

2016

**State of Utah, Plaintiff/ Appellee, v. Jared Michael Watring,
Defendant / Appellant.**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)	
)	
Plaintiff / Appellee,)	Case No. 20150841-CA
)	
v.)	
)	
JARED MICHAEL WATRING,)	
)	
Defendant / Appellant.)	

REPLY BRIEF OF APPELLANT

Appeal from Ruling and Order on Motion to Correct Illegal Sentence entered on September 15, 2015, in the Second District Court, Davis County, the Honorable John R. Morris, presiding

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FILED
UTAH APPELLATE COURTS

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ORAL ARGUMENT REQUESTED

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None.

ARGUMENTS

I. THE RECORD DEMONSTRATES THAT BECAUSE THE COURT'S JUDGMENT – ENTERED FEBRUARY 4, 2015 – WAS A VALID, LEGAL JUDGMENT, THE TRIAL COURT LACKED JURISDICTION TO RENDER THE SUBSEQUENT JUDGMENT IMPOSING CONSECUTIVE SENTENCES.

According to the State, the Judgment – entered February 4, 2015 – “did not divest the court of jurisdiction to correct its illegal sentence.” *See* Brief of Appellee, p. 11 *et seq.* Both the record and Utah law demonstrate otherwise.

Utah law dictates and the State does not dispute that “subject matter jurisdiction goes to the very power of a court to entertain an action.” *Glezos v. Frontier Investments*, 897 P.2d 1230, 1233 (Utah Ct. App. 1995). Moreover, “subject matter jurisdiction cannot be conferred upon a court by consent or waiver, and a judgment can be attacked for lack of subject matter jurisdiction at any time.” *Van Der Stappen v. Van Der Stappen*, 815 P.2d 1335, 1337 (Utah Ct. App. 1991) (citing *Thompson v. Jackson*, 743 P.2d 1230, 1232 (Utah Ct. App. 1987)). “Without subject matter jurisdiction, a court is *powerless to adjudicate a case.*” *State v. Rhinehart*, 2007 UT 61, ¶ 19, 167 P.3d 1046 (citing *United States v. Cotton*, 535 U.S. 625, 630, 122 S.Ct. 1781 (2002) (emphasis added)).

Utah law recognizes the “continuing jurisdiction of a trial court to correct an illegal sentence.” *State v. Babbel*, 813 P.2d 86, 88 (Utah 1991). Consequently, “[b]ecause an illegal sentence is void, the court does not lose jurisdiction over the sentence until that sentence has been corrected.” *Id.* However, “[o]nce a court imposes a valid sentence, it

loses subject matter jurisdiction over the case.” *Id.* (citing *State v. Lee Lim*, 79 Utah 68, 74, 7 P.2d 825, 827 (1932)). Therefore, “[a] judgment or order entered by a court lacking subject matter jurisdiction is void and does not affect the rights of any party.” *State v. Vaughn*, 2011 UT App 411, ¶ 12, 266 P.3d 202 (citing *Van Der Stappen v. Van Der Stappen*, 815 P.2d 1335, 1337 (Utah Ct. App. 1991) and *Johnson v. Johnson*, 2010 UT 28, ¶¶ 8-9, 234 P.3d 1100).

Here, Defendant appeared – on February 2, 2015 – and pleaded guilty to Possession or Use of a Controlled Substance, a third-degree felony (*see* R. 19; R. 89:11-13). After waiving time for sentencing, the trial court sentenced Defendant to a suspended term of zero to five years in the Utah State Prison with three years probation, during which he would enter into and complete the RSAT program (R. 89-90¹). The court then imposed a reduced sentence of 365 days in jail (R. 90:1-3; *see also* R. 19). The Sentence, Judgment, Commitment was entered that same day, which omitted the requisite concurrent / consecutive determination (*see* R. 19-20; Utah Code Ann. § 76-3-401(1)).²

Defendant appeared on the RSAT calendar the next day and admitted violating probation in the prior case (R. 95:2-6). Trial counsel asked the court to impose jail time and

¹See Transcript of Hearing held on February 2, 2015, R. 86-91, a true and correct copy of which is attached to this Brief as Addendum A.

²See Addendum A attached to the Brief of Appellant.

run the matters concurrent (R. 95:15-24); and the State remained silent.³ The court continued sentencing to pull the presentence report (R. 97:5-6). That same day, the court signed a second Judgment imposing the previously imposed sentence and ordered, “All cases and charges may run concurrent.” (R. 28-29).⁴ By adding the concurrent determination, as required by Utah Code Ann. § 76-3-401(1),⁵ the court imposed a valid sentence and consequently lost subject matter jurisdiction over the case for purposes of resentencing. *See Vaughn*, 2011 UT App 411 at ¶ 12, 266 P.3d 202; *Montoya*, 825 P.2d at 679.

At the continued sentencing hearing, trial counsel again requested that the court impose jail time or, in the event that prison was imposed, that the court run the matters concurrent (R. 100:9-17). Alternatively, counsel asked that if the court were to be so inclined as to impose consecutive sentences, that it affirmatively recommend Defendant eligible for further treatment at the prison (R. 100-01). The State – for what appears to be the first time – requested prison time and that the matters run consecutive (R. 101-02). Accordingly, the court revoked probation and imposed original sentences – which in the prior case resulted in two terms of zero to five years in the Utah State Prison, running

³See Transcript of Hearing held on February 3, 2015, R. 92-98, a true and correct copy of which is attached to this Brief as Addendum B.

⁴See Addendum B attached to the Brief of Appellant.

⁵Utah Code Ann. § 76-3-401(1) provides that “[a] court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses.”

concurrent with each other (R. 103-04). The court – in this case – imposed a term of zero to five years in the Utah State Prison to run consecutive with the sentence in the prior case with a specific recommendation for further treatment in prison (R. 104:7-10; *see also* R. 32-33).⁶ Because the court lost jurisdiction after imposing the previous Judgment, the court’s subsequent Judgment, signed and entered on February 12, 2015, was void and had no effect on Defendant’s substantial rights. *See State v. Rodrigues*, 2009 UT 62, ¶ 13, 218 P.3d 610 (“Once a court imposes a valid sentence and final judgment is entered, the court ordinarily loses subject matter jurisdiction over the case.”).

In its Brief, the State provides a tortured reading of Utah Code Ann. § 76-3-401(1), which states:

A court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses. The court shall state on the record and shall indicate in the order of judgment and commitment:

- (a) if the sentences imposed are to run concurrently or consecutively to each other; and
- (b) if the sentences before the court are to run concurrently or consecutively with any other sentences the defendant is already serving.

Utah Code Ann. § 76-3-401(1)(a) & (b). By so doing, the State contends – without any authoritative citation – that the “shall state on the record and shall indicate in the order of

⁶*See* Addendum C attached to the Brief of Appellant.

judgment and commitment” language of the statute require “something other than a recitation of concurrent or consecutive sentences in the order of judgment.” *See* Brief of Appellee, p. 24. This interpretation is directly inconsistent with subsection (4) of very same statute, which states:

If a written order of commitment does not clearly state whether the sentences are to run consecutively or concurrently, the Board of Pardons and Parole shall request clarification from the court. Upon receipt of the request, the court shall enter a clarified order of commitment stating whether the sentences are to run consecutively or concurrently.

See Utah Code Ann. § 76-3-401(4) (requiring only a clarified order).

II. ACCORDING TO ESTABLISHED UTAH LAW AND THE RECORD OF THIS CASE, THE TRIAL COURT ERRED BY DETERMINING THAT THE IMPOSITION OF CONCURRENT SENTENCES WAS A CLERICAL ERROR.

The State argues that “[t]he court correctly held that the February 3rd Judgment imposing concurrent sentences was clerical error.” *See* Brief of Appellee, p. 13 *et seq.* However, Utah law and the facts of this case dictate otherwise.

According to Rule 30 of the Utah Rules of Criminal Procedure, “[c]lerical mistakes in judgments . . . may be corrected by the court at any time.” Utah R. Crim. P. 30(b). The Utah Supreme Court, in *State v. Rodriguez*, 2009 UT 62, 218 P.3d 610, recognized that

A clerical error is one made in recording a judgment that results in the entry of a judgment which does not conform to the actual intention of the court. On the other hand, a judicial

error is one made in rendering the judgment and results in a substantively incorrect judgment.

Id. at ¶ 14, 218 P.3d 610 (quoting *Thomas A. Paulsen Co. v. Industrial Comm'n*, 770 P.2d 125, 130 (Utah 1989)); *see also State v. Perkins*, 2014 UT App 60, ¶ 10, 322 P.3d 1184. The State gives short shrift to the following three factors utilized in determining whether an error was clerical: “(1) whether the order or judgment that was rendered reflects what was done or intended, (2) whether the error is the result of judicial reasoning and decision making, and (3) whether the error is clear from the record.” *Rodrigues*, 2009 UT 62 at ¶ 14, 218 P.3d 610.

Under the first factor, the trial court’s Judgment stating that “[a]ll cases and charges may run concurrent” reflected what occurred at the sentencing on February 2, 2015, by accurately reflecting the fact that the trial court had imposed “a suspended term of zero to five years in the Utah State Prison”, placing Defendant on “probation”, sending him to the RSAT program, and imposing a reduced 365-day jail term (R. 89-90). Therefore, the imposition of concurrent sentences accurately reflected the trial court’s suspended and reduced sentence. This is consistent with the guiding principle that “it is ultimately the *intent* of the court or fact finder that is binding.” *See Rodrigues*, 2009 UT 62 at ¶ 15, 218 P.3d 610 (emphasis added). That intent was expressed in the nature of the sentence imposed shortly before the court ordered, “All cases and charges may run concurrent.” *See generally id.* at ¶ 23 (“We have specifically defined a judicial error as the deliberate result of the exercise of judicial reasoning and determination.” (citation and internal quotation

marks omitted)). In light of the nature and language utilized at sentencing, the trial judge intended to give Defendant the benefit of concurrent sentences.

As to the second factor, the trial court not only imposed a suspended sentence, but he placed Defendant on “probation” and sent him to the RSAT program. Then the court imposed a reduced 365-day jail term. All of this occurred shortly before ordering concurrent sentences. This suspended sentence, probation, and reduced jail term demonstrate the judicial reasoning supporting the imposition of concurrent sentences. Thus, the ordering of concurrent sentences was a result of the trial court’s judicial reasoning and decision making; indeed, concurrent sentencing was consistent with the reasoning the trial judge actually expressed in his decision. *See Finnegan v. Finnegan*, 535 P.2d 1159, 1159 (Utah 1975) (citing the “well known presumption of wisdom of the trial court in making a correct conclusion on the facts”); and *Parker v. Rolfson*, 525 P.2d 612, 614 n.5 (Utah 1974) (noting that the reviewing court presumes the trial court “had reason for his decree”).

Finally, as to the third factor, any claimed error is not clear from the record because such a claim of error is inconsistent with the trial court’s suspended prison sentence, the placement of Defendant on probation, and the imposition of a reduced jail term. To argue otherwise – as the State does – is to refuse to give weight to the reasoning expressed by the trial court in imposing the suspended prison sentence before ordering the concurrent sentences. This is consistent with the legal principle to be employed in this case, namely,

“it is ultimately the intent of the court or fact finder that is binding.” *Id.* at ¶ 15, 218 P.3d 610. Additionally, this is in harmony with the well-established principle applied on review that the trial court’s ruling “is presumed to be correct and will not be disturbed unless it is so unreasonable as to manifest a clear abuse of discretion.” *See John Price Associates, Inc. v. Davis*, 588 P.2d 713, 715 (Utah 1978); *see also State v. Cabututan*, 861 P.2d 408, 412 (Utah 1993) (“‘There is a presumption as to the correctness of the trial judge’s ruling in the absence of a demonstration to the contrary, and that decision will not be upset absent a clear abuse of discretion.’” (quoting 75 Am.Jur.2d Trial § 259 (1991))).

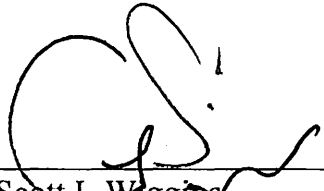
Consistent with the above-stated principles, the order of concurrent sentences reflected what the trial court intended, that ordering concurrent sentences was the result of judicial reasoning and decision making, and the record demonstrates the trial court’s intention to provide Defendant with the benefit of concurrent sentencing. Therefore, the trial court’s order that “[a]ll cases and charges may run concurrent” did not constitute a clerical error and the trial judge was not authorized to excise the improperly included language regarding concurrent sentencing. While Utah Rule of Criminal Procedure 30(b) allows for the correction of clerical errors, it does not provide the opportunity for the court to reconsider its prior sentence. *See Utah R. Crim. P. 30(b)*; *see also Atkin v. Parrish Oil Tools, Inc.*, 680 P.2d 401, 402 (Utah 1984) (“The fact that an intention was subsequently found to be mistaken would not cause the mistake to be ‘clerical.’” (citation omitted)).

CONCLUSION

Based on the foregoing as well as that set forth in the Brief of Appellant, Defendant respectfully requests that this Court set aside the trial court's Judgment imposing consecutive sentences and remand the case for further proceedings consistent with this Court's instructions as set forth in its opinion. Defendant also requests that the Court provide him with any other remedy that it deems just and appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 3rd day of November, 2016.

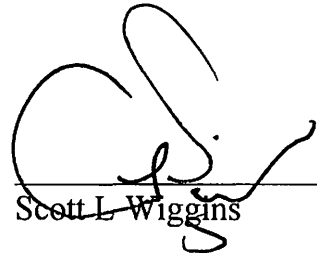
ARNOLD & WIGGINS, P.C.



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CERTIFICATE OF COMPLIANCE

The undersigned, Scott L Wiggins, hereby certifies, pursuant to Utah Rule of Appellate Procedure 24(f)(1)(C), that the Reply Brief of Appellant complies with the applicable type-volume limitation set forth in Utah Rule of Appellate Procedure 24(f)(1)(A) by containing 2,402 words.



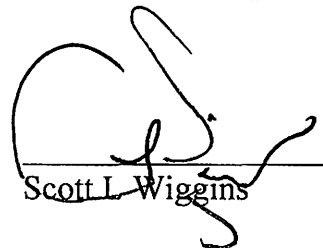
Scott L Wiggins

CERTIFICATE OF SERVICE

I, SCOTT L WIGGINS, hereby certify that I personally caused to be hand-delivered two (2) true and correct copies of the foregoing **REPLY BRIEF OF APPELLANT** to the following on this 4th day of November, 2016:

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The undersigned also certifies that he included a digital copy of the Reply Brief of Appellant.



Scott L Wiggins

ADDENDA

- Addendum A: Transcript of Hearing held on February 2, 2015, R. 86-91
- Addendum B: Transcript of Hearing held on February 3, 2015, R. 92-98

Tab A

IN THE SECOND JUDICIAL DISTRICT COURT
OF DAVIS COUNTY, STATE OF UTAH

STATE OF UTAH,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 151700133 FS
)	
JARED MICHAEL WATRING,)	
)	
Defendant.)	
)	

Hearing
Electronically Recorded on
February 2, 2015

BEFORE: THE HONORABLE JOHN R. MORRIS
Second District Court Judge

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P R O C E E D I N G S

(Electronically recorded on February 2, 2015)

THE COURT: Mr. Fujino, are you ready again?

MR. FUJINO: Jared Watring, No. 17, please.

THE COURT: State of Utah vs. Jared Watring, case No. 0133, set for arraignment. Waive reading of the Information?

MR. FUJINO: Yes, Judge. We have a resolution. He'll be entering a plea to possession of a controlled substance, a 3rd Degree. It's my understanding that the State's recommending RSAT. I think he's in RSAT --

THE COURT: He is.

MR. FUJINO: -- on an old case, and so we'd like to try and send him back there.

THE COURT: He's in RSAT currently, correct, and we're just waiting the resolution of this case, I believe.

MR. FUJINO: Right.

THE COURT: Okay. That's the agreement, 3rd Degree Felony, possession, Mr. Major?

MR. MAJOR: It is.

THE COURT: Then Mr. Watring, is that your understanding of the offer?

MR. WATRING: Yes, your Honor.

THE COURT: You've discussed this with Mr. Fujino?

MR. WATRING: Yes, your Honor.

THE COURT: Prepare to plead as indicated?

1 MR. WATRING: Yes, your Honor.
2 THE COURT: Your plea will be given to me freely and
3 voluntarily?
4 MR. WATRING: Yes.
5 THE COURT: Pleading guilty because you are guilty?
6 MR. WATRING: Yes.
7 THE COURT: Not under the influence of alcohol, drugs or
8 medications?
9 MR. WATRING: No, your Honor.
10 THE COURT: So you are thinking clearly this morning?
11 MR. WATRING: Yes, your Honor.
12 THE COURT: No one is forcing you to plead?
13 MR. WATRING: No, your Honor.
14 THE COURT: Have you read through the statement prepared
15 to support your plea?
16 MR. WATRING: Yes, your Honor.
17 THE COURT: Did you understand it?
18 MR. WATRING: Yes, your Honor.
19 THE COURT: Any questions concerning it?
20 MR. WATRING: No, your Honor.
21 THE COURT: All right. Then as soon as you get it back,
22 if you're prepared to accept the State's offer and acknowledge
23 the correctness and factual recitals in the statements, you may
24 do so by signing.
25 (Defendant signs statement in open court)

1 THE COURT: Okay. Now I remember, you had the
2 mushrooms. I find the factual recitals sufficient to support
3 your plea. Actually, it was mushrooms and something else, wasn't
4 it? Tramadol. Okay. Any other questions before I take your
5 plea?

6 MR. WATRING: No, your Honor.

7 THE COURT: Mr. Watring, to Count I, possession -- this
8 is just straight possession, gentlemen?

9 MR. FUJINO: Yes.

10 MR. MAJOR: Correct.

11 THE COURT: Possession or use of a controlled substance,
12 a 3rd Degree Felony as amended, how do you plead?

13 MR. WATRING: Guilty.

14 THE COURT: I'll accept your plea, find it knowingly,
15 voluntarily and intelligently made. I'll enter the plea as a
16 conviction, dismiss the other count, pursuant to motion of the
17 State. I will also sign your statement and enter it into the
18 record to support your plea. You're entitled to be sentenced
19 within 2 to 45 days of today. Waive time?

20 MR. FUJINO: Yes, we do.

21 THE COURT: Very well. Then Mr. Watring, for the crime
22 of 3rd Degree Felony, possession, you're sentenced to a suspended
23 term of zero to five years in the Utah State Prison. Conditions
24 of suspension will be as follows: placed on AP&P probation for a
25 period not to exceed three years, during which time you'll enter

1 into and successfully complete the RSAT program. As you know, I
2 sentenced you to 365 days in the county jail, but released to the
3 RSAT as soon as they can take you. I don't -- is he on the
4 calendar already tomorrow, or are we waiting for this?

5 (Court confers with court clerk)

6 THE COURT: Okay. He's -- all right. How big is the
7 calendar? Do we want to see him tomorrow?

8 COURT CLERK: We can.

9 THE COURT: We'll see you tomorrow afternoon.

10 MR. WATRING: All right. Thanks, your Honor.

11 THE COURT: All right. Good luck.

12 (Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

I, Natalie Lake, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.

That I have been authorized by Beverly Lowe to prepare said transcript, as an independent contractor working under her court reporter's license, appropriately authorized under Utah statutes.

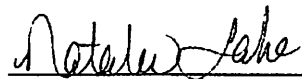
That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

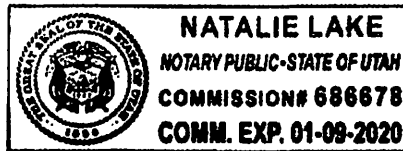
That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.


WITNESS MY HAND AND SEAL this 3rd day of February 2016.

My commission expires:
January 9, 2020



Natalie Lake
NOTARY PUBLIC
Residing in Tooele County





Beverly Lowe, RSR, CCR

Tab B

IN THE SECOND JUDICIAL DISTRICT COURT
OF DAVIS COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

JARED MICHAEL WATRING,

Defendant.

)
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Case No. 151700133 FS

Hearing
Electronically Recorded on
February 3, 2015

BEFORE: THE HONORABLE JOHN R. MORRIS
Second District Court Judge

APPEARANCES

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P R O C E E D I N G S

(Electronically recorded on February 3, 2015)

MR. BUSHELL: Your Honor, could we jump ahead to Jared's matter? Mr. Watring, please.

THE COURT: All right.

MR. BUSHELL: He's on the add-on.

THE COURT: So did you speak with him?

MR. BUSHELL: I did. I understand there was a plea yesterday in your Honor's court.

THE COURT: Yeah.

MR. BUSHELL: And then a sentence to here.

THE COURT: I went on auto pilot, I think.

MR. BUSHELL: That's kind of what we talked about. I don't think we've ever admitted the probation violation, so we'll start there today.

THE COURT: No.

MR. BUSHELL: We will admit that probation violation.

THE COURT: I need to get a copy from Jenn, if that's all right. Jared, I hope you weren't standing there yesterday wondering what's he talking about?

MR. WATRING: Yeah. I was a little confused on it, but all right.

THE COURT: Yeah, I was confused, too. That was Monday morning after I stayed up too late Sunday night, I think, and I just went on auto pilot, so sorry for the confusion.

1 MR. WATRING: You're all right.

2 THE COURT: Tim, do you have a copy -- a hard copy of

3 the affidavit that isn't marked on?

4 TIM: I could probably email you one if you want to --

5 THE COURT: Well, Jenn's printing it, so -- I just

6 wanted to see if we could save the time. It's a very -- so the

7 case ending 1211 there had been admission to. Was there one or

8 more allegations?

9 MR. BUSHELL: No, the only admission we'll make, your

10 Honor, is that he committed the newly offense of distribution.

11 THE COURT: Okay.

12 MR. WATRING: No, no, dis --

13 MR. BUSHELL: Or I'm sorry, attempted.

14 THE COURT: Okay. It's not -- it was pled down to --

15 MR. BUSHELL: Just straight possession?

16 MR. WATRING: Yeah.

17 MR. BUSHELL: Okay.

18 THE COURT: -- a possession.

19 MR. BUSHELL: Just --

20 MR. WATRING: Easy.

21 THE COURT: Yeah, it was pled down to that.

22 Mr. Bushell, you're well aware that this is the state, and we

23 don't have the most modern equipment.

24 MR. BUSHELL: I can hear it try to work, yeah.

25 THE COURT: Yeah. I'd like the affidavit before I --

1 (Court confers with court clerk)

2 THE COURT: Thank you. Okay. So in the case ending
3 1211, Jared, you admit that you violated the terms of your RSAT
4 probation by having committed the offense of possession or use of
5 a controlled substance on or about December 16th, 2014?

6 MR. WATRING: Yes, your Honor.

7 THE COURT: Okay. I'll accept that admission and find
8 you violated the terms of your probation. Mr. Bushell, what
9 should we be doing about the -- Tim's recommendation?

10 MR. BUSHELL: Well, I never really agree with Tim's
11 recommendations, and he knows that, but your Honor, I've talked
12 to Jared about that and I talked to him about yesterday's
13 sentence as well, and help is probably not going to be
14 applicable. The RSAT team is done with Jared.

15 I would ask the Court to consider in lieu of prison some
16 time in the Weber County -- or I'm sorry, the Davis County Jail
17 and then terminate him unsuccessful at that point. I would ask
18 that the matters run concurrent. I looks like we may need on the
19 new matter an oral allegation that he's unable to complete drug
20 court.

21 THE COURT: Uh-huh.

22 MR. BUSHELL: I've talked with Tim about -- or I'm
23 sorry, RSAT, and we would admit to that as well, and ask the
24 matters run concurrent with each other.

25 THE COURT: Okay. Does somebody wish to make the oral

1 allegation?

2 MR. LARSEN: Your Honor, I think we can just agree that
3 he was unable to complete RSAT as ordered.

4 THE COURT: Okay. All right, then. Jared, do you admit
5 that (inaudible) matter?

6 MR. WATRING: Yes, your Honor.

7 THE COURT: Thank you. Then we'll accept the admission
8 and find probation violations on that matter as well. When was
9 the last -- when did we last review Jared's situation? I wasn't
10 the sentencing judge, or was I?

11 COURT CLERK: Yes, you were.

12 THE COURT: Were I? Was I? Was that about three, four
13 years ago, Tim?

14 TIM: Let me look up the sentence date, if you want to
15 just hold tight for one second.

16 THE COURT: It says his probation date was 12/5/2011.

17 TIM: That was probably the sentencing date as well.

18 THE COURT: Okay. Mr. Bushell, if you're going to
19 request perhaps I consider something else, can we continue this a
20 week so I can pull up the pre-sentence report?

21 MR. BUSHELL: Of course, your Honor. Yes.

22 THE COURT: Then perhaps you and Jared could update me.

23 MR. BUSHELL: Absolutely.

24 THE COURT: Tim's got some information in here, but
25 mostly it's the things he, you know, -- well, and it's about half

1 what he did and half what he didn't do, but I'd like to know a
2 little bit more, and I'd like to pull the pre-sentence report.

3 MR. BUSHELL: Okay. I'm fine with that. I think that's
4 beneficial to my client.

5 THE COURT: Okay. We'll continue the sentencing one
6 week, and we'll pull the pre-sentence report.

7 (Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF TOOELE)

I, Natalie Lake, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.

That I have been authorized by Beverly Lowe to prepare said transcript, as an independent contractor working under her court reporter's license, appropriately authorized under Utah statutes.


That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

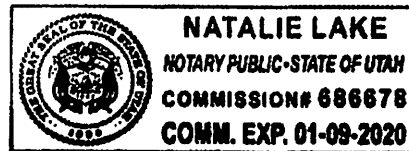
That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.


WITNESS MY HAND AND SEAL this 3rd day of February 2016.

My commission expires:
January 9, 2020



Natalie Lake
NOTARY PUBLIC
Residing in Tooele County





Beverly Lowe, RSR, CCR