

2006

Utah v. Jaden Helton : Brief of Appellant

Utah Court of Appeals

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Mark Shurtleff; Attorney General; Attorney for Appellee.

Randal W. Richards; The Public Defender Association, Inc. of Weber County; Attorney for Appellant.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

:

Plaintiff/Appellee,

:

vs.

:

Appellate Court No. 20060079

JADEN HELTON,

:

:

Defendant/Appellant.

BRIEF OF APPELLANT

THIS APPEAL IS FROM A JUDGMENT, SENTENCE AND COMMITMENT IN WHICH THE DEFENDANT ADMITTED TO VIOLATING HIS PROBATION FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, A THIRD DEGREE FELONY WHEREIN DEFENDANT WAS SENTENCED TO SERVE AN INDETERMINATE TERM OF ZERO TO FIVE YEARS AT THE PRISON, IN THE SECOND DISTRICT COURT FOR WEBER COUNTY, THE HONORABLE SCOTT M. HADLEY PRESIDING.

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Attorney for Defendant/Appellant

**FILED
UTAH APPELLATE**

MAY 1 2006

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
	:	
Plaintiff/Appellee,	:	
	:	
vs.	:	Appellate Court No. 20060079
JADEN HELTON,	:	
	:	
Defendant/Appellant.	:	

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,	:	
Plaintiff/Appellee,	:	
vs.	:	
JADEN HELTON,	:	Appellate Court No. 20060079
Defendant/Appellant.	:	

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF PROCEEDINGS

The Appellant is appealing from a Judgment, Sentence and Commitment in the Second District Court for Weber County, Utah. The Defendant admitted to violating his probation for Driving Under the Influence of Alcohol, a third degree felony. He was sentenced to serve an indeterminate term of zero to five years at the prison. Jurisdiction for the Appeal is conferred upon the Utah Court of Appeals 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 PRISON?

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

UTAH CODE ANNOTATED

§76-3-203. Felony conviction -- Indeterminate term of imprisonment.

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

- (1) In the case of a felony of the first degree, unless the statute provides otherwise, for a term of not less than five years and which may be for life.
- (2) In the case of a felony of the second degree, unless the statute provides otherwise, for a term of not less than one year nor more than 15 years.
- (3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed five years.

§77-13-6. Withdrawal of plea.

- (1) A plea of not guilty may be withdrawn at any time prior to conviction.
- (2) (a) A plea of guilty or no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made.
(b) A request to withdraw a plea of guilty or no contest, except for a plea held in abeyance, shall be made by motion before sentence is announced. Sentence may not be announced unless the motion is denied. For a plea held in

abeyance, a motion to withdraw the plea shall be made within 30 days of pleading guilty or no contest.

(c) Any challenge to a guilty plea not made within the time period specified in Subsection (2)(b) shall be pursued under Title 78, Chapter 35a, Post-Conviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure.

§78-2a-3. Court of Appeals jurisdiction.

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

(j) cases transferred to the Court of Appeals from the Supreme Court.

STATEMENT OF THE CASE

On February 8, 2005, the Defendant pled guilty to Driving Under the Influence of Alcohol, a third degree felony. On May 3, 2005, the Defendant was sentenced. The Court imposed a prison sentence of zero to five years at the Utah State prison. The Court then suspended the sentence and placed the Defendant on a zero tolerance probation. (R. 078-80). As part of his sentence he was ordered to serve 150 days of work release through the PAAG facility. (R. 078-80). The Defendant was released from the PAAG facility on November 3, 2005. (R. 095). On November 15, 2005, Defendant tested positive for using cocaine. (R. 095). On November 29, 2005, the Defendant admitted to violating his probation. (R. 147/2). He was sentenced for the probation violation on November 29, 2005. The Court revoked the Defendant's probation and ordered him to serve the original indeterminate

sentence of zero to five years at the Utah State Prison. (R. 118-19). The Defendant now appeals from that sentence.

Defendant's appellate counsel has carefully reviewed the record and has found no non-frivolous issues to appeal and is filing this brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clayton*, 639 P.2d 168 (Utah 1981).

STATEMENT OF THE FACTS

The Defendant pled guilty to Driving under the influence of alcohol, a third degree felony. On May 3, 2005, the Defendant was placed on a zero tolerance probation. On November 29, 2005, the Defendant admitted to a probation violation. He was sentenced on December 13, 2005, to serve an indeterminate sentence of zero to five years at the Utah State Prison. The Defendant now appeals from that sentence.

SUMMARY OF ARGUMENTS

Defendant's appellate counsel has diligently reviewed and researched this case and has found no non-frivolous issues to appeal. Defendant did not file a motion to withdraw his guilty plea and is therefore precluded from challenging the plea on appeal. In addition, he was sentenced to serve a term of zero to five years at the Utah State Prison. This is a legal sentence and is within the statutory guidelines for a third degree felony. For these reasons,

counsel is filing this brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clayton*, 639 P.2d 168 (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.

U.C.A. §76-3-203 lists the sentences that a judge may impose. This section reads:

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

(3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed five years.

In the case at bar, the Defendant was sentenced to a term that is within the statutory scope set by the legislature. The Defendant wanted the trial judge to grant him probation a second time. However, 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 gave the Defendant a chance at probation even though the Defendant had a lengthy criminal history. The trial judge informed the Defendant that he was on zero tolerance probation. Two weeks after the Defendant was released from his work release program he violated his

probation by using cocaine. It is impossible to say that the trial judge abused his discretion when he gave the Defendant a chance at probation and when the Defendant violated that probation two weeks after his release from custody.

Furthermore, the Defendant didn't file a motion to withdraw his plea and has not preserved any issues for appeal. Because the Defendant did not make a timely motion to withdraw his plea he is precluded from challenging his plea on appeal. *See, State v. Reyes*, 40 P.3d 630 (Utah 2002)(holding that failure to file a motion to withdraw a guilty plea "extinguishes a defendant's right to challenge the validity of the guilty plea on appeal.") Utah Code Annotated §77-13-6 requires a defendant to move to withdraw his plea prior to the time of sentencing.

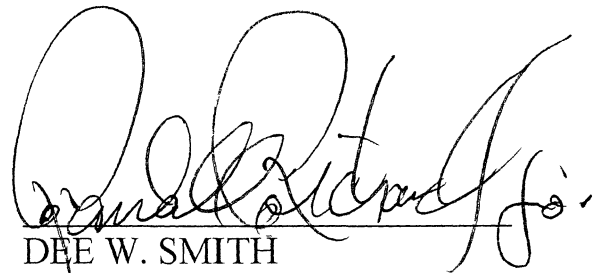
Counsel has diligently researched the applicable statutory and case law and has been unable to find any law to support the Defendant's position. Counsel has asked the Defendant to supply us with the issues he wants appealed. He has not responded to these requests and counsel has been unable to find any non-frivolous issues. He was also sent a copy of the *Anders* brief with a letter explaining the reasons for the filing of an *Anders* brief with an invitation to send counsel any issues that he felt were overlooked. He has not responded to that letter. 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).

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.

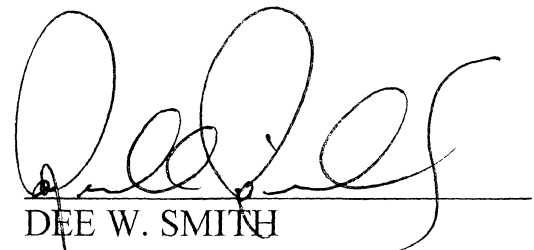
DATED this 15th day of May 2006.



DEE W. SMITH
Attorney for Appellant

CERTIFICATE OF MAILING

I certify that I mailed two copies of the foregoing Brief of Appellant to Mark Shurtleff, Attorney General, Attorney for the Plaintiff, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0180, postage prepaid this 15 day of May 2006.



DEE W. SMITH
Attorney at Law

ADDENDUM A

SECOND DISTRICT COURT

2005 DEC 19 P 4:20

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

DEC 19 2005

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
	:	
vs.	:	Case No: 031904530 FS
	:	
JADEN L HELTON,	:	Judge: SCOTT M HADLEY
Defendant.	:	Date: December 13, 2005

PRESENT

Clerk: marykd

Prosecutor: DEAN SAUNDERS

Defendant

Defendant's Attorney(s): ROY COLE

DEFENDANT INFORMATION

Date of birth: February 6, 1970

Video

Tape Number: H121305 Tape Count: 1207

CHARGES

1. DRIVING UNDER THE INFLUENCE OF ALC/DRUGS - 3rd Degree Felony
Plea: Guilty - Disposition: 02/08/2005 Guilty

SENTENCE PRISON

Based on the defendant's conviction of DRIVING UNDER THE INFLUENCE OF ALC/DRUGS a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.

To the WEBER County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

Case No: 031904530
Date: Dec 13, 2005

SENTENCE RECOMMENDATION NOTE

The Court recommends credit for time served.
DRIVING UNDER THE INFLUENCE OF ALC/DRUGS F3

SENTENCE FINE

Total Fine: \$2800.00
Total Suspended: \$0
Total Surcharge: \$1296.78
Total Principal Due: \$2800.00
Plus Interest


Pay fine to The Court.

The Court orders the defendant's probation revoked. The defendant is to serve the 0-5 year prison sentence.

SENTENCE PROBATION PAYMENT NOTE

All fines and restitution which have been imposed and remain unpaid are ordered transferred to the Division of Corrections for collection. The clerk has the authority and is directed to credit the amount owing.

Dated this 19 day of Dec., 2005.


SCOTT M HADLEY
District Court Judge

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SECOND DISTRICT COURT

2005 MAY -9 A 11:08

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

STATE OF UTAH, : MINUTES
Plaintiff, : APP SENTENCING
: SENTENCE, JUDGMENT, COMMITMENT
:
:
vs. : Case No: 031904530 FS
:
JADEN L HELTON, : Judge: SCOTT M HADLEY
Defendant. : Date: May 3, 2005

PRESENT

Clerk: roxanneb
Prosecutor: SAUNDERS, L. DEAN
Defendant
Defendant's Attorney(s): COLE, ROY D
Agency: Adult Probation and Parole

DEFENDANT INFORMATION

Date of birth: February 6, 1970
Video
Tape Number: H050305 Tape Count: 1119

CHARGES

1. DRIVING UNDER THE INFLUENCE OF ALC/DRUGS - 3rd Degree Felony
Plea: Guilty - Disposition: 02/08/2005 Guilty

HEARING

This is the time set for sentencing. Defendant is present with counsel, Roy Cole. The Court proceeds with sentencing.

SENTENCE PRISON

Based on the defendant's conviction of DRIVING UNDER THE INFLUENCE OF ALC/DRUGS a 3rd Degree Felony, the defendant is sentenced to an indeterminate term of not to exceed five years in the Utah State Prison.
The prison term is suspended.



5/4/05 12:55 PM

Case No: 031904530
Date: May 03, 2005

SENTENCE JAIL

Based on the defendant's conviction of DRIVING UNDER THE INFLUENCE OF ALC/DRUGS a 3rd Degree Felony, the defendant is sentenced to a term of 150 day(s) in the Weber County Jail.

SENTENCE FINE

Charge # 1	Fine: \$2800.00
	Suspended: \$0.00
	Surcharge: \$1296.78
	Due: \$2800.00
Total Fine: \$2800.00	
Total Suspended: \$0	
Total Surcharge: \$1296.78	
Total Principal Due: \$2800.00	
Plus Interest	

ORDER OF PROBATION

The defendant is placed on probation for 36 month(s).
Probation is to be supervised by Adult Probation and Parole.
Defendant to serve 150 day(s) jail.
Defendant is to report to the Weber County Jail.
Defendant is to report by May 7, 2005 by 9:00 a.m..

Defendant is to pay a fine of 2800.00 which includes the surcharge.
Interest may increase the final amount due.

PROBATION CONDITIONS

The defendant shall enter into an agreement with the Utah State Department of Adult Probation & Parole and comply strictly with its terms and conditions.
The defendant shall report to the Department of Corrections and to the court whenever required.
The defendant shall violate no law, either federal, state or municipal.
The defendant shall successfully complete a substance abuse evaluation and any treatment deemed necessary, paying all costs, as

13-17-2005 10:55:34

Case No: 031904530
Date: May 03, 2005

directed by Adult Probation & Parole.

The defendant shall not consume alcohol or illegal drugs.

The defendant shall submit to random search, seizure, and chemical testing.

The defendant shall take the drug "Anabuse" if approved by a physician.

The defendant shall maintain full-time, verifiable employment.

The defendant shall receive credit for any jail time already served.

The defendant shall successfully complete a parenting class as directed by Adult Probation & Parole, paying all costs.

The defendant shall have installed an Ignition Interlock Device on any vehicle owned or operated by defendant, and shall maintain the same for a period of three years, paying all costs.

The defendant shall provide a DNA sample, to be obtained by Adult Probation and Parole, and pay all costs.

The defendant shall serve 150 days in the Weber County Jail with work release through the PAAG facility. The Court orders defendant to serve the last 30 days at the Day Reporting Center.

The defendant shall commit no violations while on probation. A zero tolerance is imposed.

The defendant shall complete a substance abuse screening and assessment.

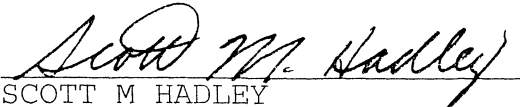
The defendant shall complete 240 hours of community service under the direction of Adult Probation and Parole.

The defendant shall not drive a vehicle unless properly insured to do so.

The defendant shall abide by a 7:00 p.m. to 6:00 a.m. curfew for the first 90 days following release from jail.

Fine payments shall be made through Adult Probation and Parole.

Dated this 5 day of MAY, 2005.


SCOTT M HADLEY
District Court Judge