

2003

Salt Lake v. Jean Fred Venord : Reply Brief

Utah Court of Appeals

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Simjarit S. Gill, Augustus Chin; attorneys for appellee.

Debra M. Nelson, Heather Johnson, Michael Misner; Salt Lake Legal Defender Assoc.; attorneys for appellant.

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IN THE UTAH COURT OF APPEALS

THE CITY OF SALT LAKE, :
 :
 Plaintiff/Appellee, :
 :
 v. :
 :
 JEAN FRED VENORD, : Case No. 20030501-CA
 :
 Defendant/Appellant. :

APPELLANT'S REPLY BRIEF

This is an appeal from a conviction for Alcohol-Related Recklessness, a Class B Misdemeanor, in violation of Utah Code Ann. § 41-6-44 (Supp. 2003), in the Third Judicial District Court, State of Utah, the Honorable Anthony B. Quinn, Judge, presiding.

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FILED
UTAH APPELLATE COURTS
APR - 5 2004

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IN THE UTAH COURT OF APPEALS

THE CITY OF SALT LAKE, :
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 Plaintiff/Appellee, :
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 v. :
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 JEAN FRED VENORD, : Case No. 20030501-CA
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On September 5, 2003, Appellant, Mr. Venord, filed his opening brief arguing the trial court erred by failing to dismiss the case against him after the prosecutor missed the 120-day prosecution deadline imposed upon him under the 120-day disposition statute, Utah Code Ann. § 77-29-1 (1999). On September 10, 2003, the city filed a Letter in Lieu of a Brief as permitted under the Utah Rules of Appellate Procedure conceding that Mr. Venord's conviction should be reversed based on the city's failure to prosecute. On October 6, 2003, this Court, on its own motion, temporarily remanded this case to the trial court to supplement the record as to issues that were preserved in the Sery plea.

THIS APPEAL IS PROPERLY BEFORE THE COURT AS APPELLANT ENTERED A CONDITIONAL GUILTY PLEA PURSUANT TO STATE V. SERY PRESERVING HIS RIGHT TO APPEAL THE TRIAL COURT'S DENIAL OF HIS MOTION TO DISMISS FOR FAILURE TO PROSECUTE WITHIN THE 120-DAY DEADLINE.

As argued in Appellant's opening brief, the trial court erred by failing to dismiss

the DUI charge against Mr. Venord, with prejudice, because the city did not demonstrate good cause in open court for its failure to bring Mr. Venord to trial within 120-days after he delivered a 120-day disposition request to jailers. See Appellant's Opening Brief 9-27; see also Utah Code Ann. § 77-29-1(1) (1999). After the trial court's denial of his motion to dismiss, Mr. Venord entered a conditional guilty plea to Alcohol-Related Reckless Driving pursuant to State v. Sery, 758 P.2d 935 (Utah Ct. App. 1988) conditioned on his right to appeal the trial court's adverse ruling on his motion to dismiss for failure to prosecute within 120-days. See R. 137, 161, 169-174.

The city filed a Letter in Lieu of a Brief admitting that "the Appellant's 120 Day Disposition was in fact received at the Salt Lake City Prosecutor's Office" as argued by Appellant below in his Motion to Dismiss to the trial court and in his opening brief. See R. 100-106, City's Letter in Lieu of Brief, Appellant's Opening Brief 9-27. The city conceded that good cause did not exist for its failure to prosecute Mr. Venord within the deadline imposed by the 120-day disposition and asked this Court "to grant the Appellant's prayer for relief from the trial court's determination." See City's Letter in Lieu of Brief.

This Court, on its own motion, temporarily remanded this case to the trial court for the sole purpose of supplementing the record "with material omitted from the record as to what particular issue[s] were contemplated to be preserved in the Sery plea." See Order of Temporary Remand. On remand, the record was supplemented with the parties

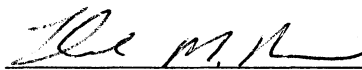
stipulation that Mr. Venord entered a conditional guilty plea to Alcohol-Related Reckless Driving pursuant to State v. Sery conditioned on his right to appeal the trial court's denial of his motion to dismiss for the city's failure to prosecute within 120-days. R. 169-174. A copy of that stipulation and order is attached in the Addendum.

Therefore, Appellant's issue on appeal was preserved and is properly before this Court for consideration.

CONCLUSION

In light of the above, Mr. Venord respectfully requests that this Court reverse his conviction for failure to prosecute within 120 days after the written request for disposition of charges.

SUBMITTED this 5th day of April, 2004.



DEBRA M. NELSON
Attorney for Defendant/Appellant

HEATHER JOHNSON
Attorney for Defendant/Appellant

MICHAEL MISNER
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, DEBRA M. NELSON, hereby certify that I have caused to be hand-delivered eight copies of the foregoing to the Court of Appeals, 450 South State Street, Salt Lake City, Utah 84114-0230, and four copies to the Salt Lake City Prosecutor's Office, 349 South 200 East, Suite 500, Salt Lake City, Utah 84111, this 5th day of April, 2004.



DEBRA M. NELSON

DELIVERED to the Utah Court of Appeals and the Salt Lake City Prosecutor's Office as indicated above this _____ day of April, 2004.

ADDENDUM

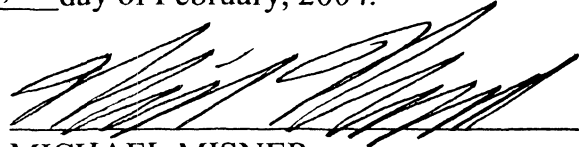
MICHAEL MISNER
Attorney for Defendant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 532-5444

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

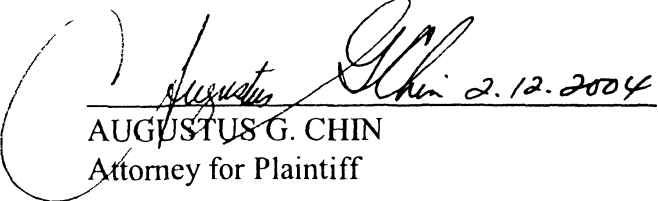
STATE OF UTAH,	:	
	:	STIPULATED MOTION TO
Plaintiff,	:	SUPPLEMENT THE RECORD
	:	REGARDING THE ISSUE
	:	PRESERVED BY THE <u>SERY</u> PLEA
v.	:	
	:	
JEAN FRED VENORD	:	Case No. 005912689
Defendant.	:	<i>Lindberg</i>

PURSUANT to Rule 11(h) of the Utah Rules of Appellate Procedure, the parties, by and through counsel of record, MICHAEL MISNER, Attorney for Defendant, and AUGUSTUS G. CHIN, Attorney for Plaintiff, hereby agree to supplement the record with the stipulation that Defendant, JEAN FRED VENDOR, entered a conditional guilty plea to Alcohol-Related Recklessness pursuant to State v. Sery, 758 P.2d 935 (Utah Ct. App. 1988) conditioned on his right to appeal the trial court's adverse ruling on his Motion to Dismiss for Failure to Prosecute within 120-days. Attached is a copy of the transcript and Defendant's plea affidavit regarding entry of his conditional guilty plea.

RESPECTFULLY SUBMITTED this 13 day of February, 2004.



MICHAEL MISNER
Attorney for Defendant



AUGUSTUS G. CHIN
Attorney for Plaintiff

CERTIFICATE OF DELIVERY

I, MICHAEL MISNER, hereby certify that I have caused to be delivered a copy of the foregoing to the Salt Lake Prosecutor's Office, 349 South 200 East, Suite 500, Salt Lake City, Utah 84111, this 13 day of February, 2004.


MICHAEL MISNER

DELIVERED this 13 day of February, 2004.



MICHAEL MISNER
Attorney for Defendant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 532-5444

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

STATE OF UTAH,	:	
	:	ORDER TO SUPPLEMENT
Plaintiff,	:	THE RECORD
	:	
v.	:	
	:	
JEAN FRED VENORD	:	Case No. 005912689
Defendant.	:	

Based upon the stipulated motion of counsel and for good cause appearing,

IT IS HEREBY ORDERED that the record on appeal be supplemented with the stipulation from the parties that Defendant, JEAN FRED VENORD, entered a conditional Sery plea preserving his right to appeal the trial court's denial of his Motion to Dismiss for Failure to Prosecute within 120-days.

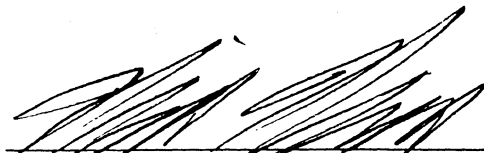
DATED this _____ day of February, 2004.

BY THE COURT:

DISTRICT COURT JUDGE

CERTIFICATE OF DELIVERY

I, MICHAEL MISNER, hereby certify that I have caused to be delivered a copy of the foregoing to the Salt Lake Prosecutor's Office, 349 South 200 East, Suite 500, Salt Lake City, Utah 84111, this 13 day of February, 2004.



MICHAEL MISNER

DELIVERED this ____ day of February, 2004.

MICHAEL MISNER
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424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 532-5444

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

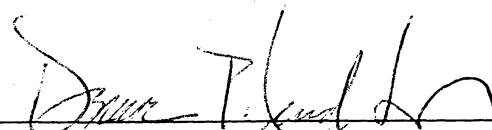
STATE OF UTAH,	:	
	:	ORDER TO SUPPLEMENT
Plaintiff,	:	THE RECORD
	:	
v.	:	
	:	
JEAN FRED VENORD	:	Case No. 005912689
	:	
Defendant.	:	

Based upon the stipulated motion of counsel and for good cause appearing,

IT IS HEREBY ORDERED that the record on appeal be supplemented with the stipulation from the parties that Defendant, JEAN FRED VENORD, entered a conditional Sery plea preserving his right to appeal the trial court's denial of his Motion to Dismiss for Failure to Prosecute within 120-days.

DATED this 23 day of March, 2004.

BY THE COURT:



DISTRICT COURT JUDGE

CERTIFICATE OF DELIVERY

I, MICHAEL MISNER, hereby certify that I have caused to be delivered a copy of the foregoing to the Salt Lake Prosecutor's Office, 349 South 200 East, Suite 500, Salt Lake City, Utah 84111, this 31 day of March, 2004.


MICHAEL MISNER

DELIVERED this 31 day of March, 2004.

