

2006

# State of Utah v. Christopher Gill : Brief of Appellant

Utah Court of Appeals

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David M. Perry; Attorney for Appellant.

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**IN THE UTAH COURT OF APPEALS**

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STATE OF UTAH,

Plaintiff-Appellee

vs.

CHRISTOPHER GILL,

Defendant-Appellant

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Case No. 20060445-CA

Priority No. 2

*Anders* BRIEF OF APPELLANT

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DEFENDANT'S APPEAL OF JUDGMENT ENTERED APRIL 11, 2006  
BY THE FIRST DISTRICT COURT OF CACHE COUNTY, UTAH THE  
HONORABLE THOMAS L. WILLMORE, PRESIDING.

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CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

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|   |            |
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**IN THE UTAH COURT OF APPEALS**

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|                      |   |                                  |
|----------------------|---|----------------------------------|
| STATE OF UTAH,       | : |                                  |
| Plaintiff/Appellee,  | : |                                  |
| vs.                  | : |                                  |
| CHRISTOPHER GILL,    | : | District Court Case No.041100181 |
| Defendant/Appellant. | : | Appellate Court No. 20060445     |

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***BRIEF OF APPELLANT***

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**JURISDICTION AND NATURE OF PROCEEDINGS**

The Appellant is appealing from a Judgment, Sentence and Commitment in the First District Court for Cache County, Utah, dated April 11, 2006. The defendant plead guilty to two counts of Forgery, a Third Degree Felony, and one count of Communications Fraud, a Third Degree Felony. He was sentenced to serve an indeterminate term of not to exceed five years in the Utah State 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**

#### **§ 76-6-501. Forgery.**

(1) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:

(a) alters any writing of another without his authority or utters any such altered writing; or

(b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication, or utterance purports to be the act of another, whether the person is existent or nonexistent, or purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed.

(2) As used in this section, “writing” includes printing, electronic storage, or transmission, or any other method of recording valuable information including forms such as:

(a) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbol of value, right, privilege, or identification;

(b) a security revenue stamp, or any other instrument or writing issued by a government or any other agency; or

(c) a check, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

(3) Forgery is a felony of the third degree.

### **§ 76-10-1801. Communications Fraud**

(1) Any person who has devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and who communicates directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice is guilty of:

(a) a class B misdemeanor when the value of the property, money, or things obtained or sought to be obtained is less than \$300;

(b) a class A misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$300 but is less than \$1,000;

(c) a third degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$1,000 but is less than \$5,000;

(d) a second degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$5,000; and

(e) a second degree felony when the object of the scheme or artifice to defraud is other than the obtaining of something of monetary value.

(2) The determination of the degree of any offense under subsection (1) shall be measured by the total value of all property, money, or things obtained or sought to be obtained by the scheme or artifice described in Subsection (1) except as provided in Subsection (1)(e).

(3) Reliance on the part of any person is not a necessary element of the offense described in Subsection (1).

(4) An intent on the part of the perpetrator of any offense described in Subsection (1) to permanently deprive any person of property, money, or thing of value is not a necessary element of the offense.

(5) Each separate communication made for the purpose of executing or concealing a scheme or artifice described in Subsection (1) is a separate act any offense of communication fraud.

(6) (a) To communicate as described in Subsection (1) means to bestow, convey, make known, recount, impart; to give by way of information; to talk over; or to transmit information.

(b) Means of communications include but are not limited to use of the mail, telephone, telegraph, radio, television, newspaper, computer, and spoken and written communication.

(7) A person may not be convicted under this section unless the pretenses, representations, promises, or material omissions made or omitted were made or omitted intentionally, knowingly, or with a reckless disregard for the truth.

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

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

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

### **STATEMENT OF THE CASE**

The Defendant was charged with Forgery, a Third Degree Felony. Defendant was represented by attorney Bryan Galloway. The Defendant was sentenced on April 11, 2006. He was sentenced to serve an indeterminate term not to exceed five years in the Utah State Prison. The sentence was to run concurrent with his First District case # 051101011.

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).

## STATEMENT OF THE FACTS

The Defendant pled guilty to three counts of Forgery, a Third Degree Felony. On April 11, 2006, he was sentenced to serve an indeterminate term not to exceed five years in the Utah State Prison.

## SUMMARY OF ARGUMENTS

Defendant's appellate counsel has diligently reviewed and researched this case and has found no non-frivolous issues to appeal. In addition, he was sentenced to serve an indeterminate term not to exceed 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. Chappoose*, 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.

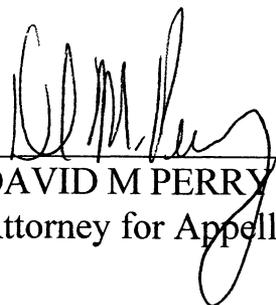
Both this Court and the Utah Supreme Court have held in the past that probation is not a right. *See, State v. Sibert*, 310 P.2d 388, 393 (1957). In *State v. Rhodes*, this Court stated that “[t]he defendant is not entitled to probation, but rather the court is empowered to place the defendant on probation 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.*

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 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). For these reasons, counsel respectfully requests permission to withdraw from further representation of the Defendant.

### 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 20 day of February 2007.

  
\_\_\_\_\_  
DAVID M PERRY  
Attorney for Appellant

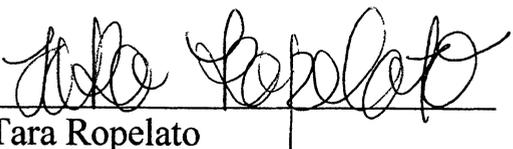
**CERTIFICATE OF MAILING**

I certify that I mailed two copies of the foregoing Brief of Appellant postage prepaid this 20 day of February 2007 to the following:

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UTAH APPELLATE COURTS

FEB 22 2007

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STATE OF UTAH,

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Case No. 20060445-CA

Priority No. 2

No Addendum Necessary

  
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