

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Plaintiff and Appellee,	)		
	)	Case No. 20060309-CA	
v.	)		
	)	F I L E D	
Thomas C. Hill,	)	(January 19, 2007)	
	)		
Defendant and Appellant.	)	<table border="1"><tr><td>2007 UT App 17</td></tr></table>	2007 UT App 17
2007 UT App 17			

-----

Second District, Ogden Department, 051903912  
The Honorable Roger S. Dutson

Attorneys: Randall W. Richards, Ogden, for Appellant  
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake  
City, for Appellee

-----

Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Defendant Thomas C. Hill appeals his sentence for aggravated assault and violation of a protective order. See Utah Code Ann. §§ 76-5-103 (2003), -108 (Supp. 2006). Defendant argues the trial court erred in imposing two consecutive indeterminate prison terms of zero to five years.

"A sentence will not be overturned on appeal unless the trial court has abused its discretion, failed to consider all legally relevant factors, or imposed a sentence that exceeds legally prescribed limits." State v. Nuttall, 861 P.2d 454, 456 (Utah Ct. App. 1993). "[T]he exercise of discretion in sentencing necessarily reflects the personal judgment of the court and the appellate court can properly find abuse only if it can be said that no reasonable [person] would take the view adopted by the trial court." Id. (second alteration in original) (quoting State v. Gerrard, 584 P.2d 885, 887 (Utah 1978)).

Defendant argues the trial court abused its discretion "because it failed to consider all . . . legally relevant factors and it imposed an excessive sentence." Defendant contends that

the trial court failed to consider the factors outlined in State v. Galli, 967 P.2d 930 (Utah 1998). Specifically, Defendant asserts that the trial court failed to consider his rehabilitative needs and criminal history.<sup>1</sup>

"In determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant." Utah Code Ann. § 76-3-401(2) (2003); see also Galli, 967 P.2d at 938. However, "the burden is on [the defendant] to show that the trial court did not properly consider all the factors in [this] section." State v. Helms, 2002 UT 12, ¶16, 40 P.3d 626.

Defendant has failed to make this showing. "Although the trial court did not explicitly address the enumerated factors in [section 76-3-401(2)], there is ample evidence in the record that the court considered these factors at the time of Defendant's sentencing." State v. Valdovinos, 2003 UT App 432, ¶30, 82 P.3d 1167. For instance, at the sentencing hearing, the trial court specifically discussed Defendant's presentence report and his criminal record. The trial court also noted that consecutive sentences were appropriate because Defendant had "not shown that [he] changed sufficiently to justify otherwise." Thus, the trial court adequately considered Defendant's rehabilitative needs and criminal history. See Helms, 2002 UT 12 at ¶13 (noting that review of presentence information by a trial court was sufficient to demonstrate that a defendant's history, character, and rehabilitative needs had been considered at the time of sentencing). Indeed, review of these factors led the trial court

---

<sup>1</sup>Defendant fails to explain why he believes his sentence was excessive. To the contrary, it is clear that each term of zero to five years imposed by the trial court fell within legally prescribed limits. See Utah Code Ann. § 76-3-203(3) (2003) (stating that a third degree felony is punishable by a term not to exceed five years). Defendant also vaguely asserts that the trial court erred by imposing consecutive sentences for a "single criminal episode." See id. § 76-1-401 (2003). The State correctly notes that this argument is inadequately briefed. See State v. Thomas, 961 P.2d 299, 304 (Utah 1998) (holding that "a reviewing court will not address arguments that are not adequately briefed"). Moreover, this argument is without merit, as Utah Code section 76-3-401(5) specifically states that "[a] court may impose consecutive sentences for offenses arising out of a single criminal episode as defined in [Utah Code section 76-1-401]." Utah Code Ann. § 76-3-401(5) (2003).

to the precise sentencing conclusion found in the presentence report.

Defendant has failed to meet his burden of demonstrating that the trial court did not consider all factors enumerated in section 76-3-401(2). See id. at ¶16. Therefore, we hold that the trial court did not abuse its discretion when it sentenced Defendant to two consecutive prison terms.

Affirmed.

---

James Z. Davis, Judge

---

Carolyn B. McHugh, Judge

---

Gregory K. Orme, Judge