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State v. Martinez Respondent's Brief Dckt. 40400

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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)
)
 Plaintiff-Respondent,)
)
 vs.)
)
 ROMELIO ALVIN MARTINEZ, JR.,)
)
 Defendant-Appellant.)
)
)

Nos. 40400, 40741
Bingham Co. Case No.
CR-2010-8436

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BINGHAM**

**HONORABLE DARREN B. SIMPSON
District Judge**

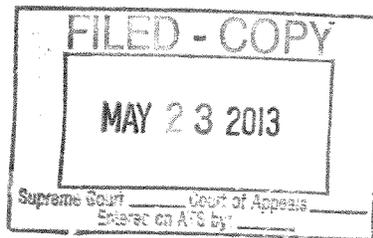
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STATEMENT OF THE CASE

Nature of the Case

Romelio Martinez appeals the district court's judgment and order sentencing him to ten years with three years fixed upon his guilty plea to felony driving under the influence. Martinez also challenges the district court's denial of his Rule 35 motion and motion for credit for time served.

Statement of Facts and Course of Proceedings

Romelio Martinez pleaded guilty to felony driving under the influence. (R., pp. 133-35, 164.¹) On the night of the offense, September 20, 2010, police observed Martinez driving a van, tailgating another vehicle, and weaving in his lane. (PSI, p. 3.) After police activated emergency lights and siren, Martinez continued on the freeway at 50 mph for about two miles before stopping. (PSI, p. 3.) According to Bingham County Sheriff's Deputy Howell, Martinez smelled of alcohol, was unsteady, and could not maintain gaze on the deputy's finger for a gaze nystagmus test. (PSI, p. 3; R., p. 19.) Martinez was taken to the hospital to rule out a medical condition, and while there had his blood drawn. (PSI, p. 3; R., p. 20.) Blood test results later showed Martinez's blood alcohol content was 0.349. (PSI, p. 4; R., p. 38.)

On his pre-sentence investigation questionnaire, Martinez wrote that he had bronchitis at the time of his arrest, and had consumed two bottles of Nyquil within the prior eight hours. (PSI, p. 4.) Martinez also told the pre-sentence

investigator that he consumed a 12-pack of beer and a bottle of whiskey the night before his arrest. (PSI, p. 4.)

Because Martinez was admitted to the hospital, he was not taken into custody for DUI. (PSI, p. 24.) The court issued a warrant the next day. (R., pp. 73-74.) Three months later, Martinez was picked up in Oregon on the Idaho warrant, and charged there with fugitive from justice. (Supp.R., p. 15; PSI, p. 14.) Due to jail overcrowding, he was released on his own recognizance and directed to appear in court on the fugitive charge. (Supp.R., p. 15.) Martinez did not appear, and an Oregon warrant was issued. (Supp.R., p. 15.)

In June 2011, Martinez was picked up in California for robbery (later amended to misdemeanor theft), and exhibiting a deadly weapon not a firearm. (PSI, p. 15.) Three months later, the district court in Bingham County, Idaho issued another warrant for Martinez's arrest for the state of Idaho. (R., pp. 75-76.) Martinez was arrested the next day and charged in California with fugitive from justice. (PSI, p. 15.) On January 13, 2012, Martinez was served with an Idaho governor's warrant. (R., p. 1; Supp.R., p. 27.) Bingham County court services contacted jail staff in California "where Mr. Martinez was housed," and was told that Martinez "had local misdemeanor charges and that he refused to waive extradition." (Supp.R., p. 30.) A Bingham County Sheriff's deputy transported Martinez back to Idaho. (R., p. 54.)

¹ Throughout this brief, the Clerk's Record filed in Docket No. 40400 shall be designated as R., and the Supplemental Clerk's Record filed in relation to Docket No. 40741 shall be designated as Supp.R.

Four months later, Martinez pleaded guilty. (R., pp. 133-35.) And on August 27, 2012, the district court sentenced Martinez to ten years with three years fixed. (R., pp. 161-62, 165.) Martinez timely appealed and filed a Rule 35 motion as well as a motion for credit for time served. (R., pp. 173, 181-82; Supp.R., p. 25.) The district court denied the motions, which Martinez also timely appealed. (Supp.R., pp. 29, 49, 51.) Martinez's appeals were consolidated. (Supp.R. p. 58.)

ISSUES

Martinez states the issues on appeal as:

1. Did the district court err by failing to grant Mr. Martinez an additional 136 days of credit for time served?
2. Did the district court abuse its discretion when it imposed upon Mr. Martinez a unified sentence of ten years, with three years fixed, stemming from his guilty plea to felony driving under the influence, in light of the mitigating factors that exist in this case?
3. Did the district court abuse its discretion when it denied Mr. Martinez's Idaho Criminal Rule 35 Motion for a Reduction of Sentence in light of the new and additional information presented in support of the motion?

(Appellant's brief, p. 5.)

The state rephrases the issues as:

1. Has Martinez failed to show the district court erred in denying his motion for credit for time served?
2. Has Martinez failed to show the district court abused its discretion in sentencing Martinez to ten years with three years fixed, or in denying his Rule 35 motion?

ARGUMENT

I.

Martinez Has Failed To Show The District Court Erred In Denying His Motion For Credit For Time Served

A. Introduction

Martinez asserts that he was entitled to an additional 136 days of credit for jail time served in California between August 31, 2011 and January 13, 2012. (Appellant's brief, p. 5.) However, given the record on this appeal, Martinez does not satisfy his burden of showing he was entitled to the requested credit.

B. Legal Standard

In reviewing whether the district court properly credited a defendant for time served, the appellate court exercises free review. State v. Vasquez, 142 Idaho 67, 68, 122 P.3d 1167, 1168 (Ct. App. 2005). Computation of a term of imprisonment, including credit for time served, is governed by I.C. § 18-309. That statute provides that a defendant against whom judgment is entered must be credited for "any period of incarceration prior to entry of judgment, if such incarceration was for the offense or an included offense for which the judgment was entered." I.C. § 18-309.

C. The Record On This Appeal Is Unclear

For Martinez to be entitled to the requested credit, the record must demonstrate both of the following: (1) that Martinez was in jail between August 31, 2011 and January 13, 2012, and (2) that Martinez served this time for the Idaho DUI charge at issue here. I.C. § 18-309; Muchow v. State, 142 Idaho 401, 403, 128 P.3d 938, 940 (2006). In an affidavit, Martinez asserts he was in jail in

Oregon for “for two or three days,” and in California from “arrest date 8-31-2011 through 1-31-2012.” (Supp.R., p. 11.) On this appeal, Martinez does not challenge the denial of credit for time served in Oregon, acknowledging the record did not support the claim. (Appellant’s brief, p. 5 n.6.) As to Martinez’s alleged jail time from “8-31-2011 through 1-31-2012,” the record shows he was served with the Idaho Governor’s warrant on January 13 rather than January 31, 2012. (See Supp.R., pp. 1, 11, 30.) Further, the record does not show what days he was in jail in California.

The record shows Martinez was “[a]rrested San Diego, California” on August 31, 2011 on “local charges.” (Supp.R., p. 31.) The criminal history section of Martinez’s PSI indicates that he was also arrested on August 31, 2011 for fugitive from justice, and that disposition on that charge was the same day. (PSI, p. 15.) The court services documents submitted to the Bingham County, Idaho district court states that Martinez was housed in the San Diego jail, but does not specify when or on what charge. (Supp.R., pp. 30-31.) The letter also notes that jail staff informed Bingham County court services that Martinez “had local misdemeanor charges and that he refused to waive extradition.” (Supp.R., p. 30.)

The record does not definitively establish that Martinez was in jail in California “solely due to the pending Idaho charges.” (See Appellant’s brief, p. 5.) It is true that the criminal history section of Martinez’s PSI does not confirm that Martinez was in custody on California charges between August 31, 2011 and January 13, 2012. (PSI, p. 15.) But neither does the record rule out the

possibility – as suggested by the court services documents – that Martinez was in custody on California charges. Notably, the California court had imposed three years' probation as part of Martinez's disposition from theft and lists the disposition of an exhibiting a deadly weapon charge as "not reported." (PSI, p. 15.) The appellate record does not reflect that Martinez faced probation violations in California; this omission is not proof that he had none.

The appellant bears the burden of providing an adequate record for appellate review of his claims of error. Triad Leasing & Financial, Inc. v. Rocky Mountain Rogues, Inc., 148 Idaho 503, 511, 224 P.3d 1092, 1100 (2009). Absent a record adequate for review of an appellant's claims, the appellate court will not presume the district court erred. Jacklin Land Co. v. Blue Dog RV, Inc., 151 Idaho 242, 249, 254 P.3d 1238, 1245 (2011); see also Indian Springs LLC v. Indian Springs Land Inv., LLC, 147 Idaho 737, 751, 215 P.3d 457, 471 (2009); Bach v. Miller, 144 Idaho 142, 145, 158 P.3d 305, 308 (2007) (court will not "presume error from a silent record"). Ultimately, the record here does not establish that Martinez was in custody during each of the 136 days at issue, nor whether such jail time – if Martinez did serve it – was for the offense charged here. Although Martinez submitted his own affidavits to support his claims, the record lacks independent corroboration.

In an appeal from a motion for credit for time served, the Court of Appeals observed it was "not apparent from the record what documents or other evidence the district court relied upon in determining the dates of [the appellant's] prejudgment incarceration." State v. Akin, 139 Idaho 160, 165, 75 P.3d 214, 219

(Ct. App. 2003). The Akin court further said there was no “indication that [appellant] presented any evidence to the district court in support of his motion,” noting the district court might have referred to jail or court records not in the appellate record. Id. The court in Akin thus concluded the appellant had failed to demonstrate error on appeal. Id. As in that case, Martinez has failed to show the district court erred in denying his motion for credit for time served.

II.
Martinez Has Failed To Show The District Court Abused Its Discretion In
Sentencing Him To Ten Years With Three Years Fixed,
Or In Denying His Rule 35 Motion

Martinez contends his sentence of ten years with three years fixed is excessive, and that the district court abused its discretion in denying his Rule 35 motion to reduce it. (Appellant’s brief, pp. 9-12.) The appellate court reviews both issues for abuse of discretion. State v. Windom, 150 Idaho 873, 875, 253 P.3d 310, 312 (2011) (citation omitted); State v. Adair, 145 Idaho 514, 516, 181 P.3d 440, 442 (2008). For such review, the appellate court considers whether the district court (1) was aware its decision was discretionary, (2) acted within the scope of its discretion and consistent with applicable law, and (3) reached its decision through exercise of reason. State v. Miller, 151 Idaho 828, 834, 264 P.3d 935, 941 (2011).

The appellate court will not disturb a sentence that is within statutory limits absent a showing the court clearly abused its discretion. Windom, 150 Idaho at 875, 253 P.3d at 312 (citation omitted). Martinez acknowledges that his sentence is within the statutory range. (Appellant’s brief, p. 9.) To carry his burden, Martinez must show his sentence is excessive “under any reasonable

view of the facts,” considering the objectives of criminal punishment: protection of society, deterrence, rehabilitation, and retribution or punishment. Windom, 150 Idaho at 876, 253 P.3d at 313.

In reviewing an excessive sentence claim, the appellate court independently reviews the record, examining the nature of the offense, and the offender’s character. State v. Delling, 152 Idaho 122, 132, 267 P.3d 709, 719 (2011) (citation omitted). Where reasonable minds could differ as to whether a sentence is excessive, the appellate court will not disturb it. Miller, 151 Idaho at 834, 264 P.3d at 941 (citation omitted).

Martinez acknowledges he suffers from alcoholism and depression. (Appellant’s brief, p. 10.) According to Martinez, these diagnosed problems support his claim that the district court should have imposed a lesser sentence. (Id.) Martinez’s extensive criminal history reveals his alcoholism and possibly his mental health problems have long intertwined to the detriment of public safety. Martinez has convictions for DUI from 1992, 1995, 1999, January and September 2002, November and December 2005, and this case from 2010. (PSI, pp. 5, 7, 10-14.) He was convicted of possession of a controlled substance in February and November 1995, and 1997. (PSI, pp. 6, 7, 9.) And he was convicted of having an alcoholic beverage or being under the influence in a public place in 1998 and 2000. (PSI, pp. 9, 11.) Martinez was convicted of driving without privileges or failure to purchase a valid driver’s license in 1995, 1999, 2000, and 2010. (PSI, pp. 6, 10, 14.) Also, he was convicted of disturbing the peace, assault, or battery in 1995, 1996, 1998, and 2006. (PSI, pp. 6-9, 14.)

These many crimes over the past two decades demonstrate an inability for Martinez to rehabilitate. The nature of Martinez's crimes has a grave impact on the public, both real and potential. While it is encouraging that Martinez now recognizes his alcohol problem, he is far from accepting responsibility for his actions. Throughout his many reports to court for his Rule 35 motion, Martinez makes excuses and otherwise denies accountability for his circumstances. (See Supp.R., pp. 22-24, 35-37.)

Given Martinez's demonstrated inability to comply with the law, particularly with respect to Idaho's DUI law, the record supports that the district court exercised leniency in sentencing Martinez to just three years fixed. Martinez simply fails to show his sentence was excessive under any reasonable view of the facts.

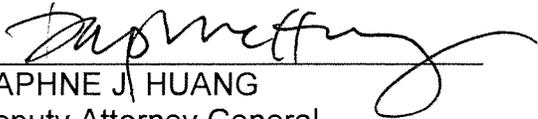
As to Martinez's Rule 35 motion, he asserts that the district court abused its discretion by denying the motion in light of new information, namely that he would not be permitted to apply for the Therapeutic Community program for six months. (Appellant's brief, pp. 11-12 (citing Supp.R., p. 48).) The source of Martinez's assertion is unclear. The Rule 35 motion hearing transcript reflects the district court's concern, asking defense counsel if he knew what Martinez meant by the reference to being "entitled certain educational substance abuse treatment programs in order to obtain a reduction on his sentence." (2/4/13 Tr., p. 4, Ls. 20-24.) Defense counsel responded, "I do not, Your Honor." (2/4/13 Tr., p. 4, L. 25.) Given this exchange concerning the new information presented

for the Rule 35 motion, the record fails to show the district court abused its discretion.

CONCLUSION

The state respectfully requests this Court to affirm the district court's sentence, and orders denying motion for credit for time served, and denying Rule 35 motion.

DATED this 23rd day of May, 2013.



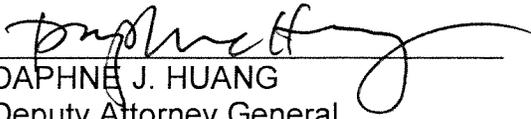
DAPHNE J. HUANG
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of May, 2013, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

JASON C. PINTLER
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



DAPHNE J. HUANG
Deputy Attorney General

DJH/pm