2002

State of Utah v. Donald S. Trujillo : Brief of Appellee

Utah Court of Appeals

Joanne C Slotnik; Assistant Attorney General; Mark L. Shurtleff; attorney general; Carlos Esqueda; Deputy Salt Lake Attorney; attorney for appellee.
Catherine E. Lilly; Salt Lake Legal Defender Assoc.; attorneys for appellant.

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
v.	:	Case No. 20020023CA
DONALD S. TRUJILLO,	:	
Defendant/Appellant.	:	

BRIEF OF APPELLEE

APPEAL FROM CONVICTIONS FOR ONE COUNT EACH OF ATTEMPTED AGGRAVATED MURDER, A FIRST DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. §76-5-202 (1999); BURGLARY, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. §76-6-203 (1999); EVIDENCE TAMPERING, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. §76-8-510 (1999); AND RECEIVING OR TRANSFERRING A STOLEN VEHICLE, A SECOND DEGREE FELONY, IN VIOLATION OF UTAH CODE ANN. §41-1a-1316(2)(1999)IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, THE HONORABLE MICHAEL K. BURTON, PRESIDING

JOANNE C. SLOTNIK (4414)
Assistant Attorney General
MARK L. SHURTLEFF (4666)
Attorney General
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114
Telephone: (801) 366-0180

CARLOS ESQUEDA
Deputy Salt Lake County
District Attorney

Attorneys for Appellee

CATHERINE E. LILLY
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant

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Salt Lake City, Utah 84114
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CARLOS ESQUEDA
Deputy Salt Lake County
District Attorney

Attorneys for Appellee

CATHERINE E. LILLY
Salt Lake Legal Defender Assoc.
424 East 500 South, Suite 300
Salt Lake City, Utah 84111

Attorney for Appellant

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BRIEF OF APPELLEE

JURISDICTION AND NATURE OF PROCEEDINGS

This is a consolidated appeal from convictions on one count each of attempted aggravated murder, a first degree felony, and burglary, evidence tampering, and receiving or transferring a stolen vehicle, all second degree felonies.[1] This Court has jurisdiction over the appeal pursuant to Utah Code Ann. §§ 78-2a-3(2)(e) and (j)(Supp. 2001).

STATEMENT OF THE ISSUE ON APPEAL AND STANDARD OF APPELLATE REVIEW

Did the trial court abuse its discretion in ordering consecutive sentences where it considered and weighed all the necessary statutory factors?

A sentence will not be overturned on appeal unless the trial

[1] In his jurisdictional statement, defendant asserts convictions on two counts of receiving or transferring a stolen vehicle (Br. of Aplt. at 1). In case no. 001906768, however, one count was dismissed as part of the plea agreement. See R. 1: 54-60.

court has abused its discretion, failed to consider all legally relevant factors, or imposed a sentence that exceeds legally prescribed limits. State v. Gibbons, 779 P.2d 1133, 1135 (Utah 1989)(citations omitted). The Utah Supreme Court has noted that "the exercise of discretion in sentencing necessarily reflects the personal judgment of the court and the appellate court can properly find abuse only if it can be said that no reasonable [person] would take the view adopted by the trial court." State v. Gerrard, 584 P.2d 885, 887 (Utah 1978).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Utah Code Ann. § 76-3-401, governing concurrent and consecutive sentences, provides:

> (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....
>
> . . .
>
> (4) A court shall consider the gravity and circumstances of the offenses and the history, character, and rehabilitative needs of the defendant in determining whether to impose consecutive sentences.

Utah Code Ann. § 76-3-401(1), (4)(1999).

STATEMENT OF THE CASE

Defendant was charged with multiple offenses in three district court cases (R. 1: 2-7; R. 2: 4-5; R. 127: 3).[2] In one

[2] "R.1" refers to the red record volume in district court case 001906768FS; "R.2" refers to the analogous volume in case

case, he was charged with six felonies and one misdemeanor: two first degree felony counts of attempted aggravated murder and one of aggravated burglary; one count each of second-degree-felony receiving or transferring a stolen vehicle and tampering with evidence; one count of third-degree-felony failure to respond to an officer's signal to stop; and one count of class-B-misdemeanor theft (R. 1: 2-5). Pursuant to a plea agreement, he entered guilty pleas to one count of attempted aggravated murder, a first degree felony with a firearm enhancement, and one count each of burglary and evidence tampering, both second degree felonies (R. 1: 65-66). In the second case, defendant pled guilty, as charged, to receiving or transferring a stolen vehicle, a second degree felony (R. 2 at 72-79). A third case, involving second and third degree felony charges of burglary and theft, was dismissed in its entirety as part of the plea agreement (R. 127: 3-4).

The court conducted a single sentencing hearing. See R. 118 or R. 128.[3] After receiving a presentence investigation report and hearing from the victim, his father, his spouse, and two witnesses, the court ordered that defendant serve one term of six years to life and three terms of one to fifteen years in the Utah

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001900513FS.

[3] R. 118 and R. 128 are identical transcripts of the sentencing hearing, held December 20, 2001.

State Prison (R. 1: 65-66; R. 2: 83-84). The court further ordered that the sentences run consecutively, both with each other and with the sentence defendant was already serving (R. 1: 65-66; R. 2: 83-84; R. 118: 34, 36).

Defendant filed a timely notice of appeal (R. 1: 67-68).

STATEMENT OF THE FACTS

Early one winter morning, defendant noticed a vehicle parked in a driveway, unattended, with the motor running (PSR at 3). He got into the vehicle and drove away. He was apprehended several days later after the owner spotted the vehicle parked in his neighborhood, adjacent to a nearby home where defendant's girlfriend was living (Id. at 2; R. 2: 5). The inside of the vehicle had been "trashed" (PSR at 2). Defendant told the presentence investigator, "I was using drugs, I took it to get around, to have a ride. No real purpose" (Id. at 3).

Several months later, in a separate incident, an individual called the police early one morning to report an unfamiliar vehicle in a neighbor's driveway and a man suspiciously "checking" the house (Id. at 3; R. 1: 5). En route to the home to investigate a possible burglary in progress, the responding officers were informed by dispatch that the vehicle had been reported stolen (R. 1: 5).

Two marked patrol cars arrived at the home just as defendant was backing the stolen vehicle out of the driveway (PSR at 3; R.

1: 4). When the uniformed officers activated their flasher lights, defendant fled, with the officers in pursuit (PSR at 3; R. 1: 4). About a block away, defendant lost control of the vehicle and crashed into a parked car. The officers ordered defendant out of the vehicle at gunpoint. Defendant complied, but then pushed past both officers and fled on foot, throwing items from his pockets as he ran (R. 1: 4-5). A passerby, observing two police officers chasing defendant on foot, tackled defendant to the ground (PSR at 3; R. 1: 5).

The two officers, Morgan in front and Dobrowolski just behind him, began struggling with defendant to gain control. Both men heard a "pop," and Officer Morgan realized he had been shot in the face (PSR at 3; R. 1: 5).[4] As Officer Dobrowolski continued to struggle for control, he saw defendant point a handgun at him and pull the trigger several times. The gun did not fire (R. 1: 5). Eventually, the officer wrestled the handgun away from defendant and subdued him (Id.).

Close by, officers found personal papers, a checkbook, and two television remotes, all belonging to another nearby homeowner (R. 1: 6-7). Upon further investigation, officers observed pry marks on a garage window and rifled drawers throughout the home. The homeowner told police that a bank full of coins was missing; when the officers arrested defendant, he had in his possession "a

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[4] The officer eventually recovered (R. 118: 5-6).

large quantity of coins in his right front pants pocket" (R. 1: 6).

SUMMARY OF ARGUMENT

The crux of defendant's argument is that the trial court, in ordering consecutive sentences, "unduly focuse[d] on the gravity of the circumstances and [defendant's] drug use without giving 'adequate weight' to his character and rehabilitative potential." Br. of Aplt. at 10 (citation omitted).

In conducting an appellate review, this Court gives deference to the trial court's advantaged position to make the individualistic assessment necessary for a proper sentencing. This Court also recognizes that, while the trial court must consider all statutory sentencing factors, it is not required to give each of them equal weight. And this Court will reverse a trial court's consecutive sentencing determination "only if it can be said that no reasonable [person] would take the view adopted by the trial court." Gerrard, 584 P.2d at 887.

In this case, defendant demonstrated an extensive criminal history, beginning as a preteen, continuing into a drug-dependent adulthood, and culminating in the intentional shooting of a police officer and clear endangerment of the community. Where Adult Probation and Parole, after preparing a presentence investigation report, unequivocally declared that "consecutive sentences are demanded," the conclusion reached by the trial

court is objectively reasonable. Consequently, its decision should be affirmed.

ARGUMENT

THE TRIAL COURT ACTED WITHIN THE LIMITS OF ITS DISCRETION IN ORDERING CONSECUTIVE SENTENCES WHERE THE DRUG-DEPENDENT DEFENDANT DEMONSTRATED AN ESCALATING PATTERN OF CRIMINAL BEHAVIOR, BEGINNING AT AGE 11 AND CULMINATING IN THE INTENTIONAL SHOOTING OF A POLICE OFFICER, AND WHERE ADULT PROBATION AND PAROLE UNEQUIVOCALLY RECOMMENDED CONSECUTIVE SENTENCES

Defendant argues that the trial court abused its discretion by ordering consecutive sentences without "giv[ing] 'adequate weight' to [his] good character and rehabilitative prospects" and instead focusing too heavily on the nature of his crime and his drug use. See Br. of Aplt. at 8 (citing State v. Galli, 967 P.2d 930, 938 (Utah 1998)).

At the outset, this Court should exercise restraint in reviewing the sentencing decision of the trial court. Trial courts are accorded broad discretion in sentencing matters because they are in the best position to make the highly individualistic assessments required in sentencing decisions. See State v. Woodland, 945 P.2d 665, 671 (Utah 1997)(sentencing "necessarily reflects the personal judgment of the court") (citation omitted). In deciding the appropriateness of a particular sentence, the trial court considers many intangibles,

such as the defendant's "character, personality, and attitude, of which the cold record gives little inkling." State v. Sibert, 310 P.2d 388, 393 (Utah 1957). A sentencing court's assessment of defendant's character and feelings of remorse may be based, at least in part, on the court's personal observation of defendant's body language, demeanor, and tone of voice, none of which are reflected in the record on appeal. See State v. Pena, 869 P.2d 932, 939 (Utah 1994).

With these principles in mind, defendant's argument that the trial court did not adequately weigh the statutory sentencing factors ultimately fails because the sentencing statute, while making clear that the trial court must consider certain factors prior to imposing consecutive sentences, does not require the court to accord each of the factors equal weight. See, e.g., State v. Howell, 707 P.2d 115, 117-19 (Utah 1985)(recognizing that sentencing judges generally give considerable weight to circumstances of crime); State v. Carson, 597 P.2d 862, 864 (Utah 1979)(judge has discretion in determining weight given to sentencing recommendations contained in evaluation reports). The statute nowhere precludes a court, having considered all the circumstances, from determining that punishment should take precedence over rehabilitation. See State v. Nuttall, 861 P.2d 454, 458 (Utah App. 1993)("trial court did not abuse its discretion by placing more emphasis on punishing defendant rather

than rehabilitating him").

Defendant's contention that the trial court gave inadequate weight to his rehabilitative potential and his good character relies largely on language taken from State v. Galli, 967 P.2d 930 (Utah 1998). See State v. Bluff, 2002 UT 66, ¶ 67 (relying similarly on Galli). There, in a split decision reversing the trial court's imposition of consecutive sentences, the Court observed that two trial courts "may not have given adequate weight to certain mitigating circumstances." Galli, 967 P.2d at 938. The Court then cited, as mitigating circumstances, the facts that defendant used only a pellet gun in committing his crime, did not injure anyone, and took only a small amount of money. Id. It also found persuasive defendant's minimal criminal history and his exemplary behavior as a productive member of society during the years he lived outside the state, eluding detection. Id.

In contrast, defendant in this case wielded a loaded handgun, shot one officer in the face, tried to shoot a second officer, and stole a costly vehicle as well as additional small items. Defendant here first became involved with the criminal justice system at age 11½ and, with the exception of a single year, had been arrested at least once - and usually more than once - every year, up to the date of the present crime, for significant criminal conduct. See PSR at 7-10. Defendant also

exhibited serious drug dependency and endangered the community through his drug use, his driving, and his continuing pattern of criminal conduct. Id. And, wholly unlike the facts in Galli, defendant's criminal behavior demonstrates a clear pattern of escalation, culminating in the attempted murder of a police officer. Because Galli presents an entirely unrelated and far less egregious constellation of facts, defendant's reliance on that case is misplaced.

Moreover, in addition to the compelling facts of this case, the trial court had before it the written recommendation of Adult Probation and Parole. The presentence investigator, after articulating mitigating factors, including his character and desire for rehabilitation, and aggravating factors, unequivocally concludes: "[I]t is the opinion of this department [that] consecutive sentences are demanded." PSR at 17. Under such circumstances, it cannot be said that "no reasonable [person] would take the view adopted by the trial court." Gerrard, 584 P.2d at 887. Consequently, the court did not abuse its discretion in imposing consecutive sentences.

CONCLUSION

For the reasons stated, this Court should affirm defendant's convictions.

RESPECTFULLY submitted this 12th day of August, 2002.

MARK L. SHURTLEFF
Attorney General

JOANNE C. SLOTNIK
Assistant Attorney General

CERTIFICATE OF MAILING

I hereby certify that two true and accurate copies of the foregoing brief of appellee were mailed first-class, postage prepaid, to Catherine E. Lilly, attorney for appellant, Salt Lake Legal Defender Association, 424 East 500 South, Suite 300, Salt Lake City, Utah 84111, this 12th day of August, 2002.