

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20070498-CA
v.)	
)	
John Haltom,)	F I L E D
)	(January 25, 2008)
)	
Defendant and Appellant.)	2008 UT App 25

Third District, Salt Lake Department, 001913808
The Honorable Randall N. Skanchy

Attorneys: W. Andrew McCullough, Salt Lake City, for Appellant
Mark L. Shurtleff and Christine F. Soltis, Salt Lake
City, for Appellee

Before Judges Thorne, Bench, and Orme.

PER CURIAM:

John Haltom appeals the district court's order denying his motion to reduce the degree of his prior conviction. We affirm.

In 2003, Haltom was convicted of dealing in material harmful to a minor, a third degree felony under Utah Code section 76-10-1206 (2000). In 2007, the Utah Legislature amended the definition of "harmful to minors," and made related stylistic changes. Utah Code Ann. § 76-10-1201 (2007). As a result, Haltom moved the trial court to reduce his felony conviction to a class A misdemeanor. Haltom argued that the legislature's subsequent amendments effectively repealed the statute under which he had been convicted. The trial court denied Haltom's motion, finding that the revisions to the definition of material harmful to minors did not provide a basis for reducing the degree of his offense.

Haltom appeals, contending that the trial court abused its discretion by refusing to reduce his felony conviction to a misdemeanor. On appeal, Haltom asserts that the revised definition and stylistic changes applicable to section 76-10-1206 provide a basis for such reduction.

Under Utah Code section 76-3-402, a trial court may reduce the level of conviction after considering: (1) the nature and circumstances of the offense, (2) the history and character of the defendant, and (3) whether it would be unduly harsh to record the conviction at the degree prescribed by statute. See id. A trial court's refusal to reduce the degree of a conviction under this standard is accorded great deference and reviewed only for abuse of discretion. See State v. Boyd, 2001 UT 30, ¶ 31, 25 P.3d 985.

Under Utah law, when a defendant has been convicted of a crime, the subsequent repeal of a statute does not affect a defendant's punishment entered prior to modification of the statute. A final criminal judgment is not modified by a subsequent amendment of the statute under which a defendant was convicted. See State v. Miller, 24 Utah 2d 1, 464 P.2d 844, 846 (1970). A defendant is entitled to a reduction in the degree of punishment only where the statute is modified before a sentence is pronounced. See State v. Tapp, 26 Utah 2d 392, 490 P.2d 334, 335 (1971).

Haltom was properly convicted under the law in effect at the time. The subsequent amendment of the criminal statute does not provide a basis for modification of his conviction. Thus, under our deferential standard of review, we cannot say that the trial court abused its discretion by denying Haltom's motion to reduce the degree of his prior conviction. Accordingly, the district court's order denying Haltom's motion to reduce the degree of his prior conviction is affirmed.

William A. Thorne Jr.,
Associate Presiding Judge

Russell W. Bench, Judge

Gregory K. Orme, Judge