

2008

Utah v. David Orosco Garcia : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff / Appellee,

vs.

DAVID OROSCO GARCIA,

Defendant / Appellant.

Case No: 20080703-CA

REPLY BRIEF OF APPELLANT

APPEAL FROM THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE
OF UTAH, FROM THE JUDGMENT, SENTENCE AND COMMITMENT ON THREE
FELONY CASES BEFORE THE HONORABLE VERNICE TREASE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ARGUMENT	1
1. The trial court abused its discretion when it sentenced Garcia to prison instead of probation	1
CONCLUSION AND PRECISE RELIEF SOUGHT	3

TABLE OF AUTHORITIES

Statutory Provisions

Utah Code Annotated § 76-3-201	2
--------------------------------------	---

Cases Cited

State Cases

<i>State v. Helms</i> , 2002 UT 12, 40 P.3d 626 (Utah 2002)	2
<i>State v. Moa</i> , 2009 UT App 231	2
<i>State v. Rhodes</i> , 818 P.2d 1048 (Utah App. 1991)	1

IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff / Appellee,

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Case No: 20080703-CA

DAVID OROSCO GARCIA,

Defendant / Appellant.

REPLY BRIEF OF APPELLANT

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT SENTENCED GARCIA TO PRISON INSTEAD OF PROBATION.

In its brief the State has claimed “regardless of whether Defendant’s particular contentions are correct, there was nothing ‘inherently unfair’ about the court’s decision to sentence him to prison.” Appellee’s Brief at 7 (*citing State v. Rhodes*, 818 P.2d 1048, 1051 (Utah App. 1991) (appellate courts only reverse a trial court’s sentencing decision where the actions of the judge were so inherently unfair as to constitute an abuse of discretion)). The State supports this assertion by listing reasons why it considers prison fair in Garcia’s case, including the number of charges, his criminal history, problems while incarcerated and on probation, gang affiliation, defendant’s history of dishonesty with law enforcement, and substance abuse problems.

While these reasons may be relevant to a layperson's determination of who deserves prison, these reasons are not relevant in considering the inherent fairness of the court's sentence. When this Court reviews a trial court's discretion, looking for inherently unfair conduct by the trial court, the focus should be on the court and not the defendant. Here, despite Garcia's checkered past and the State's characterization that a reasonable person would have sentenced him to prison, the question is whether or not the trial court's conduct was unfair. "A trial court abuses its discretion in sentencing when, among other things, it 'fails to consider all legally relevant factors.'" *State v. Helms*, 2002 UT 12, ¶ 8, 40 P.3d 626 (Utah 2002). The question is not, as the State claims, given the surrounding circumstances, is it unfair that the defendant was sent to prison. Instead, it is whether the trial court's decision was unfair given the fact that the court did not consider relevant matters.

A defendant has the burden of providing evidence that a trial court abused its discretion in weighing the legally relevant factors, otherwise this Court will presume that the trial court considered the proper factors. *See State v. Moa*, 2009 UT App 231 ¶ 20; *see also State v. Helms*, 2002 UT 12, ¶ 11.

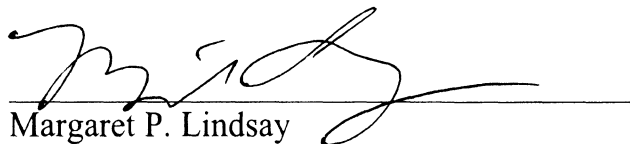
This Court should find an abuse of discretion because the trial court improperly considered violent criminal activities under the aggravating circumstances in Garcia's presentence report. Utah Code Annotated § 76-3-201(1)(b) defines "Criminal activities" as "any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct." multiple documented incidents of violence not resulting

in conviction where there had not been a court approved stipulation to those alleged incidents (PSI Form 4, Page 1). This improper consideration was exacerbated by the State when it introduced alleged violent offenses in Garcia's criminal history unsupported by the record (R. 95: 7).

CONCLUSION AND PRECISE RELIEF SOUGHT

The trial court abused its discretion by considering improper factors at sentencing making its conduct inherently unfair. As a result this Court should vacate the judgment, sentence and commitment and remand to the District Court for to be resentenced.

RESPECTFULLY SUBMITTED this 25th day of September, 2009.


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CERTIFICATE OF MAILING

I hereby certify that I delivered (2) true and accurate copies of the foregoing Reply Brief, and a PDF copy on CD, to the Appeals Division, Utah Attorney General, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, UT 84114, this 25th day of September, 2009.

