

2005

Utah v. Rich : Brief of Appellee

Utah Court of Appeals

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STATE OF UTAH,

Plaintiff/Appellant,

VS.

JOSHUA RICH,

Defendant/Appellee.

Case No. 20050264-CA

BRIEF OF APPELLEE

APPEAL FROM THE FOURTH DISTRICT JUDICIAL COURT, UTAH COUNTY,
STATE OF UTAH, FROM AN ORDER DISMISSING A CHARGE OF
AGGRAVATED ROBBERY, A FIRST DEGREE FELONY, FOR FAILURE TO
BRING THE CASE TO TRIAL WITHIN 120 DAYS, BEFORE
THE HONORABLE STEVEN L. HANSEN

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
	:	
Plaintiff/Appellant,	:	
	:	Case No. 20050264-CA
vs.	:	
	:	
JOSHUA RICH,	:	
	:	
Defendant/Appellee.	:	
	:	

JURISDICTION OF THE UTAH COURT OF APPEALS

This Court has appellate jurisdiction in this matter pursuant to the provisions of Utah Code Annotated § 78-2a-3(2)(j).

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Whether the trial court erred in dismissing an aggravated robbery charge against defendant based on a violation of his statutory speedy trial when defendant delivered a request for disposition of pending charges as outlined by Utah Code Annotated §77-29-1? The standard of review for interpreting a statute presents a question of law and is therefore reviewed for correctness. *State v. Maestas*, 2000 UT App. 22, ¶ 11, 997 P.2d 314, *cert. denied*, 4 P.3d 1289 (Utah 2000). *See also*, *State v. Hankerson*, 2005 UT 47, ¶ 4, 122 P.3d 561 (Legal determinations concerning interpretation of the 120-day disposition statute are reviewed for correctness).
2. Whether the trial court abused its discretion when it held that there was not good cause for the failure of the State to try the matter within 120 days? The standard of review for this issue is an abuse of discretion standard. *Hankerson*, 2005 UT 47 at ¶ 4

(Trial court granted discretion for its reasonable determinations concerning existence of good cause excusing failure to bring charge to trial within 120 days).

CONTROLLING STATUTORY PROVISIONS

Utah Code Annotated § 77-29-1

1. Whenever a prisoner is serving a term of imprisonment in the state prison, jail or other penal or correctional institution of this state, and there is pending against the prisoner in this state any untried indictment or information, and the prisoner shall deliver to the warden, sheriff or custodial officer in authority, or any appropriate agent of the same, a written demand specifying the nature of the charge and the court wherein it is pending and requesting disposition of the pending charge, he shall be entitled to have the charge brought to trial within 120 days of the date of delivery of written notice.
2. Any warden, sheriff or custodial office, upon receipt of the demand described in Subsection (1), shall immediately cause the demand to be forwarded by personal delivery or certified mail, return receipt requested, to the appropriate prosecuting attorney and court clerk. The warden, sheriff or custodial officer shall, upon request of the prosecuting attorney so notified provide the attorney with such information concerning the term of commitment of the demanding prisoner as shall be requested.
3. After written demand is delivered as required in Subsection (1), the prosecuting attorney or the defendant or his counsel, for good cause shown in open court, with the prisoner or his counsel being present, may be granted any reasonable continuance.
4. In the event the charge is not brought to trial within 120 days, or within such continuance as has been granted, and defendant or his counsel moves to dismiss the action, the court shall review the proceeding. If the court finds that failure of the prosecuting attorney to have the matter heard within the time required is not supported by good cause, whether a previous motion for continuance was made or not, the court shall order the matter dismissed with prejudice.

STATEMENT OF THE CASE

A. Nature of the Case

The State appeals from an order by the Honorable Steven L. Hansen, Fourth District Judicial Court, dismissing a charge of aggravated robbery, a first degree felony,

for failure of the State to have the matter tried within 120 days as required by Utah Code Annotated § 77-29-1.

B. Trial Court Proceedings and Disposition

Joshua Rich was charged by information filed in the Fourth Judicial District Court on or about November 18, 2003, with aggravated robbery, a first degree felony, in violation of Utah Code Annotated § 76-6-302 or, in the alternative, robbery, a second degree felony, in violation of Utah Code Annotated § 76-6-301 (R. 2).

An initial appearance was held on August 31, 2004 where the defendant was advised of charges, penalties, and right to counsel (R. 16).

On September 29, 2004, Rich filed a Motion to dismiss, claiming that his case was not brought to trial before the expiration of 120 days from first submission of a written 120-day Disposition to the Utah State Prison warden's agent, dated March 12, 2004 (R. 36). This, Rich claims, violated his right to a speedy and fair trial in violation of the sixth Amendment of the Constitution of the United States and Utah Code Annotated § 77-29-1 (R. 35).

A preliminary hearing was held on October 12, 2004 (R. 39). Rich waived his right to the hearing and then entered a not guilty plea. *Id.* His counsel, Gunda Jarvis, requested that the court schedule oral arguments. *Id.*

Oral arguments were held on November 15, 2004 (R. 62). The court then took the matter under advisement. *Id.*

On March 3, 2005, the Court granted the defendant's motion to dismiss (R. 73). On March 17, 2005, the State filed a Notice of Appeal from the entire Order of Dismissal

in the Fourth Judicial Court of Utah County, State of Utah and this action commenced (R. 75). The Utah Supreme Court subsequently transferred this matter to this Court (R. 80).

STATEMENT OF RELEVANT FACTS

On November 5, 2003, Rich and co-defendant Scott Wilkinson were involved in a retail theft at Wal-Mart in which an employee was injured (R. 82: 33). Wilkinson was arrested first and charged with retail theft (R. 82: 34. Rich was arrested within three or four days of Wilkinson; however, he was arrested in Park City on separate charges (R. 25; 82:37). Officer Clement charged Rich with aggravated robbery or in the alternative robbery because during the retail theft Rich caused an employee's arm to shatter in five different places (R. 82: 34-36). Officer Clement never spoke to Rich nor was Rich ever informed that he was charged with aggravated robbery instead of retail theft (R. 82:37).

On November 18, 2003, the Utah County Attorney's office filed Information against Defendant charging him with Aggravated Robbery or in the alternative Robbery (R. 2). At the time the Information was filed, Rich was serving a sentence on a prior conviction in the Utah State Prison (R. 35-36).

On March 4, 2004, Rich filed a request for disposition of pending charges as outlined by Utah Code Annotated § 77-29-1 to the Warden of the State Prison (R. 35). In filling out the Notice and Request for Disposition of Pending Charge(s), Rich listed the nature of the charges as "theft/probation violation" in the Fourth District Court of Utah County (R. 42; 82:24; State's Exhibits #3, #5). On the line for "Case # (if known)" Rich wrote: 021400580 which was the case number for the probation violation (R. 82:44; State's Exhibit #5). According to Rich, he would have listed the other case number if he had known it or if he had access to it (R. 82:46). Moreover, the only reason Rich knew

the case number to his probation violation was because he had already been sentenced on it. *Id.* Furthermore, Rich contends that the only reason he listed his pending charge as theft is because Wilkinson was charged with retail theft (R. 82: 39-40).

Rich's disposition request was forwarded to Alberta Smith, a records worker at the prison who processes 120-day disposition requests and forwards them to the proper prosecuting agency (R. 82: 5-8). On March 12, 2005, Smith received Rich's request and forwarded it and a certificate of inmate status along with a cover letter to the Utah County Attorney office (State's Exhibits #1-5). The cover letter referenced case number 021400580 (State's Exhibit #1). A copy of this material was also sent to the Fourth District Court (*Id.*). Smith testified that disposition requests can be processed without a case number (R. 82: 11).

The 120-day disposition demand was received by the Utah County Attorney's office on March 25, 2005 (Date Stamp of State's Exhibit #1). Because Deputy Utah County Attorney Tim Taylor had prosecuted case number 021400580 the disposition paperwork was forwarded to his secretary, Beth Allen (R. 82: 16-18). Allen followed office procedure and looked up the case number and pulled the file in order to designate it as a matter that needed to be resolved within the corresponding 120 days (R. 82: 18-19). Once Allen looked at the case, she discovered that Rich had been sentenced and the case was finished (R. 82: 19). Accordingly, Allen did not flag the case for special attention and refiled the matter (*Id.*). Allen testified that she only looked up the case number on the disposition request and did not examine any other case involving Rich (R. 82: 22).

Allen did not give the disposition to Taylor to review (R. 82: 23). Allen also testified that at some point she had received a reminder of office policy which indicated that when a 120-day disposition demand is received, all cases involving the particular

defendant need to be examined “because sometimes, like this case, they don’t list all the case numbers and we need to make sure that they’re all taken care of” (R. 82: 24-25).

Jan Barp, the secretary for Curtis Larson—the Utah County deputy prosecuting this matter—testified that she would have received any disposition requests which referenced the case number associated with this case (R. 82: 29-31). However, Barp testified that no disposition requests or related paperwork concerning this aggravated robbery charge ever crossed her desk (R. 82: 30).

The Fourth District Court also received the disposition demand paperwork (R. 81; State’s Exhibit #6). The trial court docketed and filed the paperwork in case number 021400580 and forwarded a copy to the Utah County Attorney’s office (R. 81; 82: 20-21; State’s Exhibit #6).

SUMMARY OF ARGUMENT

Rich asserts that he adequately specified the nature of the charge as required by the disposition statute because theft is a lesser included offense of aggravated robbery. A reading of the plain language of the statute does not require Rich to list the specific name of his crime but only the nature of the charge. Moreover, Rich contends that the statute does not require him to list any case numbers in order for his case to be brought to trial.

Furthermore, because Rich properly specified the nature of the charge it was the duty of the State to bring his case to trial and hence the State did not have good cause for failing to bring his case to trial within 120 days.

Accordingly, the trial court correctly interpreted Utah Code Annotated § 77-29-1. In addition, the trial court did not abuse its discretion in concluding that the failure of the State to have this matter tried within 120 days was not excused by good cause.

ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY INTERPRETED UTAH CODE ANNOTATED § 77-29-1 IN CONCLUDING THAT RICH HAD ADEQUATELY SPECIFIED THE NATURE OF THE CHARGE IN HIS REQUEST FOR 120-DAY DISPOSITION

The State argues that Utah Code Annotated § 77-29-1 puts the initial burden on Rich to “properly specify the nature of the charge and the court wherein it is pending” (Appellant’s Br. at 13). Therefore, the State argues that since Rich failed to properly identify the nature of the charge they did not have a duty to bring Rich’s aggravated robbery case to trial within 120 days.

Rich and the trial court disagreed with this argument and the trial court concluded that Rich specified the nature of the charge even though he “listed Theft, rather than a Robbery” (R. 68). The trial court stated that the requirement of specifying the nature of the charge was met because “theft is a lesser included offense of Robbery” (*Id.*). Moreover, the court explained that it is “reasonable to assume that most individuals who receive criminal charges are not astute in the law and therefore can not be expected to know all the differing types and degrees of thefts that one could possibly be charged with.... Or, as in this case, whether a conduct will be charged with a theft, robbery, or aggravated robbery based upon an injury or threat of injury to another person” (R. 67). The trial court further reasoned that the State is “in the best position to determine what

charges are pending against the defendant in Utah County” (R. 68). The trial court also stated that it was not the duty of the layperson to know the differentiations between theft, robbery, and aggravated robbery and, therefore, Rich satisfied the requirements of the statute by putting theft on his request for disposition. *Id.* Accordingly, the trial court concluded:

... Since a layperson is not expected to make these differentiations, it is the responsibility of the State to do more than merely check the file number provided by a defendant. The State was responsible to insure whether there were other theft related charges pending that carried a different file number.

Furthermore, Beth Allen, who is employed with the Utah County Attorney’s office, testified that she had received the 120-day disposition request sent from the prison. She testified that she looked up the case number that was provided and discovered that he had already been sentenced on the 2002 charge. This Court finds that it was more than reasonable for the State to assume that since defendant was charged with a probation violation in regards to the 2002 case, based upon a theft related charge that occurred in Utah County, that there would be in fact a pending criminal charge that was separate from the 2002 theft charge. In addition, Ms. Allen testified that she received an office reminder that when a 120-day disposition request is received by the State that all defendant’s case numbers must be examined.

Therefore, this Court finds that the State failed to comply with the 120-day disposition request. Furthermore, this Court finds that the State’s failure to make an adequate search of all the defendant’s additional case numbers and files does not constitute as “good cause”

(R. 67).

The State argues that Rich listed only one case number on his Disposition Request and when coupled with the aggravated robbery charge identified as theft, the State was left with only two possible interpretations. The first interpretation of the request could be that it was a mistake “since there apparently were no unresolved charges associated with case number 021400580 at the time the Utah County Attorney received the request” (Appellant’s Br. at 11). Secondly, it “could be interpreted as a request to have the alleged probation violation from case number 021400580 resolved within 120 days.” *Id.* at 11-12.

The State further argues that neither of these possibilities implicates the aggravated robbery charge. *Id.* According to the State “defendant’s failure to even mention the aggravated robbery charge in his written disposition request prevents application of section 77-29-1 to those charges.” In support of this proposition the State cites *Aranza v. State*, 444 S.E.2d 349 (Ga. App. 1994). In *Aranza* the Georgia Appellate Court held that when a defendant fails to “identify the charges upon which he demanded a speedy trial by name, date, term of court, or case number” the demand “‘cannot reasonably be construed as sufficient to put the authorities on notice of a defendant’s intention to invoke the extreme sanction’ of dismissal” (Appellants Br. at 12) (quoting *Aranza v. State*, 444 S.E.2d at 350).

Rich asserts that *Aranza* is distinguishable from this case for several reasons. One, the Georgia statute differs considerably from the Utah statute. Georgia’s statute, a copy of which contained in the Addenda, is applicable to basically all defendants while the Utah statute (Utah Code Annotated § 77-29-1) applies only to defendants serving a term of incarceration. Georgia’s statute also seemingly places the burden of bringing a

defendant to trial timely on the burden of the corresponding trial court while the Utah statute places the burden on the prosecuting agency.

Two, in *Aranza*, the Georgia court concluded that the copy of the speedy trial demand served upon the State failed to identify the charges by “name, date, term of court, or case number” and that therefore, it was insufficient to put the court or the State on notice “‘of a defendant’s intention to invoke the extreme sanction’ of OCGA § 17-7-170.” *Aranza*, 444 S.E.2d at 350 (quoting *Ferris v. State*, 324 S.E.2d 762 (Ga. App. 1984)).

In this case, Rich’s demand which was received by the Utah County Attorney’s office specified the Fourth District Court for a theft-related charge pending in Utah County as of March of 2005 as well as a probation violation. The case number listed corresponded to the probation violation. Rich asserts that his disposition request adequately specified the nature of the charge pending against him and adequately placed the State on notice of its statutory obligation to bring the matter to trial within the corresponding 120 days. *Cf. State v. Viles*, 702 P.2d 1175, 1176 (Utah 1985) (Notice of Appearance which contains entry of plea and request for trial is insufficient to invoke § 77-29-1 where it was not properly delivered to the warden and did not specify the nature of the charge or the appropriate court); *State v. Wright*, 745 P.2d 447, 450-51 (Utah 1987) (Letter from probation officer to county attorney making inquiry as to county’s intentions respecting prosecution of defendant was not proper invocation of 120-day disposition statute where no charges were specified and where no information was pending against defendant).

In addition, Rich asserts that the plain language of the statute supports the trial court’s conclusion that Rich adequately specified the nature of the pending charge

because theft has many variations and because theft is related to robbery as a lesser included offense (R. 68). The plain language of Utah Code Annotated § 77-29-1 only requires the nature of the charge be identified and not the specific legal name of the charge.

In *State v. McCovey*, 803 P.2d 1234, 1236 (Utah 1990), the Supreme Court of Utah stated that a lesser included offense is included when the offense is “established by proof of the same or less than all the facts required to establish the offense charged.” The Supreme Court of Utah has interpreted that to mean that where one crime cannot be committed without necessarily committing the other than the one crime is a lesser included offense of the greater crime. *Id.* In *McCovey*, the defendant was convicted of second-degree felony-murder and aggravated robbery. The Supreme Court held that these two crimes do not merge and therefore it was not double jeopardy. *Id.* at 1234. However, in this case the Supreme Court did say that “theft has been held to be a lesser included offense of aggravated robbery because theft, by its very nature, has elements that overlap aggravated robbery.” *Id.* at 1237.

Rich argues that since the plain language of the statute only requires that the defendant specify the nature of the charge and not the legal name of the crime charged; he fulfilled this requirement and, therefore, it was the duty of the State to bring the case to trial within 120-days. Moreover, Rich argues that he did specify the nature of the charge because the Supreme Court has stated that “theft, by its very nature, has elements that overlap aggravated robbery,” therefore, meaning that theft and aggravated robbery are very similar in nature. This, Rich contends, proves that he met the statutory requirement because he listed the nature of the charge and the Supreme Court of Utah has held that these two crimes are similar in nature.

As to the two interpretations advocated by the State, Rich contends that there is third—more plausible—interpretation which is supported by the trial court’s decision and the testimony of Beth Allen, a secretary in the Utah County Attorney’s office. This third interpretation is that Rich listed two different charges requesting disposition and that he listed the only case number available to him. According to Allen, she understood “theft/probation violation” as meaning “theft” and “probation violation” (R. 82: 24). Furthermore, Allen also testified that she was sent a reminder that when a 120-day disposition request is received, they are to look up all the case numbers (R. 82: 24-25). When Rich’s attorney asked why this was Ms. Allen stated that it was because “sometimes, like this case, they don’t list all the case numbers and we need to make sure that they’re all taken care of” (R. 82: 25).

In its memorandum decision, the trial court stated that it was the “responsibility of the State to do more than merely check the file number provided by a defendant. The State was responsible to insure whether there were other theft related charges pending that carried a different file number” (R. 67). The State concedes that the “State is better equipped to uncover any and all charges that may be pending against a defendant” (Appellant’s Br. at 13). However, the State argues that the “current statute imposes no such requirement on the State” and the statute places the initial burden on the defendant to properly identify the nature of the charge. *Id.* at 13.

Rich contends that since he properly identified the nature of the charge, the burden shifted to the State to bring Rich’s untried charge to disposition within 120 days from the time of delivery. In *State v. Heaton*, 958 P.2d 911, 912 (Utah 1998), the defendant appealed a conviction of aggravated robbery and evading arrest. Heaton argued that the trial court erred in failing to dismiss his case due to noncompliance of

the detainer statute. *Id.* at 914. The Supreme Court of Utah stated that “this court has consistently held that the language of the detainer statute clearly places the burden of complying with the statute on the prosecutor.” *Id.* Furthermore, in *Heaton*, the Court referred to the *Petersen* case where the defendant did not object to a trial date outside the 120-day period. The Utah Supreme Court concluded that the defendant’s failure to object to the trial date was irrelevant because the “burden of bringing the case to trial within the disposition period rested solely with the prosecution.” *Id.* The Court further declared that in *Heaton*, the lower court “clearly erred in concluding that Heaton was in the same position as was the State and therefore shared some of the responsibility to find out why his case had not been sent to trial.” *Id.*

Rich argues that, like Heaton, he was not in the same position as the State. Rich contends that he was never told he was charged with aggravated robbery and his case number was not available to him. Therefore, he did the best he could have done by specifying the nature of the charge as theft, which is the offense for which the co-defendant had been charged. The State had the ability—and the statutory responsibility—to discover the pending aggravated robbery charge, which is related to theft, but failed to take any steps to do so.

Accordingly, Rich asserts that the trial court properly interpreted the plain language of Utah Code Annotated § 77-29-1 as requiring that only the nature of the charge need be specified; and that Rich’s demand which listed “theft” adequately met this statutory requirement. Because Rich’s disposition request was not deficient, the trial court correctly dismissed the charge for failure by the State to have the matter tried within 120 days.

POINT II

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN CONCLUDING THAT THE STATE'S FAILURE TO BRING THIS MATTER TO TRIAL WITHIN 120 DAYS WAS NOT SUPPORTED BY GOOD CAUSE

Utah Code Annotated § 77-29-1(4) reads: “In the event the charge is not brought to trial within 120 days, or within such continuance as has been granted, and defendant or his counsel moves to dismiss the action, the court shall review the proceeding. If the court finds that the failure of the prosecuting attorney to have the matter heard within the time required is not supported by good cause, whether a previous motion for continuance was made or not, the court shall order the matter dismissed with prejudice.”

In *State v. Hankerson*, 2005 UT 47, 122 P.3d 561, the Utah Supreme Court stated that in determining whether the State's failure to bring a case to trial within statute § 77-29-1, the Court will determine (1) when the “120-day period commenced and expired” and (2) if the trial was not held within the 120-day period whether there was good cause for delay. 2005 UT 47 at ¶ 6. Furthermore, the Court held that in determining whether there is good cause a “trial court must have sufficient evidence to support a finding that, but for the defendant's actions, the trial would have been brought within the required disposition period.” *Id.* at ¶ 12.

The State contends that “all of the delay in bringing the aggravated robbery charge to trial within 120 days of the Disposition Request is attributable to defendant. ‘But for’ defendant’s characterization of the nature of the offense as ‘theft/probation violation’ and his use of the case number from his 2002 theft conviction, the Utah County Attorney’s Office would have brought the aggravated robbery charge to trial within 120 days” (Appellant’s Br. at 16). And that accordingly, the trial court abused its discretion in dismissing the charge (*Id.*).

However, the State overlooks the statutory responsibility placed upon the prosecuting agency to have the matter brought to trial in a timely fashion. Rich's disposition request, as established in Point I, adequately specified the nature of the charge as required by statute. It was further delivered to the proper prison authority and specified the correct court and the correct county or prosecuting agency. Accordingly, it was the responsibility of the State to have the matter tried within the corresponding 120 days.

The State's argument also fails to address the trial court's reasoned determinations concerning whether the failure of the prosecuting agency to comply with the statute was supported by good cause:

.... The State is in the best position to determine what charges are pending against the defendant in Utah County. It is reasonable to assume that most individuals who receive criminal charges are not astute in the law and therefore cannot be expected to know all the differing types and degrees of thefts that one could possibly be charged with. A person could be charged with theft or shoplifting with differing degrees based upon value amount or prior convictions.... Or, as in this case, whether a conduct will be charged with a theft, robbery, or aggravated robbery based upon an injury or threat of injury to another person. Since a layperson is not expected to make these differentiations, it is the responsibility of the State to do more than merely check the file number provided by a defendant. The State was responsible to insure whether there were other theft related charges pending that carried a different file number.

Furthermore, Beth Allen, who is employed with the Utah County Attorney's office, testified that she had received the 120-day disposition request sent from the

prison. She testified that she looked up the case number that was provided and discovered that he had already been sentenced on the 2002 charge. This Court finds that it was more than reasonable for the State to assume that since defendant was charged with a probation violation in regards to the 2002 case, based upon a theft related charge that occurred in Utah County, that there would be in fact a pending criminal charge that was separate from the 2002 theft charge. In addition, Ms. Allen testified that she received an office reminder that when a 120-day disposition request is received by the State that all defendant's case numbers must be examined.

(R. 67). Allen—as an employee of the prosecuting agency—was aware of Rich's disposition request. She was aware that both theft and a probation violation were specified on that request as “untried criminal charges.” And Allen was aware of office procedure to examine all case numbers when a 120-day disposition request is received. Yet Allen failed to insure that a check was done on Rich's cases and as a result, the request got filed and no action was taken by the State.

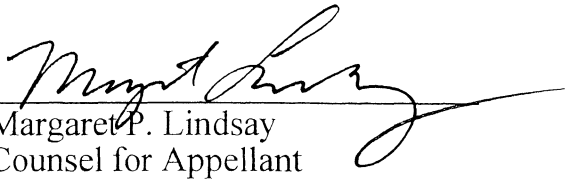
Based upon the foregoing reasonable determinations, the trial court concluded that the “State's failure to make an adequate search of all the defendant's additional case numbers and files does not constitute ‘good cause’” (R. 67).

Rich asserts that the trial court did not abuse its discretion in finding that the failure of the State to have this matter tried within 120 days was not supported by good cause. The Utah Supreme Court has previously held that a trial court is granted discretion for its reasonable determinations concerning the existence of good cause. *Hankerson*, 2005 UT 47 at ¶ 4. Rich asserts that the trial court's determinations concerning good cause were reasonable and therefore, do not constitute an abuse of discretion.

CONCLUSION AND PRECISE RELIEF SOUGHT

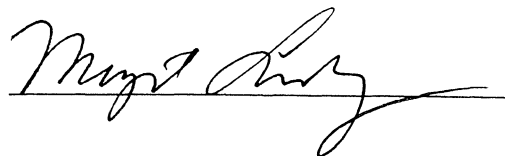
Rich asks that this court to affirm the decision of the trial court in dismissing this matter for failure of the State to comply with his demand for 120-day disposition.

RESPECTFULLY SUBMITTED this 27th day of December, 2005.


Margaret P. Lindsay
Counsel for Appellant

CERTIFICATE OF MAILING

I hereby certify that I delivered four (4) true and correct copies of the foregoing Brief Of Appellant to Brett Delporto, Appeals Division, Utah Attorney General, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City. UT 84114, this 27th day of December, 2005.



ADDENDA



State of Utah
DEPARTMENT OF CORRECTIONS
DIVISION OF INSTITUTIONAL OPERATIONS

02-040
TLT

Michael O. Leavitt
Governor
Mike Chabries
Executive Director
Scott V. Carver
Division Director

P.O. Box 250
Draper, UT 84020
(801) 576-7000

12 March 2004

Utah County District Attorney
100 East Center Street #2100
Provo, UT 84606

RE: RICH, Joshua Samuel
USP# 35878 D.O.B. 05/12/81
YOUR CASE # 021400580

Dear Sirs:

MR/MRS/MS Joshua Samuel Rich is currently incarcerated in the Utah State Prison. He/She is requesting disposition of untried charges of Theft and Probation Violation, pending in your jurisdiction. Enclosed is the appropriate paperwork to process his request.

Thank you for your assistance with this matter.

Sincerely,

by: Alberta Smith
Records Office Tech III
Institutional Operations

Encl. (2)

cc: Fourth District Court Clerk-Provo
Inmate File

UTAH DEPARTMENT OF CORRECTIONS

CERTIFICATE OF INMATE STATUS

120-DAY DISPOSITION

TO: Utah County District Attorney

RE: RICH, Joshua Samuel
Inmate Name

35878
USP#

TERM of COMMITMENT: Forgery 0-5 yrs.

TIME SERVED: Approx 00 year(s) 01 mo

TIME REMAINING: Approx. 04 year(s) 11 mo

****time calculated may not include toll time/credit time served****

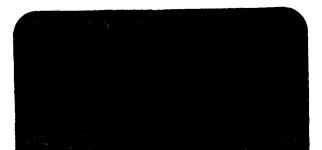
PAROLE ELIGIBILITY: scheduled for parole 00/00/00

BOARD OF PARDONS Hearing set for 00/00/00
DECISION:



Authorized Agent, DIO Record Unit
Utah State Prison
P. O. Box 250
Draper, UT 84020

cc: file



UTAH DEPARTMENT OF CORRECTIONS

NOTICE AND REQUEST FOR DISPOSITION OF PENDING CHARGE(S)

TO: DIRECTOR, DIVISION OF INSTITUTIONAL OPERATIONS

Notice is hereby given that I, JOSHUA RICH
(Inmate Name) do hereby request final disposition. Charge(s) of
THEFT / PROBATION VIOLATION are now
pending against me in the 4th DISTRICT Court,
brought by UTAH COUNTY (prosecuting
agency e.g., county, city, Attorney General, etc. in the State of
Utah) and request is hereby made that you forward this notice to
the appropriate authorities together with such information as
required by law.

Dated this 4th day of MARCH 2004 (Month / Year).

Inmate's Name JOSHUA RICH USP# 35878

I hereby certify that I have received a copy of the foregoing
notice this 12th day of MARCH 2004 (Month / Year).

Alberta Smith
Authorized Agent, DIO Record Unit
USP, PO Box 250, Draper, Utah 84020
CUCF, PO Box 898, Gunnison, Utah 84634



(Revised 10/2000)
(TMF 05/05.06, C)



MAR 08 2004

DIVISION OF INSTITUTIONAL OPERATIONS
OFFICE MEMORANDUM

TO: Records

FROM: DIO Record Unit (X) Draper () CUCF

DATE:

SUBJECT: ~~()~~ 120-Day Disposition
() 180-Day Disposition

RE: Inmate Name: JOSHUA RICH

USP Number: 35878



Please fill in the following information:

Prosecuting Agency 4th DISTRICT COURT
(e.g., county, city, Attorney General, etc.)

County UTAH

State UTAH

Crime(s) THEFT / PROBATION VIOLATION /

Case # (if known) 021400580

120-Day Dispositions: For **untried criminal charges** within the State of Utah.
180-Day Dispositions: For **untried criminal charges** out of the state for which a detainer has been filed against an inmate.

Please read and sign the attached documents. (2 pages)

Please attach a signed and appropriately witnessed Inmate Money Transfer (certified mailing cost to send disposition) with the amount section on the money transfer BLANK.

Return this letter and all attached documents to the DIO Record Unit Supervisor at the site Records Office.



**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

STATE OF UTAH, Plaintiff, vs. JOSHUA SAMUEL RICH, Defendant.	MEMORANDUM DECISION Case No. 031404393 Date: January 10, 2005 Judge Steven L. Hansen
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Before the Court is the Defendant's Motion to Dismiss. The Court, having reviewed and considered all relevant memoranda and hearings, now makes the following ruling:

STATEMENT OF FACTS

1. On May 8, 2002, the Defendant was convicted of a Theft, a Third Degree Felony in case #021400580. On June 26, 2002, the Defendant was placed on probation and was ordered to serve time in jail.
2. On October 21, 2003, the Defendant was arrested on November 7, 2004 for Forgery charges from Summit County, Utah.
3. On November 18, 2003, Utah County Attorney's office filed an Information against Defendant charging him with Aggravated Robbery or in the alternative Robbery for conduct that occurred in Utah County on November 5, 2004.
4. On January 27, 2004, the Defendant was sentenced in the Third District Court, Summit County for the Forgery charge, to which he was ordered to serve 0-5 years in the Utah State Prison.
5. On March 4, 2004 a Notice and Request for Disposition of Pending Charges(s) was completed by an authorized agent of the warden, Alberta Smith. The Defendant

requested a 120 day disposition of all charges of Theft/Probation Violation that were pending against in the Fourth District Court, brought by the Utah County Attorney's office.

6. On March 8, 2004, Ms. Smith completed a Division of Institutional Operations Office Memorandum, which list the crimes of Theft/Probation Violation, as well as referencing the case # 021400580.
7. On March 12, 2004, a letter was drafted by Ms. Smith, addressed to the Utah County District Attorney's office, whereby providing notice of the 120 disposition request for all pending charges of Theft and Probation Violation. Again, the only case number listed was at of #021400580.
8. A copy of the cover letter, Certificate of Inmate Status, and Notice and Request For Disposition of Pending Charges(s) were received by the Utah County Attorney's office on March 25, 2004.
9. On September 21, 2004, in open court, State's counsel first became aware of the 120 disposition request.
10. On September 29, 2004, the Defendant filed a motion to dismiss the case because it was not brought to trial before the expiration of the 120 disposition notice.
11. On October 15, 2004, the State filed a Motion in Opposition by stating that the State did not receive notice, since the Defendant failed to list the correct case number

ANALYSIS AND CONCLUSION OF LAW

The State contends that the Defendant did not specify the nature of the charge because he listed pending charges as Theft, whereas he had been charged with Aggravated Robbery, or in the alternative Robbery. The Defendant asserts that the State had a duty to conduct a thorough search to determine any and all types of theft-related charges that were pending. This Court finds that the Defendant did specify the nature of the charge. Although the Defendant listed Theft, rather than a Robbery, theft is a lesser included offense of Robbery. The State in the best position to determine what charges are pending against the defendant in Utah County. It is

reasonable to assume that most individuals who receive criminal charges are not astute in the law and therefore can not be expected to know all the differing types and degrees of thefts that one could possibly be charged with. A person could be charged with a theft or shoplifting with differing degrees based upon value amount or prior convictions. A person could be charged with differing degrees of burglary based upon whether the defendant entered a residence or a business. Or, as in this case, whether a conduct will be charged with a theft, robbery, or aggravated robbery based upon an injury or threat of injury to another person. Since a layperson is not expected to make these differentiations, it is the responsibility of the State to do more than merely check the file number provided by a defendant. The State was responsible to insure whether there were other theft related charges pending that carried a different file number.

Furthermore, Beth Allen, who is employed with the Utah County Attorney's office, testified that she received the 120-day disposition request sent from the prison. She testified that she looked up the case number that was provided and discovered that he had already been sentenced on the 2002 theft charge. This Court finds that it was more than reasonable for the State to assume that since the defendant was charged with a probation violation in regards to the 2002 case, based upon a theft related charge that occurred in Utah County, that there would be in fact a pending criminal charge that was separate from the 2002 theft charge. In addition, Ms. Allen testified that she received an office reminder that when a 120-day disposition request is received by the State that all the defendant's case numbers must be examined.

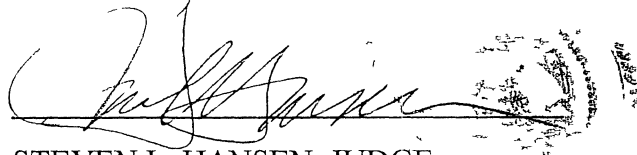
Therefore, this Court finds that the State failed to comply with the 120-day disposition request. Furthermore, this Court finds that the State's failure to make an adequate search of all the defendant's additional case numbers and files does not constitute as "good cause."

CONCLUSION

Based on the evidence presented to the Court in the parties' motions and oral arguments this Court finds that the State was provided with a written demand to have the pending charge brought to trial with 120 days. Since the charge was not properly disposed of within the 120 day period, the charge shall be dismissed. This Court hereby grants the Defendant's Motion to Dismiss and is to prepare an order consistent with this ruling and submit it for the Court's signature.

DATED this 10 day of January, 2005

BY THE COURT

A handwritten signature in black ink, appearing to read "Steven L. Hansen", is written over a horizontal line. To the right of the signature is a circular official seal, partially obscured by the signature and the line.

STEVEN L. HANSEN, JUDGE

Georgia Code Annotated § 17-7-170

a) Any person against whom a true bill of indictment or an accusation is filed with the clerk for an offense not affecting the person's life may enter a demand for trial at the court term at which the indictment or accusation is filed or at the next succeeding regular court term thereafter; or, by special permission of the court, he or she may at any subsequent court term thereafter demand a trial. In either case, the demand for trial shall be filed with the clerk of court and served upon the prosecutor and upon the judge to whom the case is assigned or, if the case is not assigned, upon the chief judge of the court in which the case is pending. The demand shall be binding only in the court in which the demand is filed, except where the case is transferred from one court to another without a request from the defendant.

(b) If the person is not tried when the demand is made or at the next succeeding regular court term thereafter, provided at both court terms there were juries impaneled and qualified to try the person, the person shall be absolutely discharged and acquitted of the offense charged in the indictment or accusation. For purposes of computing the term at which a misdemeanor must be tried under this Code section, there shall be excluded any civil term of court in a county in which civil and criminal terms of court are designated; and for purposes of this Code section it shall be as if such civil term was not held.

(c) Any demand filed pursuant to this Code section shall expire at the conclusion of the trial or upon the defendant entering a plea of guilty or nolo contendere.

(d) If a case in which a demand for trial has been filed, as provided in this Code section, is reversed on direct appeal, a new demand for trial must be filed within the term of court in which the remittitur from the appellate court is received by the clerk of court or at the next succeeding regular court term thereafter.

(e) If the case in which a demand for trial has been filed as provided in this Code section results in a mistrial, the case shall be tried at the next succeeding regular term of court.