

2017

**State of Utah, Plaintiff/Appellee, v. Robert Brian Walton,
Defendant/Appellant : Brief of Appellant**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

v.

Robert Brian Walton,

Defendant/Appellant.

Case No. 20170977-CA

Brief of Appellant

Appeal from order denying rule 22(e) motion for resentencing, in the Third Judicial District, Salt Lake County, the Honorable Paul B. Parker presiding.

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- Addendum B: Order denying Rule 22(e) Motion, Case No. 121903179;
Sentencing Minutes, Case No. Case No. 161907013.
- Addendum C: Plea agreement, Case No. 121903179.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

v.

ROBERT BRIAN WALTON,

Defendant/Appellant.

Case No. 20170977-CA

Brief of Appellant

STATEMENT OF JURISDICTION

This Court has jurisdiction under Utah Code Section 78A-4-103(2)(e).

INTRODUCTION

In 2014, Robert Brian Walton pleaded guilty to one count of retaliation against a witness, and in doing so agreed to the entry of a permanent criminal stalking injunction as part of his sentence. In 2017, Mr. Walton asked the trial court to vacate the stalking injunction as an illegal sentence because he was not convicted of stalking. The trial court denied his motion.

STATEMENT OF THE ISSUES

1. Did the trial court err in rejecting Mr. Walton's argument that the issuance of a permanent criminal stalking injunction is an illegal sentence in violation of rule 22(e), Utah Rules of Criminal Procedure, where Mr. Walton was not convicted of stalking?

Standard of Review. A district court’s Rule 22(e) decision is a legal question reviewed for correctness. *See State v. Patience*, 944 P.2d 381, 384-85 (Utah Ct. App. 1997).

Preservation. Rule 22(e) challenges are not subject to the preservation rule because “because an illegal sentence is void and, like issues of jurisdiction [may be raised] at any time.” *State v. Houston*, 2015 UT 40, ¶ 20, 353 P.3d 55 (quoting *State v. Candedo*, 2010 UT 32, ¶ 9, 232 P.3d 1008) (alteration in original). In any event, this issue was preserved at 1R1002-1007; 1R1078-86; 1R2434-2463.

2. If the stalking injunction is an illegal sentence, should Mr. Walton’s conviction for violating it be vacated along with the injunction?

Standard of Review. Although a guilty plea generally precludes direct appellate review, if there was no stalking injunction, his conviction for violating it would be void. *See State v. Lee Lim*, 7 P.2d 825, 827 (Utah 1932) (“A judgment which is void ... is a mere nullity.”).

Preservation. The preservation rule does not apply, however, Mr. Walton raised this issue at sentencing. 2R834.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

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

U.S. Const. amend. V;
U.S. Const. amend. VI;
Utah Const. art. I, § 12;

Utah Code Section 76-5-106.5 (2011);
Utah Code Section 76-5-106.5 (2018);
Utah Code Ann. § 76-8-508.3;
Utah R. Crim. P. 22.

STATEMENT OF THE CASE

This appeal involves two related district court cases, which were consolidated for appeal. For the Court's convenience, record citations to Case No. 121903179 will be referred to as 1R, and citations to Case No. 161907013 will be referred to as 2R. Although he had some representation in the trial court, Mr. Walton largely represented himself. He requested, but was denied, court-appointed counsel to argue the rule 22(e) motion. 1R2425-2426. Mr. Walton was later found to be indigent and counsel was appointed for his appeal. R1191-1192.

1. Procedural and Factual Background

Case No. 121903179. On April 3, 2012, Mr. Walton was charged with retaliation against witness, a third degree felony, stalking, a class A misdemeanor, assault, a class B misdemeanor, wrongful detention, a class B misdemeanor, and threat of violence, a class B misdemeanor. 1R1-4. The information alleged that Mr. Walton used force and threats to get [K.B] to sign a motion to dismiss a civil stalking injunction. 1R2-4. Mr. Walton denied all the allegations against him, but on December 8, 2014, entered an *Alford* plea to the retaliation against witness charge.¹ 1R984-85, 1R994-95. The factual basis for

¹ Mr. Walton represented himself at the change of plea hearing but had standby counsel. 1R987-88.

the plea was: “On or about 3/1/2012 [K.B.] would testify that I made a threat of harm against [K.B.] believing an investigation was about to begin.” 1R987. As part of the plea agreement, the State dismissed the other charges and “anything prior to Dec. 8, 2014” with prejudice. 1R986-992, 1R1000-1001, 1R2406-2407. The State also agreed to recommend a 330-day sentence with credit for time served, after which the case would be closed.² 1R989. Also as part of the agreement, Mr. Walton agreed to the entry of a permanent criminal stalking injunction. *Id.* . At sentencing, Mr. Walton made clear that “there has been no stalking,” but was agreeing to the injunction “as required by the agreement.” 1R2407-08. The trial court accepted the *Alford* plea and sentenced Mr. Walton according to the terms of the plea. 1R995.

Case No. 161907013. On July 7, 2016, Mr. Walton was charged with three counts of stalking, all third degree felonies. 2R1-4. The information alleged that on July 2 and 3, 2017, Mr. Walton approached K.B. and attempted to talk to her in violation of the permanent civil stalking injunction issued in Case No. 121903179. On October 16, 2017, Mr. Walton entered an *Alford* plea to one count of stalking, and the State dismissed the other two charges. 2R542-544. The factual basis for the plea was that the State had evidence that “On July 2, 2016

² At the time of his plea, Mr. Walton had been incarcerated for over 24 months on a \$150,000.00 bond, *see, e.g.* 1R1447; 1R244, and he was informed by standby counsel that the plea was his only way to be immediately released. 1R2401, 1R2410-11.

Robert Walton went to [K.B.'s] residence.”³ 2R549. Mr. Walton was ordered to serve 36 months of probation with credit for time served, and another permanent criminal stalking injunction was entered. 2R543, 2R841. Standby counsel alerted the trial court to the potential for a collateral attack on the conviction because if the conviction in Case No. 121903179 “was removed, then this case might be, too.” 2R834. When the court inquired into the State’s position on the matter, the prosecutor stated, “that’s fine.” *Id.*

The Rule 22(e) Motion. On October 5, 2017, Mr. Walton filed a *pro se* motion to set aside the criminal stalking injunction issued in case No. 121903179 on the basis that it was an illegal sentence under rule 22(e). 1R1002. Mr. Walton argued that he was entitled to be resentenced because under Utah law, a criminal stalking injunction could only be entered as part of a sentence on a conviction of stalking, a crime for which he had not been convicted. 1R1002-1007; 1R1078-86. The State argued that there was no statutory bar to the parties’ agreement to the entry of a criminal stalking injunction, that the motion appeared to be a collateral attack on the charges in Case No. 161907013, that Mr. Walton could not unilaterally alter the terms of the plea deal, and that he invited any error. 1R1101-1119. The trial court agreed with the State, ruling that the permanent criminal

³ Mr. Walton had previously moved to dismiss the charges on the basis that the injunction was not actually entered by the trial court until after the alleged conduct, and Mr. Walton reasonably believed it had been dismissed. 2R44-47, 2R757, 2R826. At the time of his plea, Mr. Walton had been incarcerated for approximately five months and was informed that he would not be granted pretrial release. 2R832.

stalking injunction was not expressly barred, and that Mr. Walton had agreed to the injunction “in the context of the settlement.” 1R1187, 1R2462-2463.

2. Disposition.

The trial court denied the rule 22(e) motion in Case No. 121903179. 1R1099-1100. Mr. Walton timely appealed from that denial. 1R1107. He also timely appealed from his sentence in Case No. 161907013. 2R596.⁴

SUMMARY OF ARGUMENT

Case No. 121903179. The trial court erred in denying Mr. Walton’s Rule 22(e) motion because a permanent civil stalking injunction is not an authorized sentencing enhancement for a conviction of retaliation against a witness, and because the factual basis for the plea does not support the imposition of such a penalty. Because the agreement to the imposition of a permanent criminal stalking injunction appears to be the result of a mistake of law, the burden of risk lies with the State. As a result, Mr. Walton asks that the Court strike the injunction from the plea agreement, hold that the stalking injunction is void *ab initio*, and remand for resentencing to time served.

Case No. 161907013. If the Court rules that that the stalking injunction is an illegal sentence, Mr. Walton respectfully asks that the Court vacate his

⁴ The minute entry and Court order denying the Rule 22(e) Motion, and the sentencing minutes from both cases are attached in Addendum B.

conviction and sentence in Case No. 161907013 as void *ab initio* because the conduct alleged would not be criminal absent the injunction.

ARGUMENT

I. The permanent criminal stalking injunction is an illegal sentence.

The trial court erred in its conclusion that the criminal stalking injunction was not an illegal sentence because Mr. Walton agreed to it and there was no express statutory bar against its imposition. As will be shown, such an injunction is a sentencing enhancement that is only provided for under the criminal stalking statute, and requires a finding of the elements of criminal stalking to be imposed. It therefore is beyond the statutory range, is not supported by the factual basis for the plea, and should be vacated, even if Mr. Walton agreed to it.

A. A permanent criminal stalking injunction is not within the statutory guidelines for a retaliation against a witness conviction.

A court may at any time correct a sentence that “exceeds the statutorily authorized maximums” or “includes a condition prohibited by statute.”⁵ Utah R. Crim. P. 22(e). “Because an illegal sentence is void, the court does not lose jurisdiction over the sentence until that sentence has been corrected.” *State v. Montoya*, 825 P.2d 676, 679 (Utah Ct. App. 1991). Rule 22(e) allows a court to retain jurisdiction over sentences that are patently illegal or manifestly illegal, i.e.

⁵ Prior to May 1, 2017, Rule 22(e) provided, “The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time.”

(1) where the sentencing court has no jurisdiction, or (2) where the sentence is beyond the authorized statutory range.” *State v. Thorkelson*, 2004 UT App 9, ¶ 15, 84 P.3d 854 (citation omitted). The rule also applies if the sentence itself is unconstitutional. *State v. Candedo*, 2010 UT 32, ¶ 13, 232 P.3d 1008.

“It is axiomatic that a sentence is illegal if it exceeds the statutory guidelines.” *State v. Styer*, 2008 UT App 176. “[U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.” *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000) (quoting *Jones v. United States*, 526 U.S. 227, 243 n.6 (1999)). “The Fourteenth Amendment commands the same answer in this case involving a state statute.” *Id.* Thus, “[T]he ‘statutory maximum’ for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant.” *Blakely v. Washington*, 542 U.S. 296, 303 (2004). “When a judge inflicts punishment that the jury’s verdict alone does not allow, the jury has not found all the facts ‘which the law makes essential to the punishment,’ and the judge exceeds his proper authority.” *Id.* at 304 (quoting 1 J. Bishop, *Criminal Procedure* § 87, at 55 (2d ed. 1872)). *See, e.g., State v. Ahmed*, 924 P.2d 679, 685 (Mont. 1996) (striking parole condition requiring deportation as illegal because district court lacked jurisdiction to order deportation without due process).

Article I, section 12 of the Utah Constitution also requires that a jury find all elements of a crime, including conduct that amounts to a sentencing enhancement, beyond a reasonable doubt. *State v. Lopes*, 1999 UT 24, ¶ 16, 980 P.2d 191 (gang enhancement is separate offense, and trial court could not supplement the “plea by making the factual finding that the elements of the gang enhancement were established”).

In the context of a guilty plea, the statutory maximum sentence allowed is determined by the facts admitted by the defendant in pleading guilty or found by the jury at trial. *See Blakely*, 542 U.S. at 304 (“The judge in this case could not have imposed the exceptional 90-month sentence solely on the basis of the facts admitted in the guilty plea.”); *Ring v. Arizona*, 536 U.S. 584, 602 (2002) (quoting *Apprendi*, 530 U.S. at 483) (“exceeding the maximum he would receive if punished according to the facts reflected in the jury verdict alone”); *State v. Gibson*, 2017 UT App 142, ¶ 19, 405 P.3d 716 (Court ordered restitution not justified where defendant “did not admit responsibility for [the victim’s] losses, and the State has not met its burden to show that Gibson was the but-for cause of them”); *State v. Samul*, 2015 UT App 23, ¶ 18, 343 P.3d 719 (citing Utah Code Ann. § 76-4-102(1) (LexisNexis Supp. 2014)) (“Because the original sentence [of three years to life for attempted aggravated kidnapping] exceeded the statutorily authorized sentence for the crime, ... there is no dispute that the original sentence was illegal.”). “If an offense for which a defendant is convicted differs from an offense that is the subject of a plea, that plea may not, as a matter of law, form the

basis for the imposition of an enhanced sentence.” *State v. Helmick*, 2000 UT 70, ¶ 16, 9 P.3d 164.

Similarly, a sentence that is not authorized by statute violates Rule 11, Utah Rules of Criminal Procedure. *See State v. Higginbotham*, 917 P.2d 545, 551 (Utah 1996) (a determinate 2-year sentencing enhancement was illegal where the statute authorized only an indeterminate term of up to five years); *State v. Daughton*, 2013 UT App 170, ¶ 21, 308 P.3d 537 (Sentence was illegal where the penalty imposed was authorized by statute in effect at sentencing but was not authorized by statute in effect at time of charged conduct). And, conditions of probation and parole that are not authorized by statute have also been found illegal, even where not expressly barred. *See State v. Arviso*, 1999 UT App 381, ¶ 7, 993 P.2d 894 (agreed-to suspension of prison sentence “on condition [he] not return to the United States” was illegal sentence because it exceeded trial court’s authority). Conditions of probation and parole that were not authorized by statute have also been found to be illegal sentences in other jurisdictions, even where not expressly barred. *See, e.g., State v. Schad*, 206 P. 3d 22, 35 (Kan. Ct. App. 2009) (citing cases and holding that requiring posting signs as condition of probation is not expressly or implicitly authorized by statute); *State v. Muhammad*, 43 P.3d 318 (Mont. 2002) (holding probation condition of banishment to be unauthorized by statute).

Here, the trial court erred in denying Mr. Walton’s Rule 22(e) motion because a permanent civil stalking injunction is an enhancement that is not

supported by the factual basis for Mr. Walton's *Alford* plea. See Utah R. Crim. P. 22(e); *Lopes*, 1999 UT 24, ¶ 16, 980 P.2d 191. Rather, a permanent criminal stalking injunction is a life-long restriction that extended Mr. Walton's sentence well beyond the five-year maximum sentence for the retaliation against a witness conviction.

Utah Code Section 76-5-106.5 defines criminal stalking and governs the entry of permanent criminal stalking injunctions. The stalking statute at the time of the alleged conduct stated, "A conviction for stalking ... serves as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim." Utah Code Ann. § 76-5-106.5 (2011). In other words, proof of all the elements of stalking is the trigger for the sentencing enhancement of a criminal stalking injunction. It is those elements that must be found by the fact finder or admitted to by the defendant before such an injunction can be entered. See *State v. Kropf*, 2015 UT App 223, ¶ 23, 360 P.3d 1 (quoting *State v. Yazzie*, 2009 UT 14, ¶ 13, 203 P.3d 984) (Rule 11(e), Utah Rules of Criminal Procedure, appropriately invoked to correct the sentence for a stalking conviction by imposing an injunction); cf. *Baird v. Baird*, 2014 UT 08, ¶ 22, 322 P.3d 728 (for civil stalking injunction, "the essential statutory element is proof of 'stalking.'").

The Utah code did not at the time of the alleged conduct, and does not now, appear to provide any way short of proof of stalking to apply for a

permanent criminal stalking injunction. Indeed, Mr. Walton could not find a case in which such an injunction was properly imposed absent a stalking conviction.

Retaliation against a witness is a third degree felony statute which includes no enhancements, let alone a provision allowing for a permanent criminal stalking injunction. *See generally* Utah Code Ann. § 76-8-508.3. The maximum sentence for a third degree felony is, “unless the statute provides otherwise, for a term not to exceed five years.” *Id.* § 76-3-203(3) (2018). In addition, Utah Code Section 76-3-201, which defines the court’s general sentencing authority to include discretion in areas such as probation includes no general authority to impose a permanent criminal stalking injunction.

The factual basis for Mr. Walton’s plea—that there was evidence he “made a threat of harm against [K.B.] believing an investigation was about to begin,” 1R987—supports his conviction for one count of retaliation against a witness. *See* Utah Code Ann. § 76-8-508.3 (“if, believing that an official proceeding or investigation ... is about to be instituted... he: (a) (i) makes a threat of harm ... against a witness or an informant regarding any official proceeding ... and (ii) as retaliation or retribution against the witness, victim, or informant”).

It does not support a conviction of stalking. “A person is guilty of stalking who intentionally or knowingly engages in a *course of conduct* directed at a specific person and knows or should know that the *course of conduct* would cause a reasonable person:

(a) to fear for the person’s own safety or the safety of a third person; or

(b) to suffer other emotional distress.” *Id.* (emphasis added).

Importantly, the factual basis for Mr. Walton’s plea does not support a course of conduct directed at any person. 1R987. His admission that there was evidence he made “a threat of harm against [K.B.]” relates to just one singular event, not an entire course of conduct as required to prove stalking. 1R987. At the change of plea hearing, Mr. Walton specifically denied stalking. 1R2407 (“I would like to remind that there has been no stalking and there is no stalking conviction in this case.”), and it was clarified at the hearing that the permanent criminal stalking injunction would be entered even though there had been no stalking conviction. 1R2406.

The absence of any factual basis that could support the entry of a permanent criminal stalking injunction rendered Mr. Walton’s sentence illegal. Such an injunction imposes a permanent bar against contact with the victim, and against entering the victim’s residence, property, school, or place of employment. Utah Code Ann. § 76-5-403.1(2)(10). It may only be dismissed by application of the victim. *See id.* § 76-5-403.1(11). Because of the significant life-time restraint inflicted by such an injunction, it is a sentencing enhancement under the meaning of *Apprendi*, and therefore cannot be ordered absent a factual finding of stalking. There is simply no basis for such an injunction to be imposed where Mr. Walton’s conviction was one count of retaliation against a witness, and the factual basis for his plea includes no “course of conduct” that could support a

stalking conviction. The permanent criminal stalking injunction is therefore an illegal sentence.

B. The remedy for the illegal sentence is to remand to vacate the permanent criminal stalking injunction.

The agreement to the entry of a permanent criminal stalking injunction was a mistake of law which entitles Mr. Walton to enforcement of the plea agreement and resentencing to time served. *See State v. Patience*, 944 P.2d 381, 387 (Utah Ct. App. 1997). “[A]lthough courts recognize that ‘principles of contract law provide a useful analytic framework’ in cases involving plea agreements, they also recognize that there are limits to the contract analogy, and that contract principles ‘cannot be blindly incorporated into the criminal law in the area of plea bargaining.’” *Id.* (quoting *United States v. Ocanas*, 628 F.2d 353, 358 (5th Cir. 1980)).

“Under contract law, a party may not rescind an agreement based on mutual mistake where that party bears the risk of mistake.” *Id.* at 387-88. In plea agreements, the State bears “the risk of the mistake as to the law in effect at the time the parties entered into the plea agreement.” *Id.* at 388. This is because

The State is generally in the better position to know the correct law, given that the State has control over the charges in the information and final say over whether to accept a defendant's plea, and the State must be deemed to know the law it is enforcing. Indeed, it is the State's law, duly enacted by its legislative branch, that is in issue. The State must be charged with knowledge of its own legislative enactments and, in that sense, cannot be said to have been mistaken about the governing statute in effect when it agreed to the plea arrangement.

Id.; accord *State v. Johnson*, 2012 UT 68, ¶ 18 n.7, 290 P.3d 21 (quoting *United States v. Burke*, 633 F.3d 984, 994 (10th Cir. 2011)) (general “principles of contract law define the government’s obligations under the agreement, looking to the express language and construing any ambiguities against the government as the drafter of the agreement”). Thus, in *Patience*, the defendant was entitled to resentencing for a class A misdemeanor, the actual statutory sentence, where the plea agreement incorrectly assumed that forgery was a third degree felony. See *Patience*, 944 P.2d at 388. Likewise, a defendant was entitled to be sentenced for a third degree felony rather than a second degree felony where the factual basis for his plea did not support a drug free zone enhancement from a third degree to a second degree felony. See *State v. Sinju*, 1999 UT App 150U, ¶ 6.

Similarly here, where there is no statutory basis for the imposition of a permanent criminal stalking injunction, Mr. Walton should be entitled to enforcement of a plea agreement.

Mr. Walton served more than 24 months in jail before entering the *Alford* plea, and he relied to his detriment on the deal by accepting a conviction for the greater felony offense in exchange for the dismissal of the misdemeanor charges. This is therefore not a case where the appropriate remedy should be vacating the plea in its entirety. See *State v. Arviso*, 1999 UT App 381, ¶ 9, 993 P.2d 894 (“Where the defendant has entered a guilty plea pursuant to a plea bargain contemplating a particular sentence, the general rule is that the defendant is entitled to withdraw the plea if it is subsequently determined that the sentence is

illegal or unauthorized. The withdrawal of a guilty plea returns the parties to their initial positions, and the original charges under the indictment or information may be reinstated.”); *State v. Bickley*, 2002 UT App 342, ¶ 15, 60 P.3d 582 (vacating plea agreement where there was “no meeting of the minds as to the meaning of ‘total victim restitution.’”). Rather, this is a case such as *Patience* where the State should bear the risk of the mistake in law that led to the imposition of the illegal sentence, and the case should be remanded for resentencing to time served. *See Patience*, 944 P.2d at 388; *accord* Utah Code Ann. § 76-3-405 (“Where a conviction or sentence has been set aside on direct review or on collateral attack, the court shall not impose a new sentence for the same offense or for a different offense based on the same conduct which is more severe than the prior sentence less the portion of the prior sentence previously satisfied.”); *State v. Prion*, 2012 UT 15, ¶ 65, 274 P.3d 919 (resentencing violated double jeopardy protections where defendant was “resentenced months after his initial sentence” and was “nearly doubled in a sui generis proceeding based on new evidence gathered during the course of his confinement”); *State v. Samora*, 2004 UT 79, ¶ 25, 99 P.3d 858 (“[T]here are instances where an ‘illegal sentence’ or a ‘sentence imposed in an illegal manner’ may present the same chilling effect on a defendant’s basic right to appeal and the potential for vindictiveness at resentencing.”); *Sinju*, 1999 UT App 150U, ¶ 6 (where record included no facts to support the drug free zone enhancement, the defendant was entitled to resentencing but not to withdrawal of his plea). As a result, the proper remedy is

not withdrawal of the guilty plea, but a remand for purposes of vacating the stalking injunction and resentencing Mr. Walton to time served.

II. The conviction and sentence in Case No. 161907013 are void.

Mr. Walton acknowledges the general rule that direct appellate review “is barred when the “conviction” being challenged is in the form of a guilty plea and the defendant attempts to withdraw that plea using a rule 22(e) challenge.” *State v. Kragh*, 2011 UT App 108, ¶ 10, 255 P.3d 685 (quoting *State v. Nicholls*, 2006 UT 76, ¶ 5, 148 P.3d 990). However, in this case, if the Court agrees with Mr. Walton that the permanent criminal stalking injunction was an illegal sentence, which should be vacated, it would serve the interests of judicial economy to vacate the conviction Case No. 161907013 in this proceeding. If the stalking injunction were an illegal sentence, Mr. Walton’s conviction for violating it and the resulting sentence, including the new criminal stalking injunction, would be void *ab initio*. See *State v. Lee Lim*, 7 P.2d 825, 827 (Utah 1932) (“A judgment which is void ... is a mere nullity.”). This is because the factual basis for the plea was merely that there was evidence that “on July 2, 2016 Robert Walton went to [K.B.’s] residence.” R549. Such conduct would not have been criminal had the permanent criminal stalking injunction not been in place. And, as a result, the sentence of probation and a second permanent criminal stalking injunction would also be an illegal sentence. See Utah R. Crim. P. 22(e) (1)(A), (e)(1)(F). If there were no permanent criminal stalking injunction in place, simply going to a person’s home would not amount to the crime of violating a stalking injunction.

As a result, Mr. Walton respectfully requests that if the Court decides the permanent criminal stalking injunction was an illegal sentence, that it also vacate his subsequent conviction and sentence for violating it. *State v. Parker*, 872 P.2d 1041, 1048 (Utah Ct. App. 1994) (“The fact is that his conviction has been vacated. Accordingly, defendant is now entitled to a return of those fees he was required to pay because his conviction has been vacated.”); Utah R. Crim. P. 28 (“If no further trial or proceeding is to be had a defendant in custody shall be discharged.”).

CONCLUSION

For all of the foregoing reasons, in Case No. 121903179, Mr. Walton asks this Court to vacate the permanent criminal stalking injunction as an illegal sentence, and to remand for resentencing to time served. In Case No. 161907013, Mr. Walton respectfully requests that his conviction and sentence be vacated as void *ab initio*.

Respectfully submitted on November 23, 2018.

/s/ Deborah L. Bulkeley
Counsel for Appellant

CERTIFICATE OF COMPLIANCE

I certify that in compliance with rule 24(a)(11), Utah Rules of Appellate Procedure, this brief contains fewer than 30 pages, and it complies with rule 21(g), Utah Rules of Appellate Procedure, governing private records. I further certify that in compliance with rule 27(b) of the Utah Rules of Appellate Procedure, this brief has been prepared using the proportionally spaced Georgia 13-point font.

/s/ Deborah L. Bulkeley
Counsel for Appellant

CERTIFICATE OF DELIVERY AND SERVICE

In accordance with Utah Supreme Court Standing Order 11, I certify that on November 23, 2018, I caused electronic copies of the Brief of Appellant to be delivered by email to the following:

Utah Court of Appeals
450 South State Street, 5th Floor
Salt Lake City, Utah 84114

Courttofappeals@utcourts.gov;

Sean D. Reyes, Esq.
Utah Attorney General-Criminal Appeals Division
P.O. Box 140854
Salt Lake City, UT 84114-0854

Criminalappeals@agutah.gov.

Within seven days, six printed copies of the Brief of Appellant, including one with original signatures, will be delivered by hand or U.S. Mail, first-class postage prepaid to the Court, and two printed copies will be to Appellee at the above addresses.

/s/ Deborah L. Bulkeley

ADDENDUM A

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Utah Const. Art. I, Sec. 12

Rights of accused persons.

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to be confronted by the witnesses against him, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed, and the right to appeal in all cases. In no instance shall any accused person, before final judgment, be compelled to advance money or fees to secure the rights herein guaranteed. The accused shall not be compelled to give evidence against himself; a wife shall not be compelled to testify against her husband, nor a husband against his wife, nor shall any person be twice put in jeopardy for the same offense.

Where the defendant is otherwise entitled to a preliminary examination, the function of that examination is limited to determining whether probable cause exists unless otherwise provided by statute. Nothing in this constitution shall preclude the use of reliable hearsay evidence as defined by statute or rule in whole or in part at any preliminary examination to determine probable cause or at any pretrial proceeding with respect to release of the defendant if appropriate discovery is allowed as defined by statute or rule.

Utah Code Section 76-5-106.5 (2011 version)

Stalking -- Definitions -- Injunction -- Penalties.

(1) As used in this section:

(a) "Conviction" means:

- (i) a verdict or conviction;
- (ii) a plea of guilty or guilty and mentally ill;
- (iii) a plea of no contest; or
- (iv) the acceptance by the court of a plea in abeyance.

(b) "Course of conduct" means two or more acts directed at or toward a specific person, including:

(i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:

- (A) directly, indirectly, or through any third party; and
- (B) by any action, method, device, or means; or

(ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:

- (A) approaches or confronts a person;
- (B) appears at the person's workplace or contacts the person's employer or coworkers;
- (C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;
- (D) sends material by any means to the person or for the purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person;
- (E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or
- (F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

(c) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(d) "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

(e) "Reasonable person" means a reasonable person in the victim's circumstances.

(f) "Stalking" means an offense as described in Subsection (2) or (3).

(g) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

(2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:

(a) to fear for the person's own safety or the safety of a third person; or

(b) to suffer other emotional distress.

(3) A person is guilty of stalking who intentionally or knowingly violates:

(a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions; or

(b) a permanent criminal stalking injunction issued pursuant to this section.

(4) In any prosecution under this section, it is not a defense that the actor:

(a) was not given actual notice that the course of conduct was unwanted; or

(b) did not intend to cause the victim fear or other emotional distress.

(5) An offense of stalking may be prosecuted under this section in any jurisdiction where one or more of the acts that is part of the course of conduct was initiated or caused an effect on the victim.

(6) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(7) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been previously convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking offense or a member of the victim's immediate family was also a victim of the previous felony offense;

- (d) violated a permanent criminal stalking injunction issued pursuant to Subsection (9); or
- (e) has been or is at the time of the offense a cohabitant, as defined in Section 78B-7-102, of the victim.

(8) Stalking is a second degree felony if the offender:

- (a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;
- (b) has been previously convicted two or more times of the offense of stalking;
- (c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;
- (d) has been convicted two or more times, in any combination, of offenses under Subsection (7)(a), (b), or (c);
- (e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses; or
- (f) has been previously convicted of an offense under Subsection (7)(d), (e), or (f).

(9)

- (a) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of time serves as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim.
- (b) A permanent criminal stalking injunction shall be issued by the court without a hearing unless the defendant requests a hearing at the time of the conviction. The court shall give the defendant notice of the right to request a hearing.
- (c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the time of the conviction unless the victim requests otherwise, or for good cause.
- (d) If the conviction was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance must be filed by the victim in the district court as an application and request for a hearing for a permanent criminal stalking injunction.

(10) A permanent criminal stalking injunction may grant the following relief:

(a) an order:

- (i) restraining the defendant from entering the residence, property, school, or place of employment of the victim; and

(ii) requiring the defendant to stay away from the victim and members of the victim's immediate family or household, and to stay away from any specified place that is named in the order and is frequented regularly by the victim; and

(b) an order restraining the defendant from making contact with or regarding the victim, including an order forbidding the defendant from personally or through an agent initiating any communication likely to cause annoyance or alarm to the victim, including personal, written, or telephone contact with or regarding the victim, with the victim's employers, employees, coworkers, friends, associates, or others with whom communication would be likely to cause annoyance or alarm to the victim.

(11) A permanent criminal stalking injunction may be dissolved or dismissed only upon application of the victim to the court which granted the injunction.

(12) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(13) A permanent criminal stalking injunction issued pursuant to this section has effect statewide.

(14)

(a) Violation of an injunction issued pursuant to this section constitutes a third degree felony offense of stalking under Subsection (7).

(b) Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(15) This section does not preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking injunction.

Utah Code Section 76-5-106.5 (current version)

Stalking -- Definitions -- Injunction -- Penalties -- Duties of law enforcement officer.

(1) As used in this section:

(a) "Conviction" means:

- (i) a verdict or conviction;
- (ii) a plea of guilty or guilty and mentally ill;
- (iii) a plea of no contest; or
- (iv) the acceptance by the court of a plea in abeyance.

(b) "Course of conduct" means two or more acts directed at or toward a specific person, including:

(i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person's property:

- (A) directly, indirectly, or through any third party; and
- (B) by any action, method, device, or means; or

(ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:

- (A) approaches or confronts a person;
- (B) appears at the person's workplace or contacts the person's employer or coworkers;
- (C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;
- (D) sends material by any means to the person or for the purpose of obtaining or disseminating information about or communicating with the person to a member of the person's family or household, employer, coworker, friend, or associate of the person;
- (E) places an object on or delivers an object to property owned, leased, or occupied by a person, or to the person's place of employment with the intent that the object be delivered to the person; or
- (F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

(c) "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

(d) "Immediate family" means a spouse, parent, child, sibling, or any other person who regularly resides in the household or who regularly resided in the household within the prior six months.

(e) "Reasonable person" means a reasonable person in the victim's circumstances.

(f) "Stalking" means an offense as described in Subsection (2) or (3).

(g) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the recipient's telephone number.

(2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:

(a) to fear for the person's own safety or the safety of a third person; or

(b) to suffer other emotional distress.

(3) A person is guilty of stalking who intentionally or knowingly violates:

(a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions; or

(b) a permanent criminal stalking injunction issued pursuant to this section.

(4) In any prosecution under this section, it is not a defense that the actor:

(a) was not given actual notice that the course of conduct was unwanted; or

(b) did not intend to cause the victim fear or other emotional distress.

(5) An offense of stalking may be prosecuted under this section in any jurisdiction where one or more of the acts that is part of the course of conduct was initiated or caused an effect on the victim.

(6) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(7) Stalking is a third degree felony if the offender:

(a) has been previously convicted of an offense of stalking;

(b) has been previously convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

(c) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking offense or a member of the victim's immediate family was also a victim of the previous felony offense;

(d) violated a permanent criminal stalking injunction issued pursuant to Subsection (9); or

(e) has been or is at the time of the offense a cohabitant, as defined in Section 78B-7-102, of the victim.

(8) Stalking is a second degree felony if the offender:

(a) used a dangerous weapon as defined in Section 76-1-601 or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

(b) has been previously convicted two or more times of the offense of stalking;

(c) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;

(d) has been convicted two or more times, in any combination, of offenses under Subsection (7)(a), (b), or (c);

(e) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses; or

(f) has been previously convicted of an offense under Subsection (7)(d) or (e).

(9)

(a) The following serve as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim:

(i) a conviction for:

(A) stalking; or

(B) attempt to commit stalking; or

(ii) a plea to any of the offenses described in Subsection (9)(a)(i) accepted by the court and held in abeyance for a period of time.

(b) A permanent criminal stalking injunction shall be issued by the court at the time of the conviction. The court shall give the defendant notice of the right to request a hearing.

(c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the time of the conviction unless the victim requests otherwise, or for good cause.

(d) If the conviction was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance shall be filed by the victim in the district court as an application and request for a hearing for a permanent criminal stalking injunction.

(10) A permanent criminal stalking injunction shall be issued by the district court granting the following relief where appropriate:

(a) an order:

(i) restraining the defendant from entering the residence, property, school, or place of employment of the victim; and

(ii) requiring the defendant to stay away from the victim, except as provided in Subsection (11), and to stay away from any specified place that is named in the order and is frequented regularly by the victim;

(b) an order restraining the defendant from making contact with or regarding the victim, including an order forbidding the defendant from personally or through an agent initiating any communication, except as provided in Subsection (11), likely to cause annoyance or alarm to the

victim, including personal, written, or telephone contact with or regarding the victim, with the victim's employers, employees, coworkers, friends, associates, or others with whom communication would be likely to cause annoyance or alarm to the victim; and

(c) any other orders the court considers necessary to protect the victim and members of the victim's immediate family or household.

(11) If the victim and defendant have minor children together, the court may consider provisions regarding the defendant's exercise of custody and parent-time rights while ensuring the safety of the victim and any minor children. If the court issues a permanent criminal stalking injunction, but declines to address custody and parent-time issues, a copy of the stalking injunction shall be filed in any action in which custody and parent-time issues are being considered and that court may modify the injunction to balance the parties' custody and parent-time rights.

(12) Except as provided in Subsection (11), a permanent criminal stalking injunction may be modified, dissolved, or dismissed only upon application of the victim to the court which granted the injunction.

(13) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(14) A permanent criminal stalking injunction issued pursuant to this section has effect statewide.

(15)

(a) Violation of an injunction issued pursuant to this section constitutes a third degree felony offense of stalking under Subsection (7).

(b) Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(16) This section does not preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking injunction.

(17)

(a) A law enforcement officer who responds to an allegation of stalking shall use all reasonable means to protect the victim and prevent further violence, including:

(i) taking action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(ii) confiscating the weapon or weapons involved in the alleged stalking;

(iii) making arrangements for the victim and any child to obtain emergency housing or shelter;

(iv) providing protection while the victim removes essential personal effects;

(v) arranging, facilitating, or providing for the victim and any child to obtain medical treatment; and

(vi) arranging, facilitating, or providing the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of stalking, in accordance with Subsection (17)(b).

(b)

(i) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this section and Title 77, Chapter 3a, Stalking Injunctions.

(ii) The written notice shall also include:

(A) a statement that the forms needed in order to obtain a stalking injunction are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled; and

(B) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance.

(c) If a weapon is confiscated under this Subsection (17), the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a stalking injunction is not issued or once the stalking injunction is terminated.

Utah Code Section 76-8-508.3

76-8-508.3. Retaliation against a witness, victim, or informant.

(1) As used in this section:

(a) A person is “closely associated” with a witness, victim, or informant if the person is a member of the witness’, victim’s, or informant’s family, has a close personal or business relationship with the witness or victim, or resides in the same household with the witness, victim, or informant.

(b) “Harm” means physical, emotional, or economic injury or damage to a person or to his property, reputation, or business interests.

(2) A person is guilty of the third degree felony of retaliation against a witness, victim, or informant if, believing that an official proceeding or investigation is pending, is about to be instituted, or has been concluded, he:

(a)

- (i) makes a threat of harm; or
- (ii) causes harm; and

(b) directs the threat or action:

(i) against a witness or an informant regarding any official proceeding, a victim of any crime, or any person closely associated with a witness, victim, or informant; and

(ii) as retaliation or retribution against the witness, victim, or informant.

(3) This section does not prohibit any person from seeking any legal redress to which the person is otherwise entitled.

(4) The offense of retaliation against a witness, victim, or informant under this section does not merge with any other substantive offense committed in the course of committing any offense under this section.

Rule 22, Utah Rules of Criminal Procedure

Sentence, judgment and commitment.

(a) **Time for sentencing.** 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 may be not less than two 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) **Defendant's absence.** 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) **Sentencing advisories.**

(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, the time within which any appeal shall be filed and the right to retain counsel or have counsel appointed by the court if indigent.

(c)(2) If the defendant is convicted of a misdemeanor crime of domestic violence, as defined in Utah Code § 77-36-1, the court shall advise the defendant orally or in writing that, if the case meets the criteria of 18 U.S.C. § 921(a)(33) or Utah Code § 76-10-503, then pursuant to federal law or state law 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) **Commitment.** 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) **Correcting the sentence.** The court may correct a sentence when the sentence imposed:

(e)(1)(A) exceeds the statutorily authorized maximums;

(e)(1)(B) is less than statutorily required minimums;

(e)(1)(C) violates Double Jeopardy;

(e)(1)(D) is ambiguous as to the time and manner in which it is to be served;

(e)(1)(E) is internally contradictory; or

(e)(1)(F) omits a condition required by statute or includes a condition prohibited by statute.

(e)(2) **Time for filing.** A motion under (e)(1)(C), (e)(1)(D), or (e)(1)(E) shall be filed no later than one year from the date the facts supporting the claim could have been discovered through the exercise of due diligence. A motion under the other provisions may be filed at any time.

(f) **Sentencing and mentally ill offenders.** 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 § 77-16a-202(1)(b), the court shall so specify in the sentencing order.

Effective May 1, 2018

ADDENDUM B

The Order of the Court is stated below:

Dated: January 23, 2018
12:19:47 PM

/s/ PAUL B PARKER
District Court Judge



SIM GILL, Bar No. 6389
District Attorney for Salt Lake County
JOSEPH S. HILL, Bar No. 10178
Deputy District Attorney
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IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. ROBERT BRIAN WALTON, Defendant.	FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING DEFENDANT'S MOTION TO CORRECT SENTENCE Case No. 121903179 Honorable PAUL B. PARKER
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The State of Utah, through its counsel, SIM GILL, Salt Lake County District Attorney, and JOSEPH S. HILL, Deputy District Attorney, hereby submits these Proposed Findings of Fact and Conclusions of Law regarding Defendant's *Urgent Motion for Correction of Sentence According to Statue for the "Alford" Plea to "Retaliation"* and moves the court to adopt the same.

The Court held hearings on the Defendant's motion on November 2, 2017. The Court now makes the following findings of facts and conclusions of law:

FINDINGS OF FACT

1. Defendant was originally charged in an Information with Robbery, a second degree felony, Retaliation Against a Witness, a third degree felony, Stalking, a class A misdemeanor, Assault, a class B misdemeanor, Unlawful Detention, a class B misdemeanor and Threat of Violence, a class B misdemeanor. Defendant entered a no-contest *Alford* plea to one count of Retaliation Against a Witness on December 8, 2014. As part of the plea agreement the Defendant made with the State, the State moved to dismiss the remaining counts in the information and recommended the Defendant receive credit for the time he had served (330 days) and the case be closed.
2. As part of the plea agreement, Defendant knowingly, and intending to receive the benefit of the plea bargain allowing his release from jail, stipulated to the issuance of a Permanent Criminal Stalking Injunction (PCSI) naming victim [REDACTED] as the protected party. The plea form, which the Defendant signed, stated, "Robert Walton agrees to the permanent stalking injunction being imposed in this case." The issuance of the stalking injunction was an important part of negotiation for the State and the reason they allowed the type of plea and Defendant's release from jail. The injunction was also one of the important reasons for the victim's agreement with the

resolution. The State would not have agreed with the plea except for Defendant's agreement to the stalking injunction.

3. Defendant received the benefit of his bargain, the stalking injunction was issued and he was allowed to plea was sentenced on December 8, 2014, and the Court gave him credit for 330 days served, issued the PCSI, and closed the case.
4. On July 7, 2016, Defendant was charged in District Court case number, assigned to Judge Mark Kouris, with three counts of violating the Permanen Criminal Stalking Injunction.
5. In his *Urgent Motion for Correction of Sentence According to Statue for the "Alford" Plea to "Retaliation,"* filed October 5, 2017, Defendant, as a method of attacking the prosecution against him for violating the stalking injunction, moved this Court to correct his sentence by invalidating the PCSI. Defendant argued that the issuance of the PCSI was an illegal sentence that should be corrected pursuant to Utah Rule of Criminal Procedure 22(e)(6).
6. At the November 2, 2017, hearing on Defendant's motion, Defendant presented no evidence or law to show that the PCSI the Court issued at sentencing on December 8, 2014, was a condition that was prohibited by statute.

CONCLUSIONS OF LAW

1. Utah Rule of Criminal Procedure 22(e)(6) is not a vehicle by which the Defendant can attack the issuance of the PCSI.
2. Utah Code Annotated Section 76-5-106.5(9) states that a conviction of Stalking or Attempted Stalking or a plea to either held in abeyance is an application for a permanent stalking injunction, requires the court to issue the permanent stalking injunction at the time of conviction and provides for notice and an opportunity for a hearing. Section 76-5-106.5(10) states, "A permanent criminal stalking injunction shall be issued by the district court granting the following relief where appropriate." Following that statement is a list of various orders possible including prohibiting a defendant from entering property and requiring a defendant to stay away from a victim, etc. The statute does not address whether a defendant can agree to a stalking injunction being issued when the defendant is charged with a count of stalking but bargains to plead to another of the counts in exchange for entry of the stalking injunction and dismissal of the stalking charge. In this case, Defendant agreed to have the injunction issued. He did so because he got the benefit of pleading no contest to only one count of the several charged and his release from jail. As such he got the benefit of his bargain and cannot attack the injunction that he agreed to have issued.
3. The issuance by the Court of a PCSI to which the parties stipulated was not an illegal sentence prohibited by statute.
4. Defendant has not presented a valid legal basis for this Court to invalidate the PCSI.

Having made the foregoing findings and conclusions, the Court hereby DENIES the Defendant's *Motion for Correction of Sentence According to Statue for the "Alford" Plea to "Retaliation."*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PROPOSED FINDINGS
OF FACT AND CONCLUSIONS OF LAW REGARDING DEFENDANT'S MOTION TO
CORRECT SENTENCE was e-mailed to the following:

Robert Walton
rob@westernciviccapital.com

DATED this 12th day of January 2018.

/s/ Joseph S. Hill

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	ARGUMENT
	:	
vs.	:	Case No: 121903179 FS
ROBERT BRIAN WALTON,	:	Judge: PAUL B PARKER
Defendant.	:	Date: November 2, 2017

PRESENT

Clerk: stephh
Prosecutor: HILL, JOSEPH S
Defendant Present
Defendant pro se

DEFENDANT INFORMATION

Date of birth: May 27, 1969
Sheriff Office#: 361501
Audio
Tape Number: S34 9.01 Tape Count: 9.46

CHARGES

1. ROBBERY - 2nd Degree Felony
 - Disposition: 12/08/2014 Dismissed w/ Prejudi
2. RETALIATION AGAINST A WITNESS, VICTIM, OR INFORMANT - 3rd Degree Felony
 - Plea: No Contest - Disposition: 12/08/2014 No Contest
3. STALKING - Class A Misdemeanor
 - Disposition: 12/08/2014 Dismissed w/ Prejudi
4. ASSAULT - Class B Misdemeanor
 - Disposition: 12/08/2014 Dismissed w/ Prejudi
5. UNLAWFUL DETENTION - Class B Misdemeanor
 - Disposition: 12/08/2014 Dismissed w/ Prejudi
6. THREAT OF VIOLENCE - Class B Misdemeanor
 - Disposition: 12/08/2014 Dismissed w/ Prejudi

HEARING

01099

Case No: 121903179 Date: Nov 02, 2017

Argument is placed on the record from both sides. Motion is denied, counsel will prepare order.

01100

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	CHANGE OF PLEA
	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 121903179 FS
ROBERT BRIAN WALTON,	:	Judge: ROBIN W REESE
Defendant.	:	Date: December 8, 2014

PRESENT

Clerk: marlened

Prosecutor: HILL, JOSEPH S

Defendant

Defendant pro se

Defendant's Attorney(s): BOWN, CHRISTOPHER G

DEFENDANT INFORMATION

Date of birth: May 27, 1969

Sheriff Office#: 361501

Audio

Tape Number: S-45 Tape Count: 11:40

CHARGES

1. ROBBERY - 2nd Degree Felony
 - Disposition: 12/08/2014 Dismissed w/ Prejudi
2. RETALIATION AGAINST A WITNESS, VICTIM, OR INFORMANT - 3rd Degree Felony
 - Plea: No Contest - Disposition: 12/08/2014 No Contest
3. STALKING - Class A Misdemeanor
 - Disposition: 12/08/2014 Dismissed w/ Prejudi
4. ASSAULT - Class B Misdemeanor
 - Disposition: 12/08/2014 Dismissed w/ Prejudi
5. UNLAWFUL DETENTION - Class B Misdemeanor
 - Disposition: 12/08/2014 Dismissed w/ Prejudi
6. THREAT OF VIOLENCE - Class B Misdemeanor
 - Disposition: 12/08/2014 Dismissed w/ Prejudi

Court advises defendant of rights and penalties.
Defendant waives time for sentence.

Change of Plea Note

COUNTS 1-3-4-5 COURT ORDERED DISMISSED ON STATE'S MOTION

SENTENCE JAIL

Based on the defendant's conviction of RETALIATION AGAINST A WITNESS,
VICTIM, OR INFORMANT a 3rd Degree Felony, the defendant is sentenced to a
term of 330 day(s)

Credit is granted for time served.

Credit is granted for 330 day(s) previously served.

SENTENCE JAIL SERVICE NOTE

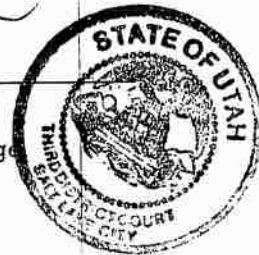
COURT ORDERED PERMANENT STALKING INJUNCTION BE ENTERED / COURT ORDERED
CREDIT FOR TIME PREVIOUSLY SERVED, CASE CLOSED

Date:

Dec. 10, 2014


ROBIN W REESE

District Court Judge



The Order of the Court is stated below:

Dated: October 16, 2017
01:20:38 PM

At the direction of:
/s/ MARK KOURIS
District Court Judge
by
/s/ REENA PARTOLA
District Court Clerk

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 161907013 FS
ROBERT BRIAN WALTON,	:	Judge: MARK KOURIS
Defendant.	:	Date: October 16, 2017
Custody: Salt Lake County Jail		

PRESENT

Clerk: reenap

Prosecutor: HILL, JOSEPH S

Defendant Present

The defendant is in the custody of the Salt Lake County Jail

Defendant's Attorney(s): FINLAYSON, DAVID V

DEFENDANT INFORMATION

Date of birth: May 27, 1969

Sheriff Office#: 361501

Audio

Tape Number: W48 Tape Count: 10:08, 12:13

CHARGES

1. STALKING - 3rd Degree Felony
Plea: Guilty - Disposition: 10/16/2017 Guilty
2. STALKING - 3rd Degree Felony
- Disposition: 10/16/2017 Dismissed w/ Prejudi
3. STALKING - 3rd Degree Felony
- Disposition: 10/16/2017 Dismissed w/ Prejudi

Court advises defendant of rights and penalties.
Defendant waives the reading of the Information.
Defendant waives time for sentence.

Change of Plea Note

Count 1 as an Alford Plea.

00555

HEARING

10:08 am. Defendant addresses the Court on issues from the last Preliminary Hearing.

Defendant provides arguments for release

10:13 am: Mr. Hill responds.

10:14 am: Discussions take place regarding scheduling.

This matter is to continue to later this morning.

12:13 am: Parties are present and inform the Court that they have reached resolution.

SENTENCE PRISON

Based on the defendant's conviction of STALKING 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 RELEASE TIME NOTE

To be released.

ORDER OF PROBATION

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

Probation is to be supervised by Adult Probation and Parole.

Usual and ordinary conditions required by Adult Probation and Parole.

Obtain a mental health evaluation and successfully complete any recommended treatment.

The issuance of a Permanent Criminal Stalking Injunction.

No contact with Victim.

No Contact with District Attorney employees. District Attorney employees may contact Defendant for official matters.

To report to AP&P Services within 24 hours of release.

Case No: 161907013 Date: Oct 16, 2017

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

00557

ADDENDUM C

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH

Plaintiff,

VS

STATEMENT OF DEFENDANT
IN SUPPORT OF GUILTY PLEA
AND CERTIFICATE OF
COUNSEL

Case No. 121903179

ROBERT WALTON,
Defendant

I, ROBERT WALTON hereby acknowledge and certify that I have been
advised of and that I understand the following facts and rights:

understand Notification of Charges
I am pleading guilty (~~or no contest~~) to the following crimes:

	Crime & Statutory Provision	Degree	Punishment Min/Max and / or Minimum Mandatory
A.	<u>Retaliation Against a Witness - 76-8-508.3</u>	<u>F3</u>	<u>0-5 yrs upl \$5,000 + 90% surcharge</u>
B.			
C.			
D.			

00986

I have received a copy of the (Amended) Information against me. I have read it, or had it read to me, and I understand the nature and the elements of crime(s) to which I am pleading guilty ~~(or no contest)~~ ^{under Alford}

The elements of the crime(s) to which I am pleading guilty ~~(or no contest)~~ ^{under Alford} are:

Believing an official proceeding or investigation is about to be
instituted, he ~~attempts to~~ makes a threat of harm and directs the threat against
a witness as retaliation against the witness

^{under Alford}
I understand that by pleading guilty ~~I will be admitting that I committed the crimes~~
listed above. (Or, if I am pleading no contest, I am not contesting that I committed the
foregoing crimes). ~~I stipulate and agree (or, if I am pleading no contest, I do not dispute~~
~~or contest)~~ ^{guilty under Alford} that the following facts describe my conduct and the conduct of other
persons for which I am criminally liable. These facts provide a basis for the court to
accept my guilty ~~(or no contest) pleas and prove the elements of the crime(s) to which I~~
am pleading guilty ~~(or no contest)~~ ^{under Alford}

~~_____ would testify~~
On or about 3/1/2012, I made a threat of harm against
_____ believing an investigation was about to begin

Waiver of Constitutional Rights

I am entering these pleas voluntarily. I understand that I have the following
rights under the constitutions of Utah and of the United States. I also understand that if
I plead guilty ~~(or no contest)~~ ^{under Alford} I will give up all the following rights:

Counsel: I know that I have the right to be represented by an attorney and that if
I cannot afford one, an attorney will be appointed by the court at no cost to me. I
understand that I might later, if the judge determined that I was able, be required to pay
for the appointed lawyer's service to me.

I ~~(have not)~~ (have) waived my right to counsel. If I have waived my right to
counsel, I have done so knowingly, intelligently, and voluntarily for the following
reasons: as requested earlier on the record and will be

discussed today.

If I have waived my rights to counsel, I certify that I have read this statement and that I understand the nature and elements of the charges and crimes to which I am pleading guilty ~~(or no contest)~~. I also understand my rights in this case and other cases and the consequences of my guilty (or no contest) plea(s).
Under Alford

If I have ~~not~~ waived my right to counsel, my attorney is Stand-by Chris Bawn. My attorney and I have fully discussed this statement, my rights, and the consequences of my guilty ~~(or no contest)~~ plea(s).
Under Alford

Jury Trial: I know that I have a right to a speedy and public trial by an impartial (unbiased) jury and that I will be giving up that right by pleading guilty ~~(or no contest)~~.
Under Alford

Confrontation and cross-examination of witnesses: I know that if I were to have a trial, a) I would have the right to see and observe the witnesses who testified against me and b) my attorney, or myself if I waived my right to an attorney, would have the opportunity to cross-examine all of the witnesses who testified against me.

Right to compel witnesses: I know that if I were to have a trial, I could call witnesses if I chose to, and I would be able to obtain subpoenas requiring the attendance and testimony of those witnesses. If I could not afford to pay for the witnesses to appear, the State would pay those costs.

Right to testify and privilege against self-incrimination: I know that if I were to have a trial, I would have the right to testify on my own behalf. I also know that if I chose not to testify, no one could make me testify or make me give evidence against myself. I also know that if I chose not to testify, the jury would be told that they could not hold my refusal to testify against me.

Presumption of innocence and burden of proof: I know that if I do not plead guilty ~~(or no contest)~~ I am presumed innocent until the State proves that I am guilty of the charged crime(s). If I choose to fight the charges against me, I need only plead "not guilty," and my case will be set for a trial. At a trial, the State would have the burden of proving each element of the charges(s) beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous, meaning that each juror would have to find me guilty.
Under Alford

I understand that if I plead guilty ~~(or no contest)~~, I give up the presumption of innocence and will be admitting that I committed the crime(s) stated above.
Under Alford
do not contest

Appeal: I know that under the Utah Constitution, if I were convicted by a jury or judge, I would have the right to appeal my conviction and sentence. If I could not afford the costs of an appeal, the State would pay those costs for me. I understand that I am giving up my right to appeal my conviction if I plead guilty ~~(or no contest)~~. I understand that if I wish to appeal my sentence I must file a notice of appeal within 30 days after my sentence is entered.
Under Alford

I know and understand that by pleading guilty, I am waiving and giving up all the statutory and constitutional rights as explained above.

Consequences of Entering a Guilty (or No Contest) Plea

Potential penalties: I know the maximum sentence that may be imposed for each crime to which I am pleading guilty ~~(or no contest)~~ ^{under Affidavit}. I know that by pleading guilty ~~(or no contest)~~ ^{under Affidavit} to a crime that carries a mandatory penalty, I will be subjecting myself to serving a mandatory penalty for that crime. I know my sentence may include a prison term, fine, or both.

I know that in addition to a fine, an ninety percent (90%) surcharge will be imposed. I also know that I may be ordered to make restitution to any victim(s) of my crimes, including any restitution that may be owed on charges that are dismissed as part of a plea agreement.

Consecutive/concurrent prison terms: I know that if there is more than one crime involved, the sentences may be imposed one after another (consecutively), or they may run at the same time (concurrently). I know that I may be charged an additional fine for each crime that I plead to. I also know that if I am on probation or parole, or awaiting sentencing on another offense of which I have been convicted or which I have plead guilty ~~(or no contest)~~ ^{under Affidavit}, my guilty ~~(or no contest)~~ ^{under Affidavit} plea(s) now may result in consecutive sentences being imposed on me. If the offense to which I am now pleading guilty occurred when I was imprisoned or on parole, I know the law requires the court to impose consecutive sentences unless the court finds and states on the record that consecutive sentences would be inappropriate.

Plea agreement: My guilty ~~(or no contest)~~ ^{under Affidavit} plea(s) (is/are) (is/are not) the result of a plea agreement between myself and the prosecuting attorney. All the promises, duties and provisions of the plea agreement, if any, are fully contained in this statement, including those explained below:

Robert Walton agrees to the permanent striking injunction being imposed in this case

Robert Walton will be given 330 days jail - Credit for that time from 10/16/2012 to 10/1/2013 and the case will be closed.

Also Dismissal w/ prejudice anything prior to Dec. 8, 2014 in anyways relate to [REDACTED] or any alleged criminal episode in any way related to 1219 03179 (except the charge he is pleading guilty to today) 131907330 and 1219 11077 and federal case 2:13-CR-654-DN

All this is done pursuant to Rule 11(i)

Trial judge not bound: I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing, made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the judge may do are not binding on the judge.

Immigration/Deportation: I understand that if I am not a United States citizen, my plea(s) today may, or even will, subject me to deportation under United States immigration laws and regulations, or otherwise adversely affect my immigration status, which may include permanently barring my re-entry into the United States. I understand that if I have questions about the effect of my plea on my immigration status, I should consult with an immigration attorney.

Defendant's Certification of Voluntariness

I am entering this plea of my own free will and choice. No force, threats or unlawful influence of any kind have been made to get me to plead guilty (or no contest). No promises except those contained in this statement have been made to me.

I have read this statement, or I have had it read to me by my attorney, and I understand its contents and adopt each statement in it as my own. I know that I am free to change or delete anything contained in this statement, but I do not wish to make any changes because all of the statements are correct.

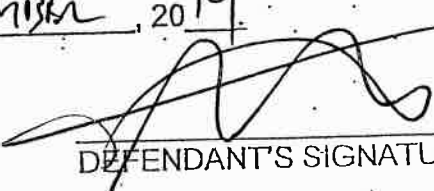
I am satisfied with advice and assistance of my attorney.

I am 45 years of age. I have attended school through the 12th grade. I can read and understand the English language. If I do not understand English, an interpreter has been provided to me. I was not under the influence of any drugs, medication, or intoxicants which would impair my judgment when I decided to plead guilty. I am not presently under the influence of any drug, medication, or intoxicants which impair my judgment.

I believe myself to be of sound and discerning mind and to be mentally capable of understanding these proceedings and the consequences of my plea. I am free of any mental disease, defect, or impairment that would prevent me from understanding what I am doing or from knowingly, intelligently, and voluntarily entering my plea.


I understand that if I want to withdraw my guilty (or no contest) plea(s), I must file a written motion to withdraw my plea(s) before sentence is announced. I understand that for a plea held in abeyance, a motion to withdraw from the plea agreement must be made within 30 days of pleading guilty or no contest. I will only be allowed to withdraw my plea if I show that it was not knowingly and voluntarily made. I understand that any challenge to my plea(s) made after sentencing must be pursued under the Post-Conviction Remedies Act in Title 78, Chapter 35a, and Rule 65C of the Utah Rules of Civil Procedure.

Dated this 8th day of DECEMBER, 2019.


DEFENDANT'S SIGNATURE


Certificate of Defense Attorney

I certify that I am the attorney for Robert Walton, the defendant above, and that I know he/she has read the statement or that I have read it to him/her; I have discussed it with him/her and believe that he/she fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crime(s) and the factual synopsis of the defendant's criminal conduct are correctly stated; and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.


Stanbury ATTORNEY FOR DEFENDANT
Bar No. 9218

Certificate of Prosecuting Attorney

I certify that I am the attorney for the State of Utah in the case against Robert Walton, defendant. I have reviewed this Statement of Defendant and find that the factual basis of the defendant's criminal conduct which constitutes the offense(s) is true and correct. No improper inducements, threats, or coercion to encourage a plea has been offered to defendant. The plea negotiations are fully contained in the Statement and in the attached Plea Agreement or as supplemented on the record before the Court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense(s) for which the plea(s) is/are entered and that the acceptance of the plea(s) would serve the public interest.


PROSECUTING ATTORNEY
Bar No. 1978

Order

Based on the facts set forth in the foregoing Statement and the certifications of the defendant and counsel, and based on any oral representations in court, the Court witnesses the signatures and finds the defendant's guilty (or no contest) plea(s) is/are freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED that the defendant's guilty (or no contest) plea(s) to the crime(s) set forth in the Statement be accepted and entered.

Dated this 8 day of Dec, 2014.

John R. [Signature]

District Court

