

SUPREME COURT OF UTAH

State v. Anderson

203 P.3d 990 (Utah 2009) · No. No. 20070328 · Decided February 17, 2009

SUMMARY

The Utah Supreme Court held that probation constitutes a sentence being served under Utah Code section 76-3-401 for purposes of determining whether sentences run concurrently or consecutively. It further held that a judge revoking probation may execute only the previously imposed sentence and lacks authority to make a concurrent-or-consecutive determination for the first time at the revocation hearing. The court reversed the Utah Court of Appeals and vacated the consecutive sentence imposed by the third judge.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Nehring; Associate Chief Justice Durrant; Justice Parrish; Chief Justice Durham; Justice Wilkins
JURISDICTION	Utah
DECIDED	February 17, 2009
DOCKET	No. 20070328
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Anderson sought certiorari review of a Utah Court of Appeals decision affirming a district court's order revoking probation and directing that his previously suspended theft sentence run consecutively to sentences for aggravated robbery.
STANDARD OF REVIEW	On certiorari, the court reviews the decision of the court of appeals rather than the district court. Pure questions of statutory interpretation are reviewed for correctness, with no deference.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Utah
PARTIES	David Scott Anderson v. State of Utah

TOPICS

- sentencing
- statutory interpretation
- criminal procedure
- appellate jurisdiction
- standard of review

PRACTICE AREAS

criminal law

criminal sentencing

appellate law

QUESTIONS PRESENTED

1. Whether probation is a sentence that a defendant is already serving under Utah Code section 76-3-401(1)(b) for purposes of determining concurrent or consecutive sentences.
2. Whether a judge revoking probation may make a concurrent-or-consecutive sentencing determination for the first time at the probation-revocation hearing.
3. Which sentencing court had statutory authority to determine whether the theft and aggravated robbery sentences would run concurrently or consecutively.

HOLDINGS

1. Probation is a sentence that a defendant serves within the meaning of Utah Code section 76-3-401(1)(b), even when the sentence is served outside jail or prison.
2. A concurrent-or-consecutive sentencing determination must be made at the time of final judgment and may not be made for the first time upon revocation of probation.
3. A judge who revokes probation after a prison sentence has been suspended has authority only to execute the previously imposed sentence and lacks authority to decide whether that sentence runs concurrently or consecutively to another sentence.
4. The second judge, who sentenced Anderson for the aggravated robberies while he was serving probation on the theft sentence, was the judge with statutory authority to determine whether the sentences would run concurrently or consecutively.

KEY QUOTATIONS

“In conclusion, we hold that a judge must impose concurrent or consecutive sentencing determinations at the time of final judgment and not at the revocation of probation.” (203 P.3d at 998)

“A judge who revokes a defendant's probation is limited by law to executing the original sentence and does not have the authority to rule on whether sentences should be concurrent or consecutive.” (203 P.3d at 998)

“Additionally, we hold that probation is a sentence being served as used in section 76-3-401 for the purposes of determining concurrent or consecutive sentencing.” (203 P.3d at 998)

FACTUAL BACKGROUND

Anderson pleaded guilty to third-degree felony theft and received a suspended indeterminate sentence of zero to five years in prison, together with eighteen months of probation. While on probation, he pleaded guilty to two first-degree aggravated robbery counts, and a second judge imposed concurrent indeterminate prison terms of at least six years each without stating whether they would run concurrently or consecutively to the earlier theft sentence. After probation was revoked, a third judge executed the suspended theft sentence and ordered it to run consecutively to the robbery sentences.

PROCEDURAL HISTORY

Anderson pleaded guilty to theft and received a suspended zero-to-five-year prison sentence and probation. After he pleaded guilty to two aggravated robbery counts, a second judge imposed concurrent prison sentences but did not address the theft sentence. A third judge later revoked probation, executed the theft sentence, and ordered it to run consecutively to the robbery sentences. The Utah Court of Appeals affirmed, and the Utah Supreme Court granted certiorari, reversed, and vacated the consecutive-sentence order.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court reversed the Utah Court of Appeals and vacated the consecutive sentence ordered by the third judge. It stated that, because the case came on certiorari from the third judge's ruling, it had no authority to remand the matter to the second judge for a new concurrent-or-consecutive determination.

CASES CITED

- State v. Brake, 2004 UT 95, 103 P.3d 699
- State v. Anderson, 2007 UT App 68, 157 P.3d 809
- Salt Lake City v. Jaramillo, 2007 UT App 32, 156 P.3d 839
- State v. Yazzie, 2009 UT 14, 203 P.3d 984
- State v. Bowers, 2002 UT 100, 57 P.3d 1065
- State v. Bradshaw, 2004 UT App 298, 99 P.3d 359, rev'd on other grounds, 2006 UT 87, 152 P.2d 288
- State v. DeChenne, 39 Or. App. 901, 594 P.2d 831 (1979)
- State v. Gaither, 97 Or. App. 576, 776 P.2d 595 (1989)
- State v. Cisneros-Gonzalez, 141 Idaho 494, 112 P.3d 782 (2004)
- State v. Calley, 140 Idaho 663, 99 P.3d 616 (2004)
- State v. Anderson, 789 P.2d 27 (Utah 1990)
- Bird v. State, 2000 UT App 209U
- State v. Workman, 2007 UT App 199U
- United States v. Granderson, 511 U.S. 39, 114 S. Ct. 1259, 127 L. Ed. 2d 611 (1994)
- United States v. Mueller, 463 F.3d 887 (9th Cir. 2006)