

2005

# State of Utah v. Keith Myles Slater : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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THE STATE OF UTAH, :  
 :  
 Plaintiff/Appellee, :  
 :  
 v. :  
 :  
 KEITH MYLES SLATER, : Case No. 20050012-CA  
 :  
 Defendant/Appellant. : Appellant is incarcerated.

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**REPLY BRIEF OF APPELLANT**

Appeal from a judgment of conviction for Aggravated Robbery, a first degree felony, in violation of Utah Code Ann. § 76-6-302 (1999), Theft, a second degree felony, in violation of Utah Code Ann. § 76-6-404 (1999), Unlawful Possession of a Controlled Substance, a third degree felony, in violation of Utah Code Ann. § 58-37-8(2)(a)(i) (2002), and Attempted Escape, a class A misdemeanor, in violation of Utah Code Ann. § 76-8-309(a)(b) (Supp. 2002), in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Leslie A. Lewis presiding.

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**INTRODUCTION**

This Court should reach the merits of Slater’s appeal because the trial court had jurisdiction to consider his motion to reduce the level of offense under Utah Code Ann. § 76-3-402 (2003). Moreover, as Slater explained in his opening brief, this Court should reverse because the trial court abused its discretion by denying his motion for a section 402 reduction. Aplt. Br. at 12-16.

**ARGUMENT**

**THIS COURT SHOULD REACH THE MERITS OF SLATER’S APPEAL  
BECAUSE THE TRIAL COURT HAD JURISDICTION TO CONSIDER  
HIS MOTION FOR A SECTION 402 REDUCTION**

Rule 12 of the Utah Rules of Criminal Procedure says “[m]otions for a reduction of criminal offense pursuant to Utah Code Section 76-3-402 may be raised at any time after sentencing upon proper service of the motion on the appropriate prosecuting entity.” Utah R. Crim. P. 12(c)(2). The plain language of this rule does not limit the application of this rule to third degree felonies or to section 402(2). But see Aple. Br. at 13 & n.4.

Rather, it broadly includes all “[m]otions for a reduction of criminal offense pursuant to Utah Code Section 76-3-402.” Utah R. Crim. P. 12(c)(2) (emphases added).

Although this language was not added to rule 12 until April 1, 2005, case law suggests it has long been the policy of Utah courts to entertain motions for section 402 reductions “at any time after sentencing.” Utah R. Crim. P. 12(c)(2); see, e.g., State v. Wareham, 801 P.2d 918, 919 (Utah 1990) (trial court considered and denied motion for 402 reduction filed after defendant’s case was affirmed on appeal; supreme court declined to reach merits of second appeal because issue raised was not “from the denial of the motion to reduce sentence” and should have been raised in first appeal); State v. Caballero, 2005 UT App 247, 2005 Utah App. LEXIS 246 (memorandum decision) (trial court considered and denied motion for 402 reduction filed ten years after conviction; this Court considered merits of motion on appeal and affirmed).

There are also strong policy reasons for allowing Utah courts to hear motions for section 402 reductions “at any time after sentencing.” Utah R. Crim. P. 12(c)(2). Section 402 is designed to allow trial courts to “enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly,” if “it would be unduly harsh to record the conviction as being for that degree of offense established by statute and to sentence the defendant to an alternative normally applicable to that offense.” Utah Code Ann. § 76-3-402(1). The trial court decides whether to allow a section 402 reduction based on the “nature and circumstances of the offense” and the “history and character of the defendant.” Id. What was an appropriate conviction and sentence originally may become inappropriate over time as the defendant’s circumstances, history, and character

change. If the defendant shows he has made progress in his rehabilitative efforts, the trial court may agree with his motion for a section 402 reduction and conclude it is now unduly harsh to force the defendant to carry the stigma of his current offense level or to force him to continue serving the current sentence.

The trial court retains jurisdiction to revoke, modify, or extend a defendant's probation based on his violation of the probation terms and its assessment of his progress. See Utah Code Ann. § 77-18-1(12) (Supp. 2005). The trial court also retains jurisdiction to review a defendant's progress and eligibility, and, if appropriate, grant a petition for expungement. See Utah Code. Ann. §§ 77-18-11 (Supp. 2005), 77-18-12 (Supp. 2005), 77-18-13 (2003). Similarly, as demonstrated by rule 12, the trial court should retain jurisdiction to grant a section 402 reduction where the defendant, through his rehabilitative progress, demonstrates that denying such a reduction would be unduly harsh. See Utah Code Ann. 76-3-402(1); Utah R. Crim. P. 12(c)(2).


In this case, the State did not argue below that the trial court did not have jurisdiction to consider Slater's motion for a section 402 reduction. R. 120:6-7. Further, Slater's motion for a section 402 reduction complied with the timing requirements of rule 12. Utah R. Crim. P. 12(c)(2); R. 120:6-7. Thus, this Court should reach the merits of Slater's appeal and reverse because, as Slater explained in his opening brief, the trial court abused its discretion by denying his motion for a section 402 reduction. Id.; but see Aple. Br. at 8-15.



**CONCLUSION**


Slater asserts this Court should reverse because the trial court abused its discretion by denying his motion for a section 402 reduction.

SUBMITTED this 11 day of October, 2005.

  
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LORI J. SEPPi  
Attorney for Defendant/Appellant

CERTIFICATE OF DELIVERY

I, LORI J. SEPPI, hereby certify that I have caused to be hand-delivered the original and seven copies of the foregoing to the Utah Court of Appeals, 450 South State, 5<sup>th</sup> Floor, P.O. Box 140230, Salt Lake City, Utah 84114-0230, and four copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6<sup>th</sup> Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 11 day of October, 2005.

  
\_\_\_\_\_  
LORI J. SEPPI

DELIVERED to the Utah Court of Appeals and the Utah Attorney General's Office as indicated above this 11 day of October, 2005.

  
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