

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20070241-CA
v.)	
)	F I L E D
Ronald Workman,)	(June 7, 2007)
)	
Defendant and Appellant.)	2007 UT App 199

Second District, Ogden Department, 021901159
The Honorable Parley R. Baldwin

Attorneys: Ronald Workman, Gunnison, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellee

Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

Ronald Workman appeals the denial of a motion to vacate consecutive sentences. This case is before the court on a sua sponte motion for summary disposition for insubstantial question.

This consolidated appeal involves three convictions for forgery, a third degree felony, from the Second District Court. On June 6, 2002, the Second District Court sentenced Workman to prison terms of zero to five years on each conviction, suspended the sentences, and placed him on probation. In June 2004, the Second District Court revoked probation based upon a conviction from the First District Court. The Second District Court reinstated the prison terms of zero to five years on each forgery conviction. The Second District Court ordered the three sentences to run concurrent to each other, but consecutive to the sentence in the First District case. The judgments also stated, "The court retains jurisdiction to make a change as to the consecutive sentence if there is a recommendation from" the First District Court.

Two years later, Workman filed a Motion to Vacate Consecutive Sentences and Review, claiming that the facts before

the Second District Court did not merit consecutive sentences and noting that district courts in two of his other cases had revoked probation, but had not run those reinstated sentences consecutive to the sentence in the First District case. Workman contended that the Second District Court retained jurisdiction over the case to modify the sentences and should make the sentences run concurrent to the sentence from the First District Court case. However, the Second District Court ruled:

Defendant's Motion to Vacate Consecutive Sentence is denied. At the time of sentencing this court stated it would review the consecutive order upon a request by Judge Hadfield in [the First District case.] A substantial amount of time has elapsed since that order was made. This Court no longer has jurisdiction to change the sentence.

Workman essentially claims that the Second District Court retained jurisdiction to modify the sentences indefinitely. A court retains jurisdiction over a sentence only until a valid sentence is imposed. See State v. Thorckelson, 2004 UT App 9, ¶10, 84 P.3d 854 ("[O]nce a court imposes a valid sentence, it loses subject matter jurisdiction over the case."); see also State v. Arviso, 1999 UT App 381, ¶8, 993 P.2d 894. Although a court retains jurisdiction to correct an illegal sentence under rule 22(e) of the Utah Rules of Criminal Procedure, that rule has no application in this case. See Utah R. App. P. 22(e) ("The Court may correct an illegal sentence, or a sentence imposed in an illegal manner, at any time."). The sentences imposed in this case were within the statutory range for third degree felonies. See Utah Code Ann. § 76-3-203(3) (2003). Furthermore, consecutive sentences are statutorily permitted. See id. § 76-3-401(1) (2003). Under the circumstances of these cases, the Second District Court correctly concluded that it no longer had jurisdiction to modify the sentence.

On appeal, Workman characterizes his motion to vacate consecutive sentences as a motion under rule 60(b)(6) of the Utah Rules of Civil Procedure. However, Workman neither cited nor analyzed the rule in the district court, and the motion, which was made two years after the sentence, was not made within a "reasonable time." Utah R. Civ. P. 60(b).

Workman also claims for the first time on appeal that his trial counsel was ineffective in failing to object to the consecutive sentences. Workman did not file a timely direct appeal from his sentences. In addition, he did not raise the alleged ineffectiveness of trial counsel in the motion to vacate

the consecutive sentences. To assert ineffectiveness of trial counsel at this time, Workman must raise the claim in an appropriate petition for post-conviction relief filed in the district court under the Utah Post-Conviction Remedies Act. See id. § 78-35a-101 to -110 (2003 & Supp. 2006).

Affirmed.

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge

James Z. Davis, Judge