

2016

The State of Utah, Plaintiff/Appellee v. Vratislav Roger Bilek, Defendant/Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,
Plaintiff/Appellee

v.

VRATISLAV ROGER BILEK,
Defendant/Appellant.

Appellant is incarcerated

BRIEF OF APPELLANT

Appeal from a judgment of conviction for Kidnapping, a second degree felony, in violation of Utah Code § 76-5-301, in the Third Judicial District, in and for Salt Lake County, State of Utah, the Honorable Bruce Lubeck presiding.

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FILED
UTAH APPELLATE COURTS

JUL 19 2016

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IN THE UTAH COURT OF APPEALS

THE STATE OF UTAH,
Plaintiff/Appellee

v.

VRATISLAV ROGER BILEK,
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Appellant is incarcerated

BRIEF OF APPELLANT

JURISDICTIONAL STATEMENT

Vratislav Roger Bilek pleaded no contest to kidnapping, a second degree felony, and was originally sentenced to a suspended sentence of one to fifteen years in prison with sixty months of probation. R:1824-28. The original Sentence, Judgment, Commitment and the Sentence, Judgment, Commitment following the court's finding that Bilek violated probation and imposing the prison sentence are attached as Addendum A. The Honorable Judge Bruce Lubeck presided at both hearings. Bilek filed a timely notice of appeal. R:1944. This court has jurisdiction under Utah Code section 78A-4-103(2)(e).

ISSUE, STANDARD OF REVIEW, AND PRESERVATION

Issue: Whether the district court erred when it revoked Bilek's probation.

Standard of Review: This court will reverse a district court's decision if "the court's findings are against the clear weight of the evidence and the probation revocation was an abuse of discretion." *State v. Maestas*, 2000 UT App 22, ¶ 23, 997 P.2d 314.

Preservation: This issue was preserved by counsel's argument. R:2043.

STATUTES AND RULES

Utah Code sections 77-18-1 and 76-9-702.7 are relevant to the issues on appeal. Their full text is provided in full in Addendum B.

STATEMENT OF THE CASE

Bilek pleaded no contest to kidnapping, a second degree felony. R:1836. His sentence was suspended and he was placed on probation for sixty months. R:1836. AP&P subsequently filed a violation report. R:1845; 1865. The court held a joint evidentiary hearing on the Order to Show Cause and preliminary hearing for new charges. R:1954. The court found each of the eight allegations to be true, revoked probation, and imposed the original prison sentence of one to fifteen years. R:2038-40; 2049. Bilek filed a timely notice of appeal. R:1944.

STATEMENT OF FACTS

Bilek pleaded no contest to one count of kidnapping. R:1824. The original information charged aggravated kidnapping, distribution, and aggravated assault. R:1-2. The case was joined with another case involving a separate victim. R:1541-42. In both instances, women had arrived at Bilek's neighbors' houses asking for help and alleging they were kept against their will in Bilek's

house. R:80;741. One of the women testified to physical and sexual abuse. R:739-42.

The State's proposed witness list for trial noted that both alleged victims were "unlikely" to testify. R:1819. The State had explained earlier that one witness "was still adamant that she would not testify, stand up, and just refused, not wanting to talk" even when transported to court. R:124. The defense filed numerous motions to admit evidence of serious drug use and mental health issues involving both alleged victims. R:261-64; 1590. Ultimately, the case resolved with a no contest plea to kidnapping, a second degree felony, including a condition that the court would suspend the prison term and place Bilek on probation for sixty months. R:1828.

The probation conditions included the standard probation conditions, no illegal drugs, and no overnight female visitors without prior approval, although Bilek explained this last condition was dropped. R:1828; 2048.

Forty-one days later, AP&P filed a violation report stating that Bilek had a female visitor at his hotel room and possessed methamphetamine and heroin. R:1843. The report was amended to include committing the offense of forcible sexual abuse, distribution, two counts of voyeurism by electronic equipment, and possession of paraphernalia. R:1865. The AP&P agents testified that they found Bilek in his hotel room with a woman. R:1999. The woman initially claimed she was only visiting for the day. R:2006. However, AP&P searched Bilek's cell

phone and discovered photos of the woman timestamped during the night.

R:2020-21.

The woman testified at the OSC that she and Bilek had engaged in oral sex as well as posing for nude pictures for money in the past and that he bailed her out of jail four days earlier. R:1968. She said he had meth and that he purchased heroin and crack cocaine at her direction. R:1968-71. She testified that she was never aware that Bilek was taking photographs of her and that she woke up in the hotel room without her clothes on and did not remember removing them.

R:1975-76. She testified that she used meth, heroin, and crack cocaine continuously while staying at the hotel and that she saw Bilek use meth. R:1972.

The court found each of the eight violations to be true and willful. R:2038-40.

Defense counsel argued that the woman was in the hotel room by consensual arrangement and that Bilek should get another chance on probation. R:2043. Bilek told the court that his ex-wife, in a contentious divorce, had threatened him and hired people make false allegations against him. R:2046. He told the court that he was not guilty of the original charges. R:2047. He also claimed that the no overnight visitors condition was dropped. R:2048.

The court found that, even disregarding the overnight visitors condition, Bilek violated probation. R:2049. The court stated that he was “not happy about” the original sentence and that Bilek “belong[ed] in prison.” R:2050. The

court ordered Bilek to serve the original one to fifteen year prison sentence.

R:2050.

SUMMARY OF THE ARGUMENT

The district court abused its discretion when it revoked probation based on two allegations of voyeurism.

ARGUMENT

I. The district court erred when it revoked probation and imposed the original prison sentence.

The Fourteenth Amendment to the United States Constitution forbids a state from “depriv[ing] any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, §1. In *Gagnon v. Scarpelli*, 411 U.S. 778, 781-82, (1973), the United States Supreme Court concluded these due process protections extend to probation revocation proceedings. Revocation proceedings involve a “conditional liberty” interest, and therefore a probationer must be afforded the “minimum requirements of due process” before probation may be revoked. *Id.* at 781-86. Due process “serve[s] as substantial protection against ill-considered revocation” and “insure[s] that [the defendant’s] liberty is not unjustifiably taken away.” *Id.* at 785-86. After all, “the whole thrust of the [probation] movement is to keep [people] in the community, working with adjustment problems there.” *See id.* at 785 (internal quotation marks omitted). Thus, a district court should revoke probation “only as a last resort” when other alternatives have failed or are about to fail. *See id.* (internal quotation marks

omitted).

In Utah, “[p]robation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.” Utah Code § 77-18-1 (12)(a)(ii). If the court finds a violation, it “must determine by a preponderance of the evidence that the violation was willful.” *State v. Maestas*, 2000 UT App 22, ¶ 24, 997 P.2d 314 (internal quotation marks omitted); *see also State v. Hodges*, 798 P.2d 270, 277 (Utah Ct. App. 1990) (“[A]s a general rule . . . to revoke probation for the violation of a condition of probation not involving the payment of money, the violation must be willful or, if not willful, must presently threaten the safety of society”). A finding of willfulness “requires a finding that the probationer did not make *bona fide* efforts to meet the conditions of his probation.” *State v. Peterson*, 869 P.2d 989, 991 (Utah Ct. App. 1994) (internal quotation marks omitted). An appellant must demonstrate “that the evidence of a probation violation, viewed in a light most favorable to the trial court’s findings, is so deficient that the trial court abused its discretion in revoking defendant’s probation.” *State v. Jameson*, 800 P.2d 798, 804 (Utah 1990).

Two of the probation violations in this case were for voyeurism by electronic equipment concealed or disguised, class A misdemeanors. R:1865.

The relevant section of the voyeurism statute reads:

(1) A person is guilty of voyeurism who intentionally uses a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means an individual:

- (a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;
- (b) without the knowledge or consent of the individual; and
- (c) under circumstances in which the individual has a reasonable expectation of privacy.

Utah Code § 76-9-702.7. As trial counsel argued at the joint preliminary hearing/OSC on this alleged offense, Bilek did not use any equipment “concealed or disguised.” R:2030. For example, a “concealed weapon” is one “not visible by ordinary observation.” *Concealed weapon*, Black’s Law Dictionary (10th ed. 2014). Rather, the photographs were taken openly from a cell phone “a short distance away” and would obviously be visible by ordinary observation. R:2030. Although the woman was not conscious, she testified that she had consented to sex acts and nude photographs with Bilek in the past in exchange for money and had also agreed to enter the hotel room with him after he paid her bail and bought her drugs, including heroin, which she testified causes her to “fall asleep like sitting forward.” R:1967; 1974; 1988-89. The statute requires that the equipment be “concealed or disguised” to exclude from criminal liability a situation where a person is taking photographs of a partner who knows about and consents to his presence (and his use of a cell phone) in the room. *See* R:2003 (Bilek was using the phone openly when the AP&P agents arrived). The court erred when it found that “when someone is unconscious or asleep it is concealed.” R:2036.

Although “a single violation of probation is legally sufficient to support a probation revocation,” if a probation violation was found in error and this court is “not confident that” the remaining violations “would have resulted in revocation of probation,” the case should be remanded “for further consideration and explanation by the trial court,” which “must reassess whether, under all the circumstances, [the defendant’s] probation should be revoked.” *State v. Legg*, 2014 UT App 80, ¶¶ 11, 25, 324 P.3d 656. As the U.S. Supreme Court noted, when there is a finding that a parolee committed a violation, a “second question arise[s]: should the parolee be recommitted to prison or should other steps be taken to protect society and improve chances of rehabilitation?” *Gagnon*, 411 U.S. at 784 (internal quotation marks omitted). The purpose of probation “is to help individuals reintegrate into society as constructive individuals as soon as they are able.” *Id.* at 783 (internal quotation marks omitted).

Voyeurism constituted two of the eight violations and would have been particularly troubling to the court considering the original offense was for kidnapping. R:2039-40. Additionally, Bilek pleaded no contest without admitted guilt and explained the circumstances of his original case, which he alleged was orchestrated by his ex-wife. R:2046. The district court abused its discretion when it found violations based on the allegations of voyeurism and this Court should reverse.

CONCLUSION

For the reasons above, Bilek respectfully requests that his sentence be reversed.


SUBMITTED this 19th day of July, 2016.



NATHALIE SKIBINE

CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(f)(1), I certify that this brief contains less than 14,000 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 Georgia 13 point.



NATHALIE SKIBINE

CERTIFICATE OF DELIVERY

I, NATHALIE S. SKIBINE, 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 three copies to the Utah Attorneys General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 19th day of July, 2016.



NATHALIE S. SKIBINE

DELIVERED this 19 day of July, 2016.



Tab A

The Order of the Court is stated below:

Dated: December 23, 2015
12:25:22 PM

/s/ Bruce Lubeck
District Court Judge



3RD DIST. COURT - WEST JORDAN
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	CHANGE OF PLEA
	:	
vs.	:	Case No: 141401370 FS
VRATISLAV ROGER BILEK,	:	Judge: BRUCE LUBECK
Defendant.	:	Date: December 23, 2015

PRESENT

Clerk: rhondam

Prosecutor: NATHAN J EVERSLED
THADDEUS J MAY

Defendant

Defendant's Attorney(s): CHRISTINE M SEAMAN
DANIEL M TORRENCE

Interpreter: Robert Santholzer (Other)

DEFENDANT INFORMATION

Language: Other

Date of birth: November 25, 1953

Sheriff Office#: 378824

Audio

Tape Number: Courtroom 32 Tape Count: 11:35-12:12

CHARGES

1. KIDNAPPING - 2nd Degree Felony

Plea: No Contest - Disposition: 12/23/2015 No Contest

2. KNOWINGLY PRODUCE/DISPENSE/MANUFACTURE CONTROLLED SUBSTANCE - 2nd Degree Felony

- Disposition: 12/23/2015 Dismissed w/ Prejudi

3. AGGRAVATED ASSAULT - 3rd Degree Felony

- Disposition: 12/23/2015 Dismissed w/ Prejudi

Defendant waives time for sentence.

HEARING

Defendant is present from Jail.

State submits an Amended Information

Defendant waives his right to a Preliminary Hearing. State consents to the waiver based on plea agreement in this case.

Jury Trial scheduled in this case is stricken.

Defendant is Ordered Released forthwith.

SENTENCE PRISON

Based on the defendant's conviction of KIDNAPPING a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

The prison term is suspended.

Credit is granted for time served.

SENTENCE JAIL SERVICE NOTE

Defendant is Ordered Released on this case Forthwith.

ORDER OF PROBATION

The defendant is placed on probation for 60 month(s).

Probation is to be supervised by Adult Probation and Parole.

No other violations.

Enter into and complete any treatment recommended by AP&P.

Not to possess or consume alcohol or non prescribed control substances.

Random urinalysis and drug testing as requested.

Submit to search of self or property by probation agent.

Not to associate with persons or frequent places where drugs or alcohol are sold.

Complete a substance abuse evaluation and comply with all recommended treatment.

Be screened by AP&P Treatment and Resource Center and complete any programming/treatment as directed;

Case No: 141401370 Date: Dec 23, 2015

No Female Overnight Stays during probation without approval of Adult Probation and Parole.

No Contact directly or indirectly with Lacy McDonald or Jolene Bagshaw.

Report to Adult Probation and Parole by December 28, 2015 by end of day to begin Probation.

Defendant to comply with all restraining orders concerning 563 Fruitwood Lane in Sandy Utah.

CUSTODY

The defendant is present in the custody of the Salt Lake County jail.

End Of Order - Signature at the Top of the First Page

The Order of the Court is stated below:

Dated: March 25, 2016
11:56:54 AM

/s/ Bruce Lubeck
District Court Judge



3RD DIST. COURT - WEST JORDAN
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 141401370 FS
VRATISLAV ROGER BILEK,	:	Judge: BRUCE LUBECK
Defendant.	:	Date: March 25, 2016

PRESENT

Clerk: rhondam
Prosecutor: EVERSLED, NATHAN J
Defendant
Defendant's Attorney(s): CHRISTINE M SEAMAN
Interpreter: Katerina Merrill (Other)
Agency: Adult Probation and Parole

DEFENDANT INFORMATION

Language: Other
Date of birth: November 25, 1953
Sheriff Office#: 378824
Audio
Tape Number: Courtroom 32 Tape Count: 9:32-11:49

CHARGES

1. KIDNAPPING - 2nd Degree Felony
Plea: No Contest - Disposition: 12/23/2015 No Contest
2. KNOWINGLY PRODUCE/DISPENSE/MANUFACTURE CONTROLLED SUBSTANCE - 2nd Degree Felony
- Disposition: 12/23/2015 Dismissed w/ Prejudi
3. AGGRAVATED ASSAULT - 3rd Degree Felony
- Disposition: 12/23/2015 Dismissed w/ Prejudi

HEARING

Case is before the Court for an Evidentiary Hearing. Counsel and defendant present.

Evidentiary Hearing is a violation of probation based on case 161400438 filed.

Counsel for the defendant requested a continuance. Counsel and defendant submit. Motion to compel and continuance is denied.

State's witness 1. Erin Conder is sworn and testifies. State's exhibit 2 is offered and received.

10:02 Attorney Heather Chesnut cross examination of witness.

10:15 Counsel for Defendant, Daniel Torrence cross examination of witness.

10:18 Redirect.

10:20 Recross, Attorney Heather Chesnut.

10:21 State's witness 2. Jerry Cook is sworn and testifies. Witness identifies the defendant.

10:27 State's witness 3. Dana Fiedler is sworn and testifies. Witness identifies the defendant.

10:32 Attorney Heather Chesnut cross examination of witness.

10:35 Counsel for Defendant, Daniel Torrence cross examination of witness.

10:40 State's witness 4. Brian Holdaway is sworn and testifies. State's exhibit 1 is offered, defense attorney Daniel Torrence objects. Court receives exhibit 1.

11:03 Attorney Heather Chesnut cross examination of witness.

11:05 State Rests.

Defendant waives his right to testify.

Court finds defendant has violated the allegations 1-8 alleged in the Affidavit in Support of Order to Show Cause. Court finds there has been preponderance of evidence that they all occurred. Defendant has willfully and knowingly violated his probation.

Case No: 141401370 Date: Mar 25, 2016

Counsel for the defendant requests that Sentencing as to Order to Show Cause be delayed until after Jury Trial in case 161400438.

State responds and requests to go forward.

Court denies the request of the defense and post sentencing to go forward.

State argues in re of sentencing.

11:36 Defendant speaks in re of sentencing.

11:49:58 end time.

SENTENCE PRISON

Based on the defendant's conviction of KIDNAPPING a 2nd Degree Felony, the defendant is sentenced to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

COMMITMENT is to begin immediately.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

The defendant's probation is revoked.

The defendant's probation is terminated unsuccessfully.

CUSTODY

The defendant is present in the custody of the Salt Lake County jail.

Case No: 141401370 Date: Mar 25, 2016

End Of Order - Signature at the Top of the First Page

Tab B

Utah Code § 77-18-1

(1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

(2)(a) On a plea of guilty, guilty with a mental illness, no contest, or conviction of any crime or offense, the court may, after imposing sentence, suspend the execution of the sentence and place the defendant on probation. The court may place the defendant:

- (i) on probation under the supervision of the Department of Corrections except in
- (ii) on probation with an agency of local government or with a private organization;
- or
- (iii) on bench probation under the jurisdiction of the sentencing court.

(b)(i) The legal custody of all probationers under the supervision of the department is with the department.

(ii) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(iii) The court has continuing jurisdiction over all probationers.

(3)(a) The department shall establish supervision and presentence investigation standards for all individuals referred to the department. These standards shall be based on:

- (i) the type of offense;
- (ii) the results of a risk and needs assessment;
- (iii) the demand for services;
- (iv) the availability of agency resources;
- (v) public safety; and

(vi) other criteria established by the department to determine what level of services

(b) Proposed supervision and investigation standards shall be submitted to the Judicial Council and the Board of Pardons and Parole on an annual basis for review and comment prior to adoption by the department.

(c) The Judicial Council and the department shall establish procedures to implement the supervision and investigation standards.

(d) The Judicial Council and the department shall annually consider modifications to the standards based upon criteria in Subsection (3)(a) and other criteria as they consider appropriate.

(e) The Judicial Council and the department shall annually prepare an impact report and submit it to the appropriate legislative appropriations subcommittee.

(4) Notwithstanding other provisions of law, the department is not required to supervise the probation of persons convicted of class B or C misdemeanors or infractions or to conduct presentence investigation reports on class C misdemeanors or infractions. However, the department may supervise the probation of class B misdemeanants in

accordance with department standards.

(5)(a) Before the imposition of any sentence, the court may, with the concurrence of the defendant, continue the date for the imposition of sentence for a reasonable period of time for the purpose of obtaining a presentence investigation report from the department or information from other sources about the defendant.

(b) The presentence investigation report shall include:

- (i) a victim impact statement according to guidelines set in Section 77-38a-203 describing the effect of the crime on the victim and the victim's family;
- (ii) a specific statement of pecuniary damages, accompanied by a recommendation from the department regarding the payment of restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act;
- (iii) findings from any screening and any assessment of the offender conducted under Section 77-18-1.1;
- (iv) recommendations for treatment of the offender; and
- (v) the number of days since the commission of the offense that the offender has spent in the custody of the jail and the number of days, if any, the offender was released to a supervised release or alternative incarceration program under Section 17-22-5.5.

(c) The contents of the presentence investigation report are protected and are not available except by court order for purposes of sentencing as provided by rule of the Judicial Council or for use by the department.

(6)(a) The department shall provide the presentence investigation report to the defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the court for review, three working days prior to sentencing. Any alleged inaccuracies in the presentence investigation report, which have not been resolved by the parties and the department prior to sentencing, shall be brought to the attention of the sentencing judge, and the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the report with the department. If after 10 working days the inaccuracies cannot be resolved, the court shall make a determination of relevance and accuracy on the record.

(b) If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter shall be considered to be waived.

(7) At the time of sentence, the court shall receive any testimony, evidence, or information the defendant or the prosecuting attorney desires to present concerning the appropriate sentence. This testimony, evidence, or information shall be presented in open court on record and in the presence of the defendant.

(8) While on probation, and as a condition of probation, the court may require that the defendant:

(a) perform any or all of the following:

- (i) pay, in one or several sums, any fine imposed at the time of being placed on probation;
- (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

- (iii) provide for the support of others for whose support the defendant is legally liable;
 - (iv) participate in available treatment programs, including any treatment program in which the defendant is currently participating, if the program is acceptable to the court;
 - (v) serve a period of time, not to exceed one year, in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;
 - (vi) serve a term of home confinement, which may include the use of electronic monitoring;
 - (vii) participate in compensatory service restitution programs, including the compensatory service program provided in Section 76-6-107.1;
 - (viii) pay for the costs of investigation, probation, and treatment services;
 - (ix) make restitution or reparation to the victim or victims with interest in accordance with Title 77, Chapter 38a, Crime Victims Restitution Act; and
 - (x) comply with other terms and conditions the court considers appropriate; and
- (b) if convicted on or after May 5, 1997:
- (i) complete high school classwork and obtain a high school graduation diploma, a GED certificate, or a vocational certificate at the defendant's own expense if the defendant has not received the diploma, GED certificate, or vocational certificate prior to being placed on probation; or
 - (ii) provide documentation of the inability to obtain one of the items listed in Subsection (8)(b)(i) because of:
 - (A) a diagnosed learning disability; or
 - (B) other justified cause.

(9) The department shall collect and disburse the account receivable as defined by Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

- (a) the parole period and any extension of that period in accordance with Subsection 77-27-6(4); and
- (b) the probation period in cases for which the court orders supervised probation and any extension of that period by the department in accordance with Subsection (10).

(10)(a)(i) Probation may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed pursuant to Section 64-13-21 regarding earned credits.

(ii)(A) If, upon expiration or termination of the probation period under Subsection (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench probation for the limited purpose of enforcing the payment of the account receivable. If the court retains jurisdiction for this limited purpose, the court may order the defendant to pay to the court the costs associated with continued probation under this Subsection (10).

(B) In accordance with Section 77-18-6, the court shall record in the registry of

civil judgments any unpaid balance not already recorded and immediately transfer responsibility to collect the account to the Office of State Debt Collection.

(iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its own motion, the court may require the defendant to show cause why the defendant's failure to pay should not be treated as contempt of court.

(b)(i) The department shall notify the sentencing court, the Office of State Debt Collection, and the prosecuting attorney in writing in advance in all cases when termination of supervised probation is being requested by the department or will occur by law.

(ii) The notification shall include a probation progress report and complete report of details on outstanding accounts receivable.

(11)(a)(i) Any time served by a probationer outside of confinement after having been charged with a probation violation and prior to a hearing to revoke probation does not constitute service of time toward the total probation term unless the probationer is exonerated at a hearing to revoke the probation.

(ii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation does not constitute service of time toward the total probation term unless the probationer is exonerated at the hearing.

(iii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation.

(b) The running of the probation period is tolled upon the filing of a violation report with the court alleging a violation of the terms and conditions of probation or upon the issuance of an order to show cause or warrant by the court.

(12)(a)(i) Probation may not be modified or extended except upon waiver of a hearing by the probationer or upon a hearing and a finding in court that the probationer has violated the conditions of probation.

(ii) Probation may not be revoked except upon a hearing in court and a finding that the conditions of probation have been violated.

(b)(i) Upon the filing of an affidavit alleging with particularity facts asserted to constitute violation of the conditions of probation, the court that authorized probation shall determine if the affidavit establishes probable cause to believe that revocation, modification, or extension of probation is justified.

(ii) If the court determines there is probable cause, it shall cause to be served on the defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show cause why the defendant's probation should not be revoked, modified, or extended.

(c)(i) The order to show cause shall specify a time and place for the hearing and shall be served upon the defendant at least five days prior to the hearing.

(ii) The defendant shall show good cause for a continuance.

(iii) The order to show cause shall inform the defendant of a right to be represented by counsel at the hearing and to have counsel appointed if the defendant is indigent.

(iv) The order shall also inform the defendant of a right to present evidence.

(d)(i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

(ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall present evidence on the allegations.

(iii) The persons who have given adverse information on which the allegations are based shall be presented as witnesses subject to questioning by the defendant unless the court for good cause otherwise orders.

(iv) The defendant may call witnesses, appear and speak in the defendant's own behalf, and present evidence.

(e)(i) After the hearing the court shall make findings of fact.

(ii) Upon a finding that the defendant violated the conditions of probation, the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.

(iii) If a period of incarceration is imposed for a violation, the defendant shall be sentenced within the guidelines established by the Utah Sentencing Commission pursuant to Subsection 63M-7-404(4), unless the judge determines that:

(A) the defendant needs substance abuse or mental health treatment, as determined by a risk and needs assessment, that warrants treatment services that are immediately available in the community; or

(B) the sentence previously imposed shall be executed.

(iv) If the defendant had, prior to the imposition of a term of incarceration or the execution of the previously imposed sentence under this Subsection (12), served time in jail as a condition of probation or due to a violation of probation under Subsection 77-18-1(12)(e)(iii), the time the probationer served in jail constitutes service of time toward the sentence previously imposed.

(13) The court may order the defendant to commit himself or herself to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or stay of sentence, only after the superintendent of the Utah State Hospital or the superintendent's designee has certified to the court that:

(a) the defendant is appropriate for and can benefit from treatment at the state hospital;

(b) treatment space at the hospital is available for the defendant; and

(c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for treatment over the defendants described in this Subsection (13).

(14) Presentence investigation reports are classified protected in accordance with Title 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a presentence investigation report. Except for disclosure at the time of sentencing pursuant to this section, the department may disclose the presentence investigation only when:

(a) ordered by the court pursuant to Subsection 63G-2-202(7);

(b) requested by a law enforcement agency or other agency approved by the department for purposes of supervision, confinement, and treatment of the offender;

(c) requested by the Board of Pardons and Parole;

(d) requested by the subject of the presentence investigation report or the subject's authorized representative; or

(e) requested by the victim of the crime discussed in the presentence investigation report or the victim's authorized representative, provided that the disclosure to the victim shall include only information relating to statements or materials provided by the victim, to the circumstances of the crime including statements by the defendant, or to the impact of the crime on the victim or the victim's household.

(15)(a) The court shall consider home confinement as a condition of probation under the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

(b) The department shall establish procedures and standards for home confinement, including electronic monitoring, for all individuals referred to the department in accordance with Subsection (16).

(16)(a) If the court places the defendant on probation under this section, it may order the defendant to participate in home confinement through the use of electronic monitoring as described in this section until further order of the court.

(b) The electronic monitoring shall alert the department and the appropriate law enforcement unit of the defendant's whereabouts.

(c) The electronic monitoring device shall be used under conditions which require:

(i) the defendant to wear an electronic monitoring device at all times; and

(ii) that a device be placed in the home of the defendant, so that the defendant's compliance with the court's order may be monitored.

(d) If a court orders a defendant to participate in home confinement through electronic monitoring as a condition of probation under this section, it shall:

(i) place the defendant on probation under the supervision of the Department of Corrections;

(ii) order the department to place an electronic monitoring device on the defendant and install electronic monitoring equipment in the residence of the defendant; and

(iii) order the defendant to pay the costs associated with home confinement to the department or the program provider.

(e) The department shall pay the costs of home confinement through electronic monitoring only for those persons who have been determined to be indigent by the court.

(f) The department may provide the electronic monitoring described in this section either directly or by contract with a private provider.

Utah Code § 76-9-702.7

(1) A person is guilty of voyeurism who intentionally uses a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means an individual:

- (a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;
- (b) without the knowledge or consent of the individual; and
- (c) under circumstances in which the individual has a reasonable expectation of privacy.

(2) A violation of Subsection (1) is a class A misdemeanor, except that a violation of Subsection (1) committed against a child under 14 years of age is a third degree felony.

(3) Distribution or sale of any images, including in print, electronic, magnetic, or digital format, obtained under Subsection (1) by transmission, display, or dissemination is a third degree felony, except that if the violation of this Subsection (3) includes images of a child under 14 years of age, the violation is a second degree felony.

(4) A person is guilty of voyeurism who, under circumstances not amounting to a violation of Subsection (1), views or attempts to view an individual, with or without the use of any instrumentality:

- (a) with the intent of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;
- (b) without the knowledge or consent of the individual; and
- (c) under circumstances in which the individual has a reasonable expectation of privacy.

(5) A violation of Subsection (4) is a class B misdemeanor, except that a violation of Subsection (4) committed against a child under 14 years of age is a class A misdemeanor.