
Defendant. : Date: October 24, 2014

PRESENT

Clerk: amyb
Prosecutor: JORGENSEN, RICHARD T
Defendant
Defendant's Attorney(s): FOWLER, AMY N

DEFENDANT INFORMATION

Date of birth: November 17, 1984
Sheriff Office#: 286665
Audio
Tape Number: CR W45 Tape Count: 12:52

This case involves domestic violence.

CHARGES

1. VIOLATION OF PROTECTIVE ORDER - Class A Misdemeanor
- Disposition: 10/24/2014 Guilty

Defendant waives the reading of the Information.
Court advises defendant of rights and penalties.
Defendant waives time for sentence.
The defendant is advised that this offense may be used as an
enhancement to the penalties for a subsequent offense.

SENTENCE JAIL

Based on the defendant's conviction of VIOLATION OF PROTECTIVE
ORDER a Class A Misdemeanor, the defendant is sentenced to a term
of 365 day(s) The total time suspended for this charge is 365
day(s).

Attorney Fees Amount: \$200.00 Plus Interest
Pay in behalf of: SALT LAKE COUNTY TREASURER

ORDER OF PROBATION

The defendant is placed on probation for 24 month(s).
Probation is to be supervised by Adult Probation and Parole.

PROBATION CONDITIONS

Usual and ordinary conditions required by Adult Probation and Parole.

If supervised by Adult Probation and Parole: all fines, fees and/or restitution are to be paid directly to Adult Probation and Parole. Pay recoupment fee (attorney fees) as ordered.

Violate no laws.

No contact with victim or victim's family.

Undergo assessment to determine appropriate counseling. Enter and successfully complete any recommended treatment.

Enter, participate in, and complete any program, counseling or treatment as directed by probation agency.

The Court requires defendant to make adequate progress in treatment, regardless of fault. Failure to make adequate progress could result in an Order to Show Cause.

Comply with all standard drug and alcohol conditions imposed by probation agency.

Do not use, consume, or possess alcohol or illegal drugs; nor associate with any persons using, possessing or consuming alcohol or illegal drugs.

Do not frequent any place where drugs are used, sold or otherwise distributed illegally.

Submit to breath and/or urine testing for drugs or alcohol upon the request of any law enforcement officer and/or probation agent.

No spice, ivory wave or items of that nature.

Submit to random UA's and/or ETG testing.

Submit to search of person and/or property upon the request of any law enforcement officer.

Refrain from the use of alcoholic beverages.

Do not use, consume or possess alcohol or frequent any place alcohol is the chief item of sale.

Obtain a domestic violence evaluation and successfully complete any recommended treatment.

Obtain and/or maintain full-time verifiable employment and/or schooling.

Defendant to be employed full-time or part-time if attending school.

Maintain updated address and phone number with the court, counsel and any relevant probation agencies.

Report to probation agency within two business days.

This sentence is to run consecutive to case number 111905380

Defendant is to comply with all the conditions of the Protective Order

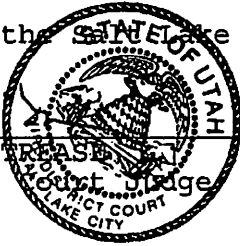
The defendant is to successfully comply with all of the conditions in case number 111905380

Case No: 141909145 Date: Oct 24, 2014

CUSTODY

The defendant is present in the custody of the STATE OF UTAH Lake County jail.

Date: 10/24/2014

Tom
VERNICE REASER
District Court Judge


ADDENDUM B

Tab B

76-1-104. Purposes and principles of construction

Purposes and principles of construction

The provisions of this code shall be construed in accordance with these general purposes.

- (1) Forbid and prevent the commission of offenses.
- (2) Define adequately the conduct and mental state which constitute each offense and safeguard conduct that is without fault from condemnation as criminal.
- (3) Prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition or differences in rehabilitation possibilities among individual offenders.
- (4) Prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

Enacted by Chapter 196, 1973 General Session