IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

CESAR VEGA-MOSQUEDA,
Appellant.

No. 2 CA-CR 2016-0222
Filed July 31, 2017

Appeal from the Superior Court in Pima County
No. CR20153206001
The Honorable Paul E. Tang, Judge

AFFIRMED

COUNSEL

Mark Brnovich, Arizona Attorney General
By Jennifer Perkins, Assistant Solicitor General and Joseph T. Maziarz, Chief Counsel, Criminal Appeals Section, Phoenix
Counsel for Appellee

Joel Feinman, Pima County Public Defender
By Erin K. Sutherland, Assistant Public Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Judge Espinosa and Judge Kelly[1] concurred.

S T A R I N G , Presiding Judge:

¶1 After a jury trial, Cesar Vega-Mosqueda was convicted of three counts of sexual assault; one count of assault, domestic violence; and one count of kidnapping, domestic violence. The trial court sentenced him to concurrent and consecutive prison terms totaling 15.75 years. Vega-Mosqueda argues the court incorrectly concluded A.R.S. § 13-1406(C) requires his sentences for sexual assault to be served consecutively. For the reasons that follow, we affirm.

Factual and Procedural Background

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to upholding the jury's verdict." *State v. Causbie*, 241 Ariz. 173, ¶ 2, 384 P.3d 1253, 1255 (App. 2016). In the early morning hours of August 1, 2015, Vega-Mosqueda held the victim captive in a bedroom, struck her head with an automobile jack, and repeatedly sexually assaulted her, putting his penis in her mouth, vagina, and anus without her consent. He was convicted as described above, with the oral, vaginal, and anal penetrations each providing the basis for a count of sexual assault. A.R.S. §§ 13-1401(A)(1), (4), 13-1406(A).

¶3 At the sentencing hearing, the trial court expressed its belief that "under law [it] was bound" to order consecutive sentences for the sexual assault convictions. The state agreed, and recommended minimum or mitigated prison terms on all counts. Vega-Mosqueda requested concurrent sentences for the sexual assault counts, arguing it would be "a violation of double jeopardy to consecutively sentence

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[1]The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

[him] for one continual sexual act." The court imposed minimum, 5.25-year prison terms for the three sexual assaults, but made them consecutive to one another, commenting it had no discretion to do otherwise. Vega-Mosqueda timely appealed and we have jurisdiction pursuant to A.R.S. §§ 13-4031 and 13-4033(A)(1).

Discussion

¶4 Vega-Mosqueda argues the trial court erred in concluding it lacked discretion to impose concurrent prison terms for the sexual assault counts. He asks this court to vacate his sentences and remand this matter for resentencing. We review a court's decision to impose consecutive sentences de novo. *State v. Urquidez*, 213 Ariz. 50, ¶ 6, 138 P.3d 1177, 1179 (App. 2006). We also interpret sentencing statutes de novo. *See State v. Farnsworth*, 241 Ariz. 486, ¶ 13, 389 P.3d 88, 91 (App. 2017). Because the language of a statute is the most reliable indicator of its meaning, "when the statute's language is plain and unambiguous, we follow the text as written." *State v. Skiba*, 199 Ariz. 539, ¶ 8, 19 P.3d 1255, 1257 (App. 2001); *see also In re Casey G.*, 223 Ariz. 519, ¶ 2, 224 P.3d 1016, 1017 (App. 2010) (court shall "ascertain and give effect to" legislature's intent, with "language of the statute" as "best indicator").

¶5 Section 13-1406(C) provides: "The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time." The state argues, and Vega-Mosqueda concedes, the plain language of the statute requires consecutive sentences for his sexual assault convictions. Vega-Mosqueda argues, however, that application of the plain language of § 13-1406(C) leads to an absurd result. *See Bilke v. State*, 206 Ariz. 462, ¶ 11, 80 P.3d 269, 271 (2003) (court must apply plain meaning of statute unless doing so "would lead to impossible or absurd results"); *see also State v. Estrada*, 201 Ariz. 247, ¶ 17, 34 P.3d 356, 360 (2001) (result absurd "if it is so irrational, unnatural, or inconvenient that it cannot be supposed to have been within the intention of persons with ordinary intelligence and discretion"), *quoting Perini Land Dev. Co. v. Pima County*, 170 Ariz. 380, 383, 825 P.2d 1, 4 (1992). He concludes it is absurd that a person who sexually assaulted different victims on separate occasions could receive a lesser sentence than he did for sexually assaulting a single victim

vaginally, anally, and orally during what he characterizes as a single sexual encounter.

¶6 Vega-Mosqueda's conclusory argument concerning sentence disparity is unpersuasive and, in any event, it fails because the law does not regard his actions against the victim as a single sexual encounter, but rather as three separate and independent felonious acts. In *State v. Griffin*, 148 Ariz. 82, 85-86, 713 P.2d 283, 286-87 (1986), our supreme court affirmed consecutive sentences for four counts of sexual assault—one for fellatio, one for anilingus, one for vaginal intercourse, and one for anal intercourse. Although the assaults were all committed against a single victim "within a relatively short time span," the court emphasized they were "four separate and distinct acts of sexual assault"—not "a single continuous act of sexual assault committed several different ways" as the defendant maintained. *Id.*; *cf. State v. Hill*, 104 Ariz. 238, 239-40, 450 P.2d 696, 697-98 (1969). The court therefore held Griffin's consecutive sentences violated neither the prohibition against double jeopardy nor A.R.S. § 13-116.[2] *Griffin*, 148 Ariz. at 86, 713 P.2d at 287.

¶7 Furthermore, the result dictated by the plain language of § 13-1406(C) is not absurd. The legislature had a rational basis for deciding to punish more severely a defendant who commits a greater number of sexual assaults, thereby causing a greater number of distinct harms. *See State v. Boldrey*, 176 Ariz. 378, 381, 861 P.2d 663, 666 (App. 1993). To the extent Vega-Mosqueda argues the legislature made a poor policy choice when it enacted § 13-1406(C), it is an argument better directed to the legislature itself. This court is "not at liberty to rewrite [the] statute under the guise of judicial interpretation." *State v. Florez*, 241 Ariz. 121, n.8, 384 P.3d 335, 341 n.8 (App. 2016), *quoting Tucson Unified Sch. Dist. v. Borek*, 234 Ariz. 364, ¶ 11, 322 P.3d 181, 185 (App. 2014) (alteration in *Florez*). The trial court did not err by applying § 13-1406(C) as written.

[2] Vega-Mosqueda does not reassert his double jeopardy argument before this court.

Disposition

¶8 We affirm Vega-Mosqueda's convictions and sentences.