

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060430-CA
v.)	
)	F I L E D
Francisco Javier Garcia-Lopez,)	(April 26, 2007)
)	
Defendant and Appellant.)	2007 UT App 143

Third District, Salt Lake Department, 051902669
The Honorable Judith S. Atherton

Attorneys: Lori J. Seppi and Ralph W. Dellapiana, Salt Lake
City, for Appellant
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake
City, for Appellee

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

Francisco Javier Garcia-Lopez appeals from his conviction and sentence for sexual abuse of a child. Garcia-Lopez argues that the district court abused its discretion in sentencing him to prison in lieu of probation. We affirm.

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. (quotations and citation omitted). Furthermore, "[a]n appellate court may only find abuse if it can be said that no reasonable person would take the view adopted by the trial court." Id. (quotations and citation omitted).

Garcia-Lopez alleges that the district court erred by failing to review or consider certain medical records referenced by Garcia-Lopez for sentencing purposes. Garcia-Lopez asserts that these medical records exonerated him of several charges that were dropped in the plea deal, or at a minimum, would have given

the judge a different perspective on the victims' allegations. Accordingly, he argues that if the district court had reviewed the records, it would have sentenced him solely upon the conduct to which Garcia-Lopez pleaded guilty, i.e., touching the buttocks of a girl over her clothing, instead of considering the other conduct alleged. Garcia-Lopez opines that under such circumstances, he would have been sentenced to probation instead of prison.

Garcia-Lopez's argument fails because the district court considered all relevant information the parties' presented to the court and made a reasonable sentencing decision based upon that information. While Garcia-Lopez argues that the district court should have considered the medical records referenced in his sentencing memorandum, Garcia-Lopez never provided the medical records in question to the district, nor did he file an appropriate motion with the court to procure the documents. Further, at the sentencing hearing, Garcia-Lopez failed to request a continuance for the purpose of obtaining the records. Thus, the documents were never available for the district court's review, and the only information before the court concerning these private records was unsubstantiated assertions of their content. Therefore, Garcia-Lopez cannot now claim that the district court erred in failing to review these medical records, when Garcia-Lopez failed to obtain, or even attempt to obtain, such documents for the court's review. Cf. State v. Rhodes, 818 P.2d 1048, 1050-51 (Utah Ct. App. 1991) (stating that when a defendant has an adequate period of time to contest a presentence report and fails to do so, it is not a violation of due process to deny a request for a continuance of the sentencing hearing).

Garcia-Lopez also fails to demonstrate that he was prejudiced in any way by the district court's failure to review the referenced medical records. Even if this court were to assume that the statements made by Garcia-Lopez concerning the medical records were true, the record still supports the district court's decision to sentence Garcia-Lopez to prison instead of probation.¹ Despite Garcia-Lopez's statements to the contrary, he has an extensive criminal history. Due to that history, and to his failure to comply with previous probation conditions, the presentence report recommended that he was not a good candidate for probation. Further, in sentencing Garcia-Lopez, the district court did not focus on the conduct alleged in the dismissed

¹There is also no evidence that the district court failed to consider the information Garcia-Lopez submitted. The information was provided via Garcia-Lopez's sentencing memorandum. Additionally, it was referenced in both Garcia-Lopez's argument at sentencing, as well as in the presentence report.

allegations. Instead, the district court was particularly focused on "the age and fragility of this victim, and [Garcia-Lopez's] relationship of trust with her." When this information concerning the victim is combined with Garcia-Lopez's long criminal history, it is apparent that the district court did not abuse its discretion in sentencing Garcia-Lopez to prison for the statutory term for the crime to which Garcia-Lopez pleaded guilty. See Valdovinos, 2003 UT App 432 at ¶14; see also State v. Rhodes, 818 P.2d 1048, 1051 (Utah Ct. App. 1991) (stating that a defendant is not entitled to probation).

Affirmed.

Russell W. Bench,
Presiding Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge