7-22-2019

State v. Garcia Appellant's Brief Dckt. 46616

ERIC D. FREDERICKSEN
State Appellate Public Defender
I.S.B. #6555

ANDREA W. REYNOLDS
Deputy State Appellate Public Defender
I.S.B. #9525
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985
E-mail: documents@sapd.state.id.us

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 46616-2018
Plaintiff-Respondent,	)	
	)	TWIN FALLS COUNTY
v.	)	NO. CR42-18-7482
	)	
JUSTICE TYREL GARCIA,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

STATEMENT OF THE CASE

Nature of the Case

Justice Tyrel Garcia pled guilty to trafficking in marijuana weighing one pound or more, and was sentenced to a unified term of seven years, with three years fixed. He contends the district court abused its discretion when it imposed this sentence upon him, considering the plea agreement and the parties' recommendations.

Statement of Facts and Course of Proceedings

Mr. Garcia was found to be in possession of over seven pounds of marijuana when his home was searched pursuant to a search warrant. (Conf. Exs., pp.44-52.) He was charged by Information with trafficking in marijuana weighing five pounds or more. (R., pp.27-29.) He entered into an agreement with the State pursuant to which he agreed to plead guilty to an amended charge of trafficking in marijuana weighing one pound or more, and the State agreed to recommend a unified sentence of six years, with two years fixed. (8/27/18 Tr., p.9, L.20 – p.10, L.6; R., pp.32-42.) While the plea offer states the sentence is stipulated, counsel for Mr. Garcia made clear at the change of plea hearing that he intended to recommend a sentence of one year fixed. (8/27/18 Tr., p.8, Ls.19-22.) The district court confirmed with the prosecutor that the sentence set forth in the plea offer was not stipulated, and accepted Mr. Garcia's guilty plea. (8/27/18 Tr., p.9, Ls.1-14, p.10, Ls.1-9, p.13, Ls.10-17.)

On September 24, 2018, Mr. Garcia allegedly committed a battery against Kyle Skuza, an off-duty police officer, by "spit[ting] on [him] near the softball fields." (R., pp.61-64.) Counsel for Mr. Garcia filed a motion to continue sentencing until after Mr. Garcia was tried on the misdemeanor battery charge. (R., p.53.) The district court held a hearing, and counsel for Mr. Garcia explained Mr. Garcia intended to contest the battery charge. (10/23/18 Tr., p.4.)[1] The district court denied the motion. (10/23/18 Tr., p.5.)

At sentencing, the State presented as evidence in aggregation, the testimony of Mr. Skuza regarding the softball incident. (11/5/18 Tr., p.3, L.25 – p.4, L.2.) Mr. Skuza testified he was driving his SUV to play a softball game for his team, "Cuff 'Em and Stuff 'Em," when he

[1] The transcript of the motion to continue sentencing hearing, held on October 23, 2018, does not contain line numbers.

encountered Mr. Garcia driving the wrong way down a one-way road. (Tr., p.5, Ls.16-21, p.9, Ls.9-15.) Mr. Garcia asked Mr. Skuza to get onto the shoulder, but Mr. Skuza refused, and instead placed his vehicle in park. (Tr., p.6, Ls.1-14.) Mr. Garcia drove past Mr. Skuza and spit at him, striking his left cheek. (11/5/18 Tr., p.6, Ls.14-16.) Mr. Skuza said he recognized Mr. Garcia from softball, and knew him from his work as a school resource officer. (11/5/18 Tr., p.5, Ls.4-6, p.6, Ls.22-25.) Mr. Skuza said he "doubt[ed]" Mr. Garcia recognized him. (11/5/18 Tr., p.10, Ls.7-9.)

The prosecutor said that, because of the new charge, he was not bound by the sentencing recommendation contained in the plea agreement. (11/5/18 Tr., p.12, Ls.17-25.) Instead of six years, with two years fixed, he recommended a sentence of seven years, with three years fixed. (11/5/18 Tr., p.13, Ls.8-14.) Counsel for Mr. Garcia recommended the mandatory minimum of one year fixed. (11/5/18 Tr., p.14, Ls.21-22.) After defense counsel made his recommendation, the prosecutor said he was "going to interject" because he had "an issue with what [counsel for Mr. Garcia] is asking for." (11/5/18 Tr., p.16, Ls.13-14.) He continued:

> If the Court looks at the plea agreement, the defense is restricted to asking for two years fixed. They cannot ask for one year fixed. While the defendant has relieved the State of maintaining that recommendation, the defendant is not relieved. And so in making his recommendation here today, Your Honor, the defendant is violating the terms of the plea agreement once again.

(11/5/18 Tr., p.16, Ls.15-21.) The district court said its notes indicated the sentence was stipulated. (11/5/18 Tr., p.17, Ls.1-6.) Counsel for Mr. Garcia explained otherwise, and the district court said, "I have what was signed by the defendant in front of me." (11/5/18 Tr., p.18, Ls.1-3.) The prosecutor then asked the district court to disregard defense counsel's request. (11/5/18 Tr., p.18, Ls.21-25.) He said it was "clear in the record" and "clear in the plea

agreement" that Mr. Garcia was bound to ask for no less than two years fixed. (11/5/18 Tr., p.18, Ls.23-24.)

The district court sentenced Mr. Garcia to a unified term of seven years, with three years fixed. (11/5/18 Tr., p.20, Ls.23-25.) The judgment of conviction was entered on November 6, 2018, and Mr. Garcia filed a timely notice of appeal on December 14, 2018. (R., pp.66-74, 82-86.)

ISSUE

Did the district court abuse its discretion when it sentenced Mr. Garcia to a unified term of seven years, with three years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Sentenced Mr. Garcia To A Unified Term Of Seven Years, With Three Years Fixed

A. Introduction

The district court abused its discretion when it imposed the sentence recommended by the prosecutor, seven years with three years fixed, and discounted defense counsel's recommended sentence based on its mistaken recollection of the plea agreement.

B. Standard Of Review

This Court reviews sentencing decisions for an abuse of discretion. *State v. McIntosh*, 160 Idaho 1, 8 (2016). This Court considers whether the trial court: "(1) correctly perceived the issue as one of discretion; (2) acted within the boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by an exercise of reason." *Lunneborg v. My Fun Life*, 163 Idaho 856, 863 (2018).

C. The District Court Did Not Reach Its Decision By An Exercise Of Reason As It Discounted The Sentence Recommend By Defense Counsel Based On Its Mistaken Recollection Of The Plea Agreement

At sentencing, counsel for Mr. Garcia recommended a sentence of one year fixed, which is the mandatory minimum for trafficking in marijuana weighing one pound or more under Idaho Code § 37-2732B(a)(1)(B). (11/5/18 Tr., p.14, Ls.21-22.) After defense counsel made this recommendation, the prosecutor said he was "going to interject" because he had "an issue with what [counsel for Mr. Garcia] is asking for." (11/5/18 Tr., p.16, Ls.13-14.) He continued:

> If the Court looks at the plea agreement, the defense is restricted to asking for two years fixed. They cannot ask for one year fixed. While the defendant has relieved the State of maintaining that recommendation, the defendant is not relieved. And so in making his recommendation here today, Your Honor, the defendant is violating the terms of the plea agreement once again.

(11/5/18 Tr., p.16, Ls.15-21.) The district court said its notes indicated the sentence was stipulated. (11/5/18 Tr., p.17, Ls.1-6.) Counsel for Mr. Garcia explained otherwise, and the district court said, "I have what was signed by the defendant in front of me." (11/5/18 Tr., p.18, Ls.1-3.) The prosecutor then asked the district court to disregard defense counsel's request. (11/5/18 Tr., p.18, Ls.21-25.) He said it was "clear in the record" and "clear in the plea agreement" that Mr. Garcia was bound to ask for no less than two years fixed. (11/5/18 Tr., p.18, Ls.23-24.) The district court apparently discounted Mr. Garcia's request, and sentenced Mr. Garcia to the sentence recommended by the prosecutor, based on its mistaken recollection of the plea agreement. (11/5/18 Tr., p.20, Ls.23-25.)

The district court abused its discretion in discounting defense counsel's recommended sentence because defense counsel made it clear at the change of plea hearing that the sentence set forth in the plea offer was not stipulated, and that he intended to recommend a sentence of one year fixed. (8/27/18 Tr., p.8, Ls.19-22.) The district court confirmed with the prosecutor at the

change of plea hearing that the sentence set forth in the plea offer was not stipulated, and accepted Mr. Garcia's guilty plea with that understanding. (8/27/18 Tr., p.9, Ls.1-14, p.10, Ls.1-9, p.13, Ls.10-17.)

In explaining Mr. Garcia's sentence, the district court recognized the case involved a significant amount of marijuana and "could have been charged at a higher trafficking level." (11/5/18 Tr., p.20, Ls.5-8). The case was, of course, originally charged at a higher trafficking level, but was amended down by the prosecutor pursuant to a plea agreement. (R., pp.27-29, 32-42, 49-51.) This fact alone thus cannot justify the sentence imposed. The district court also said at sentencing that it was "not particularly taking much account of [the softball battery] incident." (11/5/18 Tr., p.20, Ls.13-15.) But for that incident, the State would have been bound to recommend a sentence of six years, with two years fixed. (R., pp.32-42; 11/5/18 Tr., p.12, Ls.17-25, p.13, Ls.8-14.)

The district court nonetheless imposed the exact sentence recommended by the prosecutor, making no mention of the sentence recommended by defense counsel. Mr. Garcia specifically bargained for the right to recommend a sentence of one year fixed, and his bargain was all but nullified when the prosecutor asked the district court to disregard the recommendation. The district court apparently discounted defense counsel's recommendation based on its mistaken recollection of the plea agreement. The district court's sentencing decision does not reflect an exercise of reason, and represents an abuse of discretion.

CONCLUSION

Mr. Garcia respectfully requests that this Court remand this case to the district court for a new sentencing hearing.

DATED this 22nd day of July, 2019.

/s/ Andrea W. Reynolds
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 2019, 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/ Kylie M. Fourtner
KYLIE M. FOURTNER
Administrative Assistant

AWR/kmf