

2005

Utah v. Brandon James Briggs : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Scott L. Wiggins; Arnold and Wiggins; Attorney for Appellant.

Brett J. Delporto; Assistant Attorney General; Mark L. Shurtleff; Utah Attorney General; Attorneys for Appellee.

Recommended Citation

Reply Brief, *Utah v. Briggs*, No. 20050734 (Utah Court of Appeals, 2005).
https://digitalcommons.law.byu.edu/byu_ca2/5990

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN UTAH COURT OF APPEALS

STATE OF UTAH,)
)
 Plaintiff / Appellee,) Case No. 20050734-CA
)
 v.)
)
 BRANDON JAMES BRIGGS,)
)
 Defendant / Appellant.)

REPLY BRIEF OF APPELLANT

Appeal from the Sentence, Judgment, Commitment, which was signed by the district court on July 13, 2005, but, according to the docket entered on July 7, 2005, in the Second District Court, Davis County, the Honorable Darwin C. Hansen, presiding

SCOTT L WIGGINS (5820)
ARNOLD & WIGGINS, P.C.
American Plaza II, Suite 105
57 West 200 South
Salt Lake City, UT 84101
Attorneys for Appellant

BRETT J. DELPORTO (6862)
ASSISTANT ATTORNEY GENERAL
MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854
Attorneys for Appellee

FILED
UTAH APPELLATE COURTS
AUG 16 2006

IN UTAH COURT OF APPEALS

STATE OF UTAH,)
)
 Plaintiff / Appellee,) Case No. 20050734-CA
)
 v.)
)
 BRANDON JAMES BRIGGS,)
)
 Defendant / Appellant.)

REPLY BRIEF OF APPELLANT

Appeal from the Sentence, Judgment, Commitment, which was signed by the district court on July 13, 2005, but, according to the docket entered on July 7, 2005, in the Second District Court, Davis County, the Honorable Darwin C. Hansen, presiding

SCOTT L WIGGINS (5820)
ARNOLD & WIGGINS, P.C.
American Plaza II, Suite 105
57 West 200 South
Salt Lake City, UT 84101
Attorneys for Appellant

BRETT J. DELPORTO (6862)
ASSISTANT ATTORNEY GENERAL
MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854
Attorneys for Appellee

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

DETERMINATIVE AUTHORITY. iii

ARGUMENTS

 I. CONTRARY TO THE STATE’S ASSERTIONS, THE STATE
 BREACHED THE PLEA AGREEMENT AND THE
 SENTENCING COURT ERRED BY FAILING TO INQUIRE
 INTO MR. BRIGGS OBJECTION THAT THE PLEA
 AGREEMENT HAD BEEN VIOLATED BY THE STATE’S
 RECOMMENDATION FOR PRISON. 1

 A. Preservation of Issue by Objection 1

 B. The State’s Comments at Sentencing
 Breached the Plea Agreement. 3

CONCLUSION 3

ADDENDA. 6

No Addendum is utilized pursuant to Utah Rule of
Appellate Procedure 24(a)(11).

TABLE OF AUTHORITIES
CASES CITED

Page(s)

Federal Cases

Santobello v. New York, 404 U.S. 257, 92 S.Ct. 495 (1971).....3

State Cases

State v. Brown, 856 P.2d 358 (Utah Ct. App. 1993).....1

State v. Copeland, 765 P.2d 1266 (Utah 1988).....3

State v. Cruz, 2005 UT 45, 122 P.3d 543.....1

State v. Garfield, 552 P.2d 129 (Utah 1976).....3

State v. Holgate, 2000 UT 74, 10 P.3d 346.....1

State v. Kay, 717 P.2d 1294 (Utah 1986).....3

State v. Smit, 2004 UT App 222, 95 P.3d 1203.....3

STATUTES CITED

None.

RULES CITED

None.

DETERMINATIVE AUTHORITY

See cases, etc., cited abovein passim

ARGUMENTS

I. CONTRARY TO THE STATE'S ASSERTIONS, THE STATE BREACHED THE PLEA AGREEMENT AND THE SENTENCING COURT ERRED BY FAILING TO INQUIRE INTO MR. BRIGGS OBJECTION THAT THE PLEA AGREEMENT HAD BEEN VIOLATED BY THE STATE'S RECOMMENDATION FOR PRISON.

A. Preservation of Issue by Objection

The State argues that Mr. Briggs failed to preserve his claim that the State breached the plea agreement. See Brief of Appellee, pp. 9-11. The record on appeal demonstrates otherwise.

"[A]n objection 'must at least be raised to a level of consciousness such that the trial [court] can consider it.'" *State v. Cruz*, 2005 UT 45, ¶33, 122 P.3d 543 (quoting *State v. Brown*, 856 P.2d 358, 361 (Utah Ct. App. 1993)) (internal quotations omitted in original)). The basic premise of the preservation requirement is that "the trial court ought to be given the opportunity to address a claimed error and, if appropriate, correct it." *State v. Holgate*, 2000 UT 74, ¶11, 10 P.3d 346 (internal quotations omitted).

Notwithstanding the State's assertion, the record demonstrates that Mr. Briggs more than adequately preserved the issue. In the case at bar, Mr. Briggs appeared before the district court pursuant to a negotiated plea agreement and pleaded guilty "as charged, State will stipulate to a double 402 per

statute if [D]efendant is granted & completes probation without any violations; otherwise [the State will remain] silent at sentencing." (R. 20-24). See Statement of Defendant in Support of Guilty Plea and Certificate of Counsel, R. 20-24, a true and correct copy of which is attached as Addendum B to the Brief of Appellant; see also R. 56:2:9-16. The court ordered that AP&P prepare a presentence investigation report for sentencing.

At the first sentencing hearing, appointed trial counsel was surprised by AP&P's recommendation of prison and therefore obtained a continuance to investigate an alternative to the recommendation of prison.

At the second sentencing hearing, appointed trial counsel enthusiastically argued that the court provide Mr. Briggs with the opportunity to be evaluated and screened for acceptance by the Job Corp program to enable Mr. Briggs to develop necessary job skills. The State responded by arguing that Job Corp, as a treatment program, was inappropriate because Mr. Briggs is a high-risk individual who would "just reoffend." (R. 54:6-7).

Appointed trial counsel objected and specifically argued that the State's comments violated the plea agreement by constituting a "back-door recommendation for prison." (R. 54:7:16-21). Notwithstanding, the sentencing judge, without further discussion,

sentenced Mr. Briggs to an indeterminate term of not less than one year nor more than fifteen years in the Utah State Prison.

B. The State's Comments at Sentencing Breached the Plea Agreement.

All of the State's discussion in its Brief concerning its part of the bargain and "sentencing alternatives" does not alter the record on appeal, which demonstrates that the State unilaterally breached the plea agreement. According to the plain language of the plea agreement, the State agreed to remain "silent at sentencing." (R. 22). This the State failed to do, instead making critical comments that Mr. Briggs is a high-risk individual who would "just reoffend." (R. 54:6-7).

Consequently, Utah case law, following the lead of the United States Supreme Court in *Santobello v. New York*, 404 U.S. 257, 262-63, 92 S.Ct. 495, 498-99 (1971), dictates that the case be remanded for Mr. Briggs to withdraw his plea. See *State v. Copeland*, 765 P.2d 1266, 1276 (Utah 1988); *State v. Kay*, 717 P.2d 1294, 1304 (Utah 1986); *State v. Garfield*, 552 P.2d 129, 130 (Utah 1976); cf. *State v. Smit*, 2004 UT App 222, ¶17, 95 P.3d 1203.

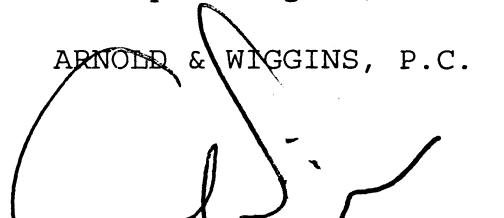
CONCLUSION

Based on the foregoing, as well as that set forth in the previously filed Brief of Appellant, Mr. Briggs respectfully requests that this Court vacate the sentence and remand the case

to the trial court for a determination of whether Mr. Briggs desires to have the guilty plea withdrawn and for further proceedings consistent with this Court's instructions as set forth in its opinion.

RESPECTFULLY SUBMITTED this 16th day of August, 2006.

ARNOLD & WIGGINS, P.C.

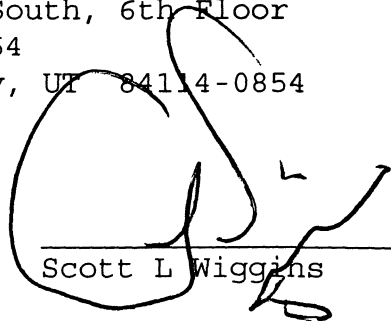


Scott L Wiggins
Attorneys for Appellant

CERTIFICATE OF SERVICE

I, SCOTT L WIGGINS, hereby certify that I personally caused to be mailed by First-Class Mail, postage prepaid, two (2) true and correct copies of the foregoing **REPLY BRIEF OF APPELLANT** to the following on this 16th day of August, 2006:

Mr. Brett J. Delporto
Assistant Attorney General
160 East 300 South, 6th Floor
P.O. Box 140854
Salt Lake City, UT 84114-0854



Scott L Wiggins

ADDENDA

No Addendum is utilized pursuant to Utah Rule of Appellate Procedure 24(a)(11).