

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20040969-CA
v.)	
)	
Gary Randall Whetton,)	F I L E D
)	(December 22, 2005)
)	
Defendant and Appellant.)	2005 UT App 552

Second District, Ogden Department, 031902992
The Honorable Scott M. Hadley

Attorneys: Dee W. Smith, Ogden, for Appellant
Mark L. Shurtleff and Creighton C. Horton II, Salt
Lake City, for Appellee

Before Judges Billings, Bench, and Greenwood.

PER CURIAM:

Gary Randall Whetton challenges the sentences imposed by the district court on guilty pleas to ten counts of communications fraud and three counts of unlawful dealing by a fiduciary, each second degree felonies, in violation of Utah Code sections 76-10-1801 and 76-6-513(2), respectively. See Utah Code Ann. §§ 76-10-1801, -6-513(2) (2003 & Supp. 2005). We affirm.

Whetton argues that the imposition of six consecutive prison terms, totaling over thirty years, was improper under Utah Code section 76-3-401. See id. § 76-3-401 (2003). Whetton argues that the sentences were improper because they exceeded the maximum time allowed under the statute.

"When examining an interpretation of a statutory provision, we apply a correction of error standard." State v. Horton, 848 P.2d 708, 715 (Utah Ct. App. 1993) (citing State v. Swapp, 808 P.2d 115, 120 (Utah Ct. App. 1991)). A penal statute shall be

construed "according to the fair import of [its] terms to promote justice." Utah Code Ann. § 76-1-106 (2003).

Utah Code section 76-3-401(6) provides, in part: "If a court imposes consecutive sentences, the aggregate maximum of all sentences imposed may not exceed 30 years imprisonment" Id. § 76-3-401(6)(a). This section "'does not preclude the imposition of consecutive sentences, but merely restricts the effect of consecutive sentences.'" Horton, 848 P.2d at 715 (quoting Swapp, 808 P.2d at 120). Thus, section 76-3-401 "does not preclude the imposition of consecutive sentences that total more than thirty years, but merely restricts the actual time served to be no more than thirty years." Id. (citing Swapp, 808 P.2d at 120); see also State v. Stettina, 868 P.2d 108, 109 (Utah Ct. App. 1994).

The district court did not violate section 76-3-401 by imposing consecutive sentences totaling more than thirty years. Accordingly, we affirm the district court's sentence, but recognize that the actual time served cannot exceed thirty years. See Horton, 848 P.2d at 715; Swapp, 808 P.2d at 121-22.¹

Accordingly, the judgment of the district court is affirmed.

Judith M. Billings,
Presiding Judge

1. Whetton raises a concern that the Board of Pardons and Parole will keep him imprisoned longer than the thirty-year limitation due to the imposition of six consecutive one to fifteen year sentences. This concern is unfounded given prior dispositive case law and the specific reference found in Utah Code section 76-3-401(8), which states that in such cases, "the Board of Pardons and Parole shall treat the defendant as though he has been committed for a single term that consists of the aggregate of the validly imposed prison terms as follows: . . . if the aggregate maximum term exceeds the 30-year limitation, the maximum sentence is considered to be 30 years." Utah Code Ann. § 76-3-401(8)(a) (2003).

Russell W. Bench,
Associate Presiding Judge

Pamela T. Greenwood, Judge