

2005

## Utah v. Vollmer : Brief of Appellant

Utah Court of Appeals

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J. Frederic Voros; assistant attorney general; Mark L. Shurtleff; attorney general; attorney for appellee.

Dee W. Smith; attorney for appellant.

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### Recommended Citation

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**IN THE UTAH COURT OF APPEALS**

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STATE OF UTAH,	:	
Petitioner,	:	
vs.	:	
JESS ROBERT VOLLMER,	:	Case No. 20050540-CA
Respondent.	:	District No. 051901886

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**BRIEF OF APPELLANT**

---

THE DEFENDANT PLED GUILTY TO A CLASS A MISDEMEANOR, DOMESTIC VIOLENCE ASSAULT, AND WAS SENTENCED TO SERVE ONE YEAR IN THE WEBER COUNTY JAIL IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR WEBER COUNTY, STATE OF UTAH, THE HONORABLE PAMELA G. HEFFERNAN PRESIDING.

---

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**IN THE UTAH COURT OF APPEALS**

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STATE OF UTAH,	:	
Petitioner,	:	
vs.	:	
		Case No. 20050540-CA
JESS ROBERT VOLLMER,	:	
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## IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,	:	
Petitioner,	:	
vs.	:	
JESS ROBERT VOLLMER,	:	Case No. 20050540-CA District No. 051901886
Respondent.	:	

---

### *BRIEF OF APPELLANT*

---

#### JURISDICTION AND NATURE OF PROCEEDINGS

The Defendant pled guilty to a class A misdemeanor, domestic violence assault. The Defendant was sentenced to serve one year in the Weber County Jail. This Court has jurisdiction pursuant to U.C.A. §78-2a-3(2)(e).

#### ISSUE ON APPEAL AND STANDARD OF REVIEW

DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT SENTENCED THE DEFENDANT TO ONE YEAR IN JAIL?

**Standard of Review:** The Court must determine whether the trial court abused its discretion when it sentenced the Defendant to prison. “A sentence will not be overturned on appeal unless the trial court has abused its discretion, failed to

consider all legally relevant factors, or imposed a sentence that exceeds legally prescribed limits.” *State v. Nuttall*, 861 P.2d 454, 456 (Utah Ct. App. 1993).

## **CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES**

### **76-3-204. Misdemeanor conviction -- Term of imprisonment.**

A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

- (1) In the case of a class A misdemeanor, for a term not exceeding one year;
- (2) In the case of a class B misdemeanor, for a term not exceeding six months;
- (3) In the case of a class C misdemeanor, for a term not exceeding ninety days.

### **78-2a-3(2)(3). Court of Appeals jurisdiction.**

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

- (e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

## **STATEMENT OF THE CASE**

The Defendant was charged with domestic violence assault with a prior, a third degree felony. (R. ) He pled guilty to a reduced charge of domestic violence assault, a class A misdemeanor. (R. /2-4). The Defendant was

sentenced on May 31, 2005, in front of the Honorable Pamela G. Heffernan. He was sentenced to serve one year in the Weber County Jail. (R. /4). The final order was signed on June 2, 2005. (R. ) A notice of appeal was timely filed on July 1, 1005. (R. ).

### **STATEMENT OF THE FACTS**

The Defendant became involved in a fight with his girlfriend. In the course of that fight he hit her and pulled her hair. The Defendant had a prior conviction for a domestic violence assault. (R. /3). A pre-sentence report was prepared by Adult Parole and Probation (“AP&P”). AP&P recommended that Defendant serve one year in the county jail. The trial judge followed this recommendation.

### **SUMMARY OF ARGUMENTS**

The Defendant has appealed the trial court’s decision to sentence him to one year in the county jail. Trial courts are given discretion when it comes to sentencing decisions. The Defendant pled guilty to a class A misdemeanor domestic violence assault. The Defendant had two prior assault convictions as an adult, including one that was domestic violence related. He also has a lengthy juvenile record that includes an Aggravated Assault. The Defendant spent time in a secure facility for juvenile offenders. The trial court based its



sentencing decision on the Defendant's prior record and the fact that he had been given the opportunity for rehabilitation in the past and hadn't taken advantage of it. The trial court did not sentence the Defendant to a term in excess of the maximum proscribed by law. Defense counsel has been unable to find any non-frivolous issues to appeal. For this reason, this brief is being filed in accordance with the guidelines set forth in *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clayton*, 639 P.2d (Utah 1981).

### **ARGUMENT**

The sentencing decision of a trial court is reviewed for an abuse of discretion. *State v. Houk*, 906 P.2d 907, 909 (Utah Ct. App. 1999)(per curium). This includes the decision to grant or deny probation. *See, State v. Chapoose*, 985 P.2d 915 (Utah 1999). An abuse of discretion occurs when "the judge fails to consider all legally relevant factors or if the sentence imposed is clearly excessive." *State v. McCovey*, 803 P.2d 1234, 1235 (Utah 1990)(citations and quotations omitted). Furthermore, an appellate court can only find an abuse of discretion "if it can be said that no reasonable [person] would take the view adopted by the trial court." *State v. Houk*, 906 P.2d at 909 (alteration in original)(quotations omitted).

In *State v. Baker*, 963 P.2d 801, 810 (Utah Ct. App. 1998), this Court stated that "[a]n abuse of discretion may be manifest if the actions of the judge

in sentencing were ‘inherently unfair’ or the judge imposed a ‘clearly excessive’ sentence.” (citations omitted). In *State v. Rhodes*, 818 P.2d 1048 (Utah Ct. App. 1991), this Court stated that “[t]he trial court has broad discretion in imposing sentence within the statutory scope provided by the legislature.” *Id.* at 1051.

In *State v. Thorkelson*, 84 P.3d 854 (Utah Ct. App. 2004), this Court held that “a court abuses its discretion in imposing consecutive sentences only if ‘no reasonable [person] would take the view by the [sentencing] court.’” *Id.* at 857 (citations omitted)(alteration in original).

Both this Court and the Utah Supreme Court have held in the past that probation is not a right. *See, State v. Sibert*, 310 P.2d 388, 393 (1957). In *State v. Rhodes*, this Court stated that “[t]he defendant is not entitled to probation, but rather the court is empowered to place the defendant on probation if it thinks that will best serve the ends of justice and is compatible with the public interest.” *State v. Rhodes*, 818 P.2d at 1051. This court also held that rehabilitation is not the only factor that a trial Court may consider when it makes a sentencing decision. “Other factors include deterrence, punishment, restitution, and incapacitation.” *Id.*

The trial judge apparently considered these factors. The trial judge spelled out her reasons for sentencing the Defendant to one year in jail. The

Court based its decision on Defendant's prior history of assaultive behavior, that he had been given opportunities for treatment and that he hadn't changed. (R. /4). The Court indicated on the record that Defendant had a number of similar offenses as a juvenile and two prior assaults as an adult, including one which was domestic violence related. (R. /4)

Based on the nature of the offense and the Defendant's prior violent history, it is impossible to say that the trial court abused its discretion and was "inherently unfair" in its sentencing of the Defendant. U.C.A. §76-3-204 gives a judge authority to sentence a defendant to imprisonment for a term "not exceeding one year." The trial court did not exceed the maximum sentence that is prescribed by law.

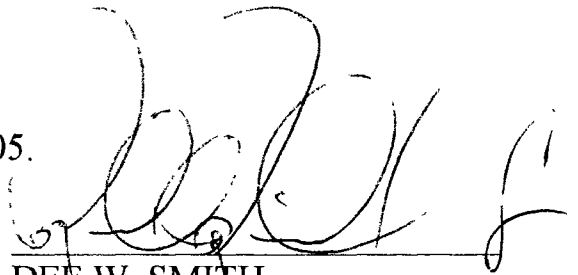
Defendant's appellate counsel has been unable to find any non-frivolous issues to raise on appeal. Counsel has diligently researched the applicable statutory and case law and has been unable to find any law to support the Defendant's position. The only issue the Defendant wanted appealed was his sentence. For these reasons, counsel respectfully requests permission to withdraw from further representation of the Defendant.

Counsel has complied with the requirements set forth in *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clayton*, 639 P.2d 168 (Utah 1981). Defendant was been mailed a copy of this brief.

## CONCLUSION

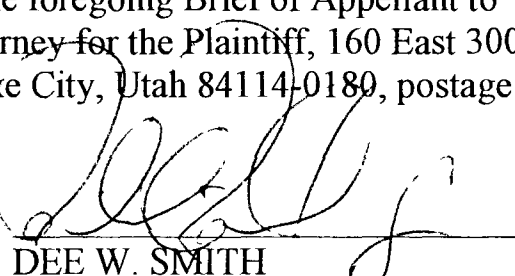
Counsel is unable to find any non-frivolous issues to appeal. For this reason, counsel respectfully requests this Court to release him as appellate counsel.

DATED this 15 day of December 2005.

  
DEE W. SMITH  
Attorney for Appellant

## CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing Brief of Appellant to \_\_\_\_\_, Assistant Attorney General, Attorney for the Plaintiff, 160 East 300 South, 6<sup>th</sup> Floor, P. O. Box 140854, Salt Lake City, Utah 84114-0180, postage prepaid this 15 day of December 2005

  
DEE W. SMITH  
Attorney at Law

## **ADDENDUM A**

SECOND DISTRICT COURT - OGDEN COURT  
WEBER COUNTY, STATE OF UTAH

JUN 02 2005

---

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	APP SENTENCING
	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
	:	
vs.	:	Case No: 051901886 FS
	:	
JESS ROBERT VOLLMER,	:	Judge: PAMELA G. HEFFERNAN
Defendant.	:	Date: May 31, 2005

---

PRESENT

Clerk: roxanneb

Prosecutor: RICHARD A PARMLEY

Defendant

Defendant's Attorney(s): JAMES RETALLICK, PDA

Agency: Adult Probation and Parole

DEFENDANT INFORMATION

Date of birth: July 12, 1978

Video

Tape Number: H053105 Tape Count: 246

CHARGES

1. SIMPLE ASSAULT (amended) - Class A Misdemeanor  
Plea: Guilty - Disposition: 04/26/2005 Guilty

HEARING

This is the time set for sentencing. Defendant is present in custody from the Weber County Jail. Defendant is represented by James Retallick. The Court proceeds with sentencing.

Case No: 051901886  
Date: May 31, 2005

---

SENTENCE JAIL


Based on the defendant's conviction of SIMPLE ASSAULT a Class A Misdemeanor, the defendant is sentenced to a term of 365 day(s)

Credit is granted for time served.

SENTENCE JAIL SERVICE NOTE

The Court denies the defendant work release.

Dated this \_\_\_\_ day of JUN 1, 20\_\_\_\_.

  
PAMELA G. HEFFERNAN  
District Court Judge

## **ADDENDUM B.**



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IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

\*\*\*\*\*

STATE OF UTAH,

PLAINTIFF,

VS.

JESS ROBERT VOLLMER,

DEFENDANT.

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VIDEO TRANSCRIPT

CASE NO. 051901886

JUL 27 2005

\*\*\*\*\*

CHANGE OF PLEA

APRIL 26, 2005

HONORABLE PAMELA G. HEFFERNAN

JUL 27 12 15 PM '05

786 DISTRICT COURT

\*\*\*\*\*

APPEARANCES:

FOR THE STATE:

RICHARD A. PARMLEY

FOR THE DEFENDANT:

MARTIN V. GRAVIS

\*\*\*\*\*

REPORTED/TRANSCRIBED BY DEAN OLSEN, CSR  
2525 GRANT AVENUE  
OGDEN, UTAH 84401  
(801) 395-1056

FILED  
JUL 27 2005  
AUG 25 2005

031

ORIGINAL 20050540-C

1                                    OGDEN, UTAH                    APRIL 26, 2005

2            **MR. GRAVIS:**    GOOD AFTERNOON, YOUR HONOR.    NUMBER 37 AND  
3    33.

4            **THE COURT:**    OKAY.    STATE OF UTAH VERSUS JESS VOLLMER,  
5    51901886.

6            **MR. GRAVIS:**    YES, YOUR HONOR.    THE STATE'S GOING TO  
7    AMEND COUNT 1, DOMESTIC VIOLENCE, TO DOMESTIC VIOLENCE  
8    ASSAULT WITH A PRIOR CONVICTION, A CLASS A. MISDEMEANOR.    HE  
9    WILL PLEAD GUILTY TO THAT.    THEY'LL DISMISS COUNT 2.

10           **MR. PARMLEY:**    THE VICTIM, BRITTANY WEAVER, IS HERE AND  
11    WAS READY TO TESTIFY IF NECESSARY TODAY, BUT THIS IS HER  
12    PREFERENCE, YOUR HONOR.    AND I'VE DISCUSSED IT WITH HER AND  
13    WHAT THE IMPLICATIONS ARE, AND SHE'S VERY MUCH IN ACCORD WITH  
14    THE NEGOTIATION.

15           **THE COURT:**    OKAY.    ALL RIGHT.    DID YOU READ THE  
16    STATEMENT IN SUPPORT OF A GUILTY PLEA?

17           **MR. GRAVIS:**    YOU READ THIS, RIGHT?

18           **MR. VOLLMER:**    YES, I DID.

19           **THE COURT:**    DID YOU UNDERSTAND IT?

20           **MR. VOLLMER:**    YES.

21           **THE COURT:**    AND DO YOU HAVE ANY QUESTIONS ABOUT WHAT'S  
22    IN THERE?

23           **MR. VOLLMER:**    NO, MA'AM.

24           **THE COURT:**    GO AHEAD AND SIGN IT IF YOU READ AND  
25    UNDERSTOOD IT, DON'T HAVE ANY FURTHER QUESTIONS.    I'LL MAKE

1 IT PART OF THE RECORD IN RELIANCE ON THAT STATEMENT AND IN  
2 SUPPORT OF YOUR GUILTY PLEA. PLEASE STATE THE FACTUAL BASIS.

3 **MR. PARMLEY:** YOUR HONOR, ON THE DATES IN THE  
4 (UNINTELLIGIBLE) INFORMATION, THE VICTIM WAS -- HAD AN  
5 ARGUMENT WITH THE DEFENDANT. SHE HAD GONE TO BED. HE WAS  
6 HARASSING HER, TRYING TO GET HER TO GIVE HIM A RIDE  
7 SOMEWHERE. AT SOME POINT, ACCORDING TO HER, SHE PUSHED HIM  
8 AWAY. HE THEN BEGAN TO HIT HER, PULL HER HAIR, AND IN THE  
9 COURSE OF THAT, SHE BIT HIS THUMB, WHICH CAUSED HIM TO STOP.  
10 HE THEN FLED. WAS LATER APPREHENDED. THE DEFENDANT HAS A  
11 PREVIOUS CONVICTION FOR A DOMESTIC VIOLENCE ASSAULT, AND THIS  
12 ONE WAS ALSO A DOMESTIC VIOLENCE.

13 **THE COURT:** IS THAT ACCURATE?

14 **MR. GRAVIS:** YOUR HONOR, I THINK THIS IS IN THE NATURE  
15 OF AN ALFORD PLEA.

16 **THE COURT:** OKAY. WOULD YOU AGREE THAT --

17 **MR. GRAVIS:** HE AGREES THAT HE HIT HER, BUT HE SAYS SHE  
18 BIT HIS THUMB FIRST.

19 **THE COURT:** OKAY. WOULD YOU AGREE THE STATE'S EVIDENCE  
20 WOULD BE AS THEY STATED IT, THOUGH, FOR PURPOSES OF FACTUAL  
21 BASIS?

22 **MR. GRAVIS:** YES, THE STATE -- THE STATE'S --

23 **THE COURT:** THAT WOULD BE THEIR EVIDENCE.

24 **MR. GRAVIS:** THAT WOULD BE THE STATE'S EVIDENCE, AND IT  
25 IS SUFFICIENT, IF THE JURY BELIEVED THAT, TO CONVICT HIM.

1       **THE COURT:** OKAY. YOU UNDERSTAND YOU COULD BE SENTENCED  
2 UP TO A YEAR IN JAIL ON THIS? AND UP TO \$2500 IN FINES? DO  
3 YOU UNDERSTAND THAT?

4       **MR. GRAVIS:** DO YOU UNDERSTAND --

5       **MR. VOLLMER:** I'VE READ THAT, YEAH.

6       **MR. GRAVIS:** OKAY.

7       **THE COURT:** DO YOU UNDERSTAND THAT THAT COULD BE IMPOSED  
8 IN THIS CASE?

9       **MR. VOLLMER:** YES, YOUR HONOR.

10       **THE COURT:** HOW DO YOU PLEAD TO THE CLASS A. DOMESTIC  
11 VIOLENCE ASSAULT?

12       **MR. VOLLMER:** GUILTY.

13       **THE COURT:** THE OTHER CHARGE WILL BE DISMISSED. I'M  
14 GONNA ASK FOR PRESENTENCE REPORT ON THIS ONE JUST BECAUSE OF  
15 THE NATURE OF THE OFFENSE AND THAT -- AND THAT THERE'S AN  
16 ADMITTED PRIOR.

17       **MR. PARMLEY:** THERE'S ACTUALLY A COUPLE OF --

18       **THE COURT:** OKAY.

19       **MR. PARMLEY:** -- PRIOR ASSAULTS, I BELIEVE, YOUR HONOR,  
20 SO IT WOULD PROBABLY BE APPROPRIATE.

21       **THE COURT:** THE 31ST?

22       **MR. BEDDES:** MAY 31, YOUR HONOR.

23       **THE COURT:** MAY 31ST AT TWO O'CLOCK WILL BE YOUR  
24 SENTENCING DATE.

25       **MR. PARMLEY:** THANK YOU, YOUR HONOR.

\*\*\*\*\*

CERTIFICATE

STATE OF UTAH )  
                  ) SS  
COUNTY OF WEBER)

THIS IS TO CERTIFY THAT THE FOREGOING FOUR PAGES OF  
TRANSCRIPT CONSTITUTE A TRUE AND ACCURATE RECORD OF THE  
PROCEEDINGS TO THE BEST OF MY KNOWLEDGE AND ABILITY AS A  
CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE OF UTAH.

DATED AT OGDEN, UTAH THIS 13TH DAY OF JULY, 2005.

  
\_\_\_\_\_  
DEAN OLSEN, CSR

## **ADDENDUM C.**

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IN THE DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

\*\*\*\*\*

STATE OF UTAH,

PLAINTIFF,

VS.

JESS ROBERT VOLLMER,

DEFENDANT.

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VIDEO TRANSCRIPT

CASE NO. 051901886

JUL 27 2005

\*\*\*\*\*

SENTENCING HEARING

MAY 31, 2005

HONORABLE PAMELA G. HEFFERNAN

JUL 27 12:15 PM '05

2ND DISTRICT COURT

\*\*\*\*\*

APPEARANCES:

FOR THE STATE:

RICHARD A. PARMLEY

FOR THE DEFENDANT:

JAMES RETALLICK

\*\*\*\*\*

REPORTED/TRANSCRIBED BY DEAN OLSEN, CSR  
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(801) 395-1056

UTAH APPELLATE COURT  
JUL 27 2005

032

ORIGINAL

20050540-a

1                    OGDEN, UTAH

MAY 31, 2005

2            **THE COURT:**    STATE OF UTAH VERSUS JESS VOLLMER, 51901886.

3            **MR. RETALLICK:**    VOLLMER.

4            **THE COURT:**    I DON'T THINK I HAVE A PRESENTENCE REPORT --  
5    OH, I DO.    I'M SORRY.    IT WAS JUST COMBINED WITH THE OTHER  
6    ONE.    SORRY.

7            **MR. RETALLICK:**    THIS IS MR. VOLLMER, YOUR HONOR.

8            **THE COURT:**    GO AHEAD.

9            **MR. RETALLICK:**    THANK YOU.    YOUR HONOR, I'VE READ THE  
10    PRESENTENCE REPORT AND IT'S OBVIOUS THAT THEIR -- A.P.&P.  
11    JUST WANTS TO PUT HIM IN JAIL AND LET HIM DO HIS TIME.    AS  
12    I'VE -- AS I'VE READ THROUGH THE PRESENTENCE REPORT AND ALSO  
13    ESPECIALLY THE DEFENDANT'S HISTORY, I CAN -- THERE'S TWO  
14    INCONSISTENCIES.    ONE IS THE CRIMINAL HISTORY THAT HE HAS AND  
15    TWO IS HIS ABILITY TO MAINTAIN HIS EMPLOYMENT AND TO WORK.  
16    HE'S WORKED IN SEVERAL IMPORTANT JOBS AS A FOREMAN IN  
17    DIFFERENT CONSTRUCTION CREWS IN DIFFERENT COMPANIES.    AND SO  
18    I'M SEEING WHAT APPEARS TO ME TO BE A -- SOMETHING THAT  
19    EITHER HIS PRIOR -- WHATEVER HE WAS ORDERED AS FAR AS IN HIS  
20    JUVENILE HISTORY, OR -- THIS IS THE ONLY -- OR HIS ADULT  
21    HISTORY, SOME THINGS THAT HAVEN'T BEEN ADDRESSED.    AND I  
22    THINK THERE'S -- I THINK THERE'S A MENTAL HEALTH -- JUST  
23    BASED ON MY EXPERIENCE, YOUR HONOR, I THINK THERE'S A MENTAL  
24    HEALTH COMPONENT HERE THAT'S NOT BEING ADDRESSED.    I WOULD  
25    ASK THAT THE COURT TO CONSIDER SOMETHING LESS THAN GIVING HIM



1 A YEAR. GIVE HIM SOME JAIL TIME WITH WORK RELEASE AND ORDER  
2 AS PART OF HIS SENTENCE THAT HE RECEIVE A MENTAL HEALTH  
3 EVALUATION AND TREATMENT DEEMED AS NECESSARY. IT'S OBVIOUS  
4 HE CERTAINLY HAS SOME KIND OF ANGER CONTROL PROBLEM. AND HE  
5 INDICATES THAT WHILE HE'S BEEN IN JAIL, HE'S COMPLETED AN  
6 ANGER MANAGEMENT PROGRAM THAT WAS OFFERED BY THE JAIL, SO  
7 HE'S BEING SOMEWHAT PROACTIVE THAT WAY. BUT I THINK THERE'S  
8 SOMETHING DIFFERENT, SOMETHING MORE THAT NEEDS TO BE  
9 DIAGNOSED AND GET HIM MAYBE SOME MEDICATIONS, ANTIDEPRESSANTS  
10 OR SOMETHING THAT'S GOING TO HELP HIM. OBVIOUSLY, THIS IS  
11 SOMETHING HE'S GOING TO HAVE TO BE VERY PROACTIVE ON, HE'S  
12 GOING TO HAVE TO FOLLOW UP ON. HE AND I HAD A HEART-TO-HEART  
13 DOWNSTAIRS ABOUT THIS AND ABOUT HIS HISTORY AND THE WAY HIS  
14 LIFE IS GOING. HE'S 26 YEARS OLD, AND IF HE DOESN'T DO  
15 SOMETHING TO CHANGE IT SOON, HE'S GONNA TURN AROUND AND LOOK  
16 AND HE'S GONNA BE 40 WITH NOTHING TO SHOW FOR HIS LIFE BUT  
17 NUMEROUS TIMES IN JAIL AND FAILED RELATIONSHIPS. AND SO I  
18 WOULD HOPE THE COURT WOULD DO SOMETHING OTHER THAN JUST GIVE  
19 HIM A YEAR AND WASH YOUR HANDS OF HIM AS A.P.&P. IS  
20 RECOMMENDING.

21 **THE COURT:** DO YOU HAVE ANYTHING, MR. PARMLEY?

22 **MR. PARMLEY:** THE JUVENILE HISTORY IS A REAL CONCERN TO  
23 THE STATE, YOUR HONOR. HE'S PREVIOUSLY BEEN IN YOUTH  
24 CORRECTION'S CUSTODY AND HE DOES HAVE SOME ADULT RECORD AS  
25 WELL. BUT I DON'T HAVE SPECIFIC RECOMMENDATIONS, BUT I THINK

1 THAT THE RECORD JUSTIFIES THE RECOMMENDATION.

2 **THE COURT:** DO YOU WANNA MAKE A STATEMENT?

3 **MR. VOLLMER:** (UNINTELLIGIBLE) YOUR HONOR.

4 **THE COURT:** WELL, THE PROBLEM IS, I THINK YOU HAD  
5 OPPORTUNITIES IN PAST AND JUST HAVE NOT BEEN COMPLIANT WITH  
6 FOLLOWING THROUGH ON THE COURT ORDERS. AND UNFORTUNATELY IN  
7 A SITUATION LIKE YOURS, AND YOU REPEATEDLY VIOLATE THE LAW,  
8 YOU DO THE SAME THING OVER AND OVER AGAIN, YOU ASSAULT  
9 PEOPLE, YOU HURT OTHER PEOPLE. YOU'RE GIVEN OPPORTUNITIES  
10 FOR TREATMENT, YOU'RE GIVEN OPPORTUNITIES TO CHANGE. YOU  
11 DON'T DO IT. AT SOME POINT, IT JUST -- IT GETS TO A POINT  
12 WHERE YOU JUST HAVE USED UP ALL YOUR OPPORTUNITIES. I THINK  
13 THAT'S WHERE YOU'RE AT. YOU HAVE A NUMBER OF THIS TYPE OF  
14 OFFENSE AS A JUVENILE AND YOU HAVE TWO PRIOR ASSAULTS ON YOUR  
15 RECORD HERE. ONE DOMESTIC VIOLENCE AT LEAST. AND THIS IS  
16 ANOTHER DOMESTIC VIOLENCE. AND SO I JUST DON'T SEE --  
17 APPARENTLY, IT WAS REDUCED FROM A THIRD DEGREE FELONY ALSO,  
18 SO YOU GOT THE BENEFIT OF THAT. I AM GONNA FOLLOW THE  
19 RECOMMENDATION. YOU'LL SERVE ONE YEAR IN JAIL. I'LL GIVE  
20 YOU CREDIT FOR THE TIME YOU'VE BEEN IN. HOWEVER, I WILL NOT  
21 ALLOW YOU WORK RELEASE. YOU DON'T HAVE A JOB. YOU'RE  
22 UNEMPLOYED. AND I'M NOT GONNA ALLOW WORK RELEASE.

23 **MR. RETALLICK:** HE -- DOES --

24 **MR. VOLLMER:** (UNINTELLIGIBLE)

25 **MR. RETALLICK:** -- HAVE THE JOB, YOUR HONOR. THAT JOB

1 AT THE STANDARD EXAMINER IS THERE AND --

2 **THE COURT:** NO. HE SAYS -- HE SAYS HE THINKS HE MAY  
3 HAVE A JOB AT THE STANDARD EXAMINER, AND THAT'S NOT WHAT WORK  
4 RELEASE IS FOR, ESPECIALLY VIOLENT OFFENDERS LIKE YOU. YOU  
5 KNOW, YOU -- YOU DON'T COME -- YOU DON'T GET A JAIL SENTENCE  
6 JUST TO PROVIDE YOURSELF AN OPPORTUNITY TO GET A JOB AND GET  
7 OUT. THAT'S NOT THE WAY THIS WORKS. IF YOU HAD A JOB, I'D  
8 CONSIDER IT. YOU DON'T HAVE A JOB, AND SO --

9 **MR. VOLLMER:** VERIFIABLE --

10 **THE COURT:** -- THAT'S IT. SO I'LL GIVE YOU CREDIT FOR  
11 THE TIME YOU'VE BEEN IN, AND THAT'S IT.

12 **MR. RETALLICK:** YOUR HONOR, HE INDICATES THAT IT WAS A  
13 VERIFIABLE JOB, AND WHEN -- IN THE STATEMENT THAT HE DID MAKE  
14 TO A.P.&P., HE SAYS HE WAS ON -- HE HAD TO GET TO WORK.  
15 THAT'S -- HE NEEDED A RIDE TO WORK AND HIS GIRLFRIEND DIDN'T  
16 WANT HIM TO LEAVE. AND HE INDICATES THAT THAT JOB WAS AT THE  
17 STANDARD EXAMINER AND HE CAN GET VERIFICATION OF THAT.

18 **THE COURT:** HE SAYS HE'LL HAVE -- HE BELIEVES HE'LL HAVE  
19 A JOB WHEN HE GETS OUT OF JAIL AT THE STANDARD EXAMINER, AND  
20 THAT'S NOT -- THAT'S NOT WHAT WORK RELEASE IS FOR. SO I'M  
21 GONNA DENY IT, ESPECIALLY GIVEN THE OFFENSE AND THE NATURE OF  
22 THE OFFENSE AND THE REPETITIVE NATURE OF IT.

23 **MR. RETALLICK:** ALL RIGHT.

24 \*\*\*\*\*  
25

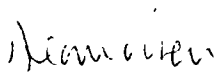
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CERTIFICATE

STATE OF UTAH     )  
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COUNTY OF WEBER)

THIS IS TO CERTIFY THAT THE FOREGOING FIVE PAGES OF  
TRANSCRIPT CONSTITUTE A TRUE AND ACCURATE RECORD OF THE  
PROCEEDINGS TO THE BEST OF MY KNOWLEDGE AND ABILITY AS A  
CERTIFIED SHORTHAND REPORTER IN AND FOR THE STATE OF UTAH.

DATED AT OGDEN, UTAH THIS 13TH DAY OF JULY, 2005.

  
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DEAN OLSEN, CSR