

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080703-CA
v.)	
)	F I L E D
David Orosco Garcia,)	(October 29, 2009)
)	
Defendant and Appellant.)	2009 UT App 311

Third District, Salt Lake Department, 071901643
The Honorable Vernice Trease

Attorneys: Margaret P. Lindsay, Spanish Fork, for Appellant
Mark L. Shurtleff and Ryan D. Tenney, Salt Lake City,
for Appellee

Before Judges Greenwood, Bench, and Davis.

PER CURIAM:

David Orosco Garcia appeals from his sentences after being found guilty of, or pleading guilty to, three counts of possession of a controlled substance, two counts of distribution of a controlled substance, unlawful possession of drug paraphernalia, providing a false identity to a police officer, and possessing a dangerous weapon as a restricted person.¹ Garcia argues that the district court abused its discretion in sentencing him to prison in lieu of probation.

We review the sentencing decision of the district court, including the decision to grant or deny probation, for abuse of discretion. See State v. Valdovinos, 2003 UT App 432, ¶ 14, 82 P.3d 1167. "An abuse of discretion results when the judge fails to consider all legally relevant factors, or if the sentence imposed is clearly excessive." Id. (internal quotation marks omitted). Furthermore, "[a]n appellate court may only find abuse if it can be said that no reasonable [person] would take the view

¹Garcia was found guilty of several crimes in one case. He subsequently entered guilty pleas in two other cases. All three cases were consolidated for purposes of sentencing.

adopted by the trial court." Id. (alteration in original) (internal quotation marks omitted). Finally, a "defendant is not entitled to probation, but rather the court is empowered to place the defendant on probation if it thinks that will best serve the ends of justice and is compatible with the public interest." State v. Rhodes, 818 P.2d 1048, 1051 (Utah Ct. App. 1991).

Garcia argues that the district court abused its discretion in sentencing him to prison in lieu of probation. However, the record demonstrates that there was sufficient evidence to support the district court's decision. First, Garcia's consolidated sentencing hearing involved convictions from three separate criminal episodes. Thus, Garcia's conduct could not be deemed an isolated event. Second, Garcia had an extensive criminal history. Third, Garcia had previously demonstrated that he was not an ideal candidate for supervised release. Specifically, while serving prior sentences for criminal conduct, Garcia was charged with thirty-one different jail infractions, stemming from fourteen separate incidents. Further, Garcia had been placed on probation for a prior conviction only to have it revoked due to his failure to comply with the terms of his probation. Based upon the totality of the circumstances, the district court acted within its discretion in sentencing Garcia to prison in lieu of probation.

Affirmed.

Pamela T. Greenwood,
Presiding Judge

Russell W. Bench, Judge

James Z. Davis, Judge