

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20090380-CA
v.)	
)	F I L E D
Lemuel Prion,)	(August 13, 2009)
)	
Defendant and Appellant.)	<div style="border: 1px solid black; padding: 2px;">2009 UT App 219</div>

Eighth District, Vernal Department, 931800470
The Honorable John R. Anderson

Attorneys: Lemuel Prion, Draper, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Greenwood, Bench, and Davis.

PER CURIAM:

Lemuel Prion appeals the district court's order denying his motion to correct an illegal sentence. This matter is before us on a sua sponte motion for summary disposition. We affirm.

Utah Code section 77-16a-202(b) permits the district court to sentence an offender to a term of imprisonment and order that the offender first be committed to the Department of Human Services for treatment until the offender's condition has been stabilized, but in no case shall the offender be committed for more than eighteen months. See Utah Code Ann. § 77-16a-202(b) (2008). At the expiration of an offender's treatment, "the court may recall the sentence and commitment, and resentence the offender." Id. A commitment and retention of the district court's jurisdiction under Utah Code section 77-16a-202(b) "shall be specified in the sentencing order." Id.

Prion asserts that the district court violated his constitutional right to be free from double jeopardy when it recalled his sentence, pursuant to section 77-16a-202(b), and determined to run the sentences consecutively rather than concurrently. This court previously determined that the double jeopardy clause "only proscribes resentencing where the defendant

has developed a legitimate expectation of the finality in his original sentence." State v. Maquire, 1999 UT App 45, ¶ 8, 975 P.2d 476. Thus, where there is no legitimate expectation of finality in the first proceeding, there can be no violation of double jeopardy protections. See id.

As required by Utah Code section 77-16a-202(b), the September 1, 1994 order provided that the district court retained jurisdiction to alter or amend its originally contemplated sentence. See Utah Code Ann. § 77-16a-202(b). Additionally, the September 1, 1994 order expressly indicated that Prion's sentence would be reconsidered once he was released from his mental health treatment. Thus, we cannot say that Prion could legitimately expect that the September 1, 1994 order constituted his final sentence. Accordingly, the district court did not violate Prion's constitutional right to be free from double jeopardy.¹

Affirmed.

Pamela T. Greenwood,
Presiding Judge

Russell W. Bench, Judge

James Z. Davis, Judge

¹Prion raises additional issues on appeal. We determine that those issues lack merit and do not address them.