

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20051149-CA
v.)	
)	F I L E D
Daniel L. Carter,)	(November 16, 2006)
)	
Defendant and Appellant.)	2006 UT App 460

Third District, Salt Lake Department, 041905901
The Honorable Leslie A. Lewis

Attorneys: Josie E. Brumfield, Michael R. Sikora, and Lori J. Seppi, Salt Lake City, for Appellant
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake City, for Appellee

Before Judges Greenwood, Davis, and Orme.

DAVIS, Judge:

Defendant Daniel L. Carter appeals his convictions for filing a false or fraudulent tax return or statement, a third degree felony, see Utah Code Ann. § 76-8-1101(1)(c) (2003), and intentionally or willfully attempting to evade the payment of taxes, a second degree felony, see id. § 76-8-1101(1)(d).¹ We affirm.

1. Utah Code section 76-8-1101 was amended in July 2001 and Defendant was charged with violating the statute for tax years 2000 through 2003. See Utah Code Ann. § 76-8-1101 amendment notes (Supp. 2001). The parties concede that the amendment does not affect this appeal so we cite to the 2003 version of the statute.

Standby counsel² argues that the trial court abused its discretion by refusing to give one of Defendant's requested jury instructions, and that such error prejudiced Defendant. "Whether the trial court's refusal to give a proposed jury instruction constitutes error is a question of law, which we review for correctness." State v. Bluff, 2002 UT 66, ¶21, 52 P.3d 1210 (quotations and citation omitted).

"[T]he trial court may properly refuse to give [a] requested instruction[] where it does not accurately reflect the law governing the factual situation of the case. Yet, this should not overshadow the trial court's obligation to see that the jury is presented with a party's theory of the case." Kilpatrick v. Wiley, 2001 UT 107, ¶65, 37 P.3d 1130 (second and third alterations in original) (quotations and citations omitted); see also State v. Alonzo, 932 P.2d 606, 615 (Utah Ct. App. 1997), aff'd, 973 P.2d 975 (Utah 1998). Defendant's proposed instruction 50 stated, in relevant part, "since taxable income in the case of a resident individual means his federal taxable income, . . . it is essential that the prosecution demonstrate and prove that the defendant made federal taxable income." Proposed instruction 50 is not an accurate statement of the law. According to Utah's Individual Income Tax Act, state taxable income "in the case of a resident individual means his federal taxable income . . . with the modifications, subtractions, and adjustments provided in Section 59-10-114." Utah Code Ann. § 59-10-112 (2000). Because section 59-10-114 enumerates numerous additions and subtractions to an individual's federal taxable income, see id. § 59-10-114 (2000), proposed instruction 50 stating only that state taxable income means "federal taxable income" is inaccurate. Therefore, the trial court did not abuse its discretion by rejecting Defendant's proposed instruction. See Bluff, 2002 UT 66 at ¶21.³

2. The trial court appointed the Salt Lake Legal Defender Association to serve as standby counsel for Defendant while he represented himself in the criminal proceedings. Standby counsel now raises one argument on appeal and presents the remaining arguments raised by Defendant.

3. Standby counsel's challenge also fails because Defendant had ample opportunity to present his theory of the case to the jury through his testimony and the approved jury instructions. See Kilpatrick v. Wiley, 2001 UT 107, ¶65, 37 P.3d 1130. Furthermore, Defendant has not demonstrated any prejudice as a result of the trial court's rejection of his proposed jury instruction since he in fact had federal taxable income.

Defendant also makes several arguments as a pro se litigant. First, Defendant challenges the trial court's refusal to give two of his proposed jury instructions, numbers 49 and 52. Proposed instruction 49 would have required the prosecution to show that Defendant "made state taxable income and not just wages." As previously noted, Defendant is "not entitled to an instruction that does not accurately state the law." Alonzo, 932 P.2d at 615 (quotations and citation omitted). Because wages constitute taxable income, see State Tax Comm'n v. Looney, 696 P.2d 1206, 1207 (Utah 1985) (per curiam), proposed instruction 49 was properly rejected by the trial court.

Proposed instruction 52 would have required the prosecution to show that Defendant "knew he was liable for payment of state income taxes, but sought to 'intentionally evade' paying them." "[T]he trial court does not err by refusing a proposed instruction if the point is properly covered in the other instructions." Alonzo, 932 P.2d at 615 (quotations and citation omitted). The trial court's jury instructions covered the requisite mental state for Defendant's crimes. As a result, Defendant's "point [was] properly covered in the other instructions," id., and proposed instruction 52 was unnecessary.

Defendant's second pro se argument is that the trial court abused its discretion by denying his motion to dismiss. The trial court never received Defendant's motion but heard his arguments at a hearing and denied the motion on the merits. "The grant or denial of a motion to dismiss is a question of law [that] we review for correctness, giving no deference to the decision of the trial court." State v. Hamilton, 2003 UT 22, ¶17, 70 P.3d 111 (alteration in original) (quotations and citation omitted). Here, Defendant's motion to dismiss was based upon his argument that his wages did not constitute taxable income. This argument is unavailing. See Yuen v. United States, 290 F. Supp. 2d 1220, 1224 (D. Nev. 2003) (stating that under federal law "[w]ages are income . . . upon which [Defendant] owes a tax, and courts . . . have found arguments to the contrary to be tired and frivolous" (citations omitted)). Therefore, the trial court properly denied Defendant's motion to dismiss.

Third, Defendant argues that the "Utah Code places the determination of what constitutes state taxable income[] outside of state jurisdiction by defining state taxable income as federal taxable income." To the extent that this raises an issue not already addressed, Defendant has not adequately briefed it, so we will not address this issue further. See Utah R. App. P. 24(a)(9); State v. Thomas, 1999 UT 2, ¶11, 974 P.2d 269; State v. Bishop, 753 P.2d 439, 450 (Utah 1988).

Defendant's fourth pro se argument, raised for the first time on appeal, is that the trial court violated his constitutional right to due process by "assum[ing] that [he was] liable for federal income taxes." "As a general rule, appellate courts will not consider an issue, including a constitutional argument, raised for the first time on appeal unless the trial court committed plain error or the case involves exceptional circumstances." State v. Brown, 856 P.2d 358, 359 (Utah Ct. App. 1993). Since Defendant does not allege plain error or exceptional circumstances, we do not address his due process claim.

Finally, Defendant asserts that the trial court improperly admitted a document entitled Internal Revenue Service Form 3050. Again, Defendant failed to preserve this argument below, so we refuse to address it on appeal. See id.

Affirmed.

James Z. Davis, Judge

WE CONCUR:

Pamela T. Greenwood,
Associate Presiding Judge

Gregory K. Orme, Judge