

2006

State of Utah v. Luke Zachary Baker : Reply Brief

Utah Court of Appeals

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IN UTAH COURT OF APPEALS

STATE OF UTAH,)
)
Plaintiff / Appellee,) Case No. 20060289-CA
)
v.)
)
ROBERT ROY BAKER,)
)
Defendant / Appellant.)

REPLY BRIEF OF APPELLANT

Appeal from the Sentence, Judgment, Commitment, which was signed by the district court on February 25, 2005, and accordingly entered that same day pursuant to reinstatement of appeal time, in the Second District Court, Davis County, the Honorable Rodney S. Page, presiding.

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DETERMINATIVE AUTHORITY

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ARGUMENTS

I. THE STATE CONCEDES THAT THE SENTENCING COURT IMPOSED AN ILLEGAL SENTENCE IN THE COURSE OF SENTENCING MR. BAKER ON HIS CONVICTION OF AGGRAVATED SEXUAL ABUSE OF A CHILD.

Utah Rule of Criminal Procedure 22(e) states, "The court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time." This applies similarly to the appellate court even if the matter is raised for the first time on appeal. See *State v. Nichols*, 2006 UT 76, ¶5, 148 P.3d 990 (citing Utah R. Crim. P. 22(e)); see also *State v. Brooks*, 908 P.2d 856, 860 (Utah 1995).

The State concedes on appeal that the sentencing court in the instant case imposed the following illegal sentence in the course of sentencing Mr. Baker on his conviction of Aggravated Sexual Abuse of a Child: "Based on the defendant's conviction of Aggravated Sex [sic] Abuse of a Child a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than ten years and which may be life in the Utah State Prison." See R. 22, Sentence, Judgment, Commitment, a true and correct copy of which is attached to the Brief of Appellant as Addendum C (Emphasis added). At the time of sentencing, Utah Code Ann. § 76-5-404.1(5) stated, "Aggravated sexual abuse of a child is a first degree felony punishable by imprisonment for an indeterminate term

of not less than *five years* and which may be for life." See Utah Code Ann. § 76-5-404.1 (Emphasis added).

Based on the foregoing, the sentencing court imposed an illegal sentence. Consequently, this Court should vacate the sentence and remand the case for resentencing.

II. BECAUSE THE REQUIREMENTS OF RES JUDICATA ARE NOT SATISFIED, THERE CAN BE NO PRECLUSION IN THE INSTANT CASE.

The State argues that Mr. Baker is collaterally estopped from claiming that appointed trial counsel was ineffective because this same claim was adjudicated in a "companion case". See Brief of Appellee, pp. 5-9. The record on appeal as compared to the so called "companion case" demonstrates otherwise.

"[R]es judicata has two branches: claim preclusion and issue preclusion.'" *Brigham Young Univ. v. Tremco Consultants, Inc.*, 2005 UT 19, ¶25, 110 P.3d 678 (quoting *Murdock v. Springville Mun. Corp. (In re General Determination of the Rights to the Use of All the Water)*, 1999 UT 39, ¶15, 982 P.2d 65). Utah courts utilize res judicata "to refer to the overall doctrine of the preclusive effects to be given to judgments." *Murdock*, 1999 UT 39 at ¶15, 982 P.2d 65.

Res judicata "serves the important public policy of preventing previously litigated issues from being relitigated."

Miller v. USAA Cas. Ins. Co., 2002 UT 6, ¶57, 44 P.3d 663 (quoting *Salt Lake City v. Silver Fork Pipeline Corp.*, 913 P.2d 731, 733 (Utah 1995) and citing *Macris & Assocs., Inc. v. Neways, Inc.*, 2000 UT 93, ¶19, 16 P.3d 1214). The burden of establishing each of the requirements of res judicata is on the party invoking the doctrine, which, in this case, is the State of Utah. See *PGM, Inc. v. Westchester Inv. Partners*, 2000 UT App 20, ¶5, 995 P.2d 1252; see also *Timm v. Dewsnup*, 851 P.2d 1178, 1184 (Utah 1993). "If any one of the[] requirements is not satisfied, there can be no preclusion." *Hill v. Seattle First Nat'l Bank*, 827 P.2d 241, 245 (Utah 1992).¹

Issue preclusion, also known as collateral estoppel, "prevents parties or their privies from relitigating issues which were once adjudicated on the merits and have resulted in a final judgment." *Murdock*, 1999 UT 39 at ¶18, 982 P.2d 65. The four requirements of issue preclusion are as follows:

[1] [T]he party against whom issue preclusion is asserted must have been a party to or in privity with a party to the prior adjudication; [2] the issue decided in the prior adjudication must be identical to the one presented in the instant action; [3] the issue in the

¹Inasmuch as the State's res judicata argument is based solely upon the branch of issue preclusion or collateral estoppel, Mr. Baker responds accordingly. However, a similar result would occur under the branch of claim preclusion because the requirements are likewise not satisfied. See *Culbertson v. Board of County Comm'rs*, 2001 UT 108, ¶12, 44 P.3d 642; see also *Snyder v. Murray City Corp.*, 2003 UT 13, ¶34, 73 P.3d 325.

first action must have been completely, fully, and fairly litigated; and [4] the first suit must have resulted in a final judgment on the merits.

Id.; see also *Collins v. Sandy City Bd. of Adjustment*, 2002 UT 77, ¶12, 52 P.3d 1267 (quoting *Murdock*, 1999 UT 39, ¶18, 982 P.2d 65).

Mr. Baker is not collaterally estopped from arguing that he was denied his constitutional right to the effective assistance of counsel² in the instant case because the issue arises under a different set of facts upon which totally different charges were pursued and which resulted in a different sentence being imposed by the district court. The fact that the district court in the instant case imposed an illegal sentence, as conceded by the State, further demonstrates a significant difference between this and the so called companion case.

In light of the foregoing, the issue decided in the so called companion case is not identical to the one presented in the instant action.³ This conclusion is particularly appropriate in the instant case because the appellate court "resolve[s] all doubts in favor of permitting parties to have their day in

²See *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984).

³"What is critical [in determining identical issues] is whether the issue that was actually litigated in the first suit was essential to resolution of that suit and is the same factual issue as that raised in a second suit." *Robertson v. Campbell*, 674 P.2d 1226, 1230 (Utah 1983).

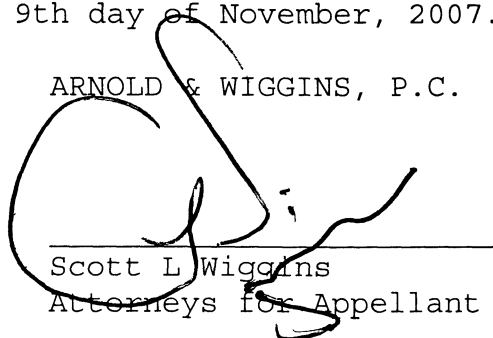
court.'" *Brigham Young Univ.*, 2005 UT 19 at ¶28, 110 P.3d 678 (quoting *Baxter v. Utah Dep't of Transp.*, 706 P.2d 1167, 1169 (Utah 1985)).

CONCLUSION

Based on the foregoing, as well as that set forth in the previously filed Brief of Appellant, Mr. Baker respectfully requests that this Court vacate the sentence imposed by the sentencing court and remand the case for resentencing and further proceedings consistent with this Court's instructions as set forth in its opinion.

RESPECTFULLY SUBMITTED this 9th day of November, 2007.

ARNOLD & WIGGINS, P.C.

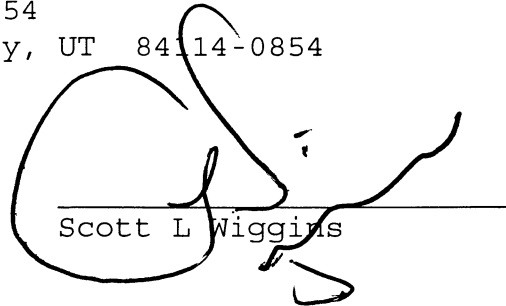


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CERTIFICATE OF SERVICE

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 9th day of November, 2007:

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ADDENDA

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