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Attorney for defendant-appellant: Felipe Lopez Guadarrama

IN THE SUPREME COURT OF THE STATE OF IDAHO

**STATE OF IDAHO,**

Plaintiff-Respondent,

vs.

**FELIPE N. LOPEZ GUADARRAMA,**

Defendant-Appellant.

NO. 46795-2019

Canyon Co. Case No. CR14-18-07264

APPELLANT'S BRIEF

STATEMENT OF THE CASE

After Mr. Guadarrama pled guilty to Aggravated Battery, the district court sentenced him to a unified sentence of fifteen years with the first twelve years fixed. Mr. Guadarrama appeals from his judgment of conviction and asserts that his sentence is excessive considering the mitigating factors in his case.

Statement of Facts and Procedural History

On November 9, 2018, Mr. Guadarrama pled guilty to Aggravated Battery for shooting Juan Reyes with a firearm. (R., pgs. 53-54) In exchange for his plea, the State agreed to dismiss Count I of the Information Part I and the entirety of the Information Part II. (R., pgs. 53-54) At sentencing, the State requested a unified sentence of fifteen years with the first twelve years fixed. (Tr., p. 6 Ls. 13-14). Defense counsel hinted at a retained jurisdiction but made no specific recommendation. (Tr., pp. 9-10 Ls. 25, 1-5). The court ultimately imposed a unified sentence of

fifteen years with the first twelve fixed. (Tr., p. 14 Ls. 11-13). Mr. Guadarrama timely appealed (R. pp. 68-71).

### ISSUE

Did the district court abuse its discretion when it sentenced Mr. Guadarrama to fifteen years with the first twelve years fixed?

### ARGUMENT

#### The District Court Abused Its Discretion When It Sentenced Mr. Guadarrama To a Fifteen Year Sentence With The First Twelve Years Fixed.

When a defendant challenges his sentence as excessively harsh, this Court will conduct an independent review of the record, taking into account “the nature of the offense, the character of the offender, and the protection of the public interest.” *State v. Miller*, 151 Idaho 828, 834 (2011). The Court reviews the district court’s sentencing decision for an abuse of discretion which occurs if the district court imposed a sentence that is unreasonable, and thus excessive, “under any reasonable view of the facts.” *State v. Strand*, 137 Idaho 457, 460 (2002); *State v. Toohill*, 103 Idaho 565, 568 (Ct. App. 1982). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” *Miller*, 151 Idaho at 834.

Idaho Code § 20-223(1) is also instructive in determining a reasonable sentence. It reads in part: “It is the intent of the legislature to focus prison space on those who commit the most serious offenses or who have the highest likelihood of offending in the future.” To that end, Mr. Guadarrama’s sentence is excessive considering the mitigating evidence in this case, including his age, lack of felony criminal history, work history, and especially the facts surrounding the entire altercation.

Prior to this case Mr. Guadarrama only had a minimal misdemeanor record dating back to 1998. (PSI, pp. 5-8). The facts of the case presented the court with a dilemma. At sentencing

Mr. Juan Reyes informed the court about the huge impact this case had on his life (Tr. pp 3-4). At the same time, Mr. Reyes himself initiated the altercation. As Mr. Knox points out, “Those gentlemen go over and speak to the defendant. And I have no doubt, again, that there was probably some sort of a heated argument.” (Tr. p. 6, Ls. 4-6). It is further borne out in the PSI that Mr. Juan Reyes had hateful preconceptions about Mr. Guadarrama. Page forty-six of the PSI is a copy of Caldwell Police Officer Cordell’s report in which he notes:

Approximately fifteen minutes after I arrived on scene I was directed to accompany Juan Reyes to St. Al’s in Boise by Sergeant Kershaw. I was directed to document anything that might be said. Juan was unable to tell me who the suspect was. He referred to the suspect as a “wetback” and a “nigger.” (PSI p. 46).

Rodolfo Reyes, the victim in the dismissed count of aggravated battery, expressed similar views to Caldwell Police Officer Heitzman as reflected on page sixty-eight of the PSI; “Rodolfo kept stating the shooter was a “fucking immigrant” because he did not speak English.” (PSI p. 68). Further, Rodolfo was on felony probation at the time of the incident and was not even supposed to be at the bar or drinking. (PSI p. 69). Rodolfo also fabricated how the entire incident played out. Caldwell Police Officer Eldridge reports on page forty-eight of the PSI:

While en route Rodolfo said they were near the taco truck eating tacos when this guy came up. Rodolfo said the guy approached his uncle Juan. Rodolfo said he told the guy he did not want any trouble that Rodolfo and his family were there to have fun. Rodolfo said the guy then opened fire hitting him and Juan. (PSI p. 48).

This is completely contradicted by the surveillance video and Mr. Knox’s portrayal at sentencing noted above. Caldwell Police Officer Giambo reports the contents of the video on page fifty-three of the PSI:

I reviewed the video which showed at 03:32:00 hours a black Mazda backing out of the stall and backing up next to a utility trailer while keeping its head lights on. At 03:33:18 three men walk over to the driver side door of the Mazda. (PSI p. 53).

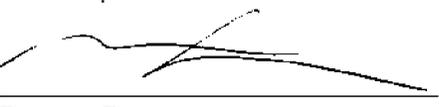
That is a far cry from just getting tacos at the taco truck and being approached by a shooter. The two victims in the case and another individual approached Mr. Guadarrama and based on their comments about him to police noted above; it was by no means in a friendly manner.

Most telling is that Mr. Juan Reyes, at sentencing, has to address the role he played in the altercation. He states “And I just hope that the – that the court sees that my life is just ruined for the rest of my life *regardless of what I may have said that night or what happened.*” (Tr. p. 3, Ls. 10-12 *emphasis added*). This indicates Mr. Reyes did more than just say something to Mr. Guadarrama. The court stated at sentencing “It appears there was a verbal altercation of some sort, perhaps some name calling as well. That in no way justifies pulling a gun and shooting two people.” (Tr., pp. 13-14 Ls. 24-25, 1). Appellant believes this portrayal of the incident is inaccurate. This was not a verbal confrontation in the bar with plenty of people around. This situation involved three men crossing a parking lot at night to approach the driver side door of appellant’s car. Though the level of force appellant responded with may have been excessive, the three men approaching him in his car at night in a parking lot is also more than just a verbal altercation and name-calling.

CONCLUSION

Mr. Guadarrama respectfully requests that this Court reduce his underlying sentence to a unified term of fifteen years with the first five fixed followed by ten years indeterminate.

DATED this 29<sup>th</sup> day of May 2019.

By   
Benson Barrera  
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> day of May, 2019, I served a true and correct copy of the foregoing **APPELLANT'S BRIEF** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

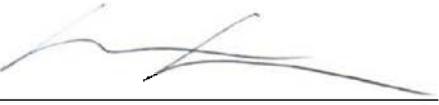
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By

  
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