STATE V. HERNANDEZ

STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
ANA HERNANDEZ,
Defendant-Appellant.

No. 33,882

COURT OF APPEALS OF NEW MEXICO

December 4, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Charles Brown, District Judge

COUNSEL

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

The Appellate Law Office of Scott M. Davidson, Ph.D., Esq., Scott M. Davidson, Albuquerque, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: CYNTHIA A. FRY, Judge, TIMOTHY L. GARCIA, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant Ana Hernandez appeals from the district court's order denying her motion to reconsider her sentence. [RP 230] 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} Defendant raises one issue on appeal: whether the district court erred in denying her motion to reconsider her sentence. [DS 6] Specifically, Defendant asserts that the district court erred for four reasons: (1) because she is "a good person who does not deserve to be locked up for ten years," [DS 9-14] (2) because her ten-year sentence is too long for a non-violent offense, [DS 14-18] (3) because she "was struggling to provide for her children," [DS 18-22] and (4) because she "has been rehabilitated and should be returned to society." [DS 22-25]

{3} Our notice explained that Defendant's assertions with respect to her good character and other alleged mitigating factors did not provide a basis for reversal, since sentences are reviewed for abuse of discretion, and there is no abuse of discretion where the sentence imposed is one that is authorized by law. *See State v. Cumpton*, 2000-NMCA-033, ¶ 10, 129 N.M. 47, 1 P.3d 429. In response, Defendant attacks the adequacy of our notice, primarily challenging our reliance on *Cumpton*. [MIO 2-4] While we acknowledge that *Cumpton* does not cite or otherwise discuss Rule 5-801 NMRA, we point out that we relied on *Cumpton* for propositions relating to a trial court's exercise of sentencing discretion. In moving the district court to reconsider the sentence it imposed pursuant to Rule 5-801, Defendant was invoking the district court's sentencing discretion by asking the district court to reduce her sentence. Therefore, we reject Defendant's assertion that *Cumpton* does not support this Court's proposed disposition. Further, there is no reason the abuse of discretion analysis should be different under Rule 5-801 than it is for review of the original sentence.

{4} Moreover, we point out that Defendant was indicted on 324 charges stemming from alleged driver's license fraud, [RP 1-70, 99] and ultimately pleaded guilty to ten counts of perjury, each carrying a potential sentence of eighteen months imprisonment. [RP 107-08] *See* NMSA 1978, § 30-25-1(B) (2009) ("Whoever commits perjury is guilty of a fourth degree felony."); NMSA 1978, § 31-18-15(A)(10) (2007) (providing that the basic sentence of imprisonment for a fourth degree felony is eighteen months). Defendant reached a favorable plea agreement with the State that provided that Defendant would serve an incarceration term of up to ten years. [RP 107-08] Defendant was sentenced in accordance with her agreement, *see State v. Gomez*, 2011-NMCA-120, ¶ 16, 267 P.3d 831("Once [a] plea is accepted, the court is bound by the dictates of due process to honor the agreement and is barred from imposing a sentence that is outside the parameters set by the plea agreement."), and Defendant has provided no authority for the proposition that it is an abuse of discretion for a district court to sentence a defendant to the maximum sentence she agreed to under her plea agreement. *See In re Adoption of Doe*, 1984-NMSC-024, ¶ 2, 100 N.M. 764, 676 P.2d 1329 (recognizing that where a party cites no authority to support an argument, we may assume no such authority exists). In short, Defendant cannot now complain about being sentenced to ten years imprisonment, when she entered the agreement knowing that the district court, in its discretion, could impose that amount of time. As we explained in our notice, while the district court could have sentenced Defendant to less than ten

years as an act of judicial clemency, it was not obligated to do so. *See Cumpton*, 2000-NMCA-033, ¶ 12. Therefore, in light of the substantial charges Defendant was facing and the favorable plea agreement she reached with the State, which the district court accepted and complied with in sentencing Defendant, we perceive no abuse of discretion.

{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:

CYNTHIA A. FRY, Judge

TIMOTHY L. GARCIA, Judge