

10-29-2015

State v. Garza Respondent's Brief Dckt. 42849

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 42849
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2013-6554
)	
GILBERTO GARZA, JR.,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Garza failed to establish that the district court abused its discretion by imposing a unified sentence of 14 years, with seven years fixed, upon his guilty plea to grand theft?

Garza Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Garza pled guilty to grand theft and the district court imposed a unified sentence of 14 years, with seven years fixed. (R., pp.215-18.) Garza filed a notice of appeal timely from the judgment of conviction. (R., pp.219-23.)

Garza asserts his sentence is excessive in light of his desire to be “a family man” and because, at sentencing, his counsel recommended “intensive programming.” (Appellant’s brief, pp.3-4.) 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 that 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 that 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 that 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.

The penalty for grand theft is not less than one year, up to 14 years in prison. I.C. §§ 18-2407(1)(b), -2408(2). The district court imposed a unified sentence of 14 years, with seven years fixed, which falls well within the statutory guidelines. (R., pp.215-18.) At sentencing, the district court articulated the correct legal standards applicable to its decision and also set forth in detail its reasons for imposing Garza’s sentence. (11/24/14 Tr., p.194, L.20 – p.198, L.8.) The state submits that Garza has failed to establish an abuse of discretion, for reasons more fully set forth in the attached

excerpt of the sentencing hearing transcript, which the state adopts as its argument on appeal. (Appendix A)

Conclusion

The state respectfully requests this Court to affirm Garza's conviction and sentence.

DATED this 29th day of October, 2015.

/s/ _____
LORI A. FLEMING
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 29th day of October, 2015, 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/ _____
LORI A. FLEMING
Deputy Attorney General

APPENDIX A

1 but there's an awful lot of good about Gilbert. And
 2 I've had the opportunity to listen to a lot of phone
 3 conversations that he's had with his wife and others,
 4 and it's kind of sad because here is this guy that
 5 really wants to be out and be with everybody and he is
 6 not able to do that. And he knows that he is not here
 7 because somebody is telling lies about him or anything
 8 like that, he's here because he committed a crime.

9 So, your Honor, I just think that if he
 10 goes out to the penitentiary there probably not going to
 11 give him a bunch of programming, if he's got a
 12 seven-year fixed sentence, they're going to let him sit
 13 around in a jail cell up until about a year before he
 14 gets out and then try to get him into programming so
 15 that he can try to make parole. If you give him the
 16 Therapeutic Rider, you have something right away they'll
 17 get him right into corrections courses, and I think that
 18 he will benefit from them a great deal.

19 Now, counsel stated that he started this
 20 back in 2005. That was nine years ago, and Gilbert is
 21 older, wiser, but sitting in the penitentiary I'm just
 22 afraid of when he comes out, he's not going to be any
 23 better and therefore the community is not going to be
 24 any safer. And I know that the main concern is the
 25 protection of society. He's got a couple of more

1 In fashioning a sentence, I'm mindful of
 2 and guided by the objectives of, first and foremost,
 3 protecting society but also of achieving deterrence, the
 4 need for rehabilitation and the need for retribution or
 5 punishment.

6 I have reviewed, as I indicated, the PSI
 7 materials, including the evaluations that have been done
 8 in this case. A review of those records and the
 9 information available to the court, the court -- what is
 10 clear to the court to begin with is that this was not
 11 your run-of-the-mill receipt of stolen goods grand-theft
 12 case. This was an extensive, overreaching theft of not
 13 just items in a home but of a home of nearly every
 14 material possession in the home.

15 I don't buy for a second, based on the
 16 information available, the idea that Mr. Garza's
 17 involvement in this was only with respect to the receipt
 18 of the goods. It is quite clear that he was involved
 19 most likely in every aspect of this theft and frankly
 20 probably not alone.

21 This type of theft rocks the victim. When
 22 your home is invaded, and it's clear that people have
 23 not just taken things but effectively taken up residence
 24 to expend the effort to remove all of the contents of
 25 the home to the tune of almost a million dollars, it

1 gauntlets to go through before this is all over for him,
 2 we'll see how those turn out, but I would just ask if
 3 you give Gilbert this one chance on the rider. Thank
 4 you.

5 THE COURT: Thank you.

6 Mr. Garza, do you wish to make any
 7 comments or statements to the court?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: All right. Mr. Taber, I was looking
 10 at time served issues and my review indicates that
 11 Mr. Garza first was arrested on this case on May 17th,
 12 2013, he bonded out June 26, 2013, and then, although
 13 already in custody on other charges, had his bond revoked
 14 in this case again on July 25, 2014. Those are the days
 15 I'm working on in terms of credit.

16 MR. TABER: That sounds correct to me,
 17 your Honor.

18 THE COURT: Could you get a number. That gives
 19 us 163 on this case.

20 All right. Mr. Garza, on your plea of
 21 guilty, I hereby find you guilty. In an exercise of my
 22 discretion in sentencing, I've considered the two Hill
 23 factors, including the nature of the offense, the
 24 character of the offender and any mitigating or
 25 aggravating factors as well.

1 leaves the natural sense of and feeling of violation,
 2 that a person's home has been violated, a person's
 3 safety and security has been violated. It leaves the
 4 person concerned, rightfully, about their own safety,
 5 their own security.

6 Mr. Garza's history is, I think put
 7 mildly, not good. When it comes to his criminal record,
 8 it is extensive, it's violent and it has demonstrated
 9 repeatedly that Mr. Garza is incapable of conforming his
 10 behavior within the confines of the law. He has been
 11 given every opportunity, made available within the
 12 system, to try to rehabilitate him to give him a chance,
 13 which has failed at every turn. And I'm not at all
 14 convinced that any additional rehabilitation, frankly,
 15 is going to be very effective given Mr. Garza's history.

16 What is needed in my view in this case is
 17 the protection of society by removal of Mr. Garza from
 18 society for an extended period of time. This will also
 19 send a message to others who seek to profit at the
 20 expense of victims that some property crimes are not
 21 simply just property crimes, some property crimes are so
 22 invasive, so nefarious that they deserve significant
 23 punishment. And that punishment hopefully in this case,
 24 which is deserved based upon Mr. Garza's conduct in this
 25 case as well as his prior record, will hopefully, as I

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1 indicate, serve as a deterrent to others in the
2 community.

3 In deciding what sentence to hand down in
4 this case, the court was clearly convinced that a
5 maximum sentence of 14 years is not only appropriate but
6 needed in this case. But really the question is how
7 much of that should be fixed. And, again, because I
8 think the protection of society requires a significant
9 time out and a departure of Mr. Garza from society in
10 order to protect society, as well as a need for
11 deterrence and punishment.

12 I don't think the state's request is too
13 far off base. In fact, in looking at what I thought was
14 appropriate, what the state was recommending was right
15 in the middle of what I was thinking. And therefore,
16 Mr. Garza, I hereby sentence you to the custody of the
17 Idaho State Board of Corrections under the Unified
18 Sentencing Laws of the State of Idaho for an aggregate
19 term of 14 years. The court specifies a minimum period
20 of confinement of seven years fixed, a subsequent
21 indeterminate period of custody of seven years.

22 I don't believe that the court retaining
23 jurisdiction in this case would do any good given
24 Mr. Garza history. He's, I don't think, earned an
25 opportunity to have the court consider this option and I

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1 don't think that option, given his history, would result
2 in anything other than the court ultimately declining
3 jurisdiction later.

4 While I do note that Mr. Garza is not a
5 young man, he's certainly at the end of this sentence
6 will have time back into the community, and I hope that
7 he takes his time to reconsider the type of life he
8 wants to lead.

9 THE DEFENDANT: Seven years to determine that?
10 You're a piece of shit.

11 THE COURT: It's not too late to add on to that.

12 THE DEFENDANT: Let's go, mother fucker, you
13 already judged me. You judged me a long time ago.

14 MS. ENGELHARDT: Junior, stop.

15 THE COURT: Mr. Garza, you will be quiet and
16 respectful in this courtroom.

17 THE DEFENDANT: Hurry the fuck up so I can get on
18 and go on with my fucking life. You already judged me.
19 15 months ago you denied every fucking request I wanted.

20 THE COURT: Remove him, please.

21 THE DEFENDANT: You fucking piece of shit.

22 THE COURT: Calm him down and bring him back in.
23 If you have to tape his mouth, tape his mouth.

24 THE AUDIENCE: (inaudible.)

25 THE COURT: I'm going to ask you to be quiet or

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1 you'll be removed. Another word from anyone, and I'm
2 clearing the courtroom.

3 THE BAILIFF: Your Honor, he said he's willing to
4 be quiet now and let you finish what you want to say.

5 THE COURT: You're remanded to the custody of the
6 sheriff of this county to be delivered to the proper
7 agent of the state board of corrections in execution of
8 the sentence. Any bail is exonerated. Credit will be
9 given for 163 days prior to entry of this judgment.

10 It's further ordered by the court that you
11 provide a DNA sample and right thumbprint impression
12 pursuant to the Idaho DNA Database Act. The court will
13 award court costs, I won't order a fine, restitution in
14 60 days.

15 Mr. Garza, you have the right to appeal.
16 If you cannot afford an attorney, you can request to
17 have one appointed at public expense. Your appeal must
18 be filed within 42 days the date of this order or entry
19 of the written order of judgment of conviction and
20 sentence. All right. We're finished.

21 (Proceedings concluded.)
22 * * *
23
24
25

REPORTER'S CERTIFICATE

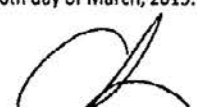
1 STATE OF IDAHO)
2 COUNTY OF ADA)

3
4
5 I, CHRISTIE VALCICH, Certified Court
6 Reporter of the County of Ada, State of Idaho, hereby
7 certify:

8 That I am the reporter who transcribed the
9 proceedings had in the above-entitled action in machine
10 shorthand and thereafter the same was reduced into
11 typewriting under my direct supervision; and that the
12 foregoing transcript contains a full, true, and accurate
13 record of the proceedings had in the above and foregoing
14 cause, which was heard at Boise, Idaho.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand this 16th day of March, 2015.

17
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19
20
21
22
23
24
25


CHRISTIE VALCICH, CSR-RPR
Ada County Courthouse
200 West Front Street
Boise, Idaho