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### State v. Garcia-Garcia Appellant's Brief Dckt. 45724

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 45724
Plaintiff-Respondent,	)	
	)	CASSIA COUNTY NO. CR 2017-2229
v.	)	
	)	
MARCO A. GARCIA-GARCIA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Marco Garcia-Garcia pled guilty to two counts of aggravated battery. He received a unified sentence of twelve years, with five years fixed, on each count. Mr. Garcia-Garcia contends that his sentence represents an abuse of the district court's discretion, as it is excessive given any view of the facts.

Statement of the Facts & Course of Proceedings

On April 20, 2017, Marco Garcia-Garcia was in an automobile accident while traveling on the interstate. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) Witnesses reported

seeing the Toyota Camry Mr. Garcia-Garcia was driving trying to run a Toyota Highlander off the road. (Presentence Investigation Report (*hereinafter*, PSI), p.3.) The Camry then hit the bumper of the Toyota Highlander as it was exiting the interstate, and then the Camry struck the Highlander again, causing it to roll approximately three times off the side of an interstate off-ramp. (PSI, p.3.) The Camry also lost control and went off the side of the off-ramp.<sup>1</sup> (PSI, p.3.)

Mr. Garcia-Garcia was charged by information with two counts of aggravated battery with two sentencing enhancements for the use of a deadly weapon. (R., pp.28-31.) Pursuant to a plea agreement, Mr. Garcia-Garcia entered an *Alford*<sup>2</sup> plea to two counts of aggravated battery. (10/13/17 Tr., p.3, L.15 – p.4, L.15; p.11, Ls.3-8; R., pp.86-91.) According to the terms of the plea agreement, the State agreed to dismiss the sentencing enhancements and the pending misdemeanor and agreed to recommend a sentence of twelve years, with five years fixed, on each count, to be served concurrently.<sup>3</sup> (10/13/17 Tr., p.3, L.22 – p.4, L.7; R., pp.86-87.) The district court accepted Mr. Garcia-Garcia's guilty plea. (10/13/17 Tr., p.14, L.10.)

At sentencing, the State recommended a sentence of twelve years, with five years fixed. (12/12/17 Tr., p.9, L.23 – p.10, L.1.) Mr. Garcia-Garcia's counsel recommended that he be placed on probation or that the district court retain jurisdiction. (12/12/17 Tr., p.13, Ls.13-121.) The district court sentenced Mr. Garcia-Garcia to twelve years, with five years fixed, on each count. (12/12/17 Tr., p.21, L.19 – p.22, L.1; R., pp.101-104.) The sentences were ordered to be served concurrently. (12/12/17 Tr., p.22, Ls.2-4; R., p.102.)

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<sup>1</sup> Mr. Garcia-Garcia maintains that he was not driving aggressively and that the accident was caused when he drove too fast on wet roads. (PSI, p.6.)

<sup>2</sup> *North Carolina v. Alford*, 400 U.S. 25 (1970).

<sup>3</sup> Mr. Garcia-Garcia was charged with one count of driving without privileges in Cassia County case no. CR-2017-1776, which was consolidated with the aggravated battery case. (PSI, p.7; R., pp.24-25.)

Mr. Garcia-Garcia appeals from the judgment of conviction.<sup>4</sup> (R., pp.106-108.)

### ISSUE

Did the district court abuse its discretion when it sentenced Mr. Garcia-Garcia to twelve years, with five years fixed, following his plea of guilty to two counts of aggravated battery?

### ARGUMENT

#### The District Court Abused Its Discretion When It Sentenced Mr. Garcia-Garcia To A Unified Sentence Of Twelve Years, With Five Years Fixed, Following His Plea Of Guilty To Two Counts Of Aggravated Battery

Mr. Garcia-Garcia asserts that, given any view of the facts, his unified sentence of twelve years, with five years fixed, is 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. Garcia-Garcia does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Garcia-Garcia must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* The governing criteria or objectives of criminal punishment are: (1) protection of

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<sup>4</sup> Mr. Garcia-Garcia signed paperwork, written in English, which indicated he was waiving his right to appeal the sentence; however, Mr. Garcia-Garcia does not speak English and no waiver was put on the record at the time he entered his *Alford* plea. (R., pp.86, 89; *see generally*, 10/13/17 Tr.)

society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.*

The district court abused its discretion in sentencing him excessively.

Mr. Garcia-Garcia does not have difficulty maintaining steady employment. (PSI, p.11.) He was regularly employed in construction work or lawn services prior to his incarceration. (PSI, p.11.) Idaho recognizes that good employment history should be considered a mitigating factor. *See State v. Nice*, 103 Idaho 89, 91 (1982); *see also State v. Shideler*, 103 Idaho 593, 595 (1982).

Further, Mr. Garcia-Garcia expressed remorse for his acts. Mr. Garcia-Garcia, in his PSI Questionnaire, wanted the court to know “I am so sorry about what happened.” (PSI, p.6.) “. . . I’m sorry for what happened in the accident. I never tr[ie]d to hurt or aggress anyone. I never wanted to harm anyone[,] I regret what happened.” (PSI, p.12.) At sentencing, Mr. Garcia-Garcia wanted the court to know that he was sorry and he did not want to harm anyone. (12/12/17 Tr., p.14, Ls.10-13.) Idaho recognizes that some leniency is required when a defendant expresses remorse for his conduct and accepts responsibility for his acts. *State v. Shideler*, 103 Idaho 593, 595 (1982); *State v. Alberts*, 121 Idaho 204, 209 (Ct. App. 1991).

Based upon the above mitigating factors, Mr. Garcia-Garcia asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his good work history and remorse, it would have imposed a less severe sentence.

CONCLUSION

Mr. Garcia-Garcia respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 30<sup>th</sup> day of August, 2018.

/s/ Sally J. Cooley  
SALLY J. COOLEY  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30<sup>th</sup> day of August, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

SJC/eas