

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20040176-CA
v.)	
)	F I L E D
Trevor Hills,)	(September 9, 2005)
)	
Defendant and Appellant.)	2005 UT App 378

Second District, Ogden Department, 031901638
The Honorable Ernest W. Jones

Attorneys: Randall W. Richards, Ogden, for Appellant
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake
City, for Appellee

Before Judges Bench, McHugh, and Orme.

BENCH, Associate Presiding Judge:

Trevor Hills appeals his sentence for attempted rape. See Utah Code Ann. §§ 76-5-402, 76-4-102(2) (2003). First, Hills argues that the district court erred in sentencing him to serve time in prison, instead of allowing probation. We review a district court's sentencing decisions for abuse of discretion. See State v. Gibbons, 779 P.2d 1133, 1135 (Utah 1989). Hills contends that the district court abused its discretion by failing to consider the factors outlined in State v. Galli, 967 P.2d 930 (Utah 1998). Galli addresses the four statutory factors that district courts are required to consider when deciding whether to impose a consecutive or concurrent sentence on a defendant convicted of more than one felony. See id. at 938. Because Hills has only been convicted of one felony, Galli and the statute do not apply to this case. Furthermore, the sentence imposed by the district court was within the statutory guidelines. Thus, we conclude that the district court did not abuse its discretion in deciding that prison time, rather than probation, was the appropriate sentence.

Second, Hills contends that comments made by a police detective at his sentencing hearing violated a provision of his

plea agreement, which required the prosecution to "remain silent" at the hearing. Hills argues that his attorney's failure to object to the comments constitutes ineffective assistance of counsel and that the district court committed plain error by allowing the detective to speak. Both the claim of ineffective assistance of counsel and the claim of plain error require Hills to show that he was prejudiced by the detective's comment. See State v. Ellifritz, 835 P.2d 170, 174 (Utah Ct. App. 1992). In this case, regardless of whether the detective's comments violated the plea agreement, the comments did not prejudice Hills. At the hearing, the detective disagreed with the recommendation of Adult Probation and Parole, expressing his belief that the crime warranted prison time. However, the detective's comments at the sentencing hearing merely echoed earlier comments made by the detective that were included in the presentence investigation report. This report was already before the district court prior to the sentencing hearing. Furthermore, in its ruling, the district court indicated it was the gravity and violent nature of the offense that merited prison time. The district court did not mention, or even allude to, the detective's comments. Given these circumstances, it is unlikely that the detective's oral comments at the hearing prejudiced the outcome. See id. (noting that plain error "requires a showing that absent the error, there is a substantial likelihood of a more favorable outcome").

We therefore affirm the judgment of the district court.

Russell W. Bench,
Associate Presiding Judge

WE CONCUR:

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge