

This summary of Utah appellate case law addresses five topics: the availability of and general standards for appellate review, standards and allowable grounds for departure, constitutional requirements for proof of facts permitting upward departure or increasing the minimum sentence, and other important appellate sentencing decisions.

1. Availability of and General Standards for Appellate Review.

The Utah Adult Sentencing and Release Guidelines are advisory.¹ As stated in the Guidelines, “[t]hey are intended to inform the sentencing authority, but do not dictate their decision. They do not create any right, expectation, or liberty interest on behalf of the offender.”² Because of their advisory nature, there is no right of appeal based upon the court’s failure to follow, or extent of deviation from, the guidelines.

There are two opportunities for a defendant to appeal a decision regarding to his or her sentence. First, a defendant may appeal the indeterminate sentence ordered by the trial court. Second, a defendant may appeal decisions relating to parole by the Board of Pardons and Parole. Each of these appeals has vastly different standards of review and thus will be assessed separately.

When appealing an indeterminate sentence ordered by a trial judge a defendant may challenge the decision on two grounds: (1) the trial judge abused his discretion; or (2) the sentence imposed was illegal. If the appellate court is reviewing a case for “abuse of discretion”, it will consider whether the trial court has failed to consider all legally relevant factors, whether the sentence is based on an erroneous interpretation of the law, whether the sentencing judge was “so *inherently unfair* as to constitute an abuse of discretion”³, and whether the sentence imposed is clearly excessive.⁴ An “abuse of discretion” appeal, like most other appeals of criminal sentences must be made within thirty days.⁵ However, an appeal asserting that a sentence imposed is an “illegal sentence” may be brought at any time.⁶ The court will find a sentence illegal when “the sentencing court has no jurisdiction [or] where the sentence is beyond the authorized statutory range.”⁷ Because the guidelines are advisory, a sentence other than that indicated in the guidelines is not grounds for such an appeal. When assessing an appeal from an illegal sentence, the appellate court uses a “de novo” standard, because the review is focused on statutory interpretation.⁸

Appellate courts have severely limited power of review when assessing a Board of Pardons and Parole decision not to release (or pardon) a defendant. The court uses an “arbitrary and capricious” standard of review,⁹ which means that if the period of incarceration falls within the statutorily prescribed period, then “that decision, absent unusual circumstances, cannot be arbitrary and capricious.”¹⁰ The Board of Pardons and Parole is not required to apply the sentencing guidelines when determining how much time a particular defendant should serve.¹¹ “[A]ny ‘expectation of release’ derived from the guidelines is at best tenuous” because the guidelines do not have the force and effect of law.¹²

¹ *Preece v. House*, 886 P.2d 508, 511 (Utah 1994) (citing *Labrum v. Utah State Bd. Of Pardons*, 870 P.2d 902 (Utah 1993)). In 2015 the Utah Legislature passed a bill seeming to require that judges comply with guidelines provisions as to length of probationary supervision, and that the parole board comply with the guidelines as to the length of incarceration following revocation of parole. 2015 Utah Laws 2254, 2351, 2356 [now Utah Code §§ 77-18-1(10)(a)(i), 12(a)(i) (probation, effective in 2019) and 77-27-11(6)(c)(parole, effective in 2018)]. Thus far, however, no reported cases have confirmed the binding nature of those guidelines provisions.

² Utah Adult Sentencing & Release Guidelines at 3 (2020).

<https://justice.utah.gov/Sentencing/Guidelines/Adult/2020%20Adult%20Sentencing%20and%20Release%20Guidelines.pdf>

³ *State v. Martin*, 423 P.3d 1254, 1262 (Utah 2017).

⁴ *State v. McCovey*, 803 P.2d 1234, 1235 (Utah 1990), *overruled on other grounds by State v. Smith*, 122 P.3d 615 (Utah 2005).

⁵ Utah R. App. P. 4(a) (2017).

⁶ Utah R. Crim. P. 22(e)(3) (2020); see also *State v. Dana*, 246 P.3d 756, 757 (Utah Ct. App. 2010) (stating that an illegal sentence is void, and Rule 22(e) allows the appellate court to vacate the sentence without remanding it to the trial court).

⁷ 246 P.3d at 757.

⁸ *State v. Yazzie*, 203 P.3d 984, 986 (Utah 2009).

⁹ *Preece v. House*, 886 P.2d 508, 512 (Utah 1994).

¹⁰ *Monson v. Carver*, 928 P.2d 1017, 1023 (Utah 1996).

¹¹ *Alvillar v. Bd. of Pardons & Parole*, 322 P.3d 1204, 1206 (Utah Ct. App. 2014), *cert. denied*, 333 P.3d 365 (Utah 2014).

¹² See *Preece*, 886 P.2d at 511 (citing *Labrum v. Utah State Bd. Of Pardons*, 870 P.2d 902, 908 (Utah 1993)).

2. Standards and Allowable Grounds for Departure.

Although trial courts are not bound by the guidelines, the Utah Supreme Court held that it is an error for a trial judge to completely disregard the sentencing guidelines when “considering whether . . . [the defendant’s] criminal history was a mitigating factor.”¹³ However, the court only stated that the guidelines must be considered, and did not elaborate on the precise weight to give them.¹⁴

3. Constitutional Requirements For Proof of Facts Permitting Upward Departure.

There are no *Blakely* issues present in the Utah sentencing scheme because the guidelines are advisory¹⁵ and therefore judges merely exercise permissible discretion when choosing a sentence within the authorized range.¹⁶ As the Court stated in *United States v. Booker*, “[w]e have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range,” and in such cases “the defendant has no right to jury determination of the facts that the judge deems relevant.”¹⁷

4. Constitutional Requirements for Proof of Facts that Increase the Minimum Sentence.

For the same reason as *Blakely*, there are no relevant Utah court decisions on the impact of *Alleyne* on the sentencing guidelines. Though decided before *Alleyne*, the Court in *Garner* used the same analysis it used to uphold Utah’s statutory sentencing system under *Booker* to also uphold the system under *Alleyne*. In essence, because the Utah statutes provide for indeterminate sentences, there is no fact-finding that a judge can conduct that would either increase the statutory minimum nor the statutory maximum.¹⁸

5. Other Important Sentencing Decisions.

There are no other significant Utah appellate court decisions relevant to the sentencing guidelines.

¹³ *LeBeau v. State*, 337 P.3d 254, 268-71 (Utah 2014).

¹⁴ *Id.*

¹⁵ *Preece v. House*, 886 P.2d 508, 511 (Utah 1994) (citing *Labrum v. Utah State Bd. Of Pardons*, 870 P.2d 902 (Utah 1993)).

¹⁶ *State v. Garner*, 177 P.3d 637, 643 (Utah Ct. App. 2008) (alternate holding, citing *United States v. Booker*, 543 U.S. 220, 233 (2005)).

¹⁷ *United States v. Booker*, 543 U.S. 220, 233 (2005).

¹⁸ *Garner*, 177 P.3d at 643.