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State v. Alvarez-Cabrera Respondent's Brief Dckt. 36821

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 36821
)	
v.)	
)	
MANUEL ALVAREZ-CABRERA,)	RESPONDENT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

Issue

Has Alvarez-Cabrera failed to establish the district court abused its discretion by imposing a unified ten year sentence with five years fixed upon his guilty plea to aggravated DUI?

Alvarez-Cabrera Has Failed To Establish The District Court Abused Its Sentencing Discretion

On February 12, 2009, Alvarez-Cabrera “consumed more than 12 Corona beers” while driving in the snow, after dark, with inoperable windshield wipers. (PSI, p.3; R., p.13.) Numerous witnesses observed Alvarez-Cabrera as he drove at speeds of

approximately 60 to 90 miles per hour, swerved all over the roadway, passed other vehicles by driving in the turn lane and over curbs, and nearly collided with several vehicles. (PSI, p.2; R., p.13.) Alvarez-Cabrera was driving approximately 60 miles per hour when he swerved into the median and ran a red light, crashing into a Grand Am that was in the intersection. (PSI, p.2; R., p.13.) Alvarez-Cabrera injured both occupants of the Grand Am; Chelsea Nicholas suffered a broken ankle and whiplash and Ryan Wright was treated for a laceration and whiplash. (PSI, p.2.) Upon removing Alvarez-Cabrera from his vehicle, officers observed “[m]ultiple open and broken Corona beer bottles” in and around the vehicle. (PSI, p.2.) Alvarez-Cabrera also had over \$6,000.00 in cash on his person. (PSI, p.3.) Alvarez-Cabrera was transported to the hospital, where a blood draw revealed a BAC of .18. (PSI, p.2.)

The state charged Alvarez-Cabrera with aggravated DUI. (R., pp.23-24.) Pursuant to a plea agreement, Alvarez-Cabrera pled guilty and the state agreed not to file a second count of aggravated DUI and to recommend a unified ten year sentence with five years fixed. (R., pp.36, 51; Tr., p.5, Ls.13-25.) The district court imposed the recommended sentence. (R., pp.54-57.) Alvarez-Cabrera filed a notice of appeal timely from the judgment of conviction. (R., pp.61-63.)

Alvarez-Cabrera asserts his sentence is excessive in light of his purported remorse, willingness to participate in treatment, and family support. (Appellant’s Brief, p.4.) The record supports the sentence imposed.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant’s entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475

(2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed the fixed portion of the sentence will be the defendant's probable term of confinement. Id. (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)). To carry this burden the appellant must show the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id.

In fashioning an appropriate sentence, the district court considered the seriousness of the offense, the harm done to the victims, and Alvarez-Cabrera's complete disregard for the law and the safety of others. Alvarez-Cabrera has prior convictions for assault, open container, and a red light violation. (PSI, p.4.) He was in the United States illegally at the time he committed the instant offense, and had previously been "processed and/or removed" from the United States on at least four separate occasions. (PSI, p.9.) The presentence investigator determined Alvarez-Cabrera presents a moderate risk to reoffend, and stated, "Alvarez-Cabrera needs to be held accountable with a period of incarceration in hopes of deterring him from drinking and driving, as well as illegally re-entering the United States." (PSI, p.10.)

At sentencing, the state noted, "I counted 16 names in this PC affidavit of people that were willing to come forward and say they saw this defendant driving like a maniac, or people who actually had to swerve to get out of his way so they didn't get hit, or

people who were actually injured.” (Tr., p.26, Ls.2-6.) In imposing sentence, the district court stated, “The damage that you caused these individuals in this case, not only the two persons that were hurt here, but the other potential persons who had the potential for damage, is significant. ... In this case, fortunately, you did not kill anybody, but you have significantly injured them. I think that because of that a significant sentence is warranted in this case.” (Tr., p.35, Ls.12-15; p.36, Ls.9-12.) The court concluded:

I do believe that you have failed to recognize the seriousness of the law of the United States because you have re-entered this country illegally four times. ... [W]hat that tells me, sir, is that you are not a law-abiding citizen in that regard. I have absolutely no faith that you would be a law-abiding citizen if I placed you on probation to this court. For that reason, I’m not going to even consider that. I have considered it and I reject that.

(Tr., p.34, Ls.8-19.)

The district court considered all of the relevant information and imposed a reasonable sentence, stating, “I believe that that sentence is warranted, not only as a matter of deterrence and retribution, but for the most important principle of the good order and protection of society.” (Tr., p.36, L.24 – p.37, L.2.) The sentence imposed is appropriate in light of the seriousness of the offense, Alvarez-Cabrera’s complete disregard for the law and the safety of others, and the danger he presents to the community. Given any reasonable view of the facts, Alvarez-Cabrera has failed to establish an abuse of sentencing discretion.

Conclusion

The state respectfully requests this Court to affirm Alvarez-Cabrera's conviction and sentence.

DATED this 1st day of October, 2010.

/s/ _____
JESSICA M. LORELLO
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 1st day of October, 2010, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JUSTIN M. CURTIS
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/ _____
JESSICA M. LORELLO
Deputy Attorney General