IN THE UTAH COURT OF APPEALS

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State of Utah, Plaintiff and Appellee, v. Corey Evan Vonberg, Defendant and Appellant.	)	MEMORANDUM DECISION (Not For Official Publication) Case No. 20060324-CA F I L E D (May 30, 2008) 2008 UT App 197

Fifth District, Cedar City Department, 031501000
The Honorable G. Michael Westfall

Attorneys: Jack B. Burns, Cedar City, for Appellant
Mark L. Shurtleff and Karen A. Klucznik, Salt Lake City, for Appellee

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Before Judges Greenwood, Billings, and Davis.

BILLINGS, Judge:

Defendant Corey Evan Vonberg was convicted of sexually abusing a 13-year-old boy. He appeals his conviction of four counts of forcible sodomy on a child, see Utah Code Ann. § 76-5-403.1 (2003).

On appeal, Defendant raises a number of ineffective assistance of counsel claims. To prevail on a claim of ineffective assistance, Defendant must show both that "counsel's performance was deficient" and that "counsel's deficient performance was prejudicial--i.e., that it affected the outcome of the case." State v. Litherland, 2000 UT 76, ¶ 19, 12 P.3d 92 (citing Strickland v. Washington, 466 U.S. 668, 687-88 (1984)). In showing that counsel's performance was deficient, Defendant must rebut the strong presumption that "under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. (quoting Strickland, 466 U.S. at 689).

We first consider whether defense counsel rendered ineffective assistance by not objecting when the trial court informed potential jurors during jury voir dire that it may be alleged that Defendant was homosexual and then questioned the jurors concerning their views on homosexuality. Defense counsel did not object when the trial court inquired about the jurors' views on homosexuality. Counsel's action could be considered sound trial strategy because counsel may have concluded that it

was better to ferret out a juror's bias or discomfort before selecting the juror. Defendant has not shown that defense counsel's decision to remain silent was not strategic. Further, even if defense counsel's actions were somehow deficient, Defendant has not attempted to show that any particular juror was biased or that the result was likely to be different but for the improper questioning. Instead, Defendant wishes us to presume prejudice, as we have on occasion deemed appropriate. See State v. King, 2006 UT App 355, ¶ 12, 144 P.3d 222 (allowing appellate courts to "presume prejudice in cases where it is difficult to measure the precise effect of counsel's error," (internal quotation marks omitted)). We do not consider this an appropriate case to presume prejudice.

Defendant also argues that the trial court committed plain error by questioning the jury directly. However, because counsel did not object to the court's questions, any error must be considered invited. Indeed, defense counsel participated in the court's questioning, asking follow-up questions and eventually passing over each of the jurors. Defendant cannot now challenge any such error. See State v. Lee, 2006 UT 5, ¶ 18, 128 P.3d 1179.

Next, Defendant claims that counsel rendered ineffective assistance by failing to request that the trial court consider Defendant as a candidate for probation under Utah Code section 76-5-406.5, which allows for a conviction for sex abuse of a child to be suspended and probation considered under various circumstances, see Utah Code Ann. § 76-5-406.5 (2003). Defendant also asserts that the trial court committed plain error by not considering Defendant for probation sua sponte. However, one of the conditions of Utah Code section 76-5-406.5 is that the defendant must admit guilt. See id. § 76-5-406.5(h). Both the Presentence Investigation Report and counsel's statements at sentencing indicate that Defendant refused to admit he committed the offenses. Because Defendant himself has not admitted guilt, he is not eligible for probation under Utah Code section 76-5-406.5. Accordingly, neither defense counsel nor the trial court erred in failing to address this issue.

Defendant further claims that defense counsel rendered ineffective assistance at trial by not presenting a certain defense, not moving for a mistrial, and by failing to request a cautionary instruction at the close of evidence. Alternatively, Defendant claims that the trial court erred by failing to order a mistrial sua sponte. We do not address the merits of these contentions because Defendant's arguments are inadequately briefed. "An issue is inadequately briefed when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court." State v. Sloan, 2003 UT App 170, ¶ 13, 72 P.3d 138. Here, Defendant provides no cases, rules, or reasoned arguments to support his assertions, and we do not consider them.

Finally, Defendant claims that the trial court erred when it relied on rule 609 of the Utah Rules of Evidence, see Utah R. Evid. 609, to prohibit Defendant from challenging a witness's credibility by cross-examining him about previous convictions. Defendant wished to raise a witness's previous convictions for theft by deception to challenge the witness's credibility. The convictions in question were fifteen years old. Rule 609 of the Utah Rules of Evidence states that "[e]vidence of a conviction under this rule is not admissible [for the purpose of attacking the credibility of a witness] if a period of more than ten years has elapsed since the date of the conviction" unless the court allows it "in the interests of justice." Id. R. 609(b). However, Defendant argued that rule 608(b) gives the trial court discretion to not follow rule 609 literally and to allow the questioning in order to attack the witness's credibility. See generally id. R. 608(b) (allowing specific instances of a witness's conduct to be inquired into on cross-examination if the trial court believes they may be probative of truthfulness). We need not address the relationship between rules 608 and 609 because our review of the record indicates that the trial court properly precluded Defendant's use of the evidence because Defendant had not offered advance written notice of his intent to use the convictions. See generally id. R. 609(b) (requiring advance written notice of intent to use evidence older than ten years).

We affirm.

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Judith M. Billings, Judge

WE CONCUR:

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Pamela T. Greenwood,
Presiding Judge

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James Z. Davis, Judge