

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20050141-CA	
v.)		
)	F I L E D	
Douglas Troy McGinnis,)	(March 2, 2006)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2006 UT App 85</td></tr></table>	2006 UT App 85
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Eighth District, Duchesne Department, 031800097
The Honorable A. Lynne Payne

Attorneys: Julie George, Salt Lake City, for Appellant
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Billings, Davis, and Thorne.

PER CURIAM:

Douglas Troy McGinnis appeals his sentence for convictions in cases consolidated for sentencing. McGinnis argues that the district court abused its discretion by sentencing him to a prison term rather than probation and by running the sentences in the two cases consecutively to each other. Because he did not preserve the claim in the district court, McGinnis asserts plain error and ineffectiveness of his trial counsel.

"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); see also State v. Schweitzer, 943 P.2d 649, 651 (Utah Ct. App. 1997) (stating abuse of discretion may occur if the actions of the sentencing judge were inherently unfair or the judge imposed a clearly excessive sentence). In determining whether to impose consecutive sentences, the court is required to "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).

Although McGinnis asserts that he was promised concurrent sentences and probation, there is no record support for the

claim. McGinnis stated at the plea colloquies that no sentencing promises had been made. The record also reflects, and McGinnis concedes, that he was advised by the court at the plea colloquies that the court would not be bound by any sentencing promises. The claim that absence of a written plea agreement supports the existence of a promise of concurrent sentences as a condition of the plea bargain is without merit. McGinnis also concedes that his sentence was not excessive under the statutory limits.

McGinnis contends that his trial counsel was ineffective by failing to "reiterate the degree and benefit of the drug rehabilitation program" and to adequately inform the court of relevant statutory factors. The record reflects that both defense counsel and McGinnis himself provided information at sentencing regarding his recent participation in a drug rehabilitation program and his intention to continue treatment. The court also considered the recommendation of Adult Probation and Parole (AP&P) that McGinnis be sentenced to probation in order to continue treatment. Counsel's failure to "reiterate" information that was already before the court was neither deficient performance nor was it prejudicial to McGinnis. It follows that the district court did not plainly err in failing to correct counsel's performance.

Based upon our review of sentencing, we conclude that the district court considered the factors relevant to sentencing. The court weighed McGinnis's lengthy criminal history; his failure to attend court appearances in the present case; and his lengthy, unsuccessful parole history against his rehabilitative needs; the AP&P recommendation; and his professed desire to pursue drug rehabilitation. Under the facts of this case, the trial court did not abuse its discretion in sentencing McGinnis to consecutive sentences in the two cases, rather than ordering concurrent terms or probation and rehabilitation. Because the terms are within the statutory parameters for the offenses, we conclude that the terms are not unfair or unnecessarily harsh.

We affirm the sentence in the consolidated cases.

Judith M. Billings, Judge

James Z. Davis, Judge

William A. Thorne Jr., Judge