

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060087-CA
v.)	
)	F I L E D
Matthew Bowman,)	(May 3, 2007)
)	
Defendant and Appellant.)	2007 UT App 147

Seventh District, Price Department, 041700044
The Honorable Scott N. Johansen

Attorneys: D. Bruce Oliver, Salt Lake City, for Appellant
Mark L. Shurtleff and Erin Riley, Salt Lake City, for
Appellee

Before Judges Greenwood, Davis, and McHugh.

McHUGH, Judge:

Defendant Matthew Bowman appeals the trial court's order revoking his probation. Bowman first contends that his Sixth Amendment right to counsel under the United States Constitution was violated when the trial court proceeded with the probation revocation hearing without the presence of Bowman's counsel.¹ The Sixth Amendment right to counsel does not apply to probation revocation proceedings. See State v. Byington, 936 P.2d 1112, 1115 (Utah Ct. App. 1997); Gagnon v. Scarpelli, 411 U.S. 778, 790-91 (1973). Instead, due process may require that counsel be provided

where, after being informed of his right to request counsel, the probationer . . . makes such a request based on a timely and

¹Bowman has not asserted that his statutory right to counsel, see Utah Code Ann. § 77-18-1(12)(c)(iii) (Supp. 2006), was violated; therefore, we do not address the issue. See Maack v. Resource Design & Constr., 875 P.2d 570, 575 n.3 (Utah Ct. App. 1994) ("It is . . . well settled that this court need not address issues that a party has not briefed.").

colorable claim (i) that he has not committed the alleged violation of the conditions upon which he is at liberty; or (ii) that, even if the violation is . . . uncontested, there are substantial reasons which justified or mitigated the violation and make revocation inappropriate, and that the reasons are complex or otherwise difficult to develop or present.

Byington, 936 P.2d at 1115.

Here, Bowman has made a bare assertion that he was constitutionally entitled to the aid of counsel in the revocation proceeding. However, Bowman has failed to brief any of the grounds for finding that a constitutional right to counsel applied during his probation revocation hearing. Bowman's appellate brief does not identify any grounds on which this court could rule that he was entitled to counsel either because he had "a timely and colorable claim" that he had not violated the conditions of his probation; or that "there [were] substantial reasons which justified or mitigated the violation and ma[d]e revocation inappropriate, and that th[ose] reasons [were] complex or otherwise difficult to develop or present." Id. (emphasis added). Because Bowman has failed to assert any ground on which he was assured of a constitutional right to counsel at his probation revocation hearing, we hold that the trial court did not err when it proceeded with the hearing in the absence of counsel. See Utah R. App. P. 24(a)(9) ("The argument shall contain the contentions and reasons, . . . including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on."); see also 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.").

Bowman also contends that he did not receive adequate notice, as required by rules 5 and 81(e) of the Utah Rules of Civil Procedure, because neither he nor his attorney were served with an order to show cause. However, the plain language of rules 5 and 81(e) limits the application of those rules to instances where there is no other governing procedural statute or rule. Rule 5 of the Utah Rules of Civil Procedure requires that "[e]xcept as otherwise provided in these rules or as otherwise directed by the court, every judgment, every order required by its terms to be served, . . . shall be served upon each of the parties." Utah R. Civ. P. 5(a)(1) (emphasis added). Furthermore, rule 5 is made generally applicable to criminal proceedings through rule 81(e) which provides that "[t]hese rules

of [civil] procedure shall also govern in any aspect of criminal proceedings where there is no other applicable statute or rule[.]" Utah R. Civ. P. 81(e) (emphasis added). The procedural framework applicable to probation revocation proceedings is governed by section 77-18-1 of the Utah Code,² see Utah Code Ann. § 77-18-1; therefore, rules 5 and 81(e) of the Utah Rules of Civil Procedure are inapplicable.

Affirmed.

Carolyn B. McHugh, Judge

WE CONCUR:

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

²Bowman has not argued that his statutory right to notice, provided by section 77-18-1(12) was violated. We, therefore, do not address whether Bowman received proper notice under the statute. See Maack, 875 P.2d at 575 n.3.