

2017

State of Utah, Plaintiff/Appellee vs. Amelia Suzanne Hoffman, Defendant/Appellant

Utah Court of Appeals

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Case No. 20150894-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/Appellee,

vs.

AMELIA SUZANNE HOFFMAN,
Defendant/Appellant.

Appellee's Brief

Appeal from a sentence of probation to class-A-misdemeanor attempted possession of a controlled substance in the Third Judicial District Court, Salt Lake County, the Honorable Royal I. Hansen presiding.

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FILED
UTAH APPELLATE COURTS

MAR 20 2017

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Case No. 20150986-CA

IN THE
UTAH COURT OF APPEALS

STATE OF UTAH,
Plaintiff/ Appellee,

vs.

AMELIA SUZANNE HOFFMAN,
Defendant Appellant.

Appellee's Brief

INTRODUCTION

When police arrested Hoffman on outstanding warrants, they discovered a package of methamphetamine secreted in her bra. The State charged her with third-degree-felony possession of a controlled substance, but agreed to let her plead to class-A-misdemeanor attempted possession. At sentencing, Hoffman, through her counsel, agreed to recommended probation terms of (1) 12 months of Salt Lake County probation, (2) obtaining a substance abuse evaluation and complete any recommended treatment, (3) completing 50 hours of community service, and (4) submitting to urinalyses. Hoffman personally responded "okay" to each of the remaining terms as the trial court read them to her.

Now, Hoffman insists that the trial court should not have imposed the terms she agreed to and did not object to. She acknowledges that she did not preserve her appellate argument. But she invites the Court to reach it under

either plain error or Utah R. Crim. P. 22(e), which allows the Court to correct an illegal sentence.

Hoffman's arguments are frivolous. She cannot rely on plain error to challenge the probation terms she agreed to. She cites no authority available to the trial court that would have made it plain that it should not have imposed any term Hoffman personally accepted without objection. And while rule 22(e) allows a court to correct an illegal sentence, Hoffman cites nothing to show that it was illegal to accept the probation terms she recommended or impose the terms she accepted without objection.

JURISDICTION

Hoffman appeals her sentence imposed on her guilty plea for class-A-misdemeanor attempted possession of a controlled substance. This Court has jurisdiction under Utah Code Ann. §78A-4-103(2)(e).

ISSUE

Did the trial court illegally impose probation terms that Hoffman agreed to or plainly err by imposing probation terms Hoffman personally accepted without objection?

Review standard. Because Hoffman raises her illegal-sentence argument for the first time on appeal, no review standard applies. To show that the trial court plainly erred by imposing the probation terms Hoffman did not object to,

Hoffman must show that (1) the court erred, (2) the error should have been obvious, and (3) absent the error, there is a reasonable likelihood of a more favorable outcome. *State v. Dean*, 2004 UT 63 ¶15, 95 P.3d 276; *State v. Mungia*, 2011 UT 5 ¶22, 253 P.3d 1082.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Addendum A contains a copy of Utah R. App. 24 and 40.

FACTS AND PROCEDURAL HISTORY

Hoffman was a passenger in a car pulled over for speeding. The officer discovered that Hoffman had outstanding warrants and took her to the Salt Lake County jail. At the jail, officers discovered a package of methamphetamine hidden in her bra. R2.

The State charged Hoffman with third-degree-felony possession of a controlled substance. R1. She pleaded guilty to class-A-misdemeanor attempted possession. R58, 66.

Among other things, the trial court sentenced Hoffman to 365 days in jail. The court suspended the jail sentence in favor of probation. Hoffman's counsel told the court that the parties had a "joint recommendation" (1) for "12 months Salt Lake County probation," (2) that Hoffman "obtain a substance abuse eval and do any recommended treatment," (3) that Hoffman complete 50 hours of community service, and (4) that Hoffman submit to urinalyses. The court

accepted the recommended terms. On the supervised probation, the court directed Hoffman to report to Salt Lake County within 24 hours of her release. The court emphasized that the reporting requirement was not optional; Hoffman responded that she understood. R95-97 (the entire transcript is attached as addendum B).

The trial court also proscribed (1) alcohol and drug use; (2) being in places where alcohol and drugs are bought, sold, or used; and (3) being with persons buying, selling, or using alcohol or drugs. Hoffman personally responded "okay" to these conditions. *Id.*

Hoffman failed to keep her appointment with Salt Lake County Probation Services. Consequently, the trial court issued an order to show cause why her probation should not be revoked. R81-84.

Hoffman timely appealed her sentence. R70.

ARGUMENT SUMMARY

Trial courts have broad sentencing discretion. Hoffman had no vested right to probation. By extension, she had no vested right to particular probation terms.

Hoffman recognizes that she preserved none of her appellate arguments. But she asks the Court to reach them under plain error or rule 22(e).

Hoffman and the State jointly recommended four terms. If those terms

were erroneous, Hoffman invited the error when she asked the trial court to impose them. The Court cannot review those terms even under plain error.

When given the opportunity to object to the remaining terms, Hoffman instead personally accepted them without objection. She cites no authority available to the trial court to show that it should have not have imposed those terms. Nor has she shown that objection would have resulted in a more favorable outcome.

Hoffman likewise fails to show that any of the probation terms the trial court imposed are illegal.

In fact, Hoffman's entire argument is frivolous. Utah R. App. P. 24(a)(9) required Hoffman to support her arguments with contentions and reasons why the trial court erred, supported with citations to appropriate authority. Utah R. App. P. 40(a) and (b) required Hoffman's counsel to certify with her signature that the arguments are supported by existing law or a non-frivolous argument to extend the law.

Hoffman's brief complies with neither. Again, Hoffman misstates the availability of review on some of the probation terms she challenges. And while Hoffman cites cases on a trial court's general sentencing authority, she cites none that show that the trial court plainly erred or imposed illegal probation terms. Her arguments include no analysis. They consist entirely of conclusory

statements about Hoffman's "position" on and what she "strongly believes" or "feels" about the probation terms.

The brief is carefully worded to recite what Hoffman herself thinks about the sentence. But by requiring her counsel to certify that the arguments in the brief are supported by the law, rule 40 necessarily precludes her from serving as a mere conduit for her client's unsupported arguments.

The law provides a means to accommodate this situation. When there are no supportable appellate claims, counsel may file a brief under *Anders v. California* explaining that there are no supportable claims and giving her client an opportunity to file her own brief. But rules 24 and 40 do not allow counsel to present unsupported claims on her client's behalf.

ARGUMENT

I.

THE TRIAL COURT PROPERLY IMPOSED THE PROBATION TERMS HOFFMAN CHALLENGES ON APPEAL BECAUSE SHE EITHER AFFIRMATIVELY ASKED FOR THEM OR ACCEPTED THEM WITHOUT OBJECTION

Hoffman had no vested right to probation. *Mungia*, 2011 UT 5 ¶26. Rather, a trial court has "complete discretion" to grant or deny probation. *State v. Rhodes*, 818 P.2d 1048, 1049 (Utah App 1991). Even on a preserved challenge to a decision not grant probation, this Court may reverse only when it is "clear that the actions of the judge were so *inherently unfair* as to constitute abuse of

discretion.'" *Id.* (citation omitted, emphasis in *Rhodes*). By necessary extension, the trial court enjoys at least the same latitude in setting the conditions of the probation it has "complete discretion" to grant or to deny in the first place.

Here, the trial court granted Hoffman probation. On appeal, she contests the conditions the trial court imposed.

Hoffman agrees that she preserved none of her arguments. She argues all of her challenges under both plain error and Utah R. Crim. P. 22(e), which allows a court to correct an illegal sentence at any time. Aplt.Br.2.

Hoffman joined in recommending four of the probation terms she now challenges: (1) probation supervised by Salt Lake County Probation Services rather than unsupervised or court-supervised probation, (2) substance abuse evaluation and recommended treatment, (3) 50 hours of community service, and (4) urinalyses. R95. Because Hoffman affirmatively recommended imposing those terms, she invited any error when the trial court followed her recommendation. A party who invites error "is simply not entitled to any appellate review," even for plain error. *State v. Lee*, 2006 UT 5 ¶16, 128 P.3d 1179.

In two "but see" citations, Hoffman acknowledges that invited error proscribes plain error review, and that she invited error on these four probation terms. Aplt.Br.2, 4. But immediately after acknowledging the clear proscription, Hoffman proceeds to ask for the very plain error review she acknowledges that

the law proscribes. Aplt.Br.5-6. She offers no reason why the proscription should not apply to her. She therefore has no good faith basis for her plain-error argument on the four probation terms she recommended that the trial court impose. Utah R. App. P. 40(a), (b) (requiring counsel to certify by signing a brief that the arguments are supported by the law or good faith argument to modify the law).

Hoffman did not object to the remaining probation terms. Rather, she responded “okay” when the trial court read them to her. Hoffman says that imposing these terms was nevertheless “error of an obvious nature.” Aplt.Br.6. To succeed on a plain error argument, Hoffman must show (1) error, (2) that was obvious, and (3) there would be a reasonable likelihood of a more favorable outcome but for the error. *Dean*, 2004 UT 63 ¶15.

To show obvious error, Hoffman “must show that the law governing the error was clear at the time” the trial court imposed the probation terms she first objects to on appeal. *Id.* ¶16. Hoffman cites no law, let alone clear law, that forbade the trial court from conditioning her probation on proscriptions against (1) alcohol and drug use; (2) being in places where alcohol and drugs are bought, sold, or used; and (3) being with persons buying, selling, or using alcohol or drugs. She therefore has not shown that imposing those conditions was “error of an obvious nature.” That failure alone defeats her plain error argument. *Id.* ¶15.

Hoffman also has not shown a reasonable likelihood of a more favorable outcome. *Id.* She says that the conditions prejudiced her because they restricted her rights. Aplt.Br.6. But that argument presupposes that the trial court would have granted probation minus the challenged conditions. She has not explained why that is the reasonably likely outcome. Rather, it is just as likely that the trial court would not have granted her probation at all if it could not have imposed the challenged restrictions.

Hoffman also argues that the probation terms are illegal within the meaning of Utah R. Crim. P. 22(e). She cites no law proscribing any of the terms. And while she argues that they are fundamentally unfair and violate due process, she does not explain how that can be true when she asked the court to impose four of the terms and did not object to the rest even when given the opportunity to do so.

In fact, Hoffman's entire argument is frivolous. Utah R. App. P. 24(a)(9) required Hoffman to support her arguments with contentions and reasons why the trial court erred, supported with citations to appropriate authority. Utah R. App. P. 40(a) and (b) required Hoffman's counsel to certify with her signature that the arguments are supported by existing law or a non-frivolous argument to extend the law.

Hoffman's brief complies with neither rule. Again, Hoffman implicitly

acknowledges that she invited error on four terms and cites law that prohibits even plain error review on those terms. She offers no reason why that proscription should not apply to her claims. She nevertheless proceeds to argue for the plain error review she acknowledges the law prohibits. This violates the rule 40 certification that the law or a good faith argument for a change in the law permits plain error review on invited error.

Hoffman also has not met her burden to support her arguments with appropriate analysis supported by legal authority. Utah R. App. P. 24(a)(9). While Hoffman cites cases on a trial court's general sentencing authority, she cites none that show that the trial court plainly erred or imposed illegal probation terms. And her arguments include no analysis. They consist entirely of conclusory statements about Hoffman's "position" on and what she "strongly believes" or "feels" about the probation terms. Hoffman therefore has not met her burden of persuasion on appeal, and the Court should disregard her inadequately briefed arguments, as it is not "a depository in which the appealing party may dump the burden of argument and research." *State v. Jaeger*, 1999 UT 1, ¶ 31, 973 P.2d 404 (citation and quotations omitted).¹

¹ The record provides a clue why Hoffman no longer appreciates the probation terms she either recommended or did not object to—she has already violated her probation. The trial court informed her that she needed to contact Probation Services within 24 hours of her release from jail. Hoffman then failed to keep her appointment

In fact, the brief is carefully worded to recite what Hoffman herself thinks about the sentence. But by requiring her counsel to certify that the arguments in the brief are supported by the law, rule 40 necessarily precludes counsel from serving as a mere conduit for her client's unsupported arguments.

The law provides a means to accommodate this situation. When there are no supportable appellate claims, counsel may file a brief under *Anders v. California* explaining that there are no supportable claims and giving their client an opportunity to file her own brief. See *State v. Prater*, 2017 UT 13 ¶43 n.7, 2017 WL 908807 (“we remind the appellate bar that counsel faced with trouble finding an argument that is not wholly frivolous may submit an *Anders* brief”). But rules 24 and 40 do not allow counsel to present unsupported arguments on her client's behalf.

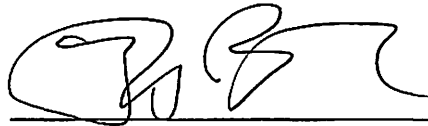
with probation services, which resulted in an order to show cause why the court should not revoke her probation. R81-84. But Hoffman's decision not to comply with her probation terms does not justify imposing on the State's and the Court's scarce resources to respond to and dispose of unsupported arguments challenging them.

CONCLUSION

For the reasons argued, the Court should affirm the probation terms.

Respectfully submitted March 20, 2017.

SEAN D. REYES
Utah Attorney General

A handwritten signature in black ink, appearing to read 'T. Brunker', is written over a horizontal line.

THOMAS B. BRUNKER
Deputy Solicitor General
Counsel for Appellee

CERTIFICATE OF SERVICE

I certify that on March 20, 2017, two copies of the foregoing brief were

☐ mailed ☒ hand-delivered to:

Debra M. Nelson
Jessica Jacobs
Salt Lake Legal Defender Assoc.
424 East 500 South, Ste. 300
Salt Lake City, UT 84111

A digital copy of the brief was also included: ☐ Yes ☐ No

Melanie Kendrick

Addenda

Addenda

Addendum A

Utah R. App. P. 24. — Briefs

(a) Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order indicated:

(a)(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.

(a)(2) A table of contents, including the contents of the addendum, with page references.

(a)(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(a)(4) A brief statement showing the jurisdiction of the appellate court.

(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or

(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.

(a)(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.

(a)(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(a)(10) A short conclusion stating the precise relief sought.

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(a)(11)(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion; in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and

(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

(b) Brief of the appellee. The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include:

(b)(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or

(b)(2) an addendum, except to provide material not included in the addendum of

the appellant. The appellee may refer to the addendum of the appellant.

(c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

(d) References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

(e) References in briefs to the record. References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs. Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule. In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

(g) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant, unless the parties otherwise agree or the court otherwise orders. Each party shall be entitled to file two briefs. No brief shall exceed 50 pages, and no party's briefs shall in combina-

tion exceed 75 pages.

(g)(1) The appellant shall file a Brief of Appellant, which shall present the issues raised in the appeal.

(g)(2) The appellee shall then file one brief, entitled Brief of Appellee and Cross-Appellant, which shall respond to the issues raised in the Brief of Appellant and present the issues raised in the cross-appeal.

(g)(3) The appellant shall then file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee, which shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant.

(g)(4) The appellee may then file a Reply Brief of Cross-Appellant, which shall reply to the Brief of Cross-Appellee.

(h) Permission for over length brief. While such motions are disfavored, the court for good cause shown may upon motion permit a party to file a brief that exceeds the limitations of this rule. The motion shall state with specificity the issues to be briefed, the number of additional pages requested, and the good cause for granting the motion. A motion filed at least seven days before the date the brief is due or seeking five or fewer additional pages need not be accompanied by a copy of the brief. A motion filed less than seven days before the date the brief is due and seeking more than 5 additional pages shall be accompanied by a copy of the draft brief for in camera inspection. If the motion is granted, any responding party is entitled to an equal number of additional pages without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

(i) Briefs in cases involving multiple appellants or appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies

shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall state the reasons for the supplemental citations. The body of the letter must not exceed 350 words. Any response shall be made within 7 days of filing and shall be similarly limited.

(k) Requirements and sanctions. All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Utah R. App. P. 40 Attorney's or party's signature; representations to the Court; Sanctions and Discipline

(a) Attorney's or party's signature. Every motion, brief, and other document must be signed by at least one attorney of record who is an active member in good standing of the Bar of this state or by a party who is self-represented. A person may sign a document using any form of signature recognized by law as binding.

(b) Representations to court. The signature of an attorney or self-represented party certifies that to the best of the person's knowledge formed after an inquiry reasonable under the circumstances:

(b)(1) the filing is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b)(2) the legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(b)(3) the factual contentions are supported by the record on appeal; and

(b)(4)(A) the filing contains no information or records classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social or any other information or records to which the right of public access is restricted by statute, rule, order, or case law; or

(b)(4)(B) a filing required by Rule 21(g) that does not contain information or records classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social or any other information or records to which the right of public access is restricted by statute, rule, order, or case law is being filed simultaneously.

(c) Sanctions and discipline of attorneys and parties. The court may, after reasonable notice and an opportunity to show cause to the contrary, and upon hearing, if requested, take appropriate action against any attorney or person who practices before it for inadequate representation of a client, conduct unbecoming a member of the Bar or a person allowed to appear before the court, or for failure to comply with these rules or order of the court. Any action to suspend or disbar a member of the Utah State Bar shall be referred to the Office of Professional Conduct of the Utah State Bar.

(d) Rule does not affect contempt power. This rule does not limit or impair the court's inherent and statutory contempt powers.

(e) Appearance of counsel pro hac vice. An attorney who is licensed to practice before the bar of another state or a foreign country but who is not a member of the Bar of this state, may appear, pro hac vice upon motion, filed pursuant to Rule 14-806 of the Rules Governing the Utah State Bar. A separate motion is not required in the appellate court if the attorney has previously been admitted pro hac vice in the trial court or agency, but the attorney shall file in the appellate court a notice of appearance pro hac vice to that effect.

Addendum B

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A P P E A R A N C E S

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1 October 16, 2015

2 * * *

3 THE COURT: Okay. And this is the Hoffman matter.
4 The record should indicate the case has been called.

5 Ms. Hoffman present?

6 MS. JACOBS: She's in custody.

7 THE COURT: Okay. This is the Hoffman matter. The
8 record should reflect that all counsel are present.

9 Ms. Jacobs, status?

10 MS. JACOBS: Your Honor, we're ready to proceed with
11 a plea today.

12 THE COURT: Great. Tell me what's processed.

13 MS. JACOBS: In case in ending -- oh, no. Okay.
14 She'll be entering a guilty plea to Count I, attempted
15 possession or class A misdemeanor.

16 THE COURT: No objection to amendment by
17 interlineation?

18 MS. JACOBS: No objection.

19 THE COURT: Waive formal reading and any defects?

20 MS. JACOBS: Yes.

21 THE COURT: The clerk will give me a copy of that.

22 You've read and reviewed your statement of
23 constitutional rights you're giving up by way of entering this
24 plea with your attorney, Ms. Hoffman?

25 THE DEFENDANT: Correct, Your Honor.

1 THE COURT: You understand those rights?

2 THE DEFENDANT: Yes.

3 THE COURT: Ms. Jacobs, you've read and reviewed the
4 statement of constitutional rights your client is giving up by
5 way of entering that plea with her?

6 MS. JACOBS: Yes, Your Honor.

7 THE COURT: You believe that she understands those
8 rights?

9 MS. JACOBS: Yes.

10 THE COURT: Any reason she should not enter a plea
11 today?

12 MS. JACOBS: No.

13 THE COURT: Would you state a factual basis for the
14 charges?

15 MS. JACOBS: Yes. And, Your Honor, I'm sorry, she
16 is -- just for the Court's [inaudible] actually entering a no
17 contest plea. But it's on or about May 20, 2015, in Salt Lake
18 County, State of Utah, the defendant -- the State would show
19 evidence to a jury that the defendant did knowingly,
20 intentionally attempt to have drugs on her person.

21 THE COURT: And let's see. Ms. Hoffman, you don't
22 dispute that charge and the State indicates that they can prove
23 those elements of the offense. You don't dispute them; is that
24 correct?

25 MS. JACOBS: You have to answer out loud.

1 THE DEFENDANT: No.

2 THE COURT: [inaudible]. Okay. You don't dispute
3 them; is that correct?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: And you realize that as a class A
6 misdemeanor it carries a commitment of up 365 days, a fine of
7 up to \$4,625. The Court is the only one that's going to
8 sentence you and the Court is not bound by recommendations or
9 proposals of others. Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: I would invite you to sign the affidavit.

12 The Court has received the affidavit signed by
13 Ms. Hoffman in open court, the Court incorporates it into the
14 record, relies upon it.

15 Let's see, Ms. Hoffman, how do you plead to amended
16 count one, attempted possession or use of a controlled
17 substance a class A misdemeanor?

18 THE DEFENDANT: No contest.

19 THE COURT: The Court accepts that no contest plea,
20 finds it to be knowing, intelligent, and voluntarily entered.
21 You have a right to file a motion to withdraw that plea up
22 until the time you're sentenced. You have a right to be
23 sentenced in not less than two more than 45 days from today's
24 date.

25 How do you wish to proceed?

1 MS. JACOBS: Your Honor, we would like to proceed
2 with sentencing today and waive time.

3 THE COURT: Okay.

4 MS. JACOBS: We have joint recommendations for 12
5 months Salt Lake County probation. That she obtain a substance
6 abuse eval and do any recommended treatment, that she complete
7 50 hours of community service and that she pay a \$50 recoupment
8 fee.

9 THE COURT: Okay. Let's see, Mr. Blanch, anything
10 else you have?

11 MS. JACOBS: I don't know if I said it, Your Honor,
12 but also submit to UAs.

13 THE COURT: Okay.

14 MR. BLANCH: That -- those are the recommended --
15 recommended [inaudible].

16 THE COURT: Okay.

17 MR. BLANCH: -- Salt Lake City.

18 THE COURT: Great. Ms. Hoffman, anything you wish to
19 report to the Court? You stay clean and sober?

20 THE DEFENDANT: Yes.

21 THE COURT: Yeah. Everybody tells me the right
22 thing, so you're going to -- I'm counting on you to do that.

23 THE DEFENDANT: I will, Your Honor.

24 THE COURT: The Court sentences you, Ms. Hoffman, to
25 a commitment of 365 days, a fine of \$4,625. I'm prepared to

1 suspend that commitment and fine, place on you probation with
2 Salt Lake County Probation Services. You need to report to the
3 Salt Lake County within 24 hours of your release.

4 How long have you served in jail?

5 THE DEFENDANT: I think I'm going to be getting out
6 on Wednesday. I'm not positive.

7 MS. JACOBS: Your Honor, she's being held on a
8 paraphernalia charge.

9 THE COURT: On another case --

10 MS. JACOBS: Yeah.

11 THE COURT: -- other than this one?

12 MS. JACOBS: Correct.

13 THE COURT: Okay. 12 months, Salt Lake County
14 Probation Services. So when you're released, you need to
15 report to Salt Lake County within 24 hours. Let me make sure
16 you understand, these aren't optional, you don't do --

17 THE DEFENDANT: I know it is.

18 THE COURT: -- them if they're convenient. If you
19 don't do them you're back here and you're going to be in jail
20 on this case.

21 THE DEFENDANT: I understand that.

22 THE COURT: You need to obtain a substance evaluation
23 and follow through with the -- within 13 days of your release
24 from custody and follow through with all recommended treatment
25 within 90 days thereafter. Good behavior. Do not appear

1 before this court or any other court for any reason other than
2 a minor traffic violation.

3 No drugs or alcohol, you can't be in places where
4 drugs and alcohol are bought or sold or used or in the company
5 of those that buy, sell, or use drugs and alcohol. You need to
6 take random UAs, they need to come up clean.

7 50 hours of community service, that's done at the
8 rate of at least five hours per month. The first five hours
9 are due on or before the 15th of November and the 15th day of
10 each month thereafter until its completed.

11 THE DEFENDANT: Okay.

12 THE COURT: I'm ordering that you pay \$50 by way of
13 recoupment. \$50 is due in a 90-day -- 90 days from today's
14 date. You need to provide proof that you paid that to the
15 court here.

16 THE DEFENDANT: Okay.

17 THE COURT: This is your chance, Ms. Hoffman to
18 follow through. I hope you're successful. Good luck to you.

19 THE DEFENDANT: Thank you, Your Honor. You have a
20 nice day.

21 (End of Hearing.)
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C E R T I F I C A T E

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

I, KATIE HARMON, a Certified Shorthand Reporter in
and for the State of Utah, do hereby certify that I received
the audio recording in this matter, and that I transcribed it
into typewriting and that a full, true and correct
transcription of said audio recording so recorded and
transcribed is set forth in the foregoing pages, inclusive
except where it is indicated that the recording was inaudible.

DATED this 12th day of December, 2015.

KATIE HARMON, RPR, CSR

MR. BLANCH: [2] 6/13 6/16 MS. JACOBS: [16] THE COURT: [30] THE DEFENDANT: [14]	attempted [2] 3/14 5/16 attorney [1] 3/24 ATTORNEY'S [1] 2/4 audio [2] 9/12 9/14	do [9] don't [6] done [1] 8/7 drugs [4] due [2] 8/9 8/13	intentionally [1] 4/20 interlineation [1] 3/17 invite [1] 5/11 it [8] it's [1] 4/17 its [1] 8/10
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