

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20060749-CA	
v.)		
)	F I L E D	
Tina Eileen Roberts,)	(March 20, 2008)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2008 UT App 97</td></tr></table>	2008 UT App 97
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Fifth District, St. George Department, 061500067
The Honorable James L. Shumate

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

Before Judges Thorne, Bench, and Davis.

DAVIS, Judge:

Tina Eileen Roberts appeals her sentence of fifteen years to life following her guilty plea to one count of aggravated kidnapping, a first degree felony, see Utah Code Ann. § 76-5-302(3) (Supp. 2007). Roberts claims that the trial court abused its discretion by elevating her sentence from the presumptive middle range of ten years to life to the upper range of fifteen years to life without specifically identifying the mitigating and aggravating factors. We affirm.

Roberts was an active coconspirator in the kidnapping, the beating, the shooting, and the coverup of the murder of Trisha Stubbs. Stubbs had been a witness in the check forgery and burglary investigation of Roberts's codefendant, Jack Brown. Roberts admitted that she "was present when [Stubbs] was brought to [her] residence"; "assaulted [Stubbs] and thereby aided the persons who severely beat and then bound [Stubbs] with duct tape"; and "was present when [Stubbs] was shot and died . . . and [Stubbs's] body was left lying there."

The State charged Roberts with aggravated kidnapping, murder, and obstruction of justice. In exchange for the dismissal of the murder and obstruction charges, Roberts pleaded

guilty to aggravated kidnapping. A person convicted of aggravated kidnapping can be sentenced to one of three prison terms: either six, ten, or fifteen years to life. See id. § 76-5-302(4).

At sentencing, the trial court considered the presentence investigative report (PSI) and received statements from Stubbs's father, the prosecutor, Roberts's trial counsel, and Roberts. The PSI report listed three aggravating factors--the extreme vulnerability of Stubbs, Stubbs's unusually extensive injuries, and the extreme cruelty or depravity of the offense--and one arguably mitigating factor--Roberts's extended period of arrest-free street time. The presentence investigator recommended that Roberts "serve the maximum amount of time in prison that can be ordered."

Roberts argued that the mitigating factor, along with the facts that she was the least involved of the other codefendants and that all of this wrongdoing was part of a single criminal episode, made the intermediate sentence of ten years to life the most appropriate choice. "Utah's indeterminate sentencing scheme, as it was then in effect, required a trial court to impose the middle of the three minimum terms 'unless there [we]re circumstances in aggravation or mitigation of the crime.'" State v. Garner, 2008 UT App 32, ¶ 4, 596 Utah Adv. Rep. 23 (alteration in original) (quoting Utah Code Ann. § 76-3-201(7)(a) (2003) (repealed 2007)). "Thus, this indeterminate sentencing scheme allowed a judge to exercise discretion and increase or decrease the minimum term of a defendant's sentence for aggravated [kidnapping], but the maximum term--life--always remained the same." Id. As required by law, the trial court examined the "circumstances in aggravation or mitigation of the crime," via statements made by Stubbs's father and Roberts in her apology, the PSI, and counsels' arguments. Utah Code Ann. § 76-3-201(7)(a), (c) (2003) (repealed 2007). In issuing Roberts's sentence, the trial court found that Roberts "orchestrated the circumstances" of Stubbs's kidnapping, beating, and murder. "The aggravating circumstances in this case," the trial court concluded, "far outweigh the mitigating circumstances." The trial court then ordered Roberts to serve fifteen years to life and made its "strongest recommendation to the Utah Board of Pardons that [Roberts] never see the light of day outside a prison again" because aggravated kidnapping of a police informant was an "assault upon the justice system here in the state of Utah." However, the trial court did not specifically identify what aggravating and mitigating factors it considered.

"A trial court's sentencing decision . . . is reviewed under an abuse of discretion standard. 'An abuse of discretion results when the judge fails to consider all legally relevant factors or

if the sentence imposed is clearly excessive.'" State v. Candedo, 2008 UT App 4, ¶ 2, 594 Utah Adv. Rep. 8 (quoting State v. Valdovinos, 2003 UT App 432, ¶ 14, 82 P.3d 1167). We "uphold[] the trial court['s sentence] even if it failed to make findings on the record whenever it would be reasonable to assume that the court actually made such findings." State v. Ramirez, 817 P.2d 774, 788 n.6 (Utah 1991). The "instances where this assumption should not be made are normally limited to situations where (1) an ambiguity of facts makes the assumption unreasonable, (2) a statute explicitly provides that written findings must be made, or (3) a prior case states that findings on an issue must be made." State v. Helms, 2002 UT 12, ¶ 11, 40 P.3d 626.

"To impose the greater or lesser mandatory minimum sentence, the trial court must '(1) identify the mitigating and aggravating circumstances and (2) state the reasons for whichever minimum mandatory sentence is imposed.'" State v. Simmons, 2000 UT App 190, ¶ 19, 5 P.3d 1228. "Sentencing should be conducted with full information and with careful deliberation of all relevant factors." State v. Strunk, 846 P.2d 1297, 1300 (Utah 1993). However, "the Utah Supreme Court has noted, . . . in the context of minimum/maximum sentences, that '[o]ne factor in mitigation or aggravation may weigh more than several factors on the opposite scale.'" State v. Jimenez, 2007 UT App 116, ¶ 17, 158 P.3d 1128 (alteration in original) (quoting State v. Russell, 791 P.2d 188, 192 (Utah 1990)). Further, "any mitigating or aggravating circumstance found by the trial court must be supported by evidence, and the proponent of the circumstance bears the burden of proving its existence by a preponderance of the evidence." State v. Moreno, 2005 UT App 200, ¶ 13, 113 P.3d 992.

In State v. Moreno, 2005 UT App 200, 113 P.3d 992, as in the present case, the defendant contended "that the trial court erred in not considering--or more accurately, not finding" a number of mitigating factors. Id. ¶ 14. This court observed that "inferentially, the trial court found that none of [the defendant]'s other claimed mitigating circumstances were supported by the evidence," id., and we held that "the trial court acted well within its discretion in discounting or ignoring [mitigating circumstances] briefly detailed in the PSI . . . and in not accepting them . . . for its sentencing decision," id. ¶ 17.

Here, the trial court stated that it "ha[d] had the opportunity to read a very well prepared and very thorough and complete [PSI]." See Helms, 2002 UT 12, ¶ 13 ("Although the trial court did not in the text of the sentencing order state to what extent it considered each of the statutory factors at the sentencing hearing, it did state: 'The court has gone over this

presentence report rather carefully, and read it'). Because "the record indicates that the trial court considered the mitigating circumstances, but ultimately found that the aggravating factors far outweigh the mitigating [factors] , the fact that [Roberts] views [the] situation differently than did the trial court does not prove that the trial court neglected to consider the [statutory] factors." Jimenez, 2007 UT App 116, ¶ 17 (last three alterations in original) (internal quotation marks and footnotes omitted). Moreover, "Utah's statutory sentencing scheme involves three ranges of sentences, rather than three fixed terms. Importantly, the upper end of the range, the maximum, does not change based on judicial fact finding." Garner, 2008 UT App 32, ¶ 24. Therefore, we affirm.

James Z. Davis, Judge

I CONCUR:

William A. Thorne Jr.,
Associate Presiding Judge

I CONCUR IN RESULT ONLY:

Russell W. Bench, Judge