2003

State of Utah v. James J. Quinn : Reply Brief

Utah Court of Appeals

Gregory N. Skabelund; Attorney for Appellant.
Jeanne B. Inouye; Attorney for Appellee.

GREGORY N. SKABELUND #5346
Attorney for Defendant/Appellant
2176 North Main, Suite 102
Logan, UT 84341
(435) 752-9437

IN THE UTAH COURT OF APPEALS

-------oooOOOooo-------

STATE OF UTAH,	)	
	)	
Plaintiff/Appellee,	)	
	)	
v.	)	Case No. 20030848-CA
	)	
JAMES J. QUINN,	)	
	)	Trial Court No. 011100562FS
Defendant/Appellant.	)	
	)	

-------oooOOOooo-------

REPLY BRIEF OF PLAINTIFF/APPELLANT

THIS IS AN APPEAL OF A JUDGMENT AND SENTENCE
OF THE FIRST JUDICIAL DISTRICT COURT
FOR CACHE COUNTY, UTAH
THE HONORABLE CLINT S. JUDKINS

GREGORY N. SKABELUND #5346
2176 North Main, Suite 102
Logan, UT 84341
(435) 752-9437
Attorney for Plaintiff/Appellant

JEANNE B. INOUYE
Attorney General's Office
160 East 300 South, 6th Floor
Salt Lake City, UT 84114
(801) 366-0280
Attorney for Defendant/Appellee

GREGORY N. SKABELUND #5346
Attorney for Defendant/Appellant
2176 North Main, Suite 102
Logan, UT 84341
(435) 752-9437

IN THE UTAH COURT OF APPEALS

-------oooOOOooo-------

STATE OF UTAH, Plaintiff/Appellee, v. JAMES J. QUINN, Defendant/Appellant.	)	Case No. 20030848-CA Trial Court No. 011100562FS

-------oooOOOooo-------

REPLY BRIEF OF PLAINTIFF/APPELLANT

THIS IS AN APPEAL OF A JUDGMENT AND SENTENCE
OF THE FIRST JUDICIAL DISTRICT COURT
FOR CACHE COUNTY, UTAH
THE HONORABLE CLINT S. JUDKINS

GREGORY N. SKABELUND #5346
2176 North Main, Suite 102
Logan, UT 84341
(435) 752-9437
Attorney for Plaintiff/Appellant

JEANNE B. INOUYE
Attorney General's Office
160 East 300 South, 6th Floor
Salt Lake City, UT 84114
(801) 366-0280
Attorney for Defendant/Appellee

TABLE OF CONTENTS

	PAGE
Table of Contents	i
Table of Authorities	ii
Argument	1
Conclusion and Request for Relief	3
Certificate of Service	4

TABLE OF AUTHORITIES

PAGE

A. **CASES:**

Belt v. Turner, 479 P.2d 791-793 (Utah 1971) 2

People v. Figueroa, 24 Cal.Rptr.2d 368-371 (Cal App. 1993) . . 2

State v. Duncan, 812 P.2d 60, 62 (Utah App. 1991) 1

State v. Gallegos, 849 P.2d 586, 591 (Utah App. 1993) 1

State v. Patience, 944 P.2d 381, 385 2

State v. Patience, 944 P.2d at 835 (Utah 1994) 2

State v. Yates, 918 P.2d 136, 139-40 (Utah App. 1996) 2

B. **RULES:**

Utah R.Crim. P.22(e) 2

C. **STATUTES:**

41-6-44(6) (2001) Utah Code Annotated 1
41-6-44(6) (2002) Utah Code Annotated 1

ARGUMENT

PLAINTIFF/APPELLEE HAS TAKEN OPPOSITE POSITIONS THAT THE TRIAL COURT PROPERLY IMPOSED A SENTENCE FOR A 3RD DEGREE FELONY DUI WITH PRIOR CONVICTIONS.

In the Brief of Plaintiff/Appellee, Plaintiff/Appellee has argued that the trial court properly imposed a sentence for a 3rd degree felony DUI with prior convictions. However, Plaintiff/Appellee filed had previously moved for summary reversal on the grounds that the sentence imposed in this case was illegal under the law in effect at the date of sentencing[1]. In Plaintiff/Appellee's motion, Plaintiff/Appellee provided the following argument:

> "Defendant committed the DUI offense at issue in this case on August 8, 2001. At the time defendant committed the offense, the enhancement section of the DUI statute provided that "[a] conviction for a violation of Subsection (2) [DUI] is a third degree felony if it is *committed* . . . within ten years of two or more prior convictions under this section." Utah Code Ann. § 41-6-44(6) (2001) (emphasis added). Defendant's August 8, 2001, DUI offense was committed within ten years of both his March 12, 1993 and October 12, 1993 convictions. Thus, on the date he committed the crime, it was a third degree felony.
>
> The statute was subsequently amended. Effective May 6, 2002, the enhancement provision provided that "[a] conviction for violation of Subsection (2) is a third degree felony if it is . . . a third or subsequent *conviction* under this section within ten years of two or more prior convictions." Utah Code Ann. § 41-6-44(6) (2002) (emphasis added).
>
> The trial court entered judgment and sentence on September 15, 2003. R109. Defendant's conviction was therefore entered on that date. *See State v. Gallegos,* 849 P.2d 586, 591 (Utah App. 1993); *State v. Duncan,* 812 P.2d 60, 62 (Utah App. 1991) ("[W]hen applying a legal and technical meaning, 'conviction' refers to the final judgment entered on the plea or verdict of guilty.").
>
> Generally, a defendant is sentenced under the law in effect at the time of his offense. However, "[a] legislative mitigation of the penalty for a particular

---

[1]On February 9, 2005, this court entered its Order denying Plaintiff/Appellee's Motion for Summary Reversal.

crime represents a legislative judgment that the lesser penalty or the different treatment is sufficient to meet the legitimate ends of the criminal law." *State v. Patience,* 944 P.2d 381, 385 (Utah App. 1997) (citing *Belt v. Turner,* 479 P.2d 791, 793 (Utah 1971)). Utah courts have therefore held that "'[d]efendants are entitled to the benefit of the lesser penalty afforded by an amended statute made effective prior to their sentencing.'" *Id.* (quoting *Belt,* 479 P.2d at 792-93).

Here, the Legislature determined, prior to defendant's sentencing, that a third DUI offense should be a felony only where conviction for the offense falls within then years of two prior convictions. Thus, even though the third DUI offense was committed within ten years of two prior convictions, the Legislature has now provided that such an offense is a class B misdemeanor unless the third conviction is entered within ten years of the two prior convictions.[2]

The Legislature may not have foreseen the situation in the current case. In particular, the Legislature may not have foreseen that a defendant, on the lam for almost a year, might by his absence convert his conviction from a third-degree felony to a class B misdemeanor. Nonetheless, Utah appellate courts have held that a defendant is "entitled to the benefit of the lesser penalty afforded by an amended statute," even in those circumstances "where the defendant's presentence misconduct resulted in the defendant's sentencing being delayed beyond the effective date of the amendments." *Patience,* 944 P.2d at 835 (citing *Belt v. Turner,* 479 P.2d 791, 792-93 (Utah 1971), and *State v. Yates,* 918 P.2d 136, 139-40 (Utah App. 1996)).

Defendant's conviction in the instant case was his third DUI conviction. This third conviction, however, was not within ten years of the March 12, 1993 conviction. Thus, even though defendant did not object on this ground and even though his own misconduct resulted in the delayed entry of his conviction, he is entitled to the benefit of the lessor penalty. *See* Utah R. Crim P.22(e)."

---

[2]The change in law effectively made defendant's conviction non-enhanceable. The situation here is similar to that in *People v. Figueroa,* 24 Cal.Rptr.2d 368 (Cal App. 1993). In that case, the court addressed a sentencing enhancement based on possession of a drug within a drug-free zone. Following Figueroa's conviction, the California legislature amended the enhancement statute so that, in addition to showing that the offense occurred within 1000 feet of a school, the prosecution had to show that is occurred while school was in session or while minors were present. *Id.* at 369. The California court held that this law benefitted defendants because the enhancement could no longer be applied unless it was proven that minors were present when the offense occurred. *Id.* at 370. The court also held that Figueroa was entitled to the benefit of this change in the law that occurred prior to his sentencing, but remanded to give the prosecution the opportunity to prove that minors were, in fact, present. *Id.* at 371.

Plaintiff/Appellee has presented two opposite positions. The sentence for a 3rd degree felony with prior convictions cannot be illegal on one hand and properly imposed on the other.

Defendant/Appellant hereby incorporates Plaintiff/Appellee's Motion for Summary Reversal argument that the trial court improperly imposed a sentence for a 3rd degree felony DUI with prior convictions as fully set forth.

CONCLUSION AND REQUEST FOR RELIEF

The trial court's Sentence, Judgment, Commitment was illegal in that it was consistent of that of a 3rd degree felony when the Defendant/Appellant was found guilty of a class B misdemeanor. Additionally, the Sentence, Judgment, Commitment was illegal in that the sentence imposed was illegal under the law at the time of the date of the sentencing. For those reasons, this court should vacate the portion of the Sentence, Judgment, Commitment that relates to the DUI conviction to a class B misdemeanor.

DATED this 13 day of May, 2005.

Gregory Skabelund
Attorney for DEFENDANT/APPELLANT

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing REPLY BRIEF OF PLAINTIFF/APPELLANT in the United States mail, postage prepaid, to the following:

Jeanne B. Inouye
Attorney General's Office
160 East 300 South, 6th Floor
Salt Lake City, UT 84114

DATED this 13 day of May, 2005.