

2005

Utah v. Rich : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellant,

vs.

JOSHUA RICH,

Defendant/Appellee.

Case No. 20050264-CA

BRIEF OF APPELLANT

APPEAL FROM AN ORDER DISMISSING A CHARGE OF AGGRAVATED ROBBERY, A THIRD FELONY, IN VIOLATION OF UTAH CODE ANN. § 76-10-504 (WEST 2004), FOR FAILURE TO BRING THE CASE TO TRIAL WITHIN 120 DAYS, AS REQUIRED BY UTAH CODE ANN. § 77-29-1 (WEST 2004), IN THE FOURTH JUDICIAL DISTRICT COURT IN UTAH COUNTY, STATE OF UTAH, THE HONORABLE STEPHEN L. HANSEN PRESIDING.

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FILED
CLERK OF DISTRICT COURT

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellant,

vs.

JOSHUA RICH,

Defendant/Appellee.

Case No. 20050264-CA

BRIEF OF APPELLANT

JURISDICTIONAL STATEMENT

The State of Utah appeals from an order dismissing a charge of aggravated robbery, a third degree felony, in violation of Utah Code Ann. § 76-10-504 (West 2004), for failure to bring the case to trial within 120 days, as required by Utah Code Ann. § 77-29-1 (West 2004), in the Fourth Judicial District Court in Utah County, State of Utah, the Honorable Stephen L. Hansen presiding. This Court has jurisdiction pursuant to Utah Code Ann. § 78-2a-3(2)(j) (West 2004).

ISSUES PRESENTED ON APPEAL AND STANDARDS OF REVIEW

Issue 1: Did the trial court err in dismissing an aggravated robbery charge against defendant based on a violation of his statutory speedy trial right when defendant had invoked the speedy trial statute only as to a different charge?

Standard of Review: This claim involves interpretation of a statute and, thus, presents a question of law reviewed for correctness. *State v. Maestas*, 2000 UT App 22, ¶11, 997 P.2d 314, *cert. denied*, 4 P.3d 1289 (Utah 2000).

This issue was preserved at R. 52-55; R. 82:51-55, 59-60.

Issue 2: Alternatively, did the trial court abuse its discretion in determining there was not “good cause” to allow prosecution of the defendant for aggravated robbery to continue even though the charge was not tried within 120 days?

Standard of Review: The Court of Appeals reviews a trial court's determination that defendant's charges should be dismissed pursuant to the speedy trial statute for abuse of discretion. *State v. Houston*, 2003 UT App 416, ¶ 7, 82 P.3d 219.

This issue was preserved at R. 50-52; R. 82:55.

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

The following statute is central to this appeal and reproduced in full:

(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 officer, 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 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.

Utah Code Ann. § 77-29-1 (West 2004).

STATEMENT OF THE CASE

On November 18, 2003, defendant was charged by information with aggravated robbery or, in the alternative, robbery in the Fourth Judicial District Court. R. 1-2.

Sometime in March 2004, defendant, an inmate at the Utah State Prison, prepared a document captioned “Notice and Request for Disposition of Pending Charge(s),” *see* R. 81, State’s Exhibit 3 (“Disposition Request”), attached as Addendum A, and presented it to prison officials. R. 81, 82. The Disposition Request demands that untried charges of “theft/probation violation” in case number 021400580 be tried within 120 days as provided by Utah law. *Id.* When the aggravated robbery charge in this case, number 031404393, had not been tried within 120 days, the defendant filed a motion to dismiss. R. 27.

On January 10, 2005, Judge Steven L. Hansen, Fourth Judicial District Court, granted the motion to dismiss. *See* Memorandum Decision, R. 65-69, attached as Addendum B . A final order dismissing the charge was entered on March 3, 2005. R. 73.

On March 17, 2005, the State filed a timely notice of appeal. R. 75.

By order dated April 12, 2005, the Utah Supreme Court transferred the case to this Court for disposition. R. 80.

STATEMENT OF FACTS

Relevant criminal history

Defendant's recent criminal history includes the following:

Case no. 021400580. On May 8, 2002, defendant was convicted of theft in the Fourth Judicial District Court and later sentenced to jail time and probation ("the 2002 theft case"). R. 69.

Case no. 031500223. Defendant was convicted of forgery in Third District Court and on January 27, 2004, he was sentenced to serve zero to five years at the Utah State Prison. R. 69.

Case no. 031404393. On November 18, 2003, defendant was charged with aggravated robbery in Fourth Judicial District Court in connection with a November 5, 2003, incident in which defendant and a co-defendant attempted to take merchandise from a Walmart store (hereinafter "the aggravated robbery case" or "the aggravated robbery charge"). R. 1-2; 82:32-34. During the incident, defendant allegedly assaulted an employee who was chasing him, breaking the employee's arm in five different places. R. 82:34.

As a result of the aggravated robbery charge, defendant was also apparently charged with violating the terms of probation imposed in connection with the 2002 theft case. R. 82:43.

“ . . . [T]he nature of the charge. . . ”¹

On March 4, 2004, defendant prepared the paperwork for his Disposition Request, indicating that he had charges of “theft/probation violation” pending against him in the Fourth Judicial District Court and that Utah County was the prosecuting entity. R. 81, State’s Exhibit 3. He also filled out a form titled “Division of Institutional Operations Office Memorandum,” which served as a “cover sheet” directing his Disposition Request to the “DIO record unit” in Draper. R. 81, State’s Exhibit 5 (“DIO cover sheet”), attached as Addendum C. The DIO cover sheet also listed the charges as “theft/probation violation” and stated that defendant was requesting a 120-day disposition of charges of “theft/probation violation” in case number 021400580, the 2002 theft case. *Id.*

Delivered to “the warden”²

The Disposition Request and cover sheet were forwarded to Alberta Smith, a records worker at the prison, whose responsibilities include processing 120-day disposition requests and forwarding them to the prosecuting agency. R. 82:5-8. Per standard procedure, Ms.

¹ Utah Code Ann. § 77-29-1(1) (West 2004) (defendant who desires to have criminal charges tried within 120 days shall prepare “a written demand specifying the nature of the charge and the court wherein it is pending . . .”).

² *Id.* (“ . . . prisoner shall deliver [disposition requests] to the warden, sheriff or custodial officer in authority, or any appropriate agent of the same . . .”).

Smith prepared a letter referencing the case number provided by the defendant—case number 021400580, the 2002 theft case—informing the prosecuting entity that defendant “is requesting disposition of untried charges of Theft and Probation Violation, pending in your jurisdiction.” R. 81, State’s Exhibit 1, attached at Addendum D. Copies of the letter and the Disposition Request were sent to the Utah County Attorney’s Office and the Fourth Judicial District Court clerk in Provo.

*Forwarded to the “prosecuting attorney and court clerk”*³

The Disposition Request, cover sheet and Ms. Smith’s letter reached the Utah County Attorney’s Office on March 25, 2004. *See, e.g.*, State’s Exhibit 1 (time stamp, upper right corner). Because prosecutor Tim Taylor had handled case number 021400580, the Disposition Request and related paperwork were routed to his secretary, Beth Allen. R. 82:16-18.

Per standard procedure for Disposition Requests, Ms. Allen looked up the case number and pulled the file so it could be properly designated as one that needed to be resolved within the 120 days provided by statute. R. 82:18-19.

“I just looked to see what the status of the case was, and it showed he had been sentenced.” R. 82:19. “If the case had not been finished, I would put a sticker up on the file showing its 120-day disposition. I would have seen what the status was, seen if I needed to

³ Utah Code Ann. § 77-29-1(2) (“Any warden, sheriff or custodial officer, upon receipt of the [disposition request] . . . shall immediately cause the [request] to be forwarded . . . to the appropriate prosecuting attorney and court clerk.”).

get it back on the calendar to get it going again.” *Id.* The sticker is designed to remind the assigned attorneys “every time they open it that this is a 120-day disposition, which means they need to speed it along. I would get it on the calendar right away, make sure it’s going.” R. 82:21-22. But because the case had already been resolved, she had no reason to flag it for special attention. “In this case, it was already done so I filed it away.” R. 82:19.

Jan Barp, another secretary in the office, also testified. As the secretary who worked for Curtis Larsen, the deputy Utah County attorney who prosecuted the aggravated robbery case, Ms. Barp would have received any disposition requests with that case number or associated with that case. R. 82:29-31. However, no disposition notices or related paperwork ever crossed her desk with regard to the aggravated robbery case. R. 82:30.

The Disposition Request and Ms. Smith’s letter were also filed in the Fourth Judicial District Court on March 24, 2004. R. 81, State’s Exhibit 6. However, the Disposition Request and letter were not filed in this case, presumably because defendant provided a different case number.⁴ The court apparently forwarded additional copies of the Disposition Request and letter to the Utah County Attorney’s Office, where they were filed along with other documents associated with case number 021400580, the 2002 theft case. R. 81, State’s Exhibit 6; R 82:20-21.

⁴ The Fourth District Court docket for case number 021400580 shows that a copy of the Disposition Request was filed on March 24, 2004.

*Dismissed with prejudice*⁵

On September 21, 2004—well past the 120-day deadline—the State first became aware of the Disposition Request in open court. R. 58. Afterward, defense counsel filed a motion to dismiss and a hearing with testimony and oral argument was scheduled. R. 26, 58.

During the hearing, Orem City Police Officer Randall Clement testified that the aggravated robbery case concerned allegations that defendant and his accomplice had attempted to take merchandise from the Walmart store and fled when confronted by store employees. R. 82:34. The accomplice was charged with retail theft, but defendant was charged with aggravated robbery because he had threatened and assaulted the Walmart employee who pursued him. R. 82:36. The employee’s arm was “shattered, broken in five different places.” R. 82:34.

Defendant testified that he had initially believed he, like his co-defendant, would be charged with theft in connection with the Walmart incident. R. 82:40. According to defendant, the phrase “theft/probation violation” was intended to cover both the aggravated robbery charge and resulting probation violations in the 2002 theft case. R. 82:39. He testified that he only wrote down the case number from the 2002 theft case—case number 021400580—because he happened to have documentation containing the case number. R. 82:46. He also stated that the probation violations were resolved within 120 days. R. 82:40.

⁵ Utah Code Ann. § 77-29-1(4) (“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 . . . the court shall order the matter dismissed with prejudice.”).

Following the hearing, the trial court took the matter under advisement and later issued a Memorandum Decision granting defendant's motion to dismiss. R. 65-69. The court ruled that defendant did specify the nature of the charge he wished to have resolved. "Although the Defendant listed Theft, rather than a Robbery, theft is a lesser included offense of Robbery." R. 68. The court also stated 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 case." R. 67. The court ruled that the State had not complied with the Disposition Request and that "the State's failure to make an adequate search of all the defendant's additional case numbers and files does not constitute as [sic] 'good cause.'" *Id.*

SUMMARY OF ARGUMENT

Point I: Defendant failed to meet his burden under Utah law to properly specify the "nature of the charge" in his Disposition Request and, thus, failed to trigger the State's duty to try the aggravated robbery charge within 120 days. Accordingly, the trial court erred in dismissing the aggravated robbery charge.

Point II: Even assuming *arguendo* that defendant's Disposition Request properly identified the nature of the charge against him, the delay in bringing the case to trial was entirely attributable to defendant. Thus, the trial court abused its discretion in failing to find "good cause" for the delay and allowing the case to continue.

ARGUMENT

I. THE TRIAL COURT ERRED IN DISMISSING THE AGGRAVATED ROBBERY CHARGE BECAUSE DEFENDANT'S DISPOSITION REQUEST DID NOT PROPERLY NOTIFY THE STATE THAT HE WISHED TO HAVE THE CHARGE TRIED WITHIN 120 DAYS.

The trial court erred in dismissing the aggravated robbery charge against defendant because the Disposition Request cannot reasonably be read to demand resolution of that charge. Utah Code Ann. § 77-29-1(1) states that a prisoner requesting disposition of untried charges “shall deliver . . . a written demand specifying *the nature of the charge* and the court wherein it is pending . . .” *Id.* (emphasis added). Because the Disposition Request did not properly specify the nature of the charge, it is fundamentally defective and could not warrant dismissal of the pending charge.

In Utah, an incarcerated defendant may request disposition of any state charges pending against him by delivering an appropriate written notice to an agent of his custodial institution as provided in Utah Code Ann. § 77-29-1(1), which states:

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.*

(Emphasis added). The 120-day period may be extended by either party for good cause shown in open court, Utah Code Ann. § 77-29-1(3) & (4), or by a defendant who causes a trial to be delayed. *State v. Banner*, 717 P.2d 1325, 1329-30 (Utah 1986) (defendant's delay

of a trial constitutes a temporary waiver of his right to a speedy trial); *State v. Velasquez*, 641 P.2d 115, 116 (Utah 1982) (providing the same with respect to the 90-day disposition period under the former statute).

The Disposition Request consisted of a pre-printed form with various blanks filled in by defendant. R. 81, State's Exhibit 3, Addendum A. That notice provides:

Notice is hereby given that I, Joshua Rich, do hereby request final disposition. Charges of theft/probation violation are now pending against me in the 4th District Court, Utah County and request is hereby made that you forward this notice to the appropriate authorities together with such other information as required by law.⁶

Id. In a separate cover letter to the prison records office, defendant also stated that the case number for the charges he wished to have resolved was 021400580—his 2002 conviction for theft. R. 81, State's Exhibit 5, Addendum C.

The only description of the nature of the charges defendant sought to include in his written disposition request is the phrase “theft/probation violation.” That phrase does nothing to identify the aggravated robbery charge or state defendant's desire to have that charge promptly disposed of. Indeed, when coupled with the designation of case number 021400580—the 2002 theft case—the Disposition Request is subject to only two interpretations. First, it could simply be a mistake since there apparently were no unresolved charges associated with case number 021400580 at the time the Utah County Attorney received the request. Second, it could be interpreted as a request to have the alleged

⁶ Underlined words and phrases illustrate blanks filled in by defendant.

probation violation from case number 021400580 resolved within 120 days. This was partly what defendant intended and, in fact, the probation violation was resolved within 120 days. R. 82:40. In any event, neither possibility implicates case no. 031404393—the aggravated robbery charge in this case, which was dismissed by the district court. The fact that defendant specified a different case seems to suggest he did not care about speedy disposition of the robbery charge. 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. *See, e.g., Aranza v. State*, 444 S.E.2d 349, 350 (Ga. App. 1994) (defendant’s demand, which failed to identify the charges upon which he demanded a speedy trial by name, date, term of court, or case number, “cannot reasonably be construed as sufficient to put the authorities on notice of a defendant’s intention to invoke the extreme sanction” of dismissal; hence the time never commenced); *see also Cummins v. State*, 413 S.E.2d 773, 774 (Ga. App. 1992) (same); *Ferris v. State*, 324 S.E.2d 762, 764-65 (Ga. App. 1984) (same).⁷

In its Memorandum Decision, the trial court suggests that it was the State’s responsibility to determine which charges a defendant is seeking to have resolved under the speedy trial statute. R. 68. “The State is in the best position to determine what charges are

⁷ This Court has stated, in dicta, that the reasoning in these cases would require a decision in the State’s favor if charges dismissed under the speedy trial statute were not included in a disposition request. *State v. Coleman*, 2001 UT App 28, ¶ 5 n.5, 34 P.3d 790 (State cannot establish plain error where authority supporting its position is from other jurisdictions).

pending against the defendant in Utah County.” *Id.* It is undoubtedly true that the State is better equipped to uncover any and all charges that may be pending against a defendant. But the current statute imposes no such requirement on the State. Rather, Utah Code Ann. § 77-29-1(1) places the initial burden on the defendant to properly identify and state “the nature of the charge and the court wherein it is pending . . .” *See, e.g., State v. Heaton*, 958 P.2d 911, 915-16 (Utah 1998) (when a prisoner delivers a written notice pursuant to the statute, then the prosecutor has an affirmative duty to have the matter heard in 120 days; 120 days does not start until notice is properly delivered under the statute); *State v. Wright*, 745 P.2d 447, 450-51 (Utah 1987) (the disposition request must be properly sent to the right people and contain an appropriate demand to be effective); *State v. Viles*, 702 P.2d 1175, 1175 (Utah 1985) (the burden is on the prisoner to give proper notice before being entitled to have charges disposed of in the statutory period). If the defendant fails to meet this burden, the State has no obligation to pore over reams of documents and files in an effort to learn what charges the defendant *may* wish to have resolved in 120 days.

Nor is defendant relieved of that burden by the presumption that the prosecutor knew of the existence of the charges. *Cf. Wright*, 745 P.2d at 451 (letter from defense counsel to the county attorney inquiring about prosecution of defendant did not trigger section 77-29-1 because, among other things, the letter did not “specify the charges, as required by section 77-29-1(1).”); *Viles*, 702 P.2d at 1176 (a notice of appearance filed by defendant’s counsel, including a plea of “not guilty” and a request that defendant be granted a trial upon the

charge, was not sufficient to meet the requirements for invoking section 77-29-1 because, among other things, it “did not specify the nature of the charge”).

The reason the statute requires defendant to identify the nature of the charges pending against him is vividly illustrated in this case. Where, as here, a defendant has multiple charges pending against him, misidentification will likely lead to confusion that will inevitably create delays when the request is not forwarded to the actual prosecutor. In the worst-case scenario, the proper authorities may not learn of the request until after the 120 days have expired—precisely what happened in this case. Because the entire prosecution hangs in the balance under this statute, strict compliance by defendant with the minimal requirements to trigger the statute should be required. Defendant need only provide a minimum of readily available information in writing to his custodial authorities, who then are responsible for adding additional information and actually delivering of the disposition request to the appropriate entities. Utah Code Ann. § 77-29-1; *Heaton*, 958 P.2d at 915-16; *Wright*, 745 P.2d at 450-51; *Viles*, 702 P.2d at 1175.

In sum, it is entirely reasonable to expect that the Disposition Request include, at minimum, a clear statement of each pending charge defendant intends the disposition request to cover, especially as the penalty for the State’s failure to act promptly under the statute is extreme—dismissal with prejudice of all identified pending charges. Because the Disposition Request unnecessarily and unjustifiably fails to name the robbery charge pending against defendant, the statute was not properly invoked as to that charge and the trial court erred in granting the motion to dismiss.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN DISMISSING THE AGGRAVATED ROBBERY CHARGE BECAUSE THE RESPONSIBILITY FOR THE DELAY IN BRINGING THE CASE TO TRIAL WITHIN 120 DAYS RESTS ENTIRELY WITH DEFENDANT.

Even assuming *arguendo* that defendant complied with the terms of the speedy trial statute, his motion to dismiss still should have been denied because the delay in bringing the case to trial within 120 days was entirely his fault.

Under the speedy trial statute, once a defendant has properly invoked the statute to start the 120-day period running and shifted the burden to the prosecution to ensure a timely trial, he must not unduly delay matters or the delay may be charged against him and the 120-day period extended. Utah Code Ann. § 77-29-1(3) and (4); *see also State v. Hankerson*, 2005 UT 47, ¶ 12, --- P.3d ----; *Heaton*, 958 P.2d at 916; *Banner*, 717 P.2d at 1329-30; *Velasquez*, 641 P.2d at 116 (Utah 1982). Determining whether the State's failure to bring a case to trial within the 120-day period mandated by the speedy trial statute requires dismissal involves a two-step analysis. *Hankerson*, 2005 UT 47 at ¶ 12. "First [a court] must determine when the 120-day period commenced and when it expired. Second, if the trial was held outside the 120-day period, [the court] must then determine whether 'good cause' excused the delay." *Id.* (citation and internal quotation marks omitted). "Good cause" may be found if there is "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.*

For the reasons stated in section I., above, 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. Indeed, the request to have the probation violation resolved within 120 days was concluded to defendant’s satisfaction. R. 82:40. Thus, even assuming that defendant intended to demand disposition of the aggravated robbery charge—and even assuming, further, that his completely misleading statements in the Disposition Request could somehow be interpreted to apply to the robbery charge—the trial court still abused its discretion in dismissing the charge because the evidence established that the aggravated robbery charge would have been brought to trial within 120 days if defendant had clearly and unequivocally included that charge within the Disposition Request.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court and reinstate the aggravated robbery charge against defendant.

RESPECTFULLY SUBMITTED this 14th day of September, 2005.

MARK L. SHURTLEFF
Attorney General

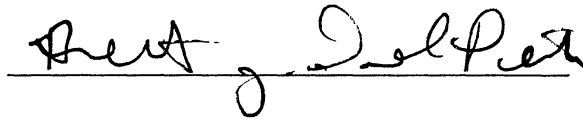
A handwritten signature in black ink, appearing to read "Brett J. DelPorto", written in a cursive style.

BRETT J. DELPORTO
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of September, 2005, I caused to be U.S. Mail two
copies of the foregoing to:

Margaret P. Lindsay
99 East Center Street PO Box1895
Orem, Utah 84059-1895

A handwritten signature in cursive script, reading "Brent J. DelPier", is written over a horizontal line.

Addenda

Addendum A

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

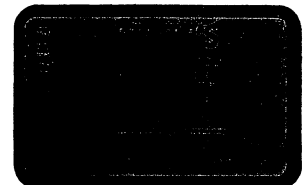
I hereby certify that I have received a copy of the foregoing
notice this 12th day of MARCH 2004 (Month / Year).

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)



Addendum B

**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

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."

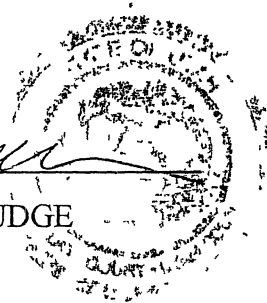
CONCLUSION

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


STEVEN L. HANSEN, JUDGE




CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 031404393 by the method and on the date specified.

METHOD NAME

By Hand STATE OF UTAH
By Hand DEFENDER PUBLIC

Dated this 10th day of January, 2005.



Deputy Court Clerk

Addendum C

MAR 08 2004

DIVISION OF INSTITUTIONAL OPERATIONS
OFFICE MEMORANDUM

TO: Records

FROM: DIO Record Unit ☒ 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

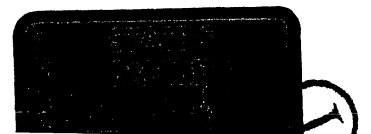
120-Day Dispositions: For **untried criminal charges** within the State of Utah.

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.



Addendum D



State of Utah
DEPARTMENT OF CORRECTIONS
DIVISION OF INSTITUTIONAL OPERATIONS

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

PO 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

TLT
MAR 15 2004
11:11 AM

