

AUG 20 2015

IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,)
)
Plaintiff and Appellee,)
)
v.)
)
ANDREW MINER,)
)
Defendant and Appellant.)

ORDER

Case No. 20110916-CA

Before Judges Davis, Christiansen, and Toomey.

Andrew Miner appeals two trial court rulings after entering a conditional guilty plea pursuant to *State v. Sery*, 758 P.2d 935 (Utah Ct. App. 1988) and rule 11(j) of the Utah Rules of Criminal Procedure. He asserts that the trial court erred in denying a request for publicly funded expert and investigator resources for his defense. He also asserts that the trial court erred in failing to compel a witness to appear at Miner's preliminary hearing.

Miner's argument that the trial court erred by declining to compel the appearance of a witness at the preliminary hearing is inadequately briefed. The one-page argument is conclusory and does not contain reasoned analysis sufficient to address without filling in gaps. This court will decline to review an issue "when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court." *State v. Thomas*, 961 P.2d 299, 305 (Utah 1998). In addition, Miner has failed to provide an adequate record to review because he has not provided a transcript of the preliminary hearing. *See State v. Pritchett*, 2003 UT 24, ¶ 13, 69 P.3d 1278. Absent a record, there is no means of verifying context, preservation, or the basis of rulings made regarding the alleged error. Rather, "defendant's assignment of error stands as a unilateral allegation which the reviewing court has no power to determine." *State v. Wulffenstein*, 657 P.2d 289, 293 (Utah 1982).

Miner also argues that the trial court erred in denying his request for publicly funded defense resources even though he is represented by private counsel. The Utah Supreme Court determined that defense resources other than legal counsel must be available to indigent defendants with retained counsel. *State v. Burns*, 2000 UT 56. After amendments to the Indigent Defense Act subsequent to *Burns*, the Utah Supreme Court reaffirmed its decision “that the Act requires local governments to provide an indigent defendant with funding for necessary defense resources, even when the defendant is represented by private counsel.” *State v. Parduhn*, 2011 UT 55, ¶ 30. After the *Parduhn* decision, the Act was amended again to clearly link the provision of defense resources such as expert witnesses or investigators to publicly provided legal counsel as a single package, abrogating the *Parduhn* decision. See Utah Code Ann. § 77-32-301 (LexisNexis 2012).

The trial court denied Miner’s request for resources because the court interpreted the statute at that time as precluding additional resources. However, under *Parduhn*, the trial court’s interpretation was incorrect and Miner was entitled to resources even though he had private counsel. This appeal was pending when the 2012 amendments to the Act became effective. In response to Miner’s argument that *Parduhn* permits him access to defense resources, Utah County argued that the 2012 amendments applied retroactively and thus precluded Miner from publicly funded defense resources unless he was represented by the public defender. The Utah Supreme Court rejected the argument that the 2012 amendments were retroactive in *State v. Steinly*, 2015 UT 15.

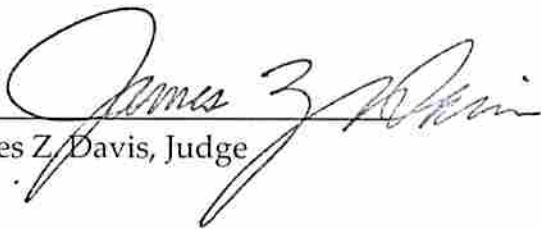
In *Steinly* and various companion cases, the question of whether the 2012 amendments were broadly retroactive was decided. The supreme court rejected the arguments for wholesale retroactive application and instead identified the event that would determine which version of the Act would apply to various defendants. The court stated “we apply the law as it exists at the time of the event regulated by the law in question.” *Id.* ¶ 12 (quotation marks and citation omitted). “And here that event is the assertion of a mature request for government-funded defense resources.” *Id.* ¶ 14. The supreme court rejected the assertion that the filing of criminal charges or the date of the underlying conduct should be the date that determines which law applies. “Instead, the [Act] regulates [defendant’s] activity occurring within the course of the criminal proceedings against him.” *Id.* ¶ 15. Accordingly, the version of the Act that would apply to any given indigent defendant is determined by the date on which the defendant requested those additional defense resources. If the request was made before the effective date of the 2012 amendments, the prior version of the Act as interpreted by *Parduhn* applied. *Id.* ¶ 16.

Miner requested funding for additional defense resources before the effective date of the 2012 amendments. Accordingly, the prior version of the Act, permitting the de-coupling of defense resources and legal counsel, applies and the trial court erred in denying Miner's request.

IT IS HEREBY ORDERED that the trial court's order denying Miner's request for funding for defense resources is reversed, and this case is remanded to the trial court for proceedings consistent with this decision.

Dated this 20th day of August, 2015.

FOR THE COURT:


James Z. Davis, Judge

CERTIFICATE OF SERVICE

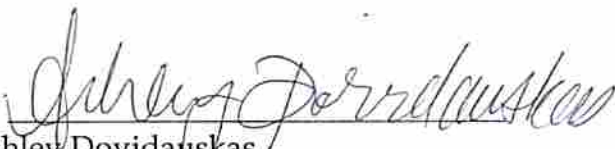
I hereby certify that on August 20, 2015, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

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