STATE V. GARCIA

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
RONNIE GARCIA,
Defendant-Appellant.

No. 33,930

COURT OF APPEALS OF NEW MEXICO

December 11, 2014

APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY, John A. Dean, Jr., District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, for Appellee

Law Office of the Public Defender, Jorge A. Alvarado, Chief Public Defender, Kathleen T. Baldridge, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: TIMOTHY L. GARCIA, Judge, J. MILES HANISEE, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant Ronnie Garcia appeals from the district court's order amending his judgment and sentence to substitute an unuseable prior felony with a different prior felony for habitual offender enhancement purposes. [RP 287] Unpersuaded by

Defendant's docketing statement, we entered a notice of proposed summary disposition, proposing to affirm. Defendant has filed a memorandum in opposition to our notice. We remain unpersuaded and therefore affirm.

{2} On appeal, Defendant raises two issues, challenging (1) the sufficiency of the evidence to support the district court's determination that the substituted prior felony could be used to enhance his sentence pursuant to NMSA 1978, Section 31-18-17 (2009), [DS 2; MIO 4-6] and (2) the enhancement of his sentence based on a prior felony that was not alleged at the time of his sentencing in 2012. [DS 3; MIO 7-9]

{3} Our notice set forth the relevant facts for each issue and set forth the law that we believed controlled. With respect to Issue 1, we stated that, in the absence of an explanation indicating why the State's evidence was insufficient and a specific explanation of how the district court erred in its calculations, we presume no error. [CN 3-4] *See State v. Aragon*, 1999-NMCA-060, ¶ 10, 127 N.M. 393, 981 P.2d 1211 (explaining that there is a presumption of correctness in the rulings of the district court, and the party claiming error bears the burden of showing any alleged error); *see also Muse v. Muse,* 2009-NMCA-003, ¶ 72, 145 N.M. 451, 200 P.3d 104 ("We will not search the record for facts, arguments, and rulings in order to support generalized arguments."). With respect to Issue 2, we noted that the State may seek to enhance a defendant's sentence "at any time following conviction, as long as the sentence enhancement is imposed before the defendant finishes serving the term of incarceration and any parole or probation that may follow that term." *State v. Trujillo*, 2007-NMSC-017, ¶ 10, 141 N.M. 451, 157 P.3d 16 (internal quotation marks and citation omitted). [CN 4-5] Accordingly, Defendant could not have had a reasonable expectation of finality relating to his original sentence. [CN 5]

{4} In response, Defendant argues that he rebutted the State's evidence with his own evidence showing that the prior felony at issue fell outside the ten-year requirement. [MIO 5-6] However, as we explained in our notice, the district court, as fact finder, was entitled to resolve any conflict in the evidence, and in this case, did so in favor of the State. *State v. Salas*, 1999-NMCA-099, ¶ 13, 127 N.M. 686, 986 P.2d 482 (recognizing that it is for the fact finder to resolve any conflict in the testimony of the witnesses and to determine where the weight and credibility lie). Further, Defendant's response fails to articulate how the district court's calculations are incorrect, despite our directive that he do so. *State v. Ibarra*, 1993-NMCA-040, ¶ 11, 116 N.M. 486, 864 P.2d 302 ("A party opposing summary disposition is required to come forward and specifically point out errors in fact and/or law."). Absent such articulation, we rely on the presumption of correctness in the district court's ruling. *See Aragon*, 1999-NMCA-060, ¶ 10 (explaining that there is a presumption of correctness in the rulings of the district court, and the party claiming error bears the burden of showing any alleged error). Lastly, Defendant's arguments relative to Issue 2, which are now pursued under the demands of *State v. Franklin*, 1967-NMSC-151, 78 N.M. 127, 428 P.2d 982, and its progeny, [MIO 8-9] have already been addressed by this Court's notice, and we therefore decline to address them further in this Opinion.

{5} Accordingly, for the reasons set forth in our notice of proposed disposition and in this Opinion, we affirm.

{6} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

TIMOTHY L. GARCIA, Judge

J. MILES HANISEE, Judge