

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Plaintiff and Appellee,	)		
	)	Case No. 20070356-CA	
v.	)		
	)	F I L E D	
Jesus Partida,	)	(April 29, 2010)	
	)		
Defendant and Appellant.	)	<table border="1"><tr><td>2010 UT App 104</td></tr></table>	2010 UT App 104
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Fourth District, Provo Department, 051403347  
The Honorable Steven L. Hansen

Attorneys: Margaret P. Lindsay, Spanish Fork, for Appellant  
Mark L. Shurtleff and Kenneth A. Bronston, Salt Lake  
City, for Appellee

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Before Judges Orme, Thorne, and Bench.<sup>1</sup>

ORME, Judge:

We have determined that "[t]he facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument." Utah R. App. P. 29(a)(3). Moreover, the issues presented are readily resolved under applicable law.

In Utah, a trial court is allowed "wide latitude and discretion in sentencing. . . . An appellate court will set aside a sentence imposed by the trial court if the sentence represents an abuse of discretion." State v. Boyd, 2001 UT 30, ¶ 31, 25 P.3d 985 (omission in original) (citation and internal quotation marks omitted). "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 (citation and internal quotation marks omitted). If a defendant is convicted "of more than one felony offense," as Partida was, in making its determination of "whether to impose

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<sup>1</sup>The Honorable Russell W. Bench, Senior Judge, sat by special assignment pursuant to Utah Code section 78A-3-103(2) (2008) and rule 11-201(6) of the Supreme Court Rules of Professional Practice.

concurrent or consecutive sentences for the offenses," Utah Code Ann. § 76-3-401(1) (2008),<sup>2</sup> the trial court must "consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant," *id.* § 76-3-401(2). The record--in particular the trial court's remarks during the sentencing hearing--indicates that the trial court adequately considered the required statutory factors specified in Utah Code section 76-3-401(2). In essence, Partida does not dispute that the trial court considered the required statutory factors; rather, Partida argues that the trial court should have considered additional mitigating factors that were relevant to the statutorily required factors and weighed in favor of concurrent sentences. For the following reasons, Partida's arguments are without merit.

First, Partida argues that additional mitigating factors in the presentence investigation report (PSI), i.e., Partida's score on the sex offender criminal history assessment; his time already served; and his history of having no gang involvement, substance abuse issues, or other criminal convictions, were not adequately considered by the trial court and weighed in favor of concurrent sentences. We reject this argument because the trial court referenced the PSI at sentencing and is therefore presumed to have considered each of these factors. *See Helms*, 2002 UT 12, ¶¶ 12-13 (holding that the trial court's statement that it had carefully read the PSI was sufficient evidence "that the trial court did consider [the defendant's] history, character, and rehabilitative needs"). Moreover, "the burden is on [Partida] to show that the trial court did not properly consider all the factors in section 76-3-401([2]). The . . . existence of circumstances favorable to [Partida] do[es] not meet this burden." *Id.* ¶ 16. Furthermore, Partida has not established that the trial court abused its discretion, especially because these additional mitigating factors are undoubtedly outweighed by the aggravating circumstances, including the gravity of his crimes; the multiple, vulnerable victims; and the remarks of the diagnostic evaluator, who stated that "there is reason to believe that [Partida] represents a high risk to sexually offend in the future."

Next, Partida contends that his voluntary confession, his assisting law enforcement to resolve these crimes, and his history as a good employee should have been considered as

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<sup>2</sup>Except as otherwise noted, we cite to the current version of the Utah Code for the reader's convenience and because no substantive changes have been made to the pivotal statute since Partida's 2007 sentencing, *see* Utah Code Ann. § 76-3-401 amendment notes (2008).

mitigating factors that weighed in favor of concurrent sentences. Indeed, the trial court considered Partida's confession and recognized that only Partida's coming forward and confessing led to his convictions. However, Partida's later attempts to bar admission of his confession, and his denial at sentencing of having actually committed the offenses, substantially undercut whatever benefit he might otherwise have derived from having come forward. Furthermore, although Partida was considered a good employee before his sexual abuse of multiple victims was revealed, his employer also stated the obvious: that sexually abusing the patients in his care would be "very inappropriate." Thus, any mitigation resulting from his status as a seemingly dependable employee is fully negated by his horrific, surreptitious misconduct in the workplace.

Additionally, Partida claims, without legal support, that all of his offenses "were basically from a single criminal episode," which should mitigate in favor of concurrent sentences. This contention is untenable. A "'single criminal episode' means all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective." Utah Code Ann. § 76-1-401. Partida committed the offenses over a twenty-month period against ten separate victims. In any event, even if Partida's actions were somehow deemed to stem from a "single criminal episode," the trial court is specifically authorized to impose consecutive sentences in such a circumstance. See id. § 76-3-401(5) ("A court may impose consecutive sentences for offenses arising out of a single criminal episode as defined in Section 76-1-401.").

Finally, we reject Partida's argument that concurrent sentences are favored over consecutive sentences. Partida relies on case law that is no longer viable to support his contention.<sup>3</sup> Indeed, Utah Code section 76-3-401(1) clearly vests the trial

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<sup>3</sup>Partida cites State v. Galli, 967 P.2d 930, 938 (Utah 1998), and State v. Strunk, 846 P.2d 1297, 1301 (Utah 1993), in support of his position. However, the statute at issue in those cases was substantially rewritten in 2002, and the following sentence was deleted from Utah Code section 76-3-401(1): "Sentences for state offenses shall run concurrently unless the court states in the sentence that they shall run consecutively." See Act of Mar. 18, 2002, ch. 129, sec. 1, § 401(1), 2002 Utah Laws 129 (codified at Utah Code Ann. § 76-3-401 (2008)). The omitted sentence was replaced with a directive to the trial court to indicate whether concurrent or consecutive sentences were to be imposed and whether they would run concurrently or consecutively to any sentences the defendant was already serving. See Utah Code Ann. § 76-3-401(1)(a)-(b) (2003).

court with discretion to decide whether the sentences will run concurrently or consecutively. See id. § 76-3-401(1).

Affirmed.

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Gregory K. Orme, Judge

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WE CONCUR:

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William A. Thorne Jr., Judge

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Russell W. Bench,  
Senior Judge