

SUPREME COURT OF UTAH

Provo City Corp. v. Thompson, 2004 UT 14

86 P.3d 735 (Utah 2004) · No. No. 20020307 · Decided February 13, 2004

SUMMARY

The Utah Supreme Court reviewed a telephone-harassment conviction under Utah Code section 76-9-201(1)(b). It held that the defendant had standing to challenge the unwanted-calls provision but that, after affirming the conviction under that valid provision, the court of appeals lacked a proper basis to decide the constitutionality of the separate repeated-calls provision. The court vacated the court of appeals' determination concerning the repeated-calls provision as advisory and without precedential value.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Durham, Chief Justice; Durrant, Associate Chief Justice; Wilkins, Justice; Parrish, Justice; Nehring, Justice
JURISDICTION	Utah
DECIDED	February 13, 2004
DOCKET	No. 20020307
DISPOSITION	vacated
PROCEDURAL POSTURE	On certiorari review of the Utah Court of Appeals' decision affirming Thompson's telephone-harassment conviction while invalidating as facially overbroad a separate portion of the statute.
STANDARD OF REVIEW	Constitutional challenges to statutes are questions of law reviewed for correctness.
PRECEDENTIAL VALUE	Published Utah Supreme Court opinion; the court held that the court of appeals' invalidation of the repeated-call provision was advisory and without precedential value.
PARTIES	Provo City Corporation v. Sean Thompson

TOPICS

- overbreadth doctrine
- first amendment
- appellate procedure
- appellate jurisdiction
- criminal procedure

PRACTICE AREAS

constitutional law

criminal procedure

appellate procedure

municipal law

QUESTIONS PRESENTED

1. Whether Thompson had standing to challenge the facial constitutionality of the repeated-call provision of Utah Code section 76-9-201(1)(b) when his conviction was upheld under the separate unwanted-calls provision.
2. Whether the Utah Court of Appeals properly reached and invalidated the repeated-call provision as facially overbroad.
3. Whether the Utah Court of Appeals correctly affirmed Thompson's conviction under the unwanted-calls provision.

HOLDINGS

1. A defendant lacks standing to challenge the constitutionality of a separate statutory provision when the defendant's conviction is sustained under another valid provision and invalidating the challenged provision would not redress any injury.
2. The First Amendment overbreadth doctrine permits a defendant to assert the rights of persons not before the court, but it does not eliminate the requirement that the defendant have a cognizable injury in fact and that favorable relief redress the injury.
3. The Utah Court of Appeals correctly affirmed Thompson's conviction under the unwanted-calls provision of Utah Code section 76-9-201(1)(b).
4. A court may not adjudicate the constitutionality of a statutory provision unnecessary to the outcome of the case when the parties lack standing to litigate that provision.

KEY QUOTATIONS

“Because the facial overbreadth doctrine is “strong medicine,” it should only be applied sparingly and as a last resort.” (¶ 10; 86 P.3d 738)

“Essentially, a court may not issue an advisory opinion as to a statutory provision unnecessary to the outcome of the case because it is one that the parties do not have standing to litigate.” (¶ 18; 86 P.3d 740)

“Because the parties before the court did not have standing in the court of appeals to litigate the issue of whether the repeated calls provision, the first portion of subsection (1)(b), was constitutionally overbroad, the court of appeals' determinations as to that portion of subsection (1)(b) were advisory in nature and without precedential value.” (¶ 26; 86 P.3d 741)

FACTUAL BACKGROUND

Sean Thompson made eleven late-night telephone calls to his ex-wife within one hour after she repeatedly told him not to call. When Thompson called again while a police officer was at the ex-wife's home, the officer learned Thompson's location, went to his apartment, and cited him for telephone harassment. The trial court

found that Thompson made the repeated calls with intent to annoy after being told not to call, in violation of Utah Code section 76-9-201(1)(b).

PROCEDURAL HISTORY

Thompson was convicted in the trial court under Utah Code section 76-9-201(1)(b) for making repeated unwanted telephone calls after being told not to call. The Utah Court of Appeals affirmed the conviction, holding that the unwanted-calls provision was not overbroad or vague, but also held that the separate repeated-call provision was facially overbroad. The Utah Supreme Court granted Provo City's petition for review of that invalidation and held that the repeated-call provision was not properly before the court because Thompson lacked standing to challenge a provision unnecessary to the outcome of his case.

DISPOSITION

vacated

CASES CITED

- Midvale City Corp. v. Haltom, 2003 UT 26, 73 P.3d 334
- I.M.L. v. State, 2002 UT 110, 61 P.3d 1038
- Salt Lake City Corp. v. Prop. Tax Div. of Utah State Tax Comm'n, 1999 UT 41, 979 P.2d 346
- Warth v. Seldin, 422 U.S. 490, 498 (1975)
- Jenkins v. Swan, 675 P.2d 1145, 1150-51 (Utah 1983)
- Broadrick v. Oklahoma, 413 U.S. 601, 610, 612 (1973)
- State v. Herrera, 1999 UT 64, 993 P.2d 854
- York v. Unqualified Wash. County Elected Officials, 714 P.2d 679, 680 (Utah 1986)
- State v. Haig, 578 P.2d 837, 841 (Utah 1978)
- Salt Lake City v. Lopez, 935 P.2d 1259, 1263 n. 2 (Utah Ct. App. 1997)
- Virginia v. Hicks, 539 U.S. 113 (2003)
- Bigelow v. Virginia, 421 U.S. 809, 815-17 (1975)
- Dombrowski v. Pfister, 380 U.S. 479, 486 (1965)
- L.A. Police Dep't v. United Reporting Publ'g Corp., 528 U.S. 32, 39 (1999)
- Houston v. Hill, 482 U.S. 451, 458 (1987)
- State v. Jordan, 665 P.2d 1280, 1284 (Utah 1983)
- Erznosnik v. City of Jacksonville, 422 U.S. 205, 216 (1975)
- Provo City Corp. v. Willden, 768 P.2d 455, 457 (Utah 1989)
- Provo City v. Whatcott, 2000 UT App 86, 1 P.3d 1113
- Logan City v. Huber, 786 P.2d 1372 (Utah Ct. App. 1990)
- American Fork City v. Pena-Flores, 2002 UT 131, 63 P.3d 675
- Miller v. Weaver, 2003 UT 12, 66 P.3d 592

- Lyon v. Bateman, 119 Utah 434, 228 P.2d 818, 820 (Utah 1951)
- State v. Ortiz, 1999 UT 84, 987 P.2d 39
- Redwood Gym v. Salt Lake County Comm'n, 624 P.2d 1138, 1148 (Utah 1981)
- Provo City v. Thompson, 2002 UT App 63, 44 P.3d 828

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