

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20070223-CA
v.	)	
	)	F I L E D
Justin Thomas Jackson,	)	(November 28, 2008)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2008 UT App 431</span>

-----

Second District, Ogden Department, 051902300  
The Honorable Ernest W. Jones

Attorneys: Randall W. Richards, Ogden, for Appellant  
Mark L. Shurtleff and Ryan D. Tenney, Salt Lake City,  
for Appellee

-----

Before Judges Greenwood, Billings, and Davis.

GREENWOOD, Presiding Judge:

Defendant Justin Thomas Jackson appeals the trial court's denial of his motion to withdraw his guilty pleas, arguing that (1) the trial court sentenced him contrary to the plea agreement, thus entitling him to withdraw his pleas; and (2) the trial court's subsequent amendment of his sentences to conform therewith was not legally permissible. We affirm.

In an attempt to resolve four separate criminal actions filed against him, Defendant negotiated a very detailed plea agreement with the State, pursuant to which Defendant pleaded guilty in exchange for sentencing concessions: some of the sentences were to run concurrently with one another while others were to run consecutively. Although the trial court attempted to follow the complicated plea agreement when sentencing Defendant, Defendant's sentences deviated slightly from the plea agreement in that one of the sentences was ordered to run consecutively, rather than concurrently, with the other sentences. After announcing Defendant's sentences, the trial court repeatedly asked both parties if they had any objections or clarifications to the sentences as announced. Neither party raised any objections.

Shortly after the sentencing hearing, Defendant filed a motion to withdraw his guilty pleas, arguing for the first time that withdrawal was appropriate because the trial court had deviated from the plea agreement. Despite initially objecting to Defendant's motion to withdraw as untimely, the State ultimately moved to amend the sentences to conform with the plea agreement. After hearing oral arguments and reviewing the record before it, the trial court resolved the parties' contrasting motions in one memorandum decision. In so doing, the trial court noted the complexity of the plea agreement and stated that it had "made a mistake when announcing consecutive or concurrent sentences on some of the cases." Further stating that it had "not intend[ed] to deviate from the agreement of the parties," the trial court "corrected the sentences . . . to conform to the plea agreement between the parties." In granting the State's motion and amending Defendant's sentences, the trial court necessarily "denied [Defendant's] motion to withdraw the guilty pleas." Defendant now appeals that denial.

We begin by noting that "[w]e will not disturb the trial court's denial of a motion to withdraw a guilty plea unless it clearly appears that the trial court has exceeded its permitted range of discretion." State v. Gamblin, 2000 UT 44, ¶ 9, 1 P.3d 1108. Defendant's primary argument on appeal is that he was entitled to withdraw his guilty pleas pursuant to rule 11(i)(3) of the Utah Rules of Criminal Procedure, see Utah R. Crim. P. 11(i)(3) (2008), because the sentences announced at the sentencing hearing were contrary to the plea agreement.<sup>1</sup>

Rule 11(i)(3) states that a defendant is entitled to withdraw or affirm his or her guilty plea if the trial court "decides that final disposition should not be in conformity with the plea agreement." Id. (emphasis added). As the State correctly points out, the trial court never decided that Defendant's sentences should differ from the parties' plea agreement. Instead, the trial court attempted to reflect the complicated plea agreement but simply "made a mistake" in doing so. The trial court "intended [for the original sentences] to reflect the plea agreement" and amended Defendant's sentences to

---

<sup>1</sup>Defendant cites to rule 11(h)(3) of the Utah Rules of Criminal Procedure in his appellate brief. However, rule 11 was amended, effective January 1, 2008, to "add[] new Subdivision (g), redesignating the following subdivisions accordingly." Utah R. Crim. P. 11 (amend. notes). Thus, for convenience we cite to the current version of the rule throughout.

correct the earlier mistake. Because we determine that this deviation was unintentional, we necessarily decide that rule 11(i)(3) was not violated. Consequently, Defendant was not entitled to withdraw his guilty pleas on that basis.

Regardless, Defendant contends that the trial court's later correction of his sentences to conform to the plea agreement was not proper under Utah law.<sup>2</sup> Defendant argues that according to rule 22(e) of the Utah Rules of Criminal Procedure, a trial court may only "correct an illegal sentence, or a sentence imposed in an illegal manner." Id. R. 22(e). Because the sentences entered against him were neither illegal nor imposed illegally, Defendant argues that the trial court was without authority to correct them. The State, on the other hand, asserts that the error was clerical in nature and, thus, was correctable under rule 30(b) of the Utah Rules of Criminal Procedure. See id. R. 30(b). Again, we agree with the State.

Rule 30(b) permits a trial court, at any time, to correct "[c]lerical mistakes in judgments, orders or other parts of the record." Id. A clerical error is a "blunder[] in execution" of the judgment, 46 Am. Jur. 2d Judgments § 142 (2006), which "prevents the judgment as entered from accurately reflecting the judgment that was rendered," id. § 139. As noted earlier, the trial court "intended [for the original sentences] to reflect the plea agreement." This intention was frustrated, however, by the complexity of the plea agreement and sentencing hearing as well as by the fact that neither party alerted the trial court to its mistake until after Defendant's sentences were announced and the sentencing hearing was concluded. Because the original sentences, as announced, did not accurately reflect the trial court's intended judgment, we conclude that the trial court's misstatement of Defendant's sentences was a clerical error,

---

<sup>2</sup>Defendant also argues that the trial court did not have jurisdiction to correct the sentences once announced. However, we decline to address this claim as Defendant has failed to present us with legal argument and analysis to support it, instead, stating simply that the trial court corrected his sentences "having already lost jurisdiction to the Utah Board of Pardons under Utah Code Ann. § 77-27-5(1)(a)(2006)." See Valcarce v. Fitzgerald, 961 P.2d 305, 313 (Utah 1998) ("It is well established that an appellate court will decline to consider an argument that a party has failed to adequately brief.").

subject to correction. See Utah R. Crim. P. 30(b). Accordingly, we see no abuse of discretion in the trial court's decision.

Affirmed.

---

Pamela T. Greenwood,  
Presiding Judge

-----

WE CONCUR:

---

Judith M. Billings, Judge

---

James Z. Davis, Judge