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State v. Munoz-Chavez Appellant's Brief Dckt. 42645

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, vs. ROGELIO MUNOZ-CHAVEZ, Defendant-Appellant.	Docket No. 42645 Case No. CR-2013-2994 **APPELLANT'S BRIEF**

BRIEF OF APPELLANT

Appeal from the District Court of the Fifth Judicial District
of the State of Idaho, in and for the county of Minidoka

HONORABLE JONATHAN BRODY
District Judge

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ISSUE ON APPEAL

The judge erred in sentencing Mr. Munoz-Chavez to a Unified Term of four (4) years, with a determinate sentence of eighteen (18) months and an indeterminate sentence of thirty (30) months, despite falling within the statutory maximum, as Mr. Munoz-Chavez was attempting to defend himself from the Victim when he engaged in the Aggravated Battery.

STATEMENT OF FACTS

On or about the 8th day of October, 2013, Defendant Rogelio Munoz-Chavez (Defendant) discharged a firearm in the direction of the victim, Encarnacion (Sean) Duarte, in the attempt to dissuade the Victim from continuing a physical fight with the Defendant. The firearm struck the Victim, resulting in injury to the Victim. As a result, on or about that same day, Defendant was arrested and charged with one count of Aggravated Battery in violation of I.C. § 18-907(1)(b).

On the 21th day of July, 2014, Defendant Rogelio Munoz-Chavez, pursuant to a Plea Agreement between the parties, entered a plea of Guilty to one count of Aggravated Battery in violation of I.C. § 18-907(1)(b). The Defendant attended a Sentencing Hearing on September 29th, 2014, wherein he was sentenced to a unified sentence of four (4) years, with a total of eighteen (18) months determinate and thirty (30) months indeterminate, with a total of twenty-four (24) days being credited for time served.

STANDARD OF REVIEW

Mr. Munoz-Chavez challenges the sentence imposed upon his conviction. In those cases where the Defendant challenges the sentence within the statutory maximum, the court reviews the evidence and determines whether there was clear abuse of discretion by the judge. [1] The sentence will be will be upheld if it is found to be reasonable; a sentence is reasonable if it appears necessary, at the time of sentencing, to accomplish the primary objective of protecting society, and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case. [2]

[1] *State* v. *Toohill*, 650 P.2d 707 (Id. Ct. App. 1982).
[2] *Id.* at 710.

ARGUMENT

I. The judge abused his discretion in sentencing Mr. Munoz-Chavez to a unified term of four (4) years, as Mr. Munoz-Chavez was attempting to defend himself from the Victim when he engaged in the Aggravated Battery..

The sentence of the Defendant to a Unified Sentence of four years violates the "clear abuse of discretion" standard established in *State* v. *Toohill*, 650 P.2d 707 (Id. Ct. App. 1982), and is therefore excessive.

Appellate review of the length of a sentence imposed by a lower court is governed by a "clear abuse of discretion" standard. "Review of the length of a sentence is governed by the same 'clear abuse' standard discussed above. Our Supreme Court has held that if a sentence is within the statutory maximum, it will not be disturbed on appeal unless the appellant affirmatively shows a 'clear abuse of discretion.'" *State* v. *Toohill*, 650 P.2d 707, 710 (Id. Ct. App. 1982). A sentence within the statutory maximum will be upheld if it is found to be reasonable, defined by the court as "appear[ing] necessary, at the time of sentencing, to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case." Id. Sentences longer than necessary to accomplish these aims of the court are deemed unreasonable. Id.

The sentence imposed by the District Court in this case is within the statutory maximum, and is therefore governed by the "clear abuse of discretion" standard. "An aggravated battery is punishable by imprisonment in the state prison not to exceed fifteen (15) years." I.C. § 18-908.

Insofar as a Unified Sentence of four (4) years does not exceed the statutory maximum of fifteen (15) years, the Sentence is therefore governed by the "clear abuse of discretion" standard.

Nevertheless, the sentence is unlikely to accomplish the aim of protecting society, deterring future acts of violence or providing rehabilitation for the Defendant, and is therefore excessive. The Defendant in this case had already been involved in a fistfight with the Victim, and feared both that the Victim intended to re-initiate the fight, and that he would bring reinforcements into the altercation with him. The Defendant attempted to deter the Victim from re-initiating the physical conflict, and in so doing, shot him instead.

Under such facts, it is difficult to see how the Sentence imposed by the Court upon the Defendant meets the standard established in *Toohill*. The Defendant himself is not a threat to society, having never before engaged in any violent conduct against any person. Indeed, the Defendant only engaged in such actions in extremis when faced with the impending assault by more than one man, each of whom was larger and younger than he. And even then, the Defendant clearly admitted from the beginning that he thought that he was firing to the ground in front of the Victim, rather than directly at him. While his actions were arguably imprudent, the imprudence of the Defendant is not a justification for imposing a sentence under *Toohill*.

Under the standard *Toohill* does establish, the sentence of the Court ignores that the goal of protecting society ought to have mitigated rather than aggravated the sentence. Defendant had reason to fear for his safety because he had been in a physical altercation with the Victim only a half-hour prior, and that the Defendant had reason to believe that the Victim intended to escalate

the threat himself by bringing more assailants than the Defendant could be expected to defend, and had no way of knowing whether the Victim would arm himself with weapons sufficient to finish the attack. The law does not countenance that the battered must allow himself to be attacked a second time with even greater force to attempt self-defense. In short, while the imposition of this sentence clearly relates to the primary goal of protecting society, it nevertheless ignores both the principle of self-defense in protecting society, and the fact that the Defendant had an interest in protecting himself under the facts of the case.

Moreover, the Sentence in this case possesses, at best, minimal deterrent effect, and to the extent that it does, it presents a potentially chilling effect against valid attempts to defend oneself. While the actions of the Defendant towards the victim may have been imprudent, they were nevertheless understandable given the circumstances of the case. The Victim had assaulted the Defendant a half-hour prior to the shooting. The Victim was a larger, stronger man than the Defendant. The Victim had family on the farm, and a half-hour to potentially arm himself. And the Victim returned, in Defendant's eyes, to continue the conflict, thereby demonstrating that fisticuffs were already insufficient means to deter and prevent future attacks on his person.

In such a circumstance, it is highly unlikely that similarly-situated individuals will consider the potential legal consequences of their actions above their immediate need to protect their person. Moreover, given the pre-eminent principle of protecting society, it is critical that the Court countenance whether they wish individuals to make such calculations in the moment, lest they risk innocents refraining from their legal right to defend themselves lest they be charged

with a crime. As such, the principle of deterrence again ought to mitigate rather than aggravate the Sentence imposed in this case.

Finally, the Sentence provides little to no rehabilitative value for the Defendant. The Defendant has no history of violence. The Pre-Sentence Report shows that the Defendant's prior record consists of one Count of Disturbing the Peace fifteen years previously when he was a minor. Nor still does the Defendant show any inclination or pattern of acting in anger or impetuously. He does have a long history of productive employment, a stable marriage, and good relations with the community in which he lives. This act, in short, seems to be a significant aberration from his usual actions, which is in keeping given the extreme provocation it took to produce it. It is unclear then exactly how one rehabilitates a person for their inclination to violence and aggression when that person, barring one extreme act in extreme circumstances, demonstrates no such inclination.

As such, the Court is left only with the final prong of retribution. While it is certainly true that, as the Pre-Sentence Report mentions multiple times, is a member of a currently disfavored class, namely that of an undocumented immigrant, it is nevertheless improper for the Court to enact retribution on those grounds without first charging him. The only proper grounds for retribution is the act for which Defendant was charged, and the act for which Defendant was charged resulted from an attempt to defend himself from a second battery upon his person by the Victim. As such, the only grounds upon which the Court may rest its sentence is that they find that the Defendant acted imprudently in his attempt to defend himself from that second battery,

and have imposed their sentence to express their displeasure at that imprudence. Even were the Court to find such an argument acceptable, it is nevertheless clear that a lesser sentence would express the same displeasure, and as such is not necessary. The sentence therefore is unreasonable under the *Toohill* standard, and must be set aside as exceeding the discretion of the District Court.

CONCLUSION

Insofar as the Sentence exceeds that necessary to impose the desired goals of protecting society, deterrence, rehabilitation and retribution, it is unreasonable, and therefore exceeds the standards of discretion described in *State* v. *Toohill*, 650 P.2d 707, 710 (Id. Ct. App. 1982). The sentence therefore exceeds judicial discretion, and ought to be reduced to comport with the *Toohill* standard.

DATED this 7th day of January, 2015

Kent D. Jensen

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of January, 2015, I served the foregoing **Appellant's Brief** to the attorney for the Plaintiff-Respondent by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

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