IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. John L. Legg Jr., Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20041035-CA F I L E D (September 8, 2006) 2006 UT App 367

Third District, Tooele Department, 041300016
The Honorable Randall N. Skanchy

Attorneys: Alan J. Buividas, Midvale, for Appellant
Mark L. Shurtleff and Kenneth A. Bronston, Salt Lake City, for Appellee

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Before Judges Billings, Davis, and Orme.

BILLINGS, Judge:

Defendant John L. Legg Jr. appeals his convictions for theft by receipt of stolen property, a second degree felony, and arson, a third degree felony. See Utah Code Ann. §§ 76-6-412(1)(a), -102(3)(b) (2003). Defendant claims that the trial court abused its discretion in denying his motion to dismiss under Utah's Speedy Trial Statute. See id. § 77-29-1(1) (2003). Defendant also argues that the trial court violated his rights under Utah Rule of Criminal Procedure 22(a) when the court sentenced him without allowing him to offer mitigating remarks.[1] See Utah R. Crim. P. 22(a). We affirm Defendant's convictions but reverse his sentence and remand for resentencing.

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1. Defendant also argues the trial court violated his federal and state constitutional due process rights when the court sentenced him without providing counsel and failed to allow the prosecuting attorney an opportunity to speak at sentencing. We do not reach these arguments, however, because we reverse and remand on the trial court's failure to allow allocution.

First, Defendant argues that the trial court abused its discretion in denying Defendant's motion to dismiss under Utah's Speedy Trial Statute.[2] See Utah Code Ann. § 77-29-1(1). We employ a two-step inquiry in deciding whether a trial court properly denied a defendant's motion to dismiss under this statute. See State v. Heaton, 958 P.2d 911, 916 (Utah 1998). "First, we must determine when the 120-day period commenced and when it expired." Id. Because we determine that here the 120-day period never commenced, there is no need for us to reach the second step of the inquiry. See State v. Lindsay, 2000 UT App 379,¶9, 18 P.3d 504 ("Our answer [that the 120-day period never began] obviates any need to move to the second step of analysis.").

Utah's Speedy Trial Statute states that a defendant may deliver a written demand requesting disposition whenever "there is pending against the prisoner . . . any untried indictment or information." Utah Code Ann. § 77-29-1(1). Therefore, Utah courts have held that formal charges must be pending against the defendant before he delivers his request for disposition or the request has no legal effect. See Lindsay, 2000 UT App 379 at ¶¶10, 14. And, "[c]harges cannot be pending against a defendant until an indictment or information is filed with the court." Id. at ¶16; see also State v. Leatherbury, 2003 UT 2,¶12, 65 P.3d 1180 ("[A] written, signed accusation does not become an information until filed with the clerk of the court."). In other words, the "120[-]day requirement . . . is triggered by an information . . . existing or pending against the defendant." Lindsay, 2000 UT App 379 at ¶8; see also Leatherbury, 2003 UT 2 at ¶12. "A premature request is simply a nullity, having no legal effect." Lindsay, 2000 UT App 379 at ¶14.

Here, Defendant submitted his 120-day disposition request on December 9, 2003. Defendant was not charged by information until January 14, 2004. Thus, because he prematurely filed his 120-day disposition request, Defendant's request had no legal effect. See id.

Notably, Defendant failed to preserve for appeal his argument that the warden, under the circumstances of this case, owed him an affirmative duty of disclosure. See State v.

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2. Although Defendant also claims that his due process rights were violated under the United States and Utah Constitutions, he provides no support for this claim. We therefore decline to address the issue. See State v. Bishop, 753 P.2d 439, 450 (Utah 1988) (stating that Utah appellate courts are "not simply a depository in which the appealing party may dump the burden of argument and research" (quotations and citation omitted)).

Winfield, 2006 UT 4,¶14, 128 P.3d 1171 ("'Generally speaking, a timely and specific objection must be made [at trial] in order to preserve an issue for appeal.'" (alteration in original) (quoting State v. Pinder, 2005 UT 15,¶45, 114 P.3d 551)). Because Defendant failed to argue either plain error or exceptional circumstances, we decline to consider Defendant's unpreserved claim on appeal. See Pinder, 2005 UT 15 at ¶45.

Second, Defendant argues that the trial court violated his due process rights and his rights under Utah Rule of Criminal Procedure 22(a) when he was sentenced without an opportunity for allocution. See Utah R. Crim. P. 22(a). The State concedes that the trial court failed to allow allocution and that under State v. Wanosik, 2001 UT App 241, 31 P.3d 615, failure to allow allocution is reversible error. See id. at ¶¶32-33. The trial court's failure to grant Defendant an opportunity for allocution at sentencing is reversible error. Therefore, we affirm Defendant's conviction but reverse and remand for resentencing.

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Judith M. Billings, Judge

WE CONCUR:

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James Z. Davis, Judge

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Gregory K. Orme, Judge