

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20070673-CA
v.)	
)	F I L E D
Bradford Laine Salters,)	(December 11, 2008)
)	
Defendant and Appellant.)	2008 UT App 450

Third District, Salt Lake Department, 061906976
The Honorable Deno M. Himonas

Attorneys: Debra M. Nelson, Salt Lake City, for Appellant
Mark L. Shurtleff and Kenneth A. Bronston, Salt Lake
City, for Appellee

Before Judges Greenwood, Thorne, and Orme.

PER CURIAM:

Bradford Laine Salters appeals from his sentences after pleading guilty to three counts of possession of a controlled substance, two counts of forgery, and one count of obstruction of justice. Salters argues that the district court erred in imposing consecutive sentences.

"The sentencing judge 'has broad discretion in imposing [a] sentence within the statutory scope provided by the legislature.'" State v. Sotolongo, 2003 UT App 214, ¶ 3, 73 P.3d 991 (quoting State v. Rhodes, 818 P.2d 1048, 1051 (Utah Ct. App. 1991)). Accordingly, an appellate court reviews sentencing decisions under an abuse of discretion standard. See State v. Hammond, 2001 UT 92, ¶ 8, 34 P.3d 773. An abuse of discretion

may be manifest if the actions of the judge in sentencing were "inherently unfair" or if the judge imposed a "clearly excessive sentence." . . . In addition, a trial court may abuse its discretion in imposing a sentence without considering all legally relevant factors, . . . or in imposing a

sentence which exceeds the limits prescribed by law.

State v. Schweitzer, 943 P.2d 649, 651 (Utah Ct. App. 1997) (citations omitted). Furthermore, "this court may find an abuse of discretion only if we conclude that 'no reasonable person would take the view adopted by the trial court.'" Id. (citations omitted); see also State v. Thorkelson, 2004 UT App 9, ¶ 12, 84 P.3d 854 (concluding that a court abuses discretion in imposing consecutive sentences only if no reasonable person would take the view of the sentencing court).

Utah Code section 76-3-401(2) sets forth the factors a district court must consider in determining whether to impose concurrent or consecutive sentences. See Utah Code Ann. § 76-3-401(2) (2003). Specifically, this section states that "[i]n determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant." Id. In considering these factors, the district court is not required to make findings on each specific factor. See State v. Helms, 2002 UT 12, ¶ 11, 40 P.3d 626. Instead, absent certain circumstances that are not present in this case, this court presupposes that the district court considered all relevant factors. See id. To do otherwise "would trample on the deference this court usually gives to the sentencing decisions of a trial court." Id.

Salters asserts that the district court failed to adequately consider his rehabilitative needs when it imposed consecutive sentences. Contrary to Salters's assertions, the record, taken as a whole, reveals that the district court did consider Salters's rehabilitative needs prior to sentencing. For example, the district court was in possession of a letter Salters had previously prepared discussing his alleged amnesia and depression issues. The presentence investigation report (PSI) also mentioned these issues and discussed Salters's long term use of narcotics. These issues were further brought to the attention of the district court at the sentencing hearing by both Salters and his counsel. Specifically, Salters's counsel indicated that Salters had been trying to enroll in an in-patient drug treatment program to address his problems. Salters was then given an opportunity to address the court. Salters indicated that he was sorry for his crimes and that he would "like to get in a program if possible to give [him] some help, some treatment." Thus, it is clear that the issue of Salters's potential rehabilitative needs was presented and considered by the court. The district court simply concluded that the other factors supporting consecutive sentences outweighed those factors favoring concurrent sentences.

Further, to the extent Salters argues that additional information about his rehabilitative needs should have been presented to the court, any such failure is directly attributable to him. For example, Salters failed to provide any documentation to Adult Probation and Parole concerning any evaluations of his alleged mental conditions by a qualified treatment center. Similarly, at sentencing, Salters was given an opportunity to raise any issues that he believed could be considered as factors that mitigated against more severe sentences. As discussed above, while Salters indicated his desire to get treatment, he otherwise failed or refused to discuss any other facts he wished the court to consider.¹ Accordingly, based upon the totality of the evidence considered by the district court, this court cannot conclude that the district court abused its discretion in sentencing Salters to consecutive sentences. See Thorkelson, 2004 UT App 9, ¶ 12.

Finally, Salters asserts that his trial counsel was ineffective in failing to present Salters's rehabilitative needs as a possible mitigating factor for purposes of sentencing. However, because this court concludes that Salters did raise the issue of his rehabilitative needs and this information was considered by the court, and because Salters himself was responsible for failing to raise any additional mitigating factors, Salters cannot demonstrate that he was prejudiced by any action taken, or not taken, by his counsel. See State v. Montoya, 2004 UT 5, ¶ 23, 84 P.3d 1183 (setting forth standard for an ineffective assistance of counsel claim).

Affirmed.

Pamela T. Greenwood,
Presiding Judge

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge

¹After making his brief statement to the court indicating that he desired treatment, Salters indicated to the district court that there was nothing else that he wanted to add to his statement.