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State v. Ramirez Appellant's Brief Dckt. 43398

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SARA B. THOMAS
State Appellate Public Defender
I.S.B. #5867

JUSTIN M. CURTIS
Deputy State Appellate Public Defender
I.S.B. #6406
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43398
Plaintiff-Respondent,)	
)	TWIN FALLS COUNTY NO. CR 2015-279
v.)	
)	
JOSE ADRIAN RAMIREZ,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Jose Adrian Ramirez appeals from his judgment of conviction for grand theft and unlawful possession of a firearm. Mr. Ramirez was found guilty following a jury trial and the district court imposed sentences of fourteen years, with five years determinate, and five years determinate, respectively. Mr. Ramirez now appeals, and he asserts that the district court abused its discretion by imposing excessive sentences.

Statement of Facts and Course of Proceedings

On December 9, 2014, officers from the Twin Falls Police Department responded to a burglary call. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) The

reporting individual stated that he was in his backyard when he heard several thumps and saw two males at the back door of his neighbor's house. (PSI, p.3.) The reporting individual informed the officers that when the two suspects did not gain access through the back door, they kicked in the front door. (PSI, p.3.)

When the police arrived, the suspects ran in separate directions. (PSI, p.3.) One male, identified as James Larson, stated after he was detained that no one else was involved and that he had taken a cross bow, two long guns, and a board game with a .38 caliber pistol in it. (PSI, p.3.) A second male, identified as Mr. Ramirez, was found on a nearby street. (PSI, p.3.) Despite initially stating that no one else was involved, Mr. Larson testified at trial that Mr. Ramirez participated in entering the house and taking the items. (Trial Tr., p.243, Ls.15-20.)

Mr. Ramirez was charged with grand theft and unlawful possession of a firearm. (R., p.44.) He was found guilty following a jury trial. (R., p.214.) The district court imposed sentences of fourteen years, with five years determinate, for grand theft and five years determinate for unlawful possession of a firearm.¹ (R., p.225.) Mr. Ramirez appealed. (R., p.237.)

¹ Mr. Ramirez notes that both the Judgment of Conviction and Amended Judgment of Conviction state that the sentence for unlawful possession of a firearm is five years indeterminate. (R., pp.228, 234.) However, at the sentencing hearing, the district court stated, "on count 2, the possession of a firearm, which really was part of this crime, to begin with, again, it's one of those that I don't see that as a significant offense, given the nature of what happened here, but a five-year fixed sentence, zero years indeterminate time. Those sentences will run [con]current, and they will both run consecutive to 07-1950." (Sent. Tr., p.14, Ls.5-10.) "When there is a disparity between the sentence imposed in open court and that expressed in the written judgment of conviction, it is the orally pronounced sentence that is effective." *State v. Dreier*, 139 Idaho 246, 254 (Ct. App. 2003) (citing *State v. Watts*, 131 Idaho 782, 786 (Ct. App. 1998.)). This case should therefore be remanded for entry of a judgment consistent with the oral pronouncement. See *id.*

ISSUE

Did the district court abuse its discretion when it imposed sentences of fourteen years, with five years determinate, and five years determinate, upon Mr. Ramirez following his convictions for grand theft and unlawful possession of a firearm?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Sentences Of Fourteen Years, With Five Years Fixed, And Five Years Determinate, Upon Mr. Ramirez Following His Convictions for Grand Theft And Unlawful Possession Of A Firearm

Mr. Ramirez asserts that, given any view of the facts, his sentences of fourteen years, with five years fixed, and five years determinate, are excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Ramirez does not allege that his sentences exceed the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Ramirez must show that in light of the governing criteria, the sentences are excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.

Id. (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Mr. Ramirez addressed the district court at the sentencing hearing. He stated,

First off, I want to apologize to the victim and the community for committing these crimes. I do have a lot of poor decision making in my history. I tried to deal with it. I believe I need counseling, one-on-one counseling, medication. I see what I did was wrong, it was very well wrong and serious, at that. I ask the Court that it give me an opportunity to change, like my attorney was saying. TC rider – not a TC rider but the TC program, I never participated in [the] TC Program. It's more intense, more therapeutic. I have done multiple programs through the IDOC, prison, CAPP, RDAP, whatnot. I think TC would really help me out with my thought process, criminal behavior, to recognize – to recognize my criminal thought patterns and whatnot.

Like I said, I apologize to the victim for what I did. It was very wrong and serious, and I would like to thank the Court for their time.

(Sent. Tr., p.9, L.22 – p.10, L.12.)

Counsel for Mr. Ramirez requested that the court impose a sentence of eight years, with three years fixed, so that Mr. Ramirez could participate in programming.

(Sent. Tr., p.9, Ls.7-16.) Counsel noted that the GAIN assessment and the mental health assessment indicated that Mr. Ramirez had mental health issues that required further assessment. (Sent. Tr., p.8, Ls.8-14.) Specifically, counsel noted that due to “acute suicidal and homicidal ideation,” further evaluation was recommended. (Sent. Tr., p.8, Ls.8-14.) Counsel hoped that Mr. Ramirez could receive this further evaluation in the therapeutic community. (Sent. Tr., p.8, Ls.20-25.)

Further, counsel emphasized that Mr. Ramirez got his GED while he was previously incarcerated, which demonstrated that Mr. Ramirez “can conform to some of the rules that were required.” (Sent. Tr., p.8, L.24 – p.9, L.3.)

Mr. Ramirez accepted responsibility for his actions and apologized to the court and the victim. He acknowledged that he needed counseling and medication through the therapeutic community. Considering these factors, Mr. Ramirez respectfully asserts that the district court abused its discretion by imposing an excessive sentence.

CONCLUSION

Mr. Ramirez respectfully requests that this Court reduce his sentences as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing. Further, he requests that his case be remanded for a judgment of conviction consistent with the oral pronouncement.

DATED this 3rd day of May, 2016.

_____/s/_____
JUSTIN M. CURTIS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of May, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JOSE ADRIAN RAMIREZ
INMATE #85394
SICI
PO BOX 8509
BOISE ID 83707

RANDY J STOKER
DISTRICT COURT JUDGE
EMAIL BRIEF

TIM J WILLIAMS
ATTORNEY AT LAW
EMAIL BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL - CRIMINAL DIVISION
EMAIL BRIEF

_____/s/_____
MARY ANN LARA
Administrative Assistant

JMC/mal