

IN THE UTAH COURT OF APPEALS

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Orem City,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20041087-CA
v.)	
)	F I L E D
Brad Harold Massey,)	(September 28, 2006)
)	
Defendant and Appellant.)	2006 UT App 392

Fourth District, Orem Department, 045208087
The Honorable John C. Backlund

Attorneys: D. Gilbert Athay, Salt Lake City, for Appellant
Robert J. Church and Jason S. Rose, Orem, for
Appellee

Before Judges Bench, Orme, and Thorne.

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record[,] and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

Massey was convicted of a class B misdemeanor and sentenced to a \$150 fine, a \$32 surcharge, and one year of probation. No incarceration was imposed. When a defendant is charged with a misdemeanor, the right to counsel is triggered only if a term of incarceration is actually imposed. See Scott v. Illinois, 440 U.S. 367, 373 (1979) (establishing an after-the-fact test that requires a reviewing court to find an uncounseled misdemeanor conviction constitutional if no jail time was imposed). It follows that since Massey had no Sixth Amendment right to counsel, the court had no obligation to inform Massey of the right to counsel nor a correlative duty to determine whether he had properly waived this right. Thus, we need not ascertain whether the court conducted an adequate colloquy and obtained a valid waiver.

As to Massey's alternative argument, the magistrate's duty to inform a defendant of his right to counsel, see Utah R. Crim. P. 7(e)(3), does not substantively expand the scope of the right to counsel beyond that required by the Sixth Amendment. Cf. United States v. Reilley, 948 F.2d 648, 652 (10th Cir. 1991) (determining that Federal Rule of Criminal Procedure 44 does not provide a right to counsel independent of the Sixth Amendment).

Affirmed.

Gregory K. Orme, Judge

WE CONCUR:

Russell W. Bench,
Presiding Judge

William A. Thorne Jr., Judge