

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060466-CA
v.)	
)	F I L E D
Jackie Sue Gambill,)	(June 21, 2007)
)	
Defendant and Appellant.)	2007 UT App 224

Second District, Farmington Department, 021700002
The Honorable Glen R. Dawson
The Honorable Rodney S. Page

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

Before Judges Greenwood, Billings, and McHugh.

McHUGH, Judge:

Defendant Jackie Sue Gambill appeals the trial court's order revoking and reinstating her probation and challenges her underlying third degree felony convictions pursuant to the Utah Uniform Securities Act. We affirm.

First, Gambill argues that because the criminal statute of limitations had lapsed, the trial court lacked subject matter jurisdiction to accept her guilty pleas for selling a security as an unlicensed broker-dealer, see Utah Code Ann. § 61-1-3 (2006), and selling an unregistered security, see Utah Code Ann. § 61-1-7 (2006), both third degree felonies, see Utah Code Ann. § 61-1-21 (2006).¹ Even assuming the statute of limitations had lapsed,

¹Both Gambill and the State organize their jurisdictional arguments within the framework of plain error. We do not, however, address their arguments within this framework, because "[o]bjection to the jurisdiction of the court over the subject matter may be urged at any stage of the proceedings, and the
(continued...)

Gambill's jurisdictional argument fails because "criminal statutes of limitations are not jurisdictional, but are a bar to prosecution which can be waived by a knowing and voluntary guilty plea." James v. Galetka, 965 P.2d 567, 573 (Utah Ct. App. 1998). Here, Gambill waived her right to assert the statute of limitations when she pleaded guilty to both felonies. Additionally, Gambill makes no argument that her pleas were not knowing and voluntary. Therefore, the trial court possessed proper subject matter jurisdiction.

Next, Gambill contends that there was insufficient evidence to support the conclusion that she violated the terms of her probation.² "[T]o succeed in this claim, [Gambill] must show that the evidence of a probation violation, viewed in a light most favorable to the trial court's findings, is so deficient that the trial court abused its discretion" in extending Gambill's probation. State v. Jameson, 800 P.2d 798, 804 (Utah 1990) (footnote omitted). Even accepting Gambill's contention that the trial court's written probation order required her to pay \$300,000 restitution at a rate to be determined by Adult Probation and Parole (AP&P), the record is sufficient to support the court's determination that she did not pay adequate restitution and, therefore, violated the terms of her probation.

The record reflects that, like other probationers, Gambill was required to review and sign a probation agreement acknowledging the terms of her probation. See State v. Wallace, 2006 UT 86, ¶3, 150 P.3d 540. Her probation agreement with AP&P included an Offender Instruction Form specifying "[a]s a condition of probation . . . [Gambill was] required to pay \$8364 per month beginning in 10/02." This rate, determined by AP&P, required Gambill to pay roughly the full \$300,000 in restitution over the thirty-six months of probation. At the probation

¹(...continued)
right to make such an objection is never waived." James v. Galetka, 965 P.2d 567, 570 (Utah Ct. App. 1998) (quotations omitted).

²Gambill's challenge to the extension of her probation focuses solely on whether the trial court properly found that she violated the technical terms of her probation. Gambill fails to argue that even if she violated the technical terms of her probation, her violation was not willful, see State v. Orr, 2005 UT 92, ¶35, 127 P.3d 1213 (leaving open the question of "whether the willfulness requirement applies to the mere extension of probation for failure to pay restitution"). We limit our review accordingly.

violation hearing, defense counsel conceded that Gambill had not attempted to pay the full \$300,000 restitution over the thirty-six month period.

Additionally, Darl Hamberlin, one of Gambill's probation officers, testified that in January 2003 he contacted Gambill to inquire about her failure to make restitution payments. At that time, Gambill indicated that she was not able to pay the \$8364 per month as required by her probation agreement, but could afford to pay \$500 per month. Hamberlin told Gambill to pay the \$500 she could afford but also told her to "pay as much as she could, more than \$500 if she could." Hamberlin indicated that, although Gambill consistently paid \$500 per month after their conversation, AP&P never agreed to amend the rate at which restitution was to be paid--\$8364 per month. Another of Gambill's probation officers, Hank Haurand, also testified that AP&P never changed the rate of restitution from \$8364 per month, although he also conceded that Gambill consistently paid \$500 per month.

When "viewed in a light most favorable to the trial court's findings," Jameson, 800 P.2d at 804, the record adequately supports the trial court's determination that Gambill initially failed to pay the \$8364 per month, the rate determined by AP&P, and that she has also failed to remit restitution payments totaling \$300,000, a condition of her probation. Therefore, the trial court did not exceed its discretion when it concluded that Gambill violated the terms of her probation by failing to pay restitution. This conclusion was sufficient to support the trial court's order that Gambill's probationary period commence anew.³ See Utah Code Ann. § 77-18-1(12)(e)(ii) (Supp. 2006) ("Upon a finding that the defendant violated the conditions of probation,

³Gambill's argument that the trial court improperly imposed a one-year time limit on the restitution obligation is contrary to the record. The trial court's order, commencing anew Gambill's term of probation, was based upon her failure to complete restitution of the entire \$300,000 within the initial thirty-six month probation period. The trial court expressly declined to impose a one-year limitation due to the confusion between the oral instructions from the sentencing judge and the written probation order and AP&P agreement.

the court may order the probation revoked, modified, continued, or that the entire probation term commence anew.").

Affirmed.

Carolyn B. McHugh, Judge

WE CONCUR:

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge