

2016

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

Utah Court of Appeals

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Case No. 20150841-CA

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IN THE  
UTAH COURT OF APPEALS

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STATE OF UTAH,  
*Plaintiff/Appellee,*

*v.*

JARED MICHAEL WATRING,  
*Defendant/Appellant.*

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Brief of Appellee

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Appeal from Ruling and Order denying Motion to Correct  
Illegal Sentence, in the Second Judicial District, Davis County,  
the Honorable John R. Morris presiding

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Oral Argument Requested

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Brief of Appellee

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**STATEMENT OF JURISDICTION**

Defendant appeals from a Ruling and Order denying his Motion to Correct Illegal Sentence. This Court has jurisdiction under Utah Code Ann. § 78A-4-103(2)(e) (West Supp. 2016).

**INTRODUCTION**

Defendant seeks a sentencing windfall that is directly contrary to applicable statutes, the Rules of Criminal Procedure, and the understanding of all participants at the relevant hearings.

Already on probation for two third degree felony counts of possession of a controlled substance and a DUI, Defendant was participating in the Regional Substance Abuse Treatment ("RSAT")



program mandated as part of his probation. While on probation, he was arrested for growing psilocybin mushrooms.

On February 2, 2015, Defendant pled guilty to a new felony in connection with his mushroom arrest and agreed to be sentenced. The court imposed an incomplete sentence, without ruling on or even mentioning whether his new sentence would run concurrent or consecutive with the sentences for his previous convictions. At a probation hearing the next day, the court realized Defendant was now disqualified from the RSAT program and that his new conviction violated the terms of his ongoing probation for his prior convictions. Defendant's counsel argued that the sentences should all run concurrently, but the court again made no decision on that issue. Instead, it indicated that it wanted to review the record and set a new sentencing for February 10, 2015. At the continued hearing, counsel argued the concurrent/consecutive issue and the court imposed consecutive sentences. A written judgement to that effect was issued two days later.

However, at some point on February 3, 2015, the court signed an order of judgment that stated: "All cases and charges may run concurrent." Although neither the court nor the parties ever acknowledged or behaved in accordance with that order, Defendant now argues that the February 3rd

judgment imposed a complete sentence that divested the court of jurisdiction to impose consecutive sentences at the February 10th hearing. The district court correctly denied Defendant's Motion to Correct Illegal Sentence, holding that the February 3rd judgment reciting concurrent sentences was a clerical error, that the initial sentence was illegal because it was missing a necessary term, and that the February 10th sentencing hearing corrected that illegality and imposed a valid sentence.

The district court was correct and should be affirmed.

### STATEMENT OF THE ISSUES

1. Did the district court have jurisdiction to correct its sentence?

*Standard of Review.* Whether a district court has subject matter jurisdiction is a question of law reviewed for correctness. *See State v. Young*, 2014 UT 34, ¶5, 337 P.3d 227.

2. Did the district court correctly determine that the February 10, 2015 sentencing corrected its prior illegal sentence?

*Standard of Review.* "Sentencing decisions are generally reviewed under an abuse of discretion standard." *State v. Yazzie*, 2009 UT 14, ¶6, 203 P.3d 984. However, where the "underlying issue . . . is one of statutory interpretation" it is reviewed "for correctness, affording no deference to a lower court's legal conclusions." *Id.* Similarly, "the interpretation of a rule

of procedure is a question of law . . . review[ed] for correctness.” *Brown v. Glover*, 2000 UT 89, ¶15, 16 P.3d 540.

## CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following constitutional provisions, statutes, and rules are reproduced in Addendum A:

- Utah Code Ann. § 76-3-401 (West 2015)
- Utah R. Crim. Pro. 22(e) (correction of illegal sentences)
- Utah R. Crim. Pro. 30(b) (correction of clerical errors)

## STATEMENT OF THE CASE

### A. Summary of facts.

In December 2011, Defendant received two suspended zero-to-five-year prison terms and a suspended jail term of 180 days in connection with two third degree felonies and a DUI in case number 1017011211. (Add. B.) He was also sentenced to probation and enrolled in the court-supervised RSAT program. In December 2014, AP&P searched Defendant’s home and discovered psilocybin mushrooms and Tramadol, for which Defendant did not have a prescription. (R. 2.) This led to the charges in the instant case and violated his parole in his prior case.

Defendant was charged in the instant case, case number 151700133, with one count of possession of a controlled substance with intent to

distribute, a second degree felony, and possession or use of a controlled substance, a class B misdemeanor. (R. 10.) He appeared at his preliminary hearing on January 26, 2015. (Add. C.) Defendant appeared again on February 2, 2015 and pled guilty to an amended count of possession or use of a controlled substance, a third degree felony. (R. 89.) The court conducted a plea colloquy, and then sentenced Defendant to a suspended term of zero to five years, imposed a one year jail sentence and probation that included enrolling in and completing the RSAT program. (R. 88-90.) The court added Defendant to the following day's RSAT calendar, but made no mention as to whether the new sentence would run concurrent with or consecutive to the sentence in the prior case. (R. 90.)

The next day, February 3, 2015, Defendant appeared on the RSAT calendar in connection with both his prior case and the instant case. The court acknowledged that (1) Defendant had violated his probation in his prior case and would be kicked out of the RSAT program as a result, (2) he was similarly no longer eligible for the RSAT program in the instant case, and (3) he was therefore unable to complete his probation in the instant case. (R. 93-96.) The court admitted that it had been "confused" the previous day, stating that it was "Monday morning after I stayed up too late



Sunday night . . . I just went on auto pilot, so sorry for the confusion.” (R. 93.)

At the February 3rd hearing, defense counsel argued that the sentences for the two cases should run concurrently. (R. 95.) The court again made no ruling on the issue, but instead said to defense counsel, “if you’re going to request perhaps I consider something else, can we continue this a week so I can pull up the pre-sentence report?” (R. 96.) Defense counsel agreed and the court noted it wanted “to know a little bit more” and stated twice more that it wanted to review the pre-sentence report. (R. 97.) The court concluded: “We’ll continue the sentencing for one week.” (R. 97.)

Despite the clear statement of the court’s intent to continue sentencing and review additional information, on that same day, February 3, 2015, the court unaccountably signed an order of judgment in connection with the instant case. (Add. E.) The record sheds no light on whether the order was signed before or after the February 3rd hearing. The judgment imposed the suspended sentence, jail term, and RSAT probation discussed at the February 2nd hearing in the instant case. (Add. E at 1.) It also included the phrase “all cases and charges may run concurrent.” (Add. E at 2.)

Despite the February 3rd judgment, the continued sentencing hearing on February 10th commenced with the court noting that it was a sentencing hearing. (R. 100:5-8.) The parties focused their arguments almost entirely on whether the sentences in the two cases should be concurrent or consecutive. (R. 100-102.) The court heard from Defendant and then made findings on the record, calling Defendant's behavior "a big mistake . . . a major mistake," (R. 103:21), and admonishing him for involving another participant from the RSAT program in his new crime. (R. 103:22-24.) The court then revoked probation in both cases and imposed the three suspended sentences from the 2011 conviction (which were to run concurrently with each other) and the suspended sentence from the February 2, 2015 sentencing in the instant case, ordering it to run consecutive to the 2011 sentences. (R. 104; Add. F.) Neither the court nor the parties referred to the February 3, 2015 judgment or suggested that the court had already ruled on the concurrent/consecutive sentence question.

**B. Summary of proceedings.**

On July 14, 2015, Defendant filed a *pro se* Motion to Correct Illegal Sentence. (R. 35-47.) Although pled only in the barest sense, Defendant raised the fundamental question of why the language of the February 3rd judgment was not binding and asked how the court was able to impose

consecutive sentences at the February 10th hearing. The State did not respond to Defendant's motion. *Id.*

The court denied the motion on September 15, 2015. (Add. G.) The court held that two errors had occurred. The first was that, at the February 2, 2015 hearing, it "made no order as to whether Defendant's sentence would run concurrent with or consecutive to the sentence Defendant was already serving" in connection with the prior case. (Add. G at 2.) The court found this "omission constituted the imposition of an illegal sentence." *Id.* It held that a second error occurred when the "Court's Clerk mistakenly included language within the Minute Entry, which states 'All cases and charges may run concurrent.'" *Id.* (quoting the February 3rd judgment).<sup>1</sup> The court found that "[i]t was not the Court's intent to order Defendant's

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<sup>1</sup> The record in this case is confusing. In its September 15, 2015 order denying the motion to correct illegal sentence, the court refers to the Minute Entry as occurring on February 2, 2015 – the date of the hearing – but it was signed by the court on February 3, 2015. (See Add. E.) But the February 3rd order was docketed on February 4, 2015 and Defendant refers to it in his brief as the February 4, 2015 judgment. (See Br.Aplt. at 1.) When the court ordered the Minute Entry corrected, a new order was docketed with the language regarding concurrent sentences stricken. Although entered after the court's September 15, 2015 order, it is signed as of "February 2, 2015," file stamped "Feb-2 2015" and entered into the electronic docket as though occurring on February 2, 2015 with a handwritten note reading "Amended" on it. (See Add. D.) Because the timing is important to assessing judicial intent, the State refers to the judgment, (Add. E), by the date it was signed by the court – February 3, 2015.

sentences to run concurrent and the Court was unaware that the Minute Entry included this language when it signed and entered the Minute Entry.” *Id.* The court then pointed out that Defense counsel argued for concurrent sentences at the February 3rd RSAT hearing, but that the court “continued sentencing in the cases to February 10, 2015, so that it could review Defendant’s Pre-Sentence Investigation report.” *Id.* at 2-3. The court then held that the February 10th sentencing was valid and “corrected the illegal sentence imposed at the February 2, 2015 hearing.” *Id.* at 3. It further ordered that an “Amended Minute Entry” be entered correcting the clerical error.<sup>2</sup>

## SUMMARY OF ARGUMENT

Defendant seeks a sentencing windfall from an illegal order that was followed by a clerical mistake. The only honest reading of the transcripts of

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<sup>2</sup> With his brief, Defendant includes the amended judgment as Addendum A and describes it as though it was in fact entered on February 2, 2015. (Br.Aplt. at 5.) This appears to be incorrect. The footer at the bottom of the judgment notes that the document the court signed was printed on September 21, 2015 – after the court denied Defendant’s motion. (See Add. D.) The court ordered “that the clerical error in the Minute Entry for Defendant’s February 2, 2015 hearing be corrected by the issuance of an Amended Minute Entry.” (Add. G at 3.) Addendum D to this brief (Addendum A to Defendant’s brief) appears to be that judgment and is docketed as “Amended Minutes 2/2/15.” Although unfortunately ambiguous, this document does not appear to be contemporaneous with the hearings and judgments at issue in this appeal.



the three relevant hearings is that no one involved – not the court, the Defendant, defense counsel, or the prosecutor – thought that the court ever ordered concurrent sentences. Months after the fact, Defendant stumbled across a mistake in the record and now tries to cash it in for a sentence reduction.

Utah law mandates that the court “*shall state on the record and shall indicate in the order of judgment*” whether the sentence is to run concurrent with or consecutive to any other sentences the defendant is serving. Utah Code Ann. § 76-3-401(1) (West 2015) (emphasis added). Failure to do so renders the resulting sentence illegal. Defendant does not dispute that no such statements were made at the February 2nd hearing. The sentence imposed was therefore illegal because it omitted a statutorily-required term.

The statement in the February 3rd judgment regarding concurrent sentences was a clerical error because, as the court held, it did not reflect its intent at the February 2nd hearing. There was no statement at the hearing regarding concurrent sentences, no judicial intent to enter such an order, and the record as a whole shows that neither the parties nor the court believed the concurrent/consecutive issue was resolved until the February 10th hearing. Furthermore, the February 3rd judgment could not correct the illegal sentence even if it was not clerical error because the judgment did not

supply the required "on the record" statement mandated by Utah Code Ann. § 76-3-401(1). Therefore, the district court retained jurisdiction until it issued the February 12th judgment.

The February 10, 2015 hearing and its resulting February 12, 2015 judgment were the first time the court entered a valid sentence, thereby correcting the prior illegal sentence.

This Court should affirm the district court's February 12, 2015 judgment and sentence and its denial of Defendant's rule 22(e) motion.

## ARGUMENT

### I.

#### THE FEBRUARY 3RD JUDGMENT DID NOT DIVEST THE COURT OF JURISDICTION TO CORRECT ITS ILLEGAL SENTENCE

##### A. The February 2, 2015 sentence was illegal.

"[D]eterminations of concurrent or consecutive sentencing are to be made at the time of final judgment." *State v. Yazzie*, 2009 UT 14, ¶8, 203 P.3d 984. "A court *shall* determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences" and "*shall state on the record and shall indicate in the order of judgment and commitment*" whether sentences are to be concurrent or consecutive with each other and "with any other sentences the defendant is

already serving.” Utah Code Ann. § 76-3-401(1)(a)-(b) (West 2015) (emphasis added).

This did not happen at the February 2, 2015 hearing. At that hearing the court made no determination on the record regarding concurrent or consecutive sentences. This fact alone makes the sentence illegal because it “omits a term required to be imposed by statute.” *Yazzie*, 2009 UT 14, ¶13, (adopting definition of “illegal sentence” promulgated by *United States v. Dougherty*, 106 F.3d 1514, 1515 (10th Cir. 1997)); *see also id.* ¶16. “As a rule, illegal sentences are void and neither create rights nor impair or affect any rights.” *Id.* at ¶17 (citing *State v. Babel*, 813 P.2d 86, 88 (Utah 1991)). When a sentence is illegal, “the jurisdiction of the district court continues until a valid sentence is imposed.” *Id.*

Much like Defendant here, Yazzie was on probation for two felonies when he was convicted of two more felonies. *Id.* at ¶¶2-3. The court sentenced him for the new felonies, suspended the sentence and imposed jail time and probation, but made no mention of whether the new sentences would be concurrent with or consecutive to the old ones. *Id.* ¶3. Yazzie later violated his probation and the judge in the second case imposed the suspended sentences and only then ordered them to run consecutive to the sentences in Yazzie’s prior case. *Id.* at ¶4. The Utah Supreme Court held

that the concurrent/consecutive determination was a statutorily-required term of the sentence and its omission left the original sentence incomplete and therefore illegal. *Id.* at ¶ 16. The Court then held that the later parole revocation and sentencing “in effect, corrected the illegally imposed sentence” by satisfying the statutory requirements, resulting in a valid sentence. *Id.* at ¶ 17. The facts of this case are even stronger than *Yazzie* because here we have the district court’s own factual findings about its lack of intent to impose concurrent sentences at the February 2nd hearing. (Add. G at 3.) Defendant neither discloses *Yazzie* nor confronts its reasoning and holding.

Because the sentence imposed at the February 2, 2015 hearing omitted the same term at issue in *Yazzie*, the February 2nd sentence was illegal. The central question then becomes: When did the district court correct the illegal sentence and impose a valid one? Defendant argues that occurred the next day when the court signed the written order that included language about concurrent prison terms. (Br.Aplt. at 12.) But that language was clerical error and, even if it was not, it did not impose a valid sentence in any event.

**B. The court correctly held that the February 3rd judgment imposing concurrent sentences was clerical error.**

Rule 30(b) provides that “[c]lerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or



omission may be corrected by the court at any time.” Utah R. Crim. P. 30(b). Hence, the existence of jurisdiction to amend the original sentencing order hinges on whether the district court was correcting a clerical error under rule 30(b), Utah Rules of Criminal Procedure. *See State v. Rodrigues*, 2009 UT 62, ¶13, 218 P.3d 610.

A rule 30(b) analysis requires distinguishing between clerical and judicial errors. *See id.* at ¶14. “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.* (quoting *Thomas A. Paulsen Co. v. Indus. Comm’n*, 770 P.2d 125, 130 (Utah 1989)). The appellate court “look[s] to the record to harmonize the intent of the court with the written judgment” in order to determine whether the mistake is clerical. *See id.* (quoting *State v. Lorrach*, 761 P.2d 1388, 1389 (Utah 1988)). The inquiry does not turn on the identity of the one who made the error, but rather “whether the error ‘is clearly a formal error that should be corrected in the interest of having [the] judgment, order, or other part of the record reflect what was done or intended.’” *Id.* (quoting *Bishop v. GenTec, Inc.*, 2002 UT 36, ¶30, 48 P.3d 218 (additional quotations omitted)). In short, the Court looks at “(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.” *Id.* at ¶14.

Defendant’s entire argument as to each of the three *Rodriguez* factors rests on the court’s imposition of the suspended prison term. (Br.Aplt. at 14-15.) But that singular fact is not logically related to the concurrent/consecutive question and does not compel Defendant’s conclusion.

**1. The district court did not intend to rule on concurrent or consecutive sentences at the February 2nd hearing.**

An error in the recording of a judgment is clerical when it results in “the entry of a judgment which does not conform to the actual intention of the court.” *Rodriguez*, 2009 UT 62, at ¶15 (quotation omitted). The parties’ intent may be considered in the analysis, but “it is ultimately the intent of the court or fact finder that is binding.” *Id.* Efforts to correct a clerical error “must be undertaken for the purpose of reflecting the actual intention of the court.” *Id.* (quoting *Lindsay v. Atkin*, 680 P.2d 401, 402 (Utah 1984)).

Defendant argues that “[b]ased on the nature [sic] and language utilized at sentencing, the trial judge intended to give Defendant the benefit of concurrent sentences.” (Br.Aplt. 14.) He claims that the mere act of

imposing a suspended prison term, 365 days in jail, and probation reflects an intent to give concurrent sentences. *Id.* But that does not follow. Utah courts impose suspended sentences that run consecutive to prior sentences all the time – especially where a jail term and probation are imposed. It is just as likely that the court intended Defendant’s suspended sentence, jail, and probation to begin after any previously imposed sentences expired. Not only are these terms not mutually exclusive with a consecutive sentence, they have no logical connection to one another. Defendant cites no cases for his proposition, nor does he point to any specific language in the transcript to support it – for the simple reason that the record of the February 2nd hearing is silent on the subject of concurrent or consecutive sentences in violation of Utah Code Ann. § 76-3-401(1)(a)-(b).

The entire February 2nd transcript runs only three and a half pages and is subject to only a single interpretation: The district court – admittedly tired and “confused” at the hearing, (R. 93) – did not give a moment of thought to the subject of concurrent or consecutive sentences. The bulk of the transcript concerns the plea colloquy. (R. 87-90.) The sentencing occupies only nine lines of text at the very end and reflects some internal confusion about the hearing itself, with the judge saying “As you know, I sentenced you to 365 days in the county jail” when there was no mention of

any such thing prior to that. (R. 89-90.) Nothing in the transcript supports Defendant's reading.

*Rodrigues* makes clear that the distinction between clerical and judicial error does not hinge on who makes the error – the judge or the clerk – but on whether the error is one that must be corrected in order to have the judgment accurately reflect what the court intended. *See Rodrigues*, 2009 UT 62, ¶14. The clerical error analysis looks at the intent of the district court, not the accuracy of the court clerk in recording the judgment announced by the court. *See id.* at ¶14 & n.4.

*State v. Perkins*, 2014 UT App 60, 322 P.3d 1184, illustrates this point. There, the on-the-record statements and the judgment *both* imposed concurrent sentences, yet both were found to be clerical error. *Id.* at ¶¶14-15. Perkins pled to two child abuse counts while on parole. The district court expressed outrage at Perkins's history of child abuse, stating "I quite frankly don't think you should ever walk the streets again," yet moments later stated, "I'm going to sentence you to two third degree felonies, zero to five years on each one to run concurrently with each other" and "concurrently" to the sentences Perkins was then serving. *Id.* at ¶5. The clerk issued a written judgment reciting concurrent sentences. *Id.* at ¶6. When the mistake was pointed out, the court ruled the error was clerical



because the record reflected a clear intent to impose consecutive sentences, notwithstanding the words spoken. *Id.* This Court affirmed, despite unambiguous statements imposing concurrent sentences in both the record and judgment. *Id.* at ¶16. Thus, it did not matter that the clerk issued a written ruling that accurately reflected the words the judge spoke, because the words themselves were the clerical error. Judges and clerks can both make correctable clerical errors.

Here, the facts are at least as strong as *Perkins*. With a silent record, Defendant tries to take advantage of the court clerk mistakenly filling the hole in the sentencing by including boilerplate language regarding concurrent sentences. But the fact that the court clerk later included the errant language in the February 3rd judgment is not itself evidence of the court's intent. The court's intent must be gleaned from the hearing and the surrounding facts. The hearing contains nothing but silence. And the surrounding facts suggest an understanding by all participants that no decision on concurrent or consecutive sentences was reached at the February 2nd hearing. As such, the February 3rd judgment does not reflect what was done or intended at the hearing. *See Rodriques*, 2009 UT 62, ¶14.

2. The error was not a result of judicial reasoning or decision making and the error is clear from the record.

Defendant makes the same flawed arguments for the second and third *Rodrigues* factors, asserting the same conditional syllogism: If a court imposes a suspended sentence, then it intends to impose concurrent prison terms. But the premise does not compel the conclusion. The court's reasoning in imposing a suspended sentence implies nothing about the judge's reasoning on when that sentence should begin in relation to other sentences. As discussed above, this record is quite clear that the judge did not engage in any "reasoning" or thought of any kind regarding concurrent sentences at the February 2nd hearing.

That the clerk later mistakenly included the language regarding concurrent sentences in the judgment does not retroactively create judicial reasoning where there was none. Indeed, at the February 3rd hearing the court heard argument from defense counsel regarding concurrent sentences, and then punted the issue. (R. 94-95.) After discussing sentencing generally with defense counsel, the court said, "Mr. Bushell, if you're going to request perhaps I consider something else, can we continue this a week so I can pull the pre-sentence report?" (R. 96.) Defense counsel agreed and the court noted "I'd like to know a little bit more, and I'd like to pull the pre-sentence

report.” (R. 97.) The court then concluded, “Okay. We’ll continue the sentencing one week, and we’ll pull the pre-sentence report.” *Id.*

When the parties arrived at the February 10th hearing they spent approximately half of their time arguing the concurrent/consecutive issue. (R. 100-102.) The court considered the arguments and statements from the Defendant, made factual findings, and imposed consecutive sentences, on the record, as required by Utah Code section 76-3-401(1)(a)-(b). Everything about this chain of events suggests that the court and the parties explicitly refrained from finally addressing the concurrent/consecutive issue until the February 10th hearing, and that the February 3rd judgment was therefore clerical error. *See Rodrigues*, 2009 UT 62, ¶14.

It does not matter if the February 3rd order was signed before or after the February 3rd hearing; on this record, the order makes no sense either way. When Defendant argues that the February 3rd judgment reflects the court’s intent at the February 2nd hearing he does not account for any events after the hearing. *See Perkins*, 2014 UT App 60 at ¶15 (discussing the importance of the court’s actions after the clerical error). He simply ignores them. However, if one views the February 3rd order as reflecting the court’s intent from February 2nd, the later arguments of counsel and the considerations of the court become nonsensical.

The court's failure to correct defense counsel at the February 3rd hearing when he begins asking for concurrent sentences by informing him that the issue had already been decided can only be read as indicating that the court was not aware of the language in the February 3rd judgment. Even more perverse would be the judge "pretending" to want to review the pre-sentence report and "know a little bit more" about an issue that he had secretly decided just before the hearing or, alternatively, going ahead and deciding immediately after the hearing despite his cutting off counsel on the issue and his ruling to continue the sentencing. Under Defendant's version of the facts, the February 10th hearing, complete with arguments of counsel directly on the topic and rulings by the court imposing consecutive instead of the previous concurrent sentences becomes little more than farce.

No honest reading of the totality of this record supports Defendant's interpretation. The court wanted to know more at the February 3rd hearing because it took the sentencing issue seriously, wanted to get it right, and had *not already decided the issue*. By the February 10th hearing, the erroneous February 3rd judgment had been in the record (and presumably served on counsel) for approximately a week. This further indicates that none of the participants - especially the court - had seen the language regarding concurrent sentences. Surely, if defense counsel thought the court had

already ruled in his favor he would have argued that at the February 10th hearing. The only judicial intent apparent from the record is the desire to review the pre-sentence report and hear arguments from counsel on whether the sentences should be concurrent or consecutive. The court's explicit, on-the-record statements are the best evidence of its intent, and against that evidence the February 3rd judgment looks groundless and erroneous.

Indeed, without the February 3rd judgment, this record makes perfect sense, follows a very normal pattern for sentencing, and is open to only one realistic interpretation that accounts for all of the events. The language regarding concurrent sentences in the February 3rd judgment was nothing but a clerical mistake.

This Court should affirm the district court's ruling that the February 3rd judgment contained a clerical error and its order striking language referring to concurrent sentences. And because this ruling was correct, the court retained jurisdiction until a valid sentence was entered. *See Yazzie*, 2009 UT 14, ¶17.

**C. Even if there was no clerical error, the February 3rd judgment did not correct the prior illegal sentence.**

Defendant argues that when the district court signed the February 3rd judgment containing the language regarding concurrent sentences it

immediately "lost subject matter jurisdiction over the case for the purposes of resentencing." (Br.Aplt. at 12.) He cites cases for the uncontroversial proposition that a court loses subject matter jurisdiction once a valid sentence is imposed. But he omits any discussion of how those cases compel the result he seeks. Defendant does not meet his burden of persuasion because he fails to offer reasoned argument from the authorities he relies on. Utah R. App. P. 24(a)(9); *State v. Nelson*, 2015 UT 62, ¶39, 355 P.3d 1031 (stating Utah appellate courts "require 'not just bald citation to authority but development of that authority and reasoned analysis based on that authority'" (citation omitted)).

In any event, none of the cases Defendant cites merit any discussion because they are factually inapposite and do not address the statute applicable here. Defendant merely asserts that as soon as the court supplied the term that was missing from the February 2nd hearing the sentence was complete and the court's jurisdiction evaporated, thereby voiding the February 10th hearing and February 12th judgment. (Br.Aplt. at 12-13.) But the applicable statute mandates that the court "*shall* state on the record *and shall* indicate in the order of judgment" whether the sentences it imposes "are to run concurrently or consecutively with any other sentences the



defendant is already serving.” Utah Code Ann. § 76-3-401(1) & (1)(b) (emphasis added).

“The primary rule of statutory interpretation is to give effect to the intent of the legislature in light of the purpose the statute was meant to achieve.” *State v. Bluff*, 2002 UT 66, ¶ 34, 52 P.3d 1210. To discover that intent, the Court looks “first to the plain language of the statute.” *Id.* The Court assumes “that each term in the statute was used advisedly; thus the statutory words are read literally, unless such a reading is unreasonably confused or inoperable.” *Id.* An interpretation that “would render portions of the statute redundant, superfluous, and inoperable” is “impermissible under the plain language rule.” *Id.* at ¶ 35.

Although the State is unaware of any cases interpreting “shall state on the record and shall indicate in the order of judgment” in section 76-3-401(1), the plain language indicates that, whatever a statement “on the record” is, it must be something other than a recitation of concurrent or consecutive sentences in the order of judgment. The statute plainly requires both. To interpret a recitation in the order of judgment as satisfying the “on the record” requirement renders the “on the record” language and the conjunctive “and” between the two terms wholly superfluous. Because courts “interpret statutes to give meaning to all parts, and avoid rendering

portions of the statute superfluous” the on the record requirement must be, at minimum, a statement by the court beyond that contained in the order of judgment. See *State v. Watkins*, 2013 UT 28, ¶23, 309 P.3d 209 (quoting *Summit Operating, LLC v. Utah State Tax Comm’n*, 2012 UT 91, ¶11, 293 P.3d 369) (internal quotations and alterations omitted). No such statement exists on this record.

This reading makes sense given the gravity of sentencing determinations. To avoid the very problem raised in this case, statements regarding concurrent or consecutive sentences must be made “on the record” and the terms recited in the order of judgment must accord with those on the record statements. In other words, the court cannot say one thing (or, as in this case, nothing at all) on the record and then order something different in the written judgment.

The most natural meaning of “on the record” is the one used colloquially by lawyers and judges on a daily basis in courts across the country – meaning a statement in open court or *in camera*, recorded in some reliable fashion, that provides “an objective basis for review.” *State v. Pedockie*, 2006 UT 28, ¶42, 137 P.3d 716 (quotation omitted) (noting that, in the context of discussing waivers of the right to counsel, “we continue to strongly recommend a colloquy on the record”).

This is generally the meaning the Utah Supreme Court has used in related circumstances. When clarifying the requirements for accepting a plea under the precursor to current rule 11(e), Utah R. Crim. P., the Court noted that, even when using an affidavit to satisfy the statutory requirements "the trial judge should then review the statements in the affidavit with the defendant . . . *on the record* before accepting the guilty plea." *State v. Gibbons*, 740 P.2d 1309, 1314 (Utah 1987) (emphasis added); accord *State v. Gentry*, 797 P.2d 456, 459 (Utah Ct. App. 1990) (discussing the then-current version of the same rule and rejecting the "record as a whole" approach to plea hearings, noting that *Gibbons* "clearly mandates that the trial court must conduct an on-the-record review with defendant."). The current version of rule 11(e) incorporates this language, stating that the required findings "may be based on questioning the defendant on the record." Utah R. Crim. P. 11(e).

Similarly, when analyzing Utah Code section 77-18-1(6)(a), which requires courts to resolve challenges to inaccuracies in pre-sentence investigation reports "on the record," courts have remanded where objections to inaccuracies were not properly resolved in open court. See e.g., *State v. Maroney*, 2004 UT App 206 ¶¶26-29, 94 P.3d 295. Although, in the context of detailed factual findings, the Utah Supreme Court has held that a

trial court "may hold an additional hearing if required by the circumstances, or simply enter the necessary findings upon the record *where the contested issues were presented to the court and considered at the sentencing hearing,*" *State v. Veteto*, 2000 UT 62, ¶15, 6 P.3d 1133 (emphasis added), but the statute here contemplates both a written judgment and something more "on the record."

In the context of a sentencing - which always involves a hearing - the more natural reading of Utah Code section 76-3-401(1) regarding the concurrent/consecutive determination is that "on the record" means a statement in open court recorded in a transcript, audio, video, or otherwise. But for purposes of this case, the Court need not determine the exact contours of an "on the record" statement under section 76-3-401(1). The Court need only determine that it means something more than the recitation in the order of judgment because here there is nothing more than the judgment (and the Court need only address this issue it finds that the language in the February 3rd judgment was not clerical error).

At the conclusion of the February 2nd hearing, the sentence was illegal because it lacked *both* of the statutory requirements: there was no statement "on the record" and no indication "in the order of judgment" regarding concurrent or consecutive sentences. When the court signed the

February 3rd judgment, only half of the statutory criteria were then met. Merely indicating concurrent sentences in the order of judgment could not supply the necessary "on the record" statement as well, without rendering the on the record requirement superfluous. The statute is clear that these are two distinct requirements.

Because the record in this case is devoid of any other statements regarding concurrent or consecutive sentences until the February 10th hearing, a valid sentence could not have been imposed until that date at the earliest. Therefore, the court was not divested of jurisdiction when the court signed the February 3rd judgment.

## II.

### **THE FEBRUARY 10, 2015 HEARING AND THE RESULTING FEBRUARY 12, 2015 JUDGMENT WAS THE FIRST TIME THE COURT IMPOSED A VALID SENTENCE**

The February 10, 2015 hearing, and the resulting February 12, 2015 order of judgment, was the first time the court complied with Utah Code sections 76-3-401(1)(a) and (b). It was only then that "a valid sentence [was] imposed" as contemplated by *Yazzie*, 2009 UT 14, ¶17. That was the first time the court made consistent statements on the record and in the judgment regarding concurrent or consecutive sentences as mandated by Utah Code section 76-3-401(1).

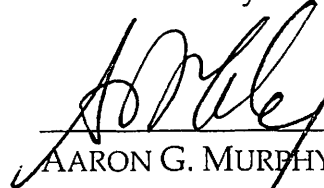
Defendant's argument that the combination of the February 2, 2015 hearing and February 3, 2015 order operated as a valid sentence that thereby removed the district court's jurisdiction to impose the subsequent sentence is meritless. Just as in *Yazzie*, the February 10th hearing and resulting judgment "in effect, corrected the illegally imposed sentence" even though the district court was not necessarily aware at the time that that was what it was doing. See *Yazzie*, 2009 UT 14, ¶17.

### CONCLUSION

For the foregoing reasons, the Court should affirm.

Respectfully submitted on September 1, 2016.

SEAN D. REYES  
Utah Attorney General



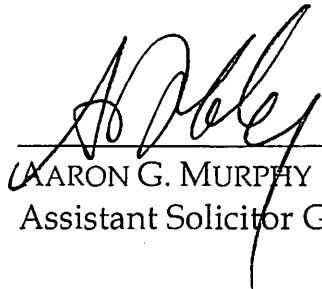
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AARON G. MURPHY  
Assistant Solicitor General  
Counsel for Appellee



## CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(f)(1), Utah R. App. P., this brief contains 6,282 words, excluding the table of contents, table of authorities, and addenda. I further certify that in compliance with rule 27(b), Utah R. App. P., this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Book Antiqua 13 point.



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AARON G. MURPHY  
Assistant Solicitor General

## CERTIFICATE OF SERVICE

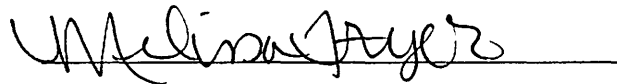
I certify that on September 1, 2016, two copies of the Brief of Appellee were ☒ mailed ☐ hand-delivered to:

Scott L. Wiggins (5820)  
Arnold & Wiggins  
American Plaza II, Suite 105  
57 West 200 South  
Salt Lake City, UT 84101

Also, in accordance with Utah Supreme Court Standing Order No. 8,  
a courtesy brief on CD in searchable portable document format (pdf):

☒ was filed with the Court and served on appellant.

☐ will be filed and served within 14 days.



# Addenda

## Addendum A



### 76-3-401 Concurrent or consecutive sentences -- Limitations -- Definition.

- (1) 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.
- (2) In determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.
- (3) The court shall order that sentences for state offenses run consecutively if the later offense is committed while the defendant is imprisoned or on parole, unless the court finds and states on the record that consecutive sentencing would be inappropriate.
- (4) 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.
- (5) A court may impose consecutive sentences for offenses arising out of a single criminal episode as defined in Section 76-1-401.
- (6)
  - (a) If a court imposes consecutive sentences, the aggregate maximum of all sentences imposed may not exceed 30 years imprisonment, except as provided under Subsection (6)(b).
  - (b) The limitation under Subsection (6)(a) does not apply if:
    - (i) an offense for which the defendant is sentenced authorizes the death penalty or a maximum sentence of life imprisonment; or
    - (ii) the defendant is convicted of an additional offense based on conduct which occurs after his initial sentence or sentences are imposed.
- (7) The limitation in Subsection (6)(a) applies if a defendant:
  - (a) is sentenced at the same time for more than one offense;
  - (b) is sentenced at different times for one or more offenses, all of which were committed prior to imposition of the defendant's initial sentence; or
  - (c) has already been sentenced by a court of this state other than the present sentencing court or by a court of another state or federal jurisdiction, and the conduct giving rise to the present offense did not occur after his initial sentencing by any other court.
- (8) When the limitation of Subsection (6)(a) applies, determining the effect of consecutive sentences and the manner in which they shall be served, the Board of Pardons and Parole shall treat the defendant as though he has been committed for a single term that consists of the aggregate of the validly imposed prison terms as follows:
  - (a) if the aggregate maximum term exceeds the 30-year limitation, the maximum sentence is considered to be 30 years; and
  - (b) when indeterminate sentences run consecutively, the minimum term, if any, constitutes the aggregate of the validly imposed minimum terms.
- (9) When a sentence is imposed or sentences are imposed to run concurrently with the other or with a sentence presently being served, the term that provides the longer remaining imprisonment constitutes the time to be served.
- (10) This section may not be construed to restrict the number or length of individual consecutive sentences that may be imposed or to affect the validity of any sentence so imposed, but only to limit the length of sentences actually served under the commitments.

- Chapter 64-13-1
- (11) This section may not be construed to limit the authority of a court to impose consecutive sentences in misdemeanor cases.
  - (12) As used in this section, "imprisoned" means sentenced and committed to a secure correctional facility as defined in Section 64-13-1, the sentence has not been terminated or voided, and the person is not on parole, regardless of where the person is located.

Amended by Chapter 129, 2002 General Session



## **Rule 22. Sentence, judgment and commitment.**

(a) Upon the entry of a plea or verdict of guilty or plea of no contest, the court shall set a time for imposing sentence which shall be not less than 2 nor more than 45 days after the verdict or plea, unless the court, with the concurrence of the defendant, otherwise orders. Pending sentence, the court may commit the defendant or may continue or alter bail or recognizance.

Before imposing sentence the court shall afford the defendant an opportunity to make a statement and to present any information in mitigation of punishment, or to show any legal cause why sentence should not be imposed. The prosecuting attorney shall also be given an opportunity to present any information material to the imposition of sentence.

(b) On the same grounds that a defendant may be tried in defendant's absence, defendant may likewise be sentenced in defendant's absence. If a defendant fails to appear for sentence, a warrant for defendant's arrest may be issued by the court.

(c)(1) Upon a verdict or plea of guilty or plea of no contest, the court shall impose sentence and shall enter a judgment of conviction which shall include the plea or the verdict, if any, and the sentence. Following imposition of sentence, the court shall advise the defendant of defendant's right to appeal and the time within which any appeal shall be filed.

(c)(2) If the defendant is convicted of a misdemeanor crime of domestic violence, as defined in Utah Code Section 77-36-1, the court shall advise the defendant orally or in writing that, as a result of the conviction, it is unlawful for the defendant to possess, receive or transport any firearm or ammunition. The failure to advise does not render the plea invalid or form the basis for withdrawal of the plea.

(d) When a jail or prison sentence is imposed, the court shall issue its commitment setting forth the sentence. The officer delivering the defendant to the jail or prison shall deliver a true copy of the commitment to the jail or prison and shall make the officer's return on the commitment and file it with the court.

(e) The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time.

(f) Upon a verdict or plea of guilty and mentally ill, the court shall impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court retains jurisdiction over a mentally ill offender committed to the Department of Human Services as provided by Utah Code Ann. § 77-16a-202(1)(b), the court shall so specify in the sentencing order.

**Rule 30. Errors and defects.**

(a) Any error, defect, irregularity or variance which does not affect the substantial rights of a party shall be disregarded.

(b) Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court may order.

## **Rule 22. Sentence, judgment and commitment.**

(a) Upon the entry of a plea or verdict of guilty or plea of no contest, the court shall set a time for imposing sentence which shall be not less than 2 nor more than 45 days after the verdict or plea, unless the court, with the concurrence of the defendant, otherwise orders. Pending sentence, the court may commit the defendant or may continue or alter bail or recognizance.

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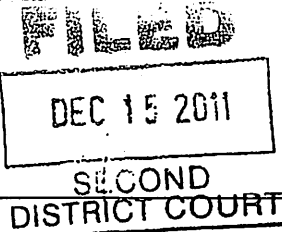
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(e) The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time.

(f) Upon a verdict or plea of guilty and mentally ill, the court shall impose sentence in accordance with Title 77, Chapter 16a, Utah Code. If the court retains jurisdiction over a mentally ill offender committed to the Department of Human Services as provided by Utah Code Ann. § 77-16a-202(1)(b), the court shall so specify in the sentencing order.

## Addendum B

2nd District - Farmington  
DAVIS COUNTY, STATE OF UTAH



STATE OF UTAH, : MINUTES  
Plaintiff, : SENTENCE, JUDGMENT, COMMITMENT  
vs. :  
JARED MICHAEL WATRING, : Case No: 101701211 FS  
Defendant. : Judge: JOHN R MORRIS  
Custody: Bail : Date: December 5, 2011

PRESENT

Clerk: jennifts  
Prosecutor: NELSON, JASON C  
Defendant  
Defendant's Attorney(s): SULLIVAN, KEVIN P

DEFENDANT INFORMATION

Date of birth: November 19, 1986  
Video  
Tape Number: 6-120511 Tape Count: 10:14-10:16

CHARGES

1. POSSESSION OR USE OF A CONTROLLED SUBSTANCE (amended) - 3rd Degree Felony  
Plea: Guilty - Disposition: 07/11/2011 Guilty
2. POSSESSION OR USE OF A CONTROLLED SUBSTANCE (amended) - 3rd Degree Felony  
Plea: Guilty - Disposition: 07/11/2011 Guilty
4. DRIVING UNDER THE INFLUENCE OF ALC/DRUGS - Class B Misdemeanor  
Plea: Guilty - Disposition: 01/03/2011 Guilty

SENTENCE PRISON

Based on the defendant's conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.  
The prison term is suspended.

Based on the defendant's conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.  
The prison term is suspended.

#### SENTENCE JAIL

Based on the defendant's conviction of DRIVING UNDER THE INFLUENCE OF ALC/DRUGS a Class B Misdemeanor, the defendant is sentenced to a term of 182 day(s) The total time suspended for this charge is 180 day(s).

#### SENTENCE JAIL SERVICE NOTE

The defendant was sentenced on the Class B misdemeanor at an earlier date. Restitution will remain open.

Charge # 1

Charge # 2

Charge # 4            Fine: \$1295.00  
                      Suspended: \$0.00  
                      Surcharge: \$627.47  
                      Due: \$1295.00

                      Total Fine: \$1295.00  
                      Total Suspended: \$0  
                      Total Surcharge: \$627.47  
Total Principal Due: \$1295.00  
                      Plus Interest

#### SCHEDULED TIMEPAY

The following cases are on timepay 101701211.

The defendant is to pay \$50.00 monthly on the 15th.

The number of payments scheduled is 29 plus a final payment of \$14.41.

The first payment is due on 01/15/2012 the final payment of \$14.41 is due on 06/15/2014. The final payment may vary based on interest.

#### ORDER OF PROBATION

The defendant is placed on probation for 36 month(s).

Probation is to be supervised by Adult Probation & Parole.

Defendant to serve 2 day(s) jail.

Defendant is to pay a fine of 1295.00 which includes the surcharge. Interest may increase the final amount due.

Pay fine to The Court.

OTHER: Defendant is to enter in and complete the Weber County Drug Court program.




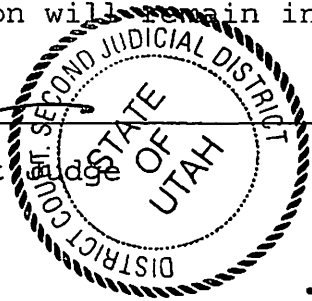
Case No: 101701211 Date: Dec 05, 2011

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OTHER: All other terms and conditions of probation will remain in full force and effect.

Date: 12/12/11

  
JOHN R MORRIS  
District Court Judge



## Addendum C

2nd District- Farmington  
DAVIS COUNTY, STATE OF UTAH

---

STATE OF UTAH, : MINUTES  
Plaintiff, : INITIAL APPEARANCE  
 :  
vs. : Case No: 151700133 FS  
JARED MICHAEL WATRING, : Judge: DAVID CONNORS  
Defendant. : Date: January 26, 2015  
Custody: Davis County Jail

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PRESENT

Clerk: jennaw  
Prosecutor: MAJOR, STEVEN V  
Defendant  
Defendant's Attorney(s): FUJINO, RONALD S

DEFENDANT INFORMATION

Date of birth: November 19, 1986  
Audio  
Tape Number: F5-012615 Tape Count: 215-216

CHARGES

1. POSS W/ INTENT TO DIST C/SUBSTANCE - 2nd Degree Felony
2. POSSESSION OR USE OF A CONTROLLED SUBSTANCE - Class B Misdemeanor

INITIAL APPEARANCE

A copy of the Information is given to the defendant.  
Defendant waives reading of Information.  
Advised of charges and penalties.  
The defendant conditionally waives the preliminary hearing.  
APPOINTMENT OF COUNSEL

Court finds the defendant indigent and appoints RONALD S FUJINO to represent the defendant.

Appointed Counsel:

Name: RONALD S FUJINO  
Address: 4764 S 900 E STE 2

City: SALT LAKE CITY UT 84117  
Phone: (801)268-6735

CASE BOUNDOVER

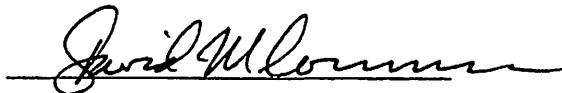
Defendant waived preliminary hearing, State consenting thereto.

This case is bound over. An Arraignment hearing has been set on 2/2/2015 at 9:00 AM in courtroom 6 before Judge JOHN R MORRIS.

CUSTODY

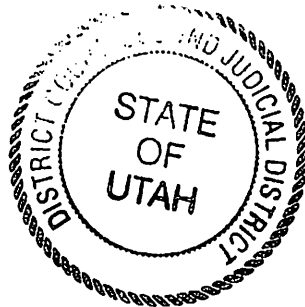
The defendant is present in the custody of the Davis County jail.  
Hold defendant pending further order.

Date: 1/28/15



DAVID CONNORS

District Court Judge



## Addendum D



2nd District- Farmington  
DAVIS COUNTY, STATE OF UTAH

**FILED**

**FEB - 2 2015**

**SECOND  
DISTRICT COURT**

*Amended*

STATE OF UTAH,  
Plaintiff,  
  
vs.  
JARED MICHAEL WATRING,  
Defendant.  
Custody: Davis County Jail

: MINUTES  
: CHANGE OF PLEA  
: SENTENCE, JUDGMENT, COMMITMENT  
:  
: Case No: 151700133 FS  
: Judge: JOHN R MORRIS  
: Date: February 2, 2015

PRESENT

Clerk: jennifts  
Prosecutor: MAJOR, STEVEN V  
Defendant  
Defendant's Attorney(s): FUJINO, RONALD S

DEFENDANT INFORMATION

Date of birth: November 19, 1986  
Video  
Tape Number: CRT 6 Tape Count: 946-950

CHARGES

1. POSSESSION OR USE OF A CONTROLLED SUBSTANCE (amended) - 3rd Degree Felony

Plea: Guilty - Disposition: 02/02/2015 Guilty

Court advises defendant of rights and penalties.

Defendant waives time for sentence.

Change of Plea Note

The defendant will waive time and be sentenced today.

SENTENCE PRISON

Based on the defendant's conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.  
The prison term is suspended.

SENTENCE JAIL

Based on the defendant's conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to a term of 365 day(s) in the Davis County Jail.

Commitment is to begin immediately.

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Page 1 of 2

SENTENCE JAIL CONCURRENT/CONSECUTIVE NOTE

Fine payments are to be made to Adult Probation and Parole.

ORDER OF PROBATION

The defendant is placed on probation for 36 month(s).

Probation is to be supervised by Adult Probation and Parole.

Defendant to serve 365 day(s) jail.

Defendant is to report to the Davis County Jail.

PROBATION CONDITIONS

CONDUCT: Commit no further violations of the law.

OTHER: Enter into and complete RSAT.

REVIEW HEARING is scheduled.

Date: 02/03/2015

Time: 02:00 p.m.

Location: Courtroom 6

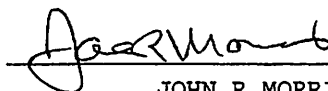
Justice Complex

800 West State Street

Farmington, UT 84025

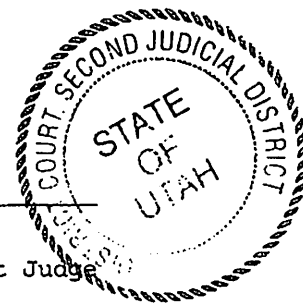
Before Judge: JOHN R MORRIS

Date: 2/2/15



JOHN R MORRIS

District Court Judge



Individuals needing special accommodations (including auxiliary communicative aids and services) should call Kim Sheffield at 801-447-3822 three days prior to the hearing. For TTY service call Utah Relay at 800-346-4128. The general information phone number is 801-447-3800.

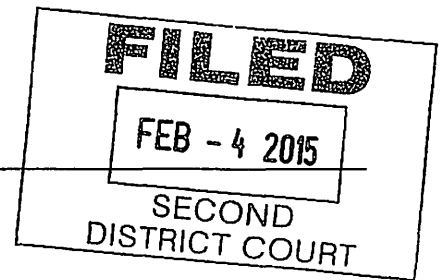
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Page 2 of 2



## Addendum E

2nd District- Farmington  
DAVIS COUNTY, STATE OF UTAH



STATE OF UTAH,  
Plaintiff,

: MINUTES  
: CHANGE OF PLEA  
: SENTENCE, JUDGMENT, COMMITMENT  
: NOTICE

vs.

: Case No: 151700133 FS  
: Judge: JOHN R MORRIS  
: Date: February 2, 2015

JARED MICHAEL WATRING,  
Defendant.

Custody: Davis County Jail

PRESENT

Clerk: jennifts

Prosecutor: MAJOR, STEVEN V

Defendant

Defendant's Attorney(s): FUJINO, RONALD S

DEFENDANT INFORMATION

Date of birth: November 19, 1986

Video

Tape Number: CRT 6 Tape Count: 946-950

CHARGES

1. POSSESSION OR USE OF A CONTROLLED SUBSTANCE (amended) - 3rd Degree Felony

Plea: Guilty - Disposition: 02/02/2015 Guilty

Court advises defendant of rights and penalties.

Defendant waives time for sentence.

Change of Plea Note

The defendant will waive time and be sentenced today.

SENTENCE PRISON

Based on the defendant's conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

The prison term is suspended.

SENTENCE JAIL

Based on the defendant's conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to a term of 365 day(s) in the Davis County Jail.

Commitment is to begin immediately.

SENTENCE JAIL CONCURRENT/CONSECUTIVE NOTE

All cases and charges may run concurrent.

Fine payments are to be made to Adult Probation and Parole.

ORDER OF PROBATION

The defendant is placed on probation for 36 month(s).

Probation is to be supervised by Adult Probation and Parole.

Defendant to serve 365 day(s) jail.

Defendant is to report to the Davis County Jail.

PROBATION CONDITIONS

CONDUCT: Commit no further violations of the law.

OTHER: Enter into and complete RSAT.

REVIEW HEARING is scheduled.

Date: 02/03/2015

Time: 02:00 p.m.

Location: Courtroom 6

Justice Complex

800 West State Street

Farmington, UT 84025

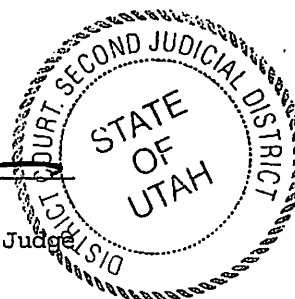
Before Judge: JOHN R MORRIS

Date: 2/3/15



JOHN R MORRIS

District Court Judge



Individuals needing special accommodations (including auxiliary communicative aids and services) should call Kim Sheffield at 801-447-3822 three days prior to the hearing. For TTY service call Utah Relay at 800-346-4128. The general information phone number is 801-447-3800.

## Addendum F



2nd District- Farmington  
DAVIS COUNTY, STATE OF UTAH

FILED

FEB 12 2015

SECOND  
DISTRICT COURT

STATE OF UTAH, : MINUTES  
Plaintiff, : POST SENTENCING JUDGMENT/COMMITMENT  
 :  
vs. : Case No: 151700133 FS  
JARED MICHAEL WATRING, : Judge: JOHN R MORRIS  
Defendant. : Date: February 10, 2015  
Custody: Davis County Jail

PRESENT

Clerk: jennifts  
Prosecutor: LARSEN, RICHARD L  
Defendant  
Defendant's Attorney(s): BUSHELL, RYAN J

DEFENDANT INFORMATION

Date of birth: November 19, 1986  
Video  
Tape Number: CRT 6 Tape Count: 245-251

CHARGES

1. POSSESSION OR USE OF A CONTROLLED SUBSTANCE (amended) - 3rd Degree Felony  
Plea: Guilty - Disposition: 02/02/2015 Guilty  
SENTENCE, JUDGMENT and COMMITMENT

The defendant admits the following numbered allegations as stated in the Affidavit and Order to Show Cause: all

The defendant's probation is revoked.

The defendant is to serve the sentence as imposed in the original Sentence, Judgment and Commitment.

COMMITMENT is to begin immediately.

This case will run consecutive to case # 101701211. The Court recommends the defendant enter the Conquest Program while in the Utah State Prison.


ORIGINAL SENTENCE OF PRISON

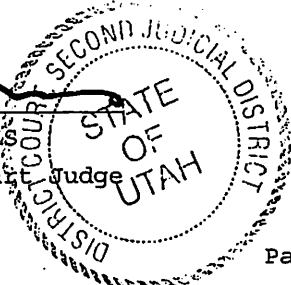
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Page 1 of 2

Based on the defendant's conviction of POSSESSION OR USE OF A CONTROLLED SUBSTANCE a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

Date: 2/12/15

  
JOHN R MORRIS  
District Court Judge



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Page 2 of 2



## Addendum G

**FILED**

SEP 15 2015

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

STATE OF UTAH,

Plaintiff,

vs.

JARED WATRING,

Defendant.

**RULING AND ORDER ON MOTION  
TO CORRECT ILLEGAL SENTENCE**

Case Nos. 101701211

151700133

Judge John R. Morris

Defendant seeks correction of his sentences in Second District Court Case No. 101701211 and Second District Court Case No. 151700133. Defendant asserts that the Court sentenced him in Case No. 151700133 on February 2, 2015, ordering his sentence for the case to run concurrent with his sentence in Case No. 101701211. Defendant argues that the Court then imposed an illegal sentence on February 10, 2015, by ordering his sentence in Case No. 101701211 to run consecutive to his sentence in Case No. 151700133. The Court DENIES Defendant's motion.

**ANALYSIS**

"[An illegal sentence is] one which is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to the substance of the sentence, or is a sentence which the judgment of conviction did not authorize." *State v. Candedo*, 2010 UT 32, ¶ 12, 232 P.3d 1008 (internal quotations omitted). "The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time." Utah R. Crim. P. 22(e).

The confusion relating to Defendant's sentences in these matters stems from two errors that occurred on February 2, 2015. At Defendant's February 2, 2015 hearing, the Court accepted Defendant's guilty plea in Case No. 151700133 and proceeded with sentencing him on the charge. The sentence included an indeterminate prison term of 0 to 5 years that the Court suspended upon Defendant's successful completion of probation. Defendant's probation included supervised probation through Adult Probation and Parole for a period

Ruling and Order on Motion to Correct Illegal Sentence  
Case Nos. 101701211 & 151700133

not to exceed 3 years and the requirement that Defendant enter and complete the Regional Substance Abuse Treatment program ("RSAT"). As part of the RSAT condition, the Court sentenced Defendant to a jail term of 365 days. The Court then scheduled Defendant to appear on its RSAT calendar the next day, February 3, 2015. The Court, however, made no order as to whether Defendant's sentence would run concurrent with or consecutive to the sentence Defendant was already serving in Case No. 101701211. This omission constituted the imposition of an illegal sentence, as the Court was statutorily required to make its determination as to concurrent or consecutive sentencing at the time of final judgment. *See* Utah Code Ann. § 76-3-401(1); *see also State v. Yazzie*, 2009 UT 14, ¶ 9, 203 P.3d 984.

The second error that occurred on February 2, 2015, was a clerical error in the recording of the Minute Entry for the hearing. Despite the fact that the Court did not make a determination as to whether Defendant's sentence in Case No. 151700133 would run concurrent with or consecutive to Defendant's sentence in Case No. 101701211, the Court's Clerk mistakenly included language within the Minute Entry, which states: "All cases and charges may run concurrent." It was not the Court's intent to order Defendant's sentences to run concurrent and the Court was unaware that the Minute Entry included this language when it signed and entered the Minute Entry. The Court now corrects this clerical error by issuing an Amended Minute Entry for the February 2, 2015 hearing, which excises the improperly included language regarding concurrent sentencing. *See* Utah R. Crim. P. 30(b).

When Defendant appeared on the Court's RSAT calendar on February 3, 2015, the Court acknowledged and apologized for the confusion in the prior day's sentence. Defendant's counsel also stated on the record that he and Defendant had discussed the sentencing issues with Defendant's two cases. Defendant then admitted to violating his probation in Case No. 101701211 and admitted that he is unable to complete the RSAT program in violation of the terms of his probation in Case No. 151700133. Defendant's counsel requested that the Court order Defendant's sentences in the cases to run concurrent. Rather than sentencing Defendant on the probation violations at that time, the Court continued sentencing

Ruling and Order on Motion to Correct Illegal Sentence  
Case Nos. 101701211 & 151700133

in the cases to February 10, 2015, so that it could review Defendant's Pre-Sentence Investigation report ("PSI").

At the February 10, 2015 hearing, the Court revoked Defendant's probation in both cases and imposed the original prison sentences after reviewing Defendant's PSI and considering the arguments of counsel. The Court then corrected the illegal sentence imposed at the February 2, 2015 hearing by ordering Defendant's sentences for the cases to run consecutive. The Court's signed Minute Entries for the February 10, 2015 hearing accurately reflect the corrected sentences for Defendant's two cases. Accordingly, because the Court corrected the illegal sentence imposed at the February 2, 2015 hearing when sentencing Defendant for his probation violations at the February 10, 2015 hearing, the Court finds that Defendant's Motion to Correct Illegal Sentence is moot. The Court, therefore, DENIES Defendant's motion and his Request for Hearing and Appointment of Counsel.

**ORDER**

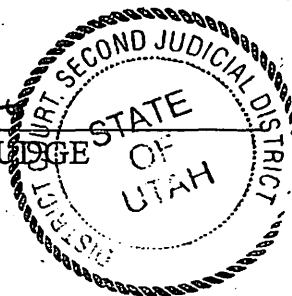
Based upon the foregoing, IT IS HEREBY ORDERED that Defendant's Motion to Correct Illegal Sentence and Request for Hearing and Appointment of Counsel are DENIED.

IT IS FURTHER HEREBY ORDERED that the clerical error in the Minute Entry for Defendant's February 2, 2015 hearing be corrected by the issuance of an Amended Minute Entry.

This Ruling and Order constitutes the Court's order on Defendant's motion; no separate order need be prepared or submitted by the parties.

Date signed: 9/15/16

  
DISTRICT COURT JUDGE  
JOHN R. MORRIS



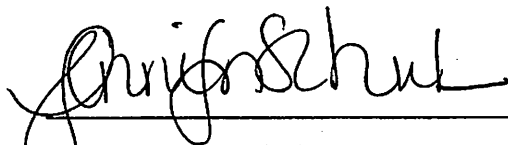
Ruling and Order on Motion to Correct Illegal Sentence  
Case Nos. 101701211 & 151700133

**CERTIFICATE OF MAILING**

I hereby certify that on the 15<sup>th</sup> day of September, 2015, I sent a true and correct copy of the foregoing **Ruling and Order** to the defendants as follows:

Richard L. Larsen  
DAVIS COUNTY ATTORNEY'S OFFICE  
800 West State Street  
P.O. Box 618  
Farmington, Utah 84025

Jared Watring #200853  
UTAH STATE PRISON  
P.O. Box 250  
Draper, Utah 84020

  
Deputy Court Clerk