

2005

Utah v. Crowe : Brief of Appellant

Utah Court of Appeals

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Mark L. Shurtleff, Attorney General; Scott F. Garrett, Iron County Attorney; Attorney for Appellee. J. Bryan Jackson, J. Bryan Jackson, PC; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,)
 : APPELLANT IS INCARCERATED
Plaintiff/Appellee,)
 :
vs.)
 :
THOMAS MYRON CROWE,) Criminal No. 041500605 FS
 : Case No. 20050561-CA
Defendant/Appellant.) Judge J. Philip Eves
)

ANDER'S BRIEF OF APPELLANT CROWE

Appeal from the judgments, sentences and orders of commitment, filed on or about the 5th day of July, 2005, by the Fifth Judicial District Court of Iron County, State of Utah, the Honorable J. Philip Eves, presiding, and counsel for Appellant filing an Ander's brief in compliance with State v. Wells, 2000 UT App. 304, 13 P.3d 1056. The Appellant is incarcerated at the Utah State Prison.

MARK L. SHURTLEFF
ATTORNEY GENERAL
160 East 300 South
Salt Lake City, Utah 84414
(801) 366-0260

SCOTT F. GARRETT (8687)
IRON COUNTY ATTORNEY
82 North 100 East, Suite 201
Post Office Box 428
Cedar City, Utah 84721-0428
(435) 865-5310
Attorney for Plaintiff/Appellee

J. BRYAN JACKSON, (4488)
J. BRYAN JACKSON, P.C.
95 North Main Street, Suite 25
Post Office Box 519
Cedar City, Utah 84721-0519
(435) 586-8450
Attorney for
Defendant/Appellant Crowe

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J. BRYAN JACKSON, (4488)
J. BRYAN JACKSON, P.C.
95 North Main Street, Suite 25
Post Office Box 519
Cedar City, Utah 84721-0519
(435) 586-8450
Attorney for
Defendant/Appellant Crowe

TABLE OF CONTENTS

JURISDICTION	1
ISSUES PRESENTED FOR REVIEW	1
STANDARD OF REVIEW	2
STATUTORY PROVISIONS	2
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	5
SUMMARY OF ARGUMENTS	8
ARGUMENTS	8
POINT 1	9
POINT 2	13
POINT 3	17
CONCLUSION	18
CERTIFICATE OF MAILING	20
ADDENDUM	21
A. Hearing Transcript, pages 1 to 10.	
B. At the record, pages 54 to 62.	
C. Letter received after sentencing.	
D. Letter to counsel.	
E. Hearing Transcript, sentencing, pages 1 to 4.	

TABLE OF AUTHORITIES

STATUTES AND RULES

Utah Code Annotated, Section 78-2a-3(2)(f) (1953, as amended).	1,2
Rule 11, Utah Rules of Criminal Procedure, (1953, as amended).	2
Utah Code Annotated, Section 58-37-1 (1953, as amended).	2

CASES

<u>Anders v. California</u> , 386 U.S. 738, 87 S. Ct 1396, 18 L.Ed.2d 473 (1967)	8, 18
<u>State v. Dean</u> , 2004, Utah 63	16
<u>State v. Gannlin</u> , 2000, Utah 44 at paragraph 9, 1 P.2d 1108.	17
<u>State v. Hittle</u> , 2004, Utah 46	16
<u>State v. Howell</u> , 707 P.2d 115 (Utah 1985)	2
<u>State v. Smith</u> , 842 P.2d 908 (Utah 1992)	2
<u>State v. Thurman</u> , 911 P.2d 371 (Utah 1996)	2
<u>State v. Valsilacupulos</u> , 756 P.2d 92 (Ut App. 1988) cert. denied 765 P.2d 1278 (Utah 1988)	2
<u>State v. Wells</u> , 2000 UT App. 304, 13 P.3rd 1056	8, 18

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Defendant/Appellant.	:	Judge J. Philip Eves
)	

JURISDICTION

This appeal is within the jurisdiction of the Utah Court of Appeals pursuant to Utah Code Annotated, Section 78-2a-3(2)(f) (1953, as amended), where it involves an appeal from a court of record in a criminal case, which does not involve a conviction of a capital felony or one in the first degree.

ISSUES PRESENTED FOR APPEAL

ISSUE NO. 1: Whether or not the Appellant received ineffective assistance of counsel or if there was prosecutorial misconduct under the circumstances?

ISSUE NO. 2: Whether or not the Appellant is entitled to withdraw his plea under the circumstances?

ISSUE NO. 3: Whether or not the trial court erred or abused its discretion in sentencing the Appellant to prison under the circumstances of his case?

STANDARD OF REVIEW

Appellant believes that the issues presented for review are under the abuse of discretion or clearly erroneous standard. The Court of Appeals will review a trial court's denial of a motion to withdraw guilty plea under an abuse of discretion standard; the trial court's findings of fact made in conjunction with his discretion will not be set aside unless they are clearly erroneous. See State v. Thurman, 911 P.2d 371 (Utah 1996). It is an abuse of discretion to deny a motion to withdraw plea if the Appellant did not have full knowledge and understanding of the circumstances of his plea. See State v. Valsilacupulos, 756 P.2d 92 (Utah App.) cert. denied, 765 P.2d 1278 (Utah 1988). Sentencing, being indeterminate in Utah, falls to the substantial discretion of the trial court judge. See State v. Smith, 842 P.2d 908 (Utah 1992). However, the exercise of that discretion is not unlimited and it may not be exercised on the basis of unreliable information. See State v. Howell, 707 P.2d 115 (Utah 1985).

STATUTORY PROVISIONS

The statutory and regulatory provisions which Appellant believes to be applicable but not decisive are as follows:

Utah Code Annotated, Section 78-2a-3(2)(f) (1953, as amended).
Rule 11, Utah Rules of Criminal Procedure, (1953, as amended).
Utah Code Annotated, Section 58-37-1 (1953, as amended).

STATEMENT OF THE CASE

A. NATURE of the CASE: This case concerns the Appellant, THOMAS MYRON CROWE, who on or about the 25th day of April, 2005, entered into a plea agreement which included a statement of Defendant in support of guilty plea to the charge of cultivation of marijuana, a third degree felony pursuant to Utah Code Annotated, Section 58-37-1 et seq. (1953, as amended). A charge of unlawful possession of a controlled substance to wit, marijuana, a class A misdemeanor was dismissed. There were no promises made to the Appellant regarding sentencing except to request the preparation of a presentence investigation report prior to sentencing. The statement of Defendant in support of guilty plea and certificate of counsel and order informed Appellant that he must pursue any post conviction remedies through the Post Convictions Remedies Act in Title 78, Chapter 35(a) and Rule 65(c) of the Utah Rules of Civil Procedure. The Appellant was sentenced to prison on or about the 13th day of June, 2005, the same being filed with the Fifth Judicial District Court on or about the 5th day of July, 2005. Notice of appeal and request for transcript was filed on or about the 20th day of June, 2005. The recommendation from Adult Probation and Parole recommended that the Appellant serve 180 days in the Iron County Jail with no credit for time served which was a downward departure from that which was suggested from the general matrix criminal history assessment placing the Appellant in the category of intermediate sanctions.

The trial court departed from the recommendation and from the general matrix by sentencing the Appellant to prison presumably because the Appellant had previously been to prison notwithstanding his prior successful termination and completion of probation.

B. COURSE OF PROCEEDINGS AND DISPOSITION: Appellant was charged by the filing of an information on or about the 7th day of December, 2004, alleging that the Appellant, THOMAS MYRON CROWE, did on that day knowingly and intelligently produce, cultivate or manufacture a controlled substance, marijuana. A preliminary hearing was conducted on or about the 22nd day of December, 2004, and the Appellant was arraigned on or about the 4th day of January, 2005. The matter was set once for trial but was continued at the request of the Appellant and on or about the 25th day of April, 2005, the Appellant entered a plea rather than go to trial on the date set for the 26th day of April, 2005. A plea agreement was entered into which involved the review, initialing and signing of a statement of Defendant regarding guilty plea before the Honorable J. Philip Eves. Judge Eves accepted the plea but not before conducting a standard Rule 11, Utah Rules of Criminal Procedure, oral colloquy establishing that the plea had been made knowingly, voluntarily and intelligently. Sentencing was set for the 13th day of June, 2005, and the Appellant was sentenced on that day after the preparation of a presentence investigation report. The Appellant had not given any indication either in writing or

orally, either to counsel or to the trial court, of his intention to withdraw his plea until after sentencing. On or about the 15th day of June, 2005, the Appellant sent a letter to his attorney requesting that a notice of appeal be filed but without providing any specifics. A notice of appeal was filed on or about the 20th day of June, 2005. The docketing statement was filed on or about the 11th day of July, 2005. On or about the 17th day of June, 2005, the Appellant filed a letter with the clerk of the Fifth Judicial District Court requesting that he be allowed to withdraw his plea which made no reference to his request for appeal sent to his attorney. The copy of the request made to the trial court was sent to counsel but not before the filing of the docketing statement. In August, 2005, counsel for Appellant filed a motion to withdraw plea but no further action has been taken in the trial court. In July, 2005, at the time of filing the docketing statement, the matter came before this Court on sua sponte motion for summary disposition and on or about the 24th day of August, 2005, the sua sponte motion for summary disposition was withdrawn and the matter was set for briefing. As of the date of the filing of this brief, the Appellant is still incarcerated at the Utah State Prison.

STATEMENT of FACTS

1. The Appellant was initially charged with cultivation of marijuana in violation of Utah Code Annotated 58-37-1 et seq. (1953, as amended) and for unlawful possession of paraphernalia, a class A misdemeanor, in violation of Utah Code

Annotated 58-37a-5 (1953, as amended). See record at pages 1 and 2.

2. The Appellant was arrested after complaints reporting someone smoking marijuana in an apartment complex in Cedar City. Police officers arrived at the apartment, the Appellant answered the door and after a brief discussion admitted to growing marijuana in his room. There was also recovered from his room a bong used for smoking marijuana.

3. The Appellant was arrested and a preliminary hearing was held on or about the 22nd day December, 2004. Part way through the testimony of the first witness at the hearing the Appellant waived and the matter was reset for January 4th, 2005, for arraignment. The Appellant pled not guilty and the matter came on before the trial court for a change of plea on the 25th day of April, 2005, the day before the matter was set to go to trial.

4. The Appellant was sentenced on the 13th day of June, 2005. Prior to sentencing, no request to withdraw plea was neither filed with the trial court nor communicated to his attorney.

5. The Appellant was sentenced to prison and shortly thereafter sent a letter to his attorney requesting that the matter be appealed and to the trial court judge requesting that he be allowed to withdraw his plea. A motion to withdraw plea was filed in August, 2005, beyond the date of sentencing or thirty (30) days thereafter.

6. Notice of appeal was filed on or about the 20th day of June, 2005.

7. Sentencing the Appellant to prison, the trial court judge departed from the recommendation made by Adult Probation and Parole which recommended probation and one hundred eighty (180) days of jail without credit for time served and which recommendation was itself a downward departure from that suggested by the criminal history general matrix which recommended intermediate sanctions.

8. Appellant's request to appeal was non-specific and made to counsel for Appellant who was also his counsel during the proceedings in the trial court.

9. Counsel for Appellant filed a docketing statement and sent a copy of same to Appellant. Counsel for Appellant certifies that he has sent a copy of this brief after reviewing the same with Appellant and requesting that he notify counsel of any additional issues that he feels need be raised in the brief or that if he chooses to file his own brief that a request be made to the Court of Appeals for an extension of time to do so. Appellant is incarcerated at the Utah State Prison in Draper, Utah, and his appointed counsel works as a Public Defender for Iron County and resides in Cedar City, Utah, about 250 miles to the south. The only practical way of reviewing the brief with Appellant was by telephone which was arranged on a conference call basis but limited to 30 minutes. This was time to review the brief in general terms but not as thoroughly as a review which would occur had the Appellant been held at a correctional facility near his attorney. Counsel for Appellant has received no

response which would assist in the preparation of this brief by identifying any more specific grounds for appeal or additional grounds to be added to counsel's Ander's brief for consideration or to request an extension of time in which to respond to file his own brief.

4. Counsel for Appellant certifies that he has diligently reviewed the record, the various transcripts from the hearings involved, his own file and otherwise having represented the Appellant throughout the proceedings, is sufficiently informed and aware of Appellant's circumstances and having made some effort to review and research the law of the State of Utah in regard to such potential issues believes that he cannot in good faith assert a meritorious claim to justify Appellant's claim for appeal.

SUMMARY OF ARGUMENTS

Counsel for Appellant submits an Ander's brief, concluding that the appeal is non-meritorious, finding that the record does not support or show that Appellant attempted to withdraw his plea in a timely fashion and that the trial court did not abuse its discretion in sentencing the Appellant to prison.

ARGUMENTS

SUBMISSION OF ANDER'S BRIEF PURSUANT TO THE REQUIREMENTS OF STATE v. WELLS, 2000 UTAH APP. 304, 13 P.3d 1056.

Counsel for Appellant files this brief after the manner of Anders v. California,

386 U.S. 738, 87 S. Ct. 1396, 18 L.Ed.2d 493 (1967), having furnished to the Court the details which counsel submits should be considered in the record that might arguably support an appeal, counsel submits that the certificate of mailing will confirm that a copy of this brief was furnished to Appellant by mail after Appellant had the opportunity to discuss and review and provide additional arguments or commentary. Counsel also submits the following considered points in reaching his determination that the appeal of Appellant is non-meritorious.

POINT NO. 1

THIS APPEAL IS FROM THE SENTENCE OF THE DEFENDANT AFTER ENTRY OF A GUILTY PLEA OF PURSUANT TO A PLEA AGREEMENT WHICH LIMITS THE POTENTIAL ISSUES THAT CAN BE RAISED ON APPEAL.

The circumstances of the present case are not unusual. In fact, one might consider them to be a common, frequent and regular occurrence to have a defendant enter into a plea agreement with some hope or expectation of favorable disposition only to be sentenced to something less expected and understanding his right to appeal chooses to exercise it by advising his attorney to file it in his behalf without much further explanation. In the instant case, counsel for Appellant was the attorney that represented him through all trial court proceedings. After sentencing, the Appellant requested that an appeal be filed but was not specific with counsel. Notwithstanding, given the circumstances, counsel for Appellant views the matter as

one where only three (3) general areas could be considered for appeal purposes. The first area of consideration would involve the issue of whether or not Appellant received ineffective assistance of counsel. Since counsel for Appellant is in fact the counsel that represented him in all proceedings, the position is taken that it would not be appropriate for an attorney to argue his own ineffectiveness for purposes of asserting his client's claim for appeal. Related to ineffective assistance of counsel is the issue of prosecutorial misconduct. For the same reason that the record establishes a clear finding of compliance with Rule 11 by written or verbal colloquy for a knowing and voluntary plea before the trial court, on the record, and other proceedings confirming appropriate judicial procedure there is really nothing with which to assert a basis for either concern.

Since the Appellant requested this attorney to file his appeal, there is an implication from the circumstances that the Appellant did not intend the issue of ineffective assistance of counsel to be raised as part of his appeal and therefore could not have intended this attorney to make such an investigation into his case. Notwithstanding, the requirements of Rule 11 and the judicial procedure of the Fifth Judicial District Court in Iron County foreclose as a consideration at least as far as the record can reflect the issue of ineffective assistance of counsel as well as prosecutorial misconduct.

In other words, the Appellant in this case was advised of his constitutional and

procedural rights, both through counsel and in the form of a written Statement by Defendant Regarding Guilty Plea, the same being read and initialed by the Appellant in this case and then further reviewed by oral colloquy from the bench prior to entry of the plea. It was further acknowledged both in writing and in open court by the Appellant that such pleas were voluntary and that he had entered into the same knowingly, having sufficient capacity to do so, and not operating or acting under duress, undue influence, threat or other improper or inappropriate pressure from any person or thing. That is to say that the record in this case shows that the Appellant acknowledged that he read and understood the Statement of Defendant Regarding Guilty Plea and that it was his desire to enter into a plea of guilty pursuant to a plea agreement which contemplated the dismissal of the other remaining charge and the preparation of a presentence report. When asked by the trial court if any other promises had been made to induce him to plead guilty the Appellant responded in the negative. See the hearing transcript for the entry of plea on the 25th day of April, 2005, at page 3, at the record at page 112 and at the Addendum, Exhibit A at page 3.

Moreover, since the matter did not go to trial, there is really nothing in the record that would establish or suggest ineffective assistance of counsel or prosecutorial misconduct. A review of the record will disclose that on or about 8th day of December, 2004, the Appellant made an initial appearance before the trial

court and requested the appointment of a public defender and was appointed this attorney, counsel for Appellant and that a preliminary hearing was set, commenced and waived on the 22nd day of December, 2004. On or about the 4th day of January, 2005, the Appellant entered a plea of not guilty and the matter was set for trial. The Appellant entered his plea the day before the last trial setting on or about the 25th day of April, 2005. See hearing transcript for entry of plea on the 25th day of April, 2005, at page 3, at the record at page 112, and at the Addendum, Exhibit A at page 3. Counsel for Appellant notes nothing unusual or extra ordinary or noteworthy in the procedure in which Appellant's case was handled to distinguish it as being exceptional or different and particularly, the Statement of Defendant Regarding Guilty Plea and the review of the trial court judge addressing every concern and eliminating any possibility of the plea not being entered knowingly, voluntarily or intelligently. That is to say, the record reveals nothing that would suggest, let alone establish, ineffective assistance of counsel or prosecutorial misconduct as an issue that would have merit for appeal purposes, primarily because the circumstances disclose that the case was resolved early in the proceedings, prior to trial and a full and adequate record was made of the entry of the plea in that the execution of that procedure rendered moot any pending issues regarding ineffective assistance of counsel or prosecutorial misconduct.

POINT NO. 2

THE RECORD ESTABLISHES THAT THE PLEA WAS VOLUNTARY AND IN COMPLIANCE WITH RULE 11 BOTH IN WRITING AND BY ORAL COLLOQUY AND THERE IS NOTHING IN THE RECORD TO SUGGEST THAT THE APPELLANT INTENDED TO WITHDRAW HIS PLEA PRIOR TO RECEIVING HIS SENTENCE.

The next area for consideration is whether or not the plea entered by the Appellant in this matter was knowingly and voluntarily made. Utah Code Annotated, Section 77-13-6 (1953, as amended), provides that a request to withdraw a plea of guilty shall be made by motion before sentence is announced. In the instant case, the Appellant entered a guilty plea on the 25th day of April, 2005, and the sentence was announced on the 13th day of June, 2005. The Appellant apparently filed a letter with his attorney requesting that the case be appealed. The letter he sent to the trial court on the 17th day of June, 2005, requested that he be allowed to withdraw his plea, four (4) days after the same had been announced. The trial court did not enter its judgment, sentence and commitment until the 5th day of July, 2005, but the document itself makes clear that the sentence was announced on the 13th day of June, 2005. Moreover, the request to withdraw plea was made more than thirty (30) days from the time of entry of the plea and as a consequence the Appellant's request is beyond statutory provision even considering the law prior to its most recent amendment. Counsel for Appellant asserts that the record will reflect that there was no motion to withdraw the plea prior to sentence being announced.

A review of the record shows a Statement of Defendant in support of guilty plea at pages 54 to 62 and in comparing said statement to the requirements of Rule 11, Utah Rules of Criminal Procedure, the following is noted:

1. The Appellant was represented by counsel and did not waive his right to such representation. *Id* at 60. The Appellant certified that the plea was voluntary. *Id* at 57. See also Addendum at Exhibit B, at pages 54 to 62.

2. The Appellant was advised of his constitutional rights including but not limited to the right to a presumption of innocence, the right against self compulsory incrimination, the right to a speedy public trial before an impartial jury, the right to confront and cross examine in open court the prosecution witnesses, the right to compel the attendance of defense witnesses, and Appellant was further advised that by entering into such plea such rights would be waived. *Id*.

3. The Appellant acknowledged that he understood the nature and elements of the offense and that the prosecution would have the burden of proving each of the elements beyond a reasonable doubt and that his plea would be an admission to all those elements. *Id* at page 61; see also the entry of plea hearing transcript of April 25th, 2005, at pages 5, 6 and 7 found at Addendum, Exhibit A at pages 5, 6 and 7. That the terms of the plea agreement included the dismissal of Count II in the original information and refers the case to Adult Probation and Parole for the a preparation of the presentence investigation report as part of the plea agreement

and as acknowledged by the parties in open court, see hearing transcript at page 8.

4. The Appellant was advised that he had until sentencing to withdraw his plea, but only if it was shown that it was not knowingly and voluntarily made and further advised that any additional challenge after sentencing must be pursued through the Post Conviction Remedies Act in Title 78, Chapter 35(a), and Rule 65(c) of the Utah Rules of Civil Procedure. Id at page 56.

5. The Appellant was further advised that his right to appeal would be limited. Id at page 59. Moreover, the trial court made a factual finding that the Appellant was in full possession of his faculties, not acting under duress or coercion, in that he was acting freely and voluntarily, knowingly and intelligently in entering into said guilty plea pursuant to the plea agreement. See the hearing transcript for entry of plea at page 6. See also Addendum, Exhibit A at page 6.

In other words, a clear and substantial record has been made which complies with the requirements of Rule 11 showing that the Appellant's plea was made and entered knowingly and voluntarily, freely and intelligently and that the Appellant was not acting under duress, coercion or the undue influence of any person or thing. In fact, the record is clear in establishing that the Appellant was not promised anything beyond what which was stated above. See the entry of plea hearing transcript at pages 5 and 6. See also Addendum, Exhibit A at pages 5 and 6.

There is also the question of whether the issues of withdrawing a plea of guilty

under the circumstances of this case have been preserved since no motion was heard by the trial court to determine whether or not grounds existed for the withdrawal of such plea where the matter is now being considered for the first time on appeal. The fact that the Utah Supreme Court still requires the preservation of an issue involving withdrawal of a guilty plea except in circumstances involving plain error is evident from the decision in State v. Dean, 2004 Utah 63; see also State v. Hittle, 2004 Utah 46. There is nothing in the present case that suggests to this attorney that there is any error, let alone an error that is obvious to the trial court and harmful with a reasonable likelihood of a more favorable outcome for the Appellant if brought to the attention of the trial court. Counsel for Appellant finds nothing in the record to suggest an issue under the plain error doctrine.

It may also be considered that the possibility that a motion to withdraw was implicit in the Appellant's request to appeal his case. In this particular case, the request to appeal is made in writing to the attorney but differs from that which was filed with the trial court. The letters were received after sentence was announced. The one filed with the trial court is made a part of the record at page 70 see also Addendum, Exhibit C. The request in that case is to withdraw his plea to try for a lighter sentence. The letter sent to his counsel is made a part of the record at page 136 see also Addendum, Exhibit D. Beyond wanting to get into a drug rehab program, the Appellant offers little or nothing to suggest grounds for appeal. There

is even less to suggest his intention is to withdraw his plea rather than appeal the sentence. That is to say, there is nothing in the record which clearly requests or moves to withdraw the plea prior to sentence being announced. The plea of guilty entered in this case, the record absent of anything that could be inferred or implied, clearly establishes no request and also no grounds to withdraw. See State v. Gannlin, 2000 Utah 44 at paragraph 9, 1 P.3d 1108. In the instant case, it cannot be demonstrated that a request or motion to withdraw was made a part of the record and there is nothing so plain or obvious upon which error could be established that would allow such matter to be considered under the plain error doctrine.

POINT NO. 3

THE TRIAL COURT SENTENCE UNDER THE CIRCUMSTANCES CANNOT BE CONSIDERED AN ABUSE OF DISCRETION EVEN THOUGH IT DID NOT FOLLOW THE RECOMMENDATION OF ADULT PROBATION AND PAROLE IN THAT THE RECORD DOES NOT CLEARLY ESTABLISH THAT THE TRIAL COURT RELIED UPON UNRELIABLE INFORMATION.

The last matter to be considered is whether or not the sentence was appropriate under the circumstances. In this case, the trial court considered background and history presented in a presentence investigation report. A glaring fact was that the Appellant had been to prison on a previous charge. The Appellant was advised that the trial court judge was not bound by the recommendations by defense counsel or the prosecution or any other party or entity including Adult

Probation and Parole. The presentence investigation report prepared by Adult Probation and Parole disclosed a substantial criminal history but still recommended probation eventhough the same was a departure from the criminal history general matrix which suggested intermediate sanctions. There was no indication at sentencing from the presentence report or by evidence presented at hearing that the information was inaccurate or unreliable.

The trial court without much commentary sentenced the Appellant to prison per statute see the sentencing hearing transcript at Addendum, Exhibit E. Counsel for Appellant has reviewed the record and there is nothing that would suggest that this course of action constituted an abuse of discretion on the part of the trial court, the reporting agency or the prosecuting authority upon which counsel for Appellant could in good faith assert a claim on behalf the Appellant. Without question, the trial court has both authority and discretion to sentence a person to prison if the information relied upon is reliable.

CONCLUSION

On the grounds and for the reasons set forth above, counsel for the Appellant having submitted this brief after the fashion of Anders, as required by State v. Wells, 2000 UT App. 304, 13 P.3rd 1056, having exercised due diligence in attempting to support Appellant's appeal to the best of his ability, having underwent a conscientious examination of the record and hearing transcripts in this case and

having set forth those points and authorities disclosing his basis for said brief and which might arguably support the appeal, having furnished the Appellant with a copy of the brief and counsel's request for permission to withdraw after viewing the same with Appellant and determining that no additional issues could be raised and that he had no desire to submit a brief on his own. Counsel for Appellant requests that action be taken by the Court of Appeals to either dismiss the appeal or proceed to a decision on its merits together with such other and further relief as to this Court appears equitable and proper.

DATED this 17 day of April, 2002.

J. BRYAN JACKSON,
Attorney for Appellant Crowe

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of _____, 20____, I did
mailed a true and correct photocopy of the BRIEF OF APPELLANT CROWE, by way
of U.S. mail, postage fully prepaid, thereon, to the following:

COURT OF APPEALS

450 South State Street, Suite 500
P.O. Box 140230
Salt Lake City, UT 84114-0230

MARK L. SHURTLEFF

ATTORNEY GENERAL

160 East 300 South, Sixth Floor
Salt Lake City, Utah 84114

SCOTT F. GARRETT

IRON COUNTY ATTORNEY

82 North 100 East, Suite 201
P.O. Box 428
Cedar City, Utah 84721-0428

THOMAS MYRON CROWE, #31717

UTAH STATE PRISON

P.O. Box 250
Draper, UT 84020

LAURA LEE, Secretary

ADDENDUM

Exhibit A

FILED
DISTRICT COURT

2005 JUL 12 PM 12:20

IN THE FIFTH JUDICIAL DISTRICT COURT OF IRON COUNTY
OF IRON COUNTY, STATE OF UTAH

BY

[Signature]

STATE OF UTAH,

Plaintiff,

vs.

THOMAS MYRON CROWE,

Defendant.

Case No. 041500605 FS

ORIGINAL

Change of Plea Hearing
Electronically Recorded on
April 25, 2005

BEFORE: THE HONORABLE J. PHILIP EVES
Fifth District Court Judge

APPEARANCES

For the Plaintiff:

JEFFERY E. SLACK
Iron County Attorney
97 N. Main #1
Cedar City, UT 84720
Telephone: (435) 586-6694

For the Defendant:

J. BRYAN JACKSON
157 E. Center Street
Cedar City, UT 84720
Telephone: (435) 586-8450

Transcribed by: Beverly Lowe, CSR/CCT

1909 South Washington Avenue
Provo, Utah 84606
Telephone: (801) 377-0027

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SEP 12 2005

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~~UTAH APPELLATE COURTS~~
~~JUL 27 2005~~

20050561-CA

P R O C E E D I N G S

(Electronically recorded on April 25, 2005)

THE COURT: State of Utah vs. Thomas Myron Crowe.

Mr. Crowe is present with his Counsel. This is also set for a jury trial to begin tomorrow morning. Where are we in this case?

MR. JACKSON: Actually, your Honor, this one will not go to trial. Mr. Crowe has received and reviewed and is prepared to sign a plea agreement -- a statement regarding a plea agreement whereby he agrees to plead guilty to a third degree felony, cultivation of marijuana. We anticipate that there will be an amended Information filed in conjunction with that, and that there will be recommended a pre-sentence investigation report.

THE COURT: So he's pleading guilty to Count I in the -- or the only count in the amended Information?

MR. JACKSON: Correct.

THE COURT: Then we're doing a PSI?

MR. JACKSON: Correct.

THE COURT: Are there any other commitments?

MR. JACKSON: That's it, your Honor.

THE COURT: Is that the agreement from the State?

MR. SLACK: It is, your Honor.

THE COURT: Is that the agreement as you understand it, Mr. Crowe?

1 MR. CROWE: It is, your Honor.

2 THE COURT: Have any other promises been made to get you
3 to plead guilty today?

4 MR. CROWE: No, your Honor.

5 THE COURT: Okay. I've just been handed an amended
6 Information. Have you received that document?

7 MR. CROWE: Yes.

8 THE COURT: Do you need it read to you?

9 MR. CROWE: No, your Honor.

10 THE COURT: Reading is waived. The amended Information
11 contains one count, cultivation of marijuana, a third degree
12 felony. The State alleges specifically that on or about December
13 7th, 2004 in this county and state you did knowingly and
14 intentionally produce, cultivate or manufacture the controlled
15 substance, marijuana. Do you understand that charge?

16 MR. CROWE: Yes, your Honor.

17 THE COURT: The State would have to prove that at trial
18 before you could be convicted. If you plead guilty you would be
19 admitting those things, and the State will never have to prove
20 them.

21 If you plead guilty then you could be sentenced to serve
22 up to five years in the Utah State Prison, pay a fine up to
23 \$5,000 plus an 85 percent surcharge on the fine. In addition,
24 you should understand that this conviction of drug offense could
25 be used to enhance the charges in a future incidence of drug

1 possession, or could result in a longer penalty because you've
2 suffered this conviction. Do you understand that?

3 MR. CROWE: Yes, your Honor.

4 THE COURT: Okay. Any question about the charges or the
5 penalties?

6 MR. CROWE: No.

7 THE COURT: You have certain rights in the matter,
8 including the right to have an attorney, and you do. The right
9 to have a speedy trial before an impartial judge or jury, and
10 this matter is set for trial tomorrow morning at 9 o'clock.

11 At the trial you could hear the State's witnesses. You
12 could make them prove the case beyond a reasonable doubt. You
13 could have your attorney cross examine the witnesses while
14 they're under oath.

15 You could testify if you wanted to, but no one could
16 compel you to say anything. If you chose to remain silent, no
17 one would infer that you were guilty because you didn't say
18 anything.

19 You have the right to use the subpoena power of the
20 Court to compel witnesses to come to Court and testify, but since
21 you have no burden of proof you don't have to -- have to produce
22 any witnesses or any case. You could just sit back and see what
23 the State can prove. Do you understand all those rights?

24 MR. CROWE: Yes, your Honor.

25 THE COURT: If you plead guilty you're giving up those

1 rights, and there will be no trial. The only question left is
2 to decide what penalty should be imposed. As I understand it,
3 there's going to be a pre-sentence investigation report prepared,
4 and it could recommend the maximum. Do you understand that?

5 MR. CROWE: Yes, your Honor.

6 THE COURT: Okay. Now have you read that plea
7 agreement?

8 MR. CROWE: Yes, I have.

9 THE COURT: Did you initial the paragraphs and sign it?

10 MR. CROWE: Yes. I have not signed it.

11 THE COURT: Okay, but you have read the paragraphs?

12 MR. CROWE: Yes.

13 THE COURT: You've initialed them?

14 MR. CROWE: Yes.

15 THE COURT: Did you understand the entire document?

16 MR. CROWE: Yes.

17 THE COURT: Okay. If you are prepared to do so, you can
18 go ahead and sign it. Does that document accurately reflect your
19 agreement with the State?

20 MR. CROWE: Yes, your Honor.

21 THE COURT: Okay.

22 MR. JACKSON: Date it and sign it, the 25th.

23 (Defendant signs document in open court)

24 THE COURT: Mr. Crowe, has anyone brought any force or
25 fear or threat to bear against you to get you to plead guilty?

1 MR. CROWE: No, your Honor.

2 THE COURT: Are you doing this of your own free will?

3 MR. CROWE: Yes, your Honor.

4 THE COURT: Are you under the influence of any substance
5 or any conditions that would make it difficult for you to
6 understand what's going on today?

7 MR. CROWE: No, your Honor.

8 THE COURT: Have you understood up to now?

9 MR. CROWE: Yes, your Honor.

10 THE COURT: Have you had plenty of time to speak to your
11 attorney?

12 MR. CROWE: Yes.

13 THE COURT: I'm going to execute the order which is part
14 of the written agreement, make the findings contained therein.
15 You appear to be in full possession of your faculties. I see no
16 evidence that you're under any duress or coercion. I find that
17 you're acting freely, voluntarily, knowingly and intelligently in
18 entering into this plea agreement. Do you agree with those
19 statements?

20 MR. CROWE: Yes, your Honor.

21 THE COURT: Are you ready now to enter your plea to this
22 amended Information?

23 MR. CROWE: Yes, your Honor.

24 THE COURT: How do you plead to cultivation of
25 marijuana, a third degree felony?

1 MR. CROWE: Guilty, your Honor.

2 THE COURT: Factual basis?

3 MR. SLACK: Your Honor, on about December 7, 2004 in
4 Iron County, State of Utah, Cedar City Police Department was
5 called out to an apartment complex in Cedar City, Utah located at
6 322 North, 100 East on a complaint of potential marijuana being
7 smoked.

8 When they arrived at the door they had a conversation
9 with Mr. Crowe and his roommate. Post Miranda Mr. Crowe admitted
10 to having a marijuana plant in his apartment, that he had
11 obtained the seeds for the marijuana plant from the marijuana
12 that he had been smoking. We would indicate that the plant was
13 only about a week old, but there nevertheless, was a plant in the
14 apartment. I would submit it.

15 THE COURT: Okay. Do you agree that would be the
16 State's evidence?

17 MR. JACKSON: We do, your Honor.

18 THE COURT: All right. I find there is a factual basis.
19 I will enter the plea of guilty. Do you understand what a pre-
20 sentence investigation is, Mr. Crowe?

21 MR. CROWE: Yes, your Honor.

22 THE COURT: Do you agree that one should be done in your
23 case?

24 MR. CROWE: Yes, your Honor.

25 THE COURT: I'll refer the matter to Adult Probation and

1 Parole for the preparation of a pre-sentence report. We'll have
2 the matter back on the calendar in about 40 days, which I would
3 make to be about June 13th. June 13th at 10:30. You're ordered
4 to cooperate in this investigation, provide accurate and speedy
5 information, and we'll see you here June 13th ready for
6 sentencing.

7 MR. JACKSON: Your Honor, Mr. Crowe -- and this goes
8 beyond our deal. Mr. Crowe basically has been in jail for
9 roughly about 60 days, as I understand it.

10 MR. CROWE: Yes.

11 MR. JACKSON: We anticipate that his criminal history --
12 he has very little criminal history. This is the first felony
13 he's ever -- that he's ever been convicted of.

14 We are anticipating that the recommendation for jail
15 time would probably not exceed what he's already served. In
16 light of that, he's requested that I ask this Court to reconsider
17 possibly either reducing or setting bail to allow him to bail out
18 waiting the pendency of the pre-sentence report.

19 MR. CROWE: I have bail at \$5,000 cash only.

20 THE COURT: What's the State's position on that?

21 MR. SLACK: Your Honor, I'm not opposed to reducing bail
22 to the amount for which he has pled here today. Otherwise, the
23 State would oppose said motion.

24 Frankly, we're a little concerned in this regard because
25 we did have a deal on the table made many months down the road

1 and then he split on us. So, your Honor, I feel like this is a
2 pretty fortunate deal for him as it is. I'd just submit it.

3 THE COURT: So you're suggesting bail at \$5,000?

4 MR. JACKSON: He's telling me that it was set at 5 cash
5 only, so I guess the question becomes whether or not it should be
6 bondable.

7 MR. SLACK: It was cash only for the very reason that
8 we OR'd him for our own reasons and then he split on us. So we
9 would simply ask that it remain the same.

10 THE COURT: At \$5,000 cash?

11 MR. SLACK: Please.

12 THE COURT: Any response?

13 MR. JACKSON: Submit it, your Honor.

14 THE COURT: When you say he split, where did he go?

15 MR. SLACK: May we approach?

16 THE COURT: Sure.

17 (Discussion at the bench off the record)

18 THE COURT: Well, \$5,000 is the appropriate amount of
19 bail for a third degree felony. Typically under the law I am
20 supposed to commit the defendant to the custody of the sheriff
21 upon his conviction, unless the defense can establish that he's
22 not a flight risk or doesn't pose any danger to the community.

23 In view of his failure to follow through on his prior
24 commitments, I'm concerned that he might present a flight risk,
25 and \$5,000 cash only seems like the appropriate bail. I'm not

1. going to modify it now.

2. MR. JACKSON: Okay. Thank you.

3. THE COURT: Post that and you can be released.

4. Otherwise, we'll see you here still in custody at the time of
5. sentencing. Thank you.

6. (Hearing concluded)

Exhibit B

FILED

APR 25 2005

FIFTH DISTRICT COURT
IRON COUNTY
DEPUTY CLERK W.M.

JEFFERY E. SLACK (#9210)
Deputy Iron County Attorney
97 North Main, Suite #1
P.O. Box 428
Cedar City, Utah 84720
Telephone: (435) 586-6694
Fax: (435) 586-2737

IN THE FIFTH JUDICIAL DISTRICT COURT, IN AND FOR IRON COUNTY,
STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

THOMAS MYRON CROWE,

Defendant.

**STATEMENT OF THE DEFENDANT IN
SUPPORT OF GUILTY PLEA AND
CERTIFICATE OF COUNSEL, and
ORDER**

Criminal No. 041500605

J. Philip Eves
Judge ~~G. Michael Westfall~~

I, THOMAS MYRON CROWE, hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights:

NOTIFICATION OF CHARGES

I am pleading guilty to the following crime:

Crime & Statutory Provision	Degree	Punishment Min/Max and/or Minimum Mandatory
A. CULTIVATION OF MARIJUANA, UCA §58-37-1	3 rd Degree Felony	0-5 years / \$5,000 fine, plus an 85% surcharge

0062

I have received a copy of the Amended Information against me. I have read it, or had it read to me, and I understand the nature and the elements of the crime to which I am pleading guilty.

The elements of the crime to which I am pleading guilty are:

CULTIVATION OF MARIJUANA, a Third-Degree Felony, in violation of Title 58, Chapter 37, Section 1, Utah Code Annotated, 1953 as amended, in that on or about December 7, 2004, in Iron County, State of Utah, I did knowingly and intentionally produce, cultivate, or manufacture the controlled substance marijuana.

I understand that by pleading guilty I will be admitting that I committed the crimes listed above. I stipulate and agree that the following facts describe my conduct and the conduct of other persons for which I am criminally liable. These facts provide a basis for the court to accept my guilty plea and prove the elements of the crime to which I am pleading guilty:

I did, on or about December 7, 2004, in Iron County, State of Utah, knowingly and intentionally produce, cultivate, or manufacture the controlled substance marijuana. More specifically, I did have within my possession a small marijuana plant.

WAIVER OF CONSTITUTIONAL RIGHTS

I am entering these pleas voluntarily. I understand that I have the following rights under the constitutions of Utah and of the United States. I also understand that if I plead guilty I will give up all the following rights:

TC 1. **Counsel:** I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me. I understand that I might later, if the judge determined that I was able, be required to pay for the appointed lawyer's service to me.

I have not waived my right to counsel; or if I have waived my right to counsel, I have done so knowingly, intelligently, and voluntarily, and after stating my reasons for doing so on the record.

If I have waived my right to counsel, I certify that I have read this statement and that I understand the nature and elements of the charges and crimes to which I am pleading guilty. I also understand my rights in this case and other cases and the consequences of my guilty plea.

If I have **not** waived my right to counsel, my attorney is J. Bryan Jackson. My attorney and I have fully discussed this statement, my rights, and the consequences of my guilty plea.

TC 2. **Jury Trial.** I know that I have a right to a speedy and public trial by an impartial (unbiased) jury and that I will be giving up that right by pleading guilty.

TC 3. **Confrontation and cross-examination of witnesses.** I know that if I were to have a trial, a) I would have the right to see and observe the witnesses who testified against me and b) my attorney, or myself if I waived my right to an attorney, would have the opportunity to cross-examine all of the witnesses who testified against me.

TC 4. **Right to compel witnesses.** I know that if I were to have a trial, I could call witnesses if I chose to, and I would be able to obtain subpoenas requiring the attendance and testimony of those witnesses. If I could not afford to pay for the witnesses to appear, the State would pay those costs.

TC 5. **Right to testify and privilege against self-incrimination.** I know that if I were to have a trial, I would have the right to testify on my own behalf. I also know that if I chose not to testify, no one could make me testify or make me give evidence against myself. I also know that if I chose not to testify, the jury would be told that they could not hold my refusal to testify against me.

AL 6. **Presumption of innocence and burden of proof.** I know that if I do not plead guilty, I am presumed innocent until the State proves that I am guilty of the charged crimes. If I choose to fight the charges against me, I need only plead "not guilty," and my case will be set for a trial. At a trial, the State would have the burden of proving each element of the charges beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous, meaning that each juror would have to find me guilty.

I understand that if I plead guilty, I give up the presumption of innocence and will be admitting that I committed the crimes stated above.

AL 7. **Appeal.** I know that under the Utah Constitution, if I were convicted by a jury or judge, I would have the right to appeal my conviction and sentence. If I could not afford the costs of an appeal, the State would pay those costs for me. I understand that I am giving up my right to appeal my conviction if I plead guilty. I understand that if I wish to appeal my sentence I must file a notice of appeal within 30 days after my sentence is entered.

I know and understand that by pleading guilty, I am waiving and giving up all the statutory and constitutional rights as explained above.

AL 8. **Potential penalties.** I know the maximum sentence that may be imposed for each crime to which I am pleading guilty. I know that by pleading guilty to a crime that carries a mandatory penalty, I will be subjecting myself to serving a mandatory penalty for that crime. I know my sentence may include a prison term, fine, or both.

I know that in addition to a fine, an eighty-five percent (85%) surcharge will be imposed. I also know that I may be ordered to make restitution to any victims of my crimes, including any restitution that may be owed on charges that are dismissed as part of a plea agreement.

TC 9. Consecutive/concurrent prison terms. I know that if there is more than one crime involved, the sentences may be imposed one after another (consecutively), or they may run at the same time (concurrently). I know that I may be charged an additional fine for each crime that I plead to. I also know that if I am on probation or parole, or awaiting sentencing on another offense of which I have been convicted or which I have plead guilty, my guilty pleas now may result in consecutive sentences being imposed or on parole, I know the law requires the court to impose consecutive sentences unless the court finds and states on the record that consecutive sentences would be inappropriate.

TC 10. Plea agreement. My guilty plea is the result of a plea agreement between myself and the prosecuting attorney. All the promises, duties, and provisions of the plea agreement, if any, are fully contained in this statement, including those explained below:

In exchange for my plea of "guilty," the State has agreed to file an Amended Information therein charging me with CULTIVATION OF MARIJUANA, a Third-Degree Felony; as opposed to the original charges of CULTIVATION OF MARIJUANA, a Third-Degree Felony; and UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE, TO WIT: MARIJUANA, a Class A Misdemeanor. I understand that the State of Utah will recommend the preparation of a Presentence Investigation Report prior to sentencing. ~~Further, I understand that the State of Utah will concur with a 402 Reduction if I successfully complete all terms and conditions of probation.~~ No other promises have been made to induce me to plead guilty. **J.S.**

XC 11. **Trial judge not bound.** I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing, made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the judge may do are not binding on the judge.

DEFENDANT'S CERTIFICATION OF VOLUNTARINESS

I am entering this plea of my own free will and choice. No force, threats, of unlawful influence of any kind have been made to get me to plead guilty. No promises except those contained in this statement have been made to me.

I have read this statement, or I have had it read to me by my attorney, and I understand its contents and adopt each statement in it as my own. I know that I am free to change or delete anything contained in this statement, but I do not wish to make any changes because all of the statements are correct.

I am satisfied with the advice and assistance of my attorney.

I am 24 years of age. I have attended school through the 11 grade. I can read and understand the English language. If I do not understand English, an interpreter has been provided to me. I was not under the influence of any drugs, medication, or intoxicants which would impair my judgment when I decided to plead guilty. I am not presently under the influence of any drug, medication, or intoxicants which impair my judgment.

I believe myself to be of sound and discerning mind and to be mentally capable of understanding these proceedings and the consequences of my plea. I am free of any mental disease,

defect, or impairment that would prevent me from understanding what I am doing or from knowingly, intelligently, and voluntarily entering my plea.

I understand that if I want to withdraw my guilty plea, I must file a written motion or withdraw my plea before sentence is announced. I understand that for a plea held in abeyance, a motion to withdraw from the plea agreement must be made within 30 days of pleading guilty or no contest. I will only be allowed to withdraw my plea if I show that it was not knowingly and voluntarily made. I understand that any challenge to my plea made after sentencing must be pursued under the Post-Conviction Remedies Act in Title 78, Chapter 35a, and Rule 65C of the Utah Rules of Civil Procedure.

DATED 29 day of April, 2005.

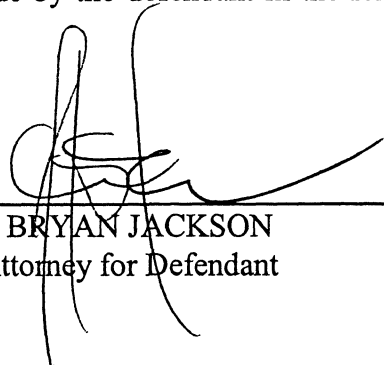


THOMAS MYRON CROWE
Defendant

CERTIFICATE OF DEFENSE ATTORNEY

I certify that I am the attorney for THOMAS MYRON CROWE, the defendant above, and I know he has read the statement, or that I have read it to him; and I discussed it with him and believe he fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crimes and the factual synopsis of the defendant's criminal conduct are correctly stated; and these, along with


the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.



J. BRYAN JACKSON
Attorney for Defendant

CERTIFICATE OF PROSECUTING ATTORNEY

I certify that I am the attorney for the State of Utah in the case against THOMAS MYRON CROWE, defendant. I have reviewed this Statement of Defendant and find that the factual basis of the defendant's criminal conduct which constitutes the offenses is true and correct. No improper inducements, threats, or coercions to encourage a plea have been offered defendant. The plea negotiations are fully contained in the Statement and in the attached Plea Agreement or as supplemented on the record before the Court. There is reasonable cause to believe the evidence would support the conviction of defendant for the offenses for which the pleas are entered and acceptance of the pleas would serve the public interest.



JEFFERY E. SLACK
Deputy Iron County Attorney

ORDER

Based upon the facts set forth in the foregoing Statement and the certification of the defendant and counsel, and based on any oral representation in the court, the Court witnesses the signatures and finds that defendant's guilty pleas are freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED that the defendant's guilty plea to the crime set forth in the Statement be accepted and entered.

DATED this 25th day of April, 2005.



G. MICHAEL WESTFALL
District Court Judge

Exhibit C

FILED

JUN 17 2005

FIFTH DISTRICT COURT
IRON COUNTY
DEPUTY CLERK mm

Dear Mr. Eves

I would like to withdraw my guilty plea and try for a lighter sentence.

I have sent letters to Mr. Jackson to do this with in 30 days. My family & Me think that this sentence is a little to much, I know I did wrong & I know I need help with My Drug problem. But prison is not going to get me the help I need. I'm only 24 years old and My family really Needs me My Mother is in Montana right now or She would be hear. I'm very Sorry if this is a waste of your time. I'm kind of Slow I have ADD Attention Deficit Disorder. it is really hard for me to understand what is happening wright now. thanks for your time.

Thomas Lowe

P.S. I really need help with my drug problem.
please help me get threw this.
I'm Starting to feel very unstable I just want life to end.

0070

Rec'd 6/27/05 - Please file & conn to counsel. JRS

Exhibit D

Mr. Jackson

My Name Is Thomas Crowe and I would like for you to file a 30 day appeal with Judge Eve's. My charges are 3rd Degree Feloney Cultivation of Marijuana I have talked to my family and they think you can still get me out of going to prison.

I would be very grateful if you could help me in my Time of Need. My girlfriend has just told Me i'm going to be a daddy: and prison just doesn't sound like it will help me their are so much more drugs in their then there is on the Streets, how much will it cost for you to help me get home to my new family. please please try and help me i need a Drug rehab or something not prison i need help with my Drug problem. Thank you for your time.

Respectfully Thomas Crowe.

Exhibit E

FILED

DISTRICT COURT

2005 JUL 12 PM 12:20

IN THE FIFTH JUDICIAL DISTRICT COURT
OF IRON COUNTY, STATE OF UTAH

IRON COUNTY

BY

(Signature)

STATE OF UTAH,

Plaintiff,

vs.

THOMAS MYRON CROWE,

Defendant.

Case No. 041500605 FS

ORIGINAL

Sentencing
Electronically Recorded on
June 13, 2005

BEFORE: THE HONORABLE J. PHILIP EVES
Fifth District Court Judge

APPEARANCES

For the Plaintiff:

JEFFERY E. SLACK
Iron County Attorney
97 N. Main #1
Cedar City, UT 84720
Telephone: (435) 586-6694

For the Defendant:

J. BRYAN JACKSON
157 E. Center Street
Cedar City, UT 84720
Telephone: (435) 586-8450

Transcribed by: Beverly Lowe, CSR/CCT

1909 South Washington Avenue
Provo, Utah 84606
Telephone: (801) 377-0027

FILED

UTAH APPELLATE COURTS

SEP 12 2005

FILED

UTAH APPELLATE COURTS

JUL 27 2005

20050561-CK

0122

P R O C E E D I N G S

(Electronically recorded on June 13, 2005)

THE COURT: State of Utah vs. Thomas Myron Crowe.

Mr. Crowe is present. This matter comes on for sentencing.

Mr. Crowe, have you read the pre-sentence investigation report in your case?

MR. CROWE: Yes, I have.

THE COURT: All right. Are you ready to go ahead, Mr. Jackson?

MR. JACKSON: Yes, your Honor. We've reviewed it. Honestly, the recommendation is favorable to Mr. Crowe. I think the factual information is complete, correct?

MR. CROWE: Uh-huh.

MR. JACKSON: Everything in there is accurate?

MR. CROWE: Yes.

MR. JACKSON: He has served, I think, 120 days in jail.

MR. CROWE: It's 122.

MR. JACKSON: Well, 122 days he says. We would simply ask that he get credit for time served, and we would concur with the recommendation.

THE COURT: Well, the recommendation is that he serve 180 days without credit for time served.

MR. JACKSON: Well, we would ask that the Court consider credit for time served, but we'll do whatever the Court orders. I -- you know, it's a favorable recommendation in either case

1 under the circumstances, and so frankly, we're willing to do
2 whatever the Court feels is necessary in this case to set it
3 right.

4 If the Court is inclined to give him an additional 120
5 days, we would maybe ask that he have the opportunity to go out
6 and try to find work and then be -- work towards some sort of
7 work release situation where he is able to get out at least part
8 of that time to do some work -- work release.

9 THE COURT: The State's position?

10 MR. SLACK: Your Honor, we simply concur with the PSI as
11 stated.

12 THE COURT: Mr. Crowe has been sentenced to the state
13 prison previously in 2001, correct?

14 MR. CROWE: Yes.

15 THE COURT: How long were you there?

16 MR. CROWE: Approximately six months.

17 THE COURT: Have you been on parole?

18 MR. CROWE: No. I terminated.

19 THE COURT: You finished parole?

20 MR. CROWE: No, I terminated my number at the prison.
21 They gave me a termination date.

22 THE COURT: Oh, is that right?

23 MR. CROWE: Yes.

24 THE COURT: After six months?

25 MR. CROWE: Yes.

1 THE COURT: Since then there have been a DUI, a
2 possession of marijuana, contributing -- well, the contributing
3 charge got dismissed. Injury to a jail, a felony, another
4 marijuana possession and now this one, right?

5 MR. CROWE: Yes.

6 THE COURT: Okay. Anything you want to say, Mr. Crowe?

7 MR. CROWE: No, your Honor.

8 THE COURT: You stand convicted of cultivation of
9 marijuana, a third degree felony. I sentence you to serve zero
10 to five years in the Utah State Prison. You're committed to the
11 custody of the Department of Corrections to serve that term.

12 You have 30 days to file a notice of appeal, if you
13 choose to appeal. You have to file written notice of your intent
14 to appeal with the clerk within the next 30 days, otherwise you
15 will lose your right to appeal. Good luck.

16 (Hearing concluded)

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, Beverly Lowe, a Notary Public in and for the State of Utah, do hereby certify:

That this proceeding was transcribed under my direction from the transmitter records made of these meetings.


That this transcript is full, true, correct, and contains all of the evidence and all matters to which the same related which were audible through said recording.

I further certify that I am not interested in the outcome thereof.

That certain parties were not identified in the record, and therefore, the name associated with the statement may not be the correct name as to the speaker.

WITNESS MY HAND AND SEAL this 12th day of July 2005.

My commission expires:
February 24, 2008


Beverly Lowe
NOTARY PUBLIC
Residing in Utah County

