

2002

## Utah v. Frederick Germonto : Reply Brief

Utah Court of Appeals

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### Recommended Citation

Reply Brief, *Utah v. Frederick Germonto*, No. 20020304 (Utah Court of Appeals, 2002).  
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IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH, :  
 :  
 Plaintiff/Appellee, :  
 :  
 v. :  
 :  
 FREDERICK GERMONTO, : Case No. 20020304-CA  
 :  
 Defendant/Appellant. :

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**REPLY BRIEF OF APPELLANT**

Appeal from a judgment of conviction for Escape from Official Custody, a second degree felony, in violation of Utah Code Ann. § 76-8-309 (1999), in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Terry L. Christiansen, Judge, presiding.

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**FILED**  
Utah Court of Appeals

**MAR 17 2003**

Paulette S. ...  
Clerk of the Court

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**SUMMARY OF ARGUMENT IN REPLY**

The plain language of Utah's escape statute requires that an inmate leave the confines of the state prison in order to commit a completed escape. Case law from other jurisdictions that define escape in a different way does not aid in analyzing Utah's statute. Moreover, some of the cases from other jurisdictions require, or at least suggest, that the defendant must be at liberty, even if only for a brief period of time, before a completed escape can be committed. This supports Germonto's position since he never was at liberty.

The escape statute must be interpreted, if possible, to avoid interpretations that conflict with constitutional protections. Interpreting the escape statute so that a defendant can be convicted of a completed escape even though he has not left the confines of the prison renders the statute void for vagueness. The statute therefore cannot be interpreted in this fashion.

Moreover, Germonto has standing to assert this vagueness challenge. The state misconstrues the test when it argues that one must be completely innocent of criminal wrongdoing in order to have standing to assert a vagueness challenge. The correct test for standing is whether the defendant is adversely affected. In this case, Germonto is adversely affected since he was convicted of a completed escape even though he did not leave the confines of the prison.

### **ARGUMENT**

#### **THE LANGUAGE OF UTAH'S ESCAPE STATUTE REQUIRES A TOTAL DEPARTURE FROM PRISON CONFINEMENT IN ORDER TO CONSTITUTE ESCAPE.**

As set forth in Appellant's opening brief ("A.B.") at 6-16, the plain language of Utah's escape statute requires a total departure from prison confinement in order to be guilty of an escape. This is so because the statute defines escape as "leav[ing] official custody without lawful authorization." Utah Code Ann. § 76-8-309(1)(a) (2002).

"Official custody" is defined as "confinement in a state prison." Utah Code Ann. § 76-8-309(7)(b). And "confinement" means "housed in a state prison." Utah Code Ann. § 76-8-309(7)(a)(i).

Had the Legislature intended that any movement into restricted areas of the prison would give rise to an escape charge, its inclusion of the definitions for official custody and confinement would be unnecessary. The Legislature could have simply defined escape as leaving custody, or better yet, as moving into restricted areas without

authorization had the Legislature intended that the crime of escape be given such a broad sweep that it encompassed actions such as those in this case. Instead, the Legislature included a precise and specific definition that requires that an inmate leave *official custody* and defines such official custody as being confined or housed in a state prison. The state's argument that an inmate need not leave the confines of the prison in order to escape official custody is not well taken in light of the plain language of the statute, including this precise definition of the term "official custody."

In analyzing the statutory terms "housed" and "confinement," the state disregards the context in which those terms appear. See state's brief ("S.B.") at 6-7. For example, the term "confinement" does not stand alone. Instead, the statute defines "official custody" as "confinement *in a state prison*." While standing alone, the term confinement might arguably refer to an inmate's cell or places where the inmate is authorized to be, but the inclusion of the words "in a state prison" shows that the Legislature was referring to the state of being confined in the state prison and not to confinement in one's cell.

The state's analysis of the term "housed" is similarly flawed since the state ignores the fact that the statute defines "confinement" as being "housed *in a state prison* ." The inclusion of the words "in a state prison" demonstrates that the Legislature defined confinement as the state of being held in prison and was not referring to the inmate's "living quarters, his lodgings, his 'housing in the prison'" as the state argues. See S.B. at 6. Indeed, the state twists the language of the statute when it changes the verb



"housed" as used in the statute to refer to "housed in a state prison" into a noun, claiming that the language refers to an inmate's "housing." See S.B. at 6. A complete reading of the statute clarifies that the Legislature made an effort to include definitions that would refine and clarify the meaning of "official custody" so that that term was properly utilized to refer to the state of being held in prison confines and to define the crime of escape as leaving those confines.

The state acknowledges that decisions from other states provide little guidance since the language of statutes in other states is different from the language of the Utah statute and the facts of cases from other states vary. S.B. at 8. For example, the state relies must heavily on Scott v. State, 672 S.W.2d 465, 465-66 (Tex. Crim. App. 1984). S.B. at 7-8, 9. But the statute at issue in that case did not define the term "confinement." Id. at 466. Rather than relying on a statutory definition, as is required in this case, the Texas court of appeals looked at the dictionary definition for confinement and the facts of the case, and concluded that "[t]he walls of the jail building itself were the bounds of appellant's detention and custody," and appellant left confinement when he dug a hole out of the jail. Id. Because the statutory language and facts in Scott are very different from the present case, Scott provides no guidance in interpreting Utah's escape statute.

Huffman v. State, 659 N.E.2d 214, 215 (Ind. App. 1995), also relied on by the state in support of its argument that Germonito was not required to leave prison boundaries in order to be guilty of an escape, likewise interprets language very different

from the language in Utah's statute. The Indiana statute at issue in Huffman defines escape as "intentionally flee[ing] from lawful detention . . . ." Id. (citing Ind. Code 35-44-3-5(a)). The Court concluded that a juvenile who left his cottage at the Indiana Boys' School "by breaking a lock off of a door, forcing open a second door, and removing a board covering a window" (Id.) fled from lawful detention and therefore was guilty of escape. Because the language of Indiana's statute is very different and defines escape as fleeing from lawful detention, Huffman provides no guidance.

State v. Cahill, 194 N.W. 191, 192 (Iowa 1923), also relied on by the state in S.B. at 8-9, likewise provides no guidance because the statute at issue in that case explicitly states that an escape occurs when an inmate "leave[s] without due authority . . . any place whatsoever in which he is placed or to which he is directed to go . . . ." Id. The Cahill court held that an inmate who escaped from his cell after being placed in solitary confinement and who was apprehended on the top of a perimeter wall was guilty of escape. This holding was consistent with the language of the Iowa statute making it an escape for an inmate to leave the cell in which he had been placed. Id. Since Utah's statute does not have similar language, Cahill is not persuasive.

Cope v. Commonwealth, 645 S.W.2d 703 (Ky. 1983), cited in S.B. at 9, is easily distinguishable on its facts because the inmate in that case was essentially at liberty when arrested. In Cope, the inmate had reached a location where there were no locked doors between himself and the street. Id. at 704. He had sawed himself out of his cell and

gotten past the locked steel door by assaulting the guard. Id. Because the inmate had made it past the area used for confinement and was in an area that was not fenced or locked, the court concluded that he had departed from the detention facility and completed an escape. Id. Unlike the defendant in Cope, Germonto was never at liberty.

Urbauer v. State, 744 P.2d 1274, 1275-76 (Okla. Crim. App. 1987), cited by the state on page 9 of its brief, also involves distinct facts from the present case. In that case, the inmate had climbed over two fences and was apprehended as he was climbing the third and last fence. Unlike the present case, the outer fence did not have razor wire on top, did not surround the entire facility, and did not confine or secure the inmates. Id. The purpose of that outer fence in Urbauer was "not to keep inmates in, but to keep others out." Id. at 1276. Under those circumstances, the court appropriately determined that Urbauer "was outside the confines of the correctional facility" when he was apprehended. Id. at 1275. By contrast, Germonto was still confined by the outer perimeter fence when he was apprehended.

Moreover, as the state acknowledges, various other courts have held that a completed escape has not been committed when the inmate has not left prison boundaries. See S.B. at 9. For example, in People v. Lavaie, 82 Cal.Rptr. 2d 719 (Cal. App. 4<sup>th</sup> 1999), the court held that a completed escape does not occur when the inmate has entered a restricted area but has not left the boundaries of the prison. The court stated:

We have found no cases recognizing an escape when a prisoner remains within the camp or prison barriers, but is outside the particular area within the camp or prison where he is permitted to be. The evidence in this case, even when viewed in the light most favorable to the judgment establishes only that much, and is hence insufficient.

Id. at 723. State v. Buck, 724 S.W.2d 574, 576 (Mo. 1986), likewise held that an inmate must leave the boundaries of the prison to be guilty of escape. Id. ("The essence of escape by an inmate in custody is that the custodial detention be breached and the inmate be at liberty, however briefly."); see also State v. Gaines, 372 So.2d 552, 553-55 (La. 1978) (inmate who did not leave prison boundaries did not leave confines of the prison).

When interpreting a statute, "court[s] will construe the statute to avoid interpretations that conflict with relevant constitutional mandates, so long as the resulting construction does not conflict with the reasonable or actual legislative purposes of the statute." State v. Mohi, 901 P.2d 991, 1009 (Utah 1995) (Russon, J., dissenting and concurring). If Utah's escape statute were interpreted to allow a conviction for escape when an inmate has not left the prison confines, the statute would be unconstitutionally vague. "Vagueness questions are essentially procedural due process issues, i.e., whether the statute adequately notices the proscribed conduct." State v. Morrison, 2001 UT 73, ¶13, 31 P.3d 547 (further citations omitted). A statute is therefore unconstitutionally vague "if it is [not] sufficiently explicit to inform the ordinary reader what conduct is prohibited." Id. (further citation omitted); see also State v. Archambeau, 820 P.2d 920, 926 (Utah App. 1991) (statute is unconstitutionally vague in violation of the Fourteenth

Amendment due process protection where "it does not give notice of prohibited behavior with sufficient specificity"). Additionally, a statute is unconstitutionally vague when it leaves officers, judges and juries with discretion to decide what actions constitute the crime, thereby leading to arbitrary enforcement. See Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972). See also discussion in A.B. at 11-14.

In State v. Gaines, 372 So.2d 552, 555 (La. 1979), the court held the phrase "[a]ny place where . . . legally confined" in Louisiana's escape statute "must be construed as a place where the individual is actually confined, i.e., restrained by physical barriers sufficient to prevent him from going at large." Id. (further citations omitted). The court concluded that "[a]ny less definitive or more ambiguous definition of place of confinement would render the statute unconstitutionally vague." Id. The same holds true for Utah's statute. If the terms "leaves official custody" and "confinement" are broadened to include movement into restricted areas within the prison rather than limited to circumstances where the inmate leaves prison boundaries, Utah's escape statute fails to give a person of ordinary intelligence notice of which misbehavior within the prison might amount to an escape charge. See A.B. at 12-14. A person could not read the statute and know that he would be guilty of a completed escape even if he did not leave the confines of the prison. Moreover, prison guards, judges and juries would be given unlimited discretion to decide whether misbehavior within the prison was significant enough to be considered an escape. This would lead to arbitrary enforcement, in

violation of due process. See A.B. at 12-14.

The state does not address the merits of Germonto's claim that the trial court's interpretation of the statute renders the escape statute unconstitutionally vague in violation of due process. Instead, the state argues Germonto "lacks standing to assert a vagueness challenge." S.B. at 10-11. The state is incorrect, however, because it is apparent that Germonto is adversely affected by the vague application of the escape statute and therefore has standing to raise this claim. See State v. Mace, 921 P.2d 1372, 1379 (Utah 1996).

The state seems to argue that in order to have standing to claim that a statute is vague, a defendant must be completely innocent of any criminal wrongdoing. S.B. at 10-12. The state misconstrues the test for standing, however.<sup>1</sup> "[S]tanding rules are a matter of state procedural law." Mace, 921 P.2d at 1379. Utah appellate decisions make it clear that in order to have standing to mount a constitutional challenge to a statute, the party must be "adversely affected by that very statute." State v. Davis, 787 P.2d 517, 524 (Utah App. 1990); see also Mace, 921 P.2d at 1379.

The facts of this case demonstrate that Germonto is adversely affected by this statute and therefore has standing. Indeed, the adverse effect on Germonto is that he

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<sup>1</sup> It is important to note that this case is before the Court on an appeal of the refusal to quash the bindover order and that the case has not yet gone to trial. If the conditional plea is vacated and the case remanded for trial on the charge of attempted escape, evidence may be presented controverting or clarifying the statement attributed to Germonto as well as the testimony that Germonto was on the outer perimeter fence.

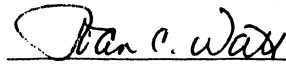
stands convicted of a completed escape even though he never left the confines of the prison. This is precisely what Germonto complains of in his vagueness analysis; he therefore has standing to raise this claim.

Moreover, Germonto is not asking this Court to strike the statute. Instead, Germonto is arguing that the escape statute must and can be interpreted to meet constitutional requirements, and that in order to interpret the statute in a constitutionally acceptable fashion, the statute cannot be read to define escape under these circumstances where Germonto did not leave the prison boundaries. Instead, the escape statute requires that an inmate leave the confines of the prison in order to commit a completed escape.

### **CONCLUSION**

The plain language of Utah's escape statute requires that an inmate leave the confines of the state prison in order to commit a completed escape. Additionally, in order to meet vagueness concerns, Utah's escape statute must be read to require that an inmate leave the prison confines to be guilty of a completed escape. Accordingly, Defendant/Appellant Frederick Germonto respectfully requests that this Court reverse the lower court ruling and remand this case to allow him to withdraw his conditional plea of guilty and proceed to trial on the charge of attempted escape.

DATED this 17<sup>th</sup> day of March, 2003.

A handwritten signature in cursive script, appearing to read "Joan C. Watt", is written above a horizontal line.

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Attorney for Defendant/Appellant

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KAREN STAM

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CERTIFICATE OF DELIVERY

I, JOAN C. WATT, hereby certify that I have caused to be delivered the original and seven copies of the foregoing to the Utah Court of Appeals, 450 South State Street, 5<sup>th</sup> Floor, P. O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6<sup>th</sup> Floor, P. O. Box 140854, Salt Lake City, Utah 84114-0854, this 17<sup>th</sup> day of March, 2003.

  
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JOAN C. WATT

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this \_\_\_\_\_ day of March, 2003.

\_\_\_\_\_