

IN THE UTAH COURT OF APPEALS

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Hyde Park City,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20080055-CA	
v.)		
)	F I L E D	
Jerald Rio Davis,)	(February 20, 2009)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2009 UT App 39</td></tr></table>	2009 UT App 39
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First District, Logan Department, 071100143
The Honorable Clint S. Judkins

Attorneys: A.W. Lauritzen, Logan, for Appellant
 Jonathan E. Jenkins, Logan, for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Defendant Jerald Rio Davis appeals his conviction following a trial de novo in the district court in a case originating in the Hyde Park City justice court. Davis moved to dismiss the case, claiming that the Hyde Park City nuisance ordinance was unconstitutionally vague. Davis also moved to quash the justice court conviction, claiming that the Utah statutes creating justice courts are unconstitutional under the Utah Constitution. The district court denied both motions but did not enter a written order. Following a trial de novo, Davis was again convicted of maintaining a nuisance, an infraction, under Hyde Park City ordinance 10-332.

"The decision of the district court is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance." Utah Code Ann. § 78A-7-118(7) (2008) (formerly Utah Code Ann. § 78-5-120(7) (2002)). By enacting section 78A-7-118, "the Utah Legislature . . . specifically and intentionally limited the issues that may be appealed from a district court's judgment." State v. Hinson, 966 P.2d 273, 276 (Utah Ct. App. 1998). Accordingly, "absent an issue regarding the constitutionality of a statute or ordinance, the decision of the district court is final and this court has no jurisdiction to hear an appeal thereof." Id. at 277. Our "appellate

jurisdiction is limited only to those issues attacking the validity or constitutionality of an ordinance or statute." Id. Since July 1, 1997, appeals in cases originating in justice court have been limited to those cases where the district court "rules on the constitutionality of a statute or ordinance." Kanab v. Guskey, 965 P.2d 1065, 1068 (Utah Ct. App. 1998).

Davis provided a transcript of the district court's ruling on his motions. The district court denied the motion to dismiss, finding that Davis had "not overcome the long-standing presumptions regarding constitutionality" and that the Hyde Park nuisance ordinance was not unconstitutionally vague. The district court also denied the motion to quash, stating that Davis did not "allege any wrongdoing on the part of the Hyde Park justice court." Hyde Park argues that the absence of a written order on the interlocutory rulings deprives this court of jurisdiction because it prevents the judgment and sentence from becoming final and appealable. However, the final judgment in a criminal case for purposes of appeal is the judgment and sentence. See State v. Gerrard, 584 P.2d 885, 886 (Utah 1978) ("It is the sentence itself which constitutes a final judgment from which appellant has the right to appeal."). The transcript of the district court's ruling establishes that the district court ruled on the constitutional claims. Davis appealed after entry of a final judgment. Accordingly, we have jurisdiction to consider the constitutional claims raised by the appeal.

The district court rejected a challenge to the Hyde Park City nuisance ordinance as unconstitutionally vague. Utah Code section 10-8-60 states that cities "may declare what shall be a nuisance, and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist." Utah Code Ann. § 10-8-60 (2007). Hyde Park City ordinance 10-331 defines nuisance for purposes of ordinance 10-332, stating:

For the purpose of this part the term "nuisance" is defined to mean any condition or use of premises or of building exteriors which are deleterious or injurious, noxious or unsightly which includes, but is not limited to keeping or depositing on, or scattering over the premises any of the following:

- A. Lumber, junk, trash or debris.
- B. Abandoned, discarded or unused objects or equipment such as furniture, stoves, refrigerators, freezers, cans or containers.

Hyde Park, Utah, Rev. Ordinance 10-331.

In support of his vagueness challenge, Davis argues that Utah statutes pertaining to nuisance are unconstitutional, although Davis was not prosecuted under those statutes. In the only allegation specific to Hyde Park's ordinance, he claims it is unconstitutional because it might be construed to preclude operation of a lumber or construction business that stores lumber. When considering a constitutional challenge, we presume the ordinance is valid and "resolve any reasonable doubts in favor of constitutionality." Goodman v. West Jordan, 2006 UT 27, ¶ 9, 135 P.3d 874. The ordinance cannot be fairly read in the manner Davis contends because the ordinance also requires proof that the condition or use of the property be "deleterious, noxious, injurious or unsightly." Hyde Park, Utah, Rev. Ordinance 10-331. The district court correctly ruled that Davis did not overcome the presumption that the nuisance ordinance was constitutional.

Davis claims that the statutory scheme that establishes municipal justice courts is unconstitutional because it violates the separation of powers. Davis's claims are similar to claims rejected by the Utah Supreme Court in Goodman, where that court applied a three-prong test to a separation of powers claim. See 2006 UT 27, ¶ 26. The supreme court concluded that Goodman's briefing was inadequate, stating that the brief "acknowledge[d] neither the controlling test nor the district court's discussion of that test" and did not "make any attempt to explain why the test does not apply." Id. ¶ 30. Accordingly, the court held, "deficiencies in Goodman's briefing, coupled with the presumption that statutes passed by the legislature are constitutional, require that we affirm the ruling of the district court on Goodman's separation of powers claim." Id.

Although Davis had the benefit of the analysis in Goodman, he also fails to adequately brief the separation of powers claim. Davis has not even attempted to apply the three-prong test. Instead, his argument conclusively asserts that "[u]nder Utah's statutory scheme, municipal governments have been afforded broad authority to control and direct justice courts, including the power to whimsically appoint and dismiss judges." Davis further asserts that the legislative scheme presents "enormous, if subtle, incentives for justice courts to generate revenue by convicting and fining criminal defendants" and "[t]hese incentives, in turn, interfere with the core judicial function of independently and fairly adjudicating criminal cases in violation of the separate of powers doctrine." Davis's generalized speculation fails to address any element of the test for violation of the separation of powers. "To prevail on such claims, a defendant would need to support them with specific evidence and cogent legal argument." Id. The deficiencies in briefing and the presumption favoring constitutionality require

us to affirm the district court's denial of Davis's separation of powers claim.

Davis's briefing of the related conflict of interest claim is similarly deficient. In both this court and the district court, Davis cited to the "Salt Lake County Criminal Justice Assessment." Contrary to his statement that relevant portions of the report were submitted to the district court, no portions appear in the record. Similarly, an addendum to the brief on appeal includes Salt Lake County Council minutes, which refer to the report, but include none of the quoted language. Even assuming that this report had been submitted to the district court, it clearly would not constitute specific evidence about Hyde Park City's justice court. The district court therefore correctly rejected the conflict of interest claim. See id. ¶ 31 (rejecting a claim that West Jordan City's justice court "has a conflict of interest in every case because Goodman failed to establish the factual predicate for this claim").¹

We affirm the district court's ruling on the constitutional claims and the conviction and sentence.

Russell W. Bench, Judge

Carolyn B. McHugh, Judge

I CONCUR IN THE RESULT:

James Z. Davis, Judge

¹We do not consider Davis's claim that the penalty provided by the ordinance was not allowed by Utah law and that he could only be sentenced to a \$50 fine because that was the sentence he received in district court. The claim that the Hyde Park City nuisance ordinances violates Utah general law is without merit because they were adopted pursuant to statutory authority. See Utah Code Ann. § 10-8-60 (2007).