

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

February 16, 2023

NO. S-1-SC-39574

RALPH CASTILLO,

Petitioner,

v.

RICHARD MARTINEZ, Warden
and STATE OF NEW MEXICO,

Respondent.

ORDER

WHEREAS, this matter came on for consideration by the Court upon petition for writ of certiorari, response and reply filed under Rule 12-501 NMRA, and the Court having considered the petition and being sufficiently advised, Michael E. Vigil, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

NOW, THEREFORE, IT IS ORDERED that the petition for writ of certiorari is DENIED.

IT IS SO ORDERED.



WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 16th day of February, 2023.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

I CERTIFY AND ATTEST:

A true copy was served on all parties
or their counsel of record on date filed.

Zelda Abrita

Clerk of the Supreme Court
of the State of New Mexico

By

Zelda Abrita

Deputy Clerk

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
7/26/2022 9:23 AM
CLERK OF THE COURT
Esperanza Maldonado

STATE OF NEW MEXICO,

Plaintiff-Respondent,

vs.

D-202-CR-2005-02141

RAPLH CASTILLO,

Defendant-Petitioner.

ORDER

THIS MATTER comes to the Court's attention as a result of Defendant-Petitioner Castillo's *Amended Petition for Writ of Habeas Corpus* (Amd Pet) filed on August 4, 2021, and the *State's Response to Habeas Petition* (Response) filed on December 20, 2021, by Plaintiff-Respondent State of New Mexico. Having reviewed the Amd Pet and the Response, along with the Court's records of the instant case, plus having conducted a February 10, 2022, status conference and a May 11, 2022, hearing on the Amd Pet, **the Court finds the Petition is not well-taken and is denied pursuant to the following findings.**

1. Castillo attacks the aggravated portion of his sentence in the instant case as being illegal because that portion was imposed without his being informed either of his right to a jury trial on the facts that would support aggravating his sentence or those supporting facts themselves. *See* [Amd Pet 12]

2. Castillo's sentence resulted from his entering a *Repeat Offender Plea and Disposition Agreement* (PDA) on July 24, 2007, and on August 8, 2007, he was sentenced pursuant to the PDA as reflected in the *Judgment, Partially Suspended Sentence and Commitment* (J & S) entered that same day.

3. Under the July 24 PDA, Castillo agreed to the aggravation of his basic sentence (eighteen years) for Count 1, criminal sexual penetration in the first degree (child under 13), to twenty-three years. *See* [PDA 2-3] The J & S reflected this agreement. *See* [J & S 2]

4. Neither the PDA nor the J & S state explicitly whether Castillo waived his jury trial right on the facts supporting aggravation, nor list such supporting facts, although the PDA states he waived his right to a trial by jury and discussed his case and constitutional rights with counsel. *See* [PDA] Essentially, the PDA and the J & S are silent on such waiver and facts supporting aggravation. Castillo notes that no stenographic or electronic media records are available for either his plea colloquy or sentencing hearings. *See* [Amd Pet 4-5]

5. Under *State v. King*, 2007-NMCA-130, 142 N.M. 699, 168 P.3d 1123, Castillo plainly had the right to jury determination of facts supporting aggravation of his sentence under the Sixth Amendment. The Court of Appeals decided *King* on June 27, 2007, a little less than one month prior to Castillo entering the PDA, and a little more than one month prior to his sentencing.

6. Viewing Castillo's attack on the aggravated portion of his sentence in light of the PDA and the J & S, he essentially mounts a collateral attack on the validity of PDA itself. *Cf. State v. Gibson*, 1981-NMCA-099, ¶ 10, 96 N.M. 742, 634 P.2d 1294 (holding a plea bargain stands or falls as a unit).

7. As the State notes, see [Response 4], Castillo could waive his right to jury determination of facts supporting aggravation of his sentence, and his statutory right to the statement of the reasons for aggravation provided under NMSA 1978, Section 31-18-15.1(A) (1993). *See Baird v. State*, 1977-NMSC-067, ¶ 12, N.M. 667, 568 P.2d 193 (A defendant may waive fundamental constitutional rights, and rights created by statute.).

8. Absent affirmative proof otherwise, in the face of a silent record, a presumption of regularity attaches to final judgments which are attacked collaterally. *See State v. Pacheco*, 2008-NMNCA-059, ¶ 15, 144 N.M. 61, 183 P3d. 946 (citing *Parke v. Raley*, 506 U.S. 20, 29 (1992)).

9. Castillo has not produced evidence indicating he did not waive his right to jury determination of facts supporting aggravation, or a statement of reasons for the aggravation as provided under the version of Section 31-18-15.1(A) applicable at the time of his sentencing. Parenthetically, the Court notes that upon query at the February 10 status conference, Castillo elected not to request an evidentiary hearing on the Amd Pet.

10. Consequently, on the present record, particularly the silence of the PDA regarding waiver of the right to jury determination of facts supporting aggravation, or a statement of reasons for aggravation, Castillo has not shown the aggravated portion of his sentence was improperly imposed in the light of his entering the PDA. *See Pacheco*, 2008-NMNCA-059, ¶ 15.

11. Additionally, Castillo moved twice to withdraw the PDA, on the day of his sentencing, August 8, 2007, and subsequently on October 10, 2007, both motions were denied. *See [Form Order on Scheduled Motions* (filed Aug. 8, 2007) (summarily denying pro se motion to withdraw plea heard on Aug. 8); *Motion to Withdraw Plea* (filed Oct. 2, 2007); *Order* (filed Nov. 6, 2007) (summarily denying apparently the October 2 motion)] The record is silent as to the grounds for Castillo's motion on the day of his sentencing and the October 2 motion did not argue his aggravated sentence as ground for withdrawing the PDA. Nor did Castillo challenge his aggravated sentence on direct appeal.

12. As Castillo never moved to withdraw the PDA based upon his aggravated sentence being improper, nor challenged the sentence on direct appeal, he must show the sentence constituted fundamental error. *See Marquez v. Hatch*, 2009-NMSC-040, ¶ 15, 146 N.M. 556, 212

P.3d 1110. Similar to his failure to show affirmatively he did not waive his right to jury trial determination of the facts supporting aggravation, or a statement of the reasons for the aggravation, he has not shown fundamental error. *See Pacheco*, 2008-NMNCA-059, ¶ 15.

THEREFORE, the Petition is not well-taken and is denied.

IT IS SO ORDERED.



JUDGE ALISA A. HART
DIV. XXI

Endorsed copies forwarded to the following on date of filing:

Amanda Stephenson, Post-Conviction Habeas Unit, Law Offices of the Public Defender,
for Defendant-Petitioner Castillo;
Gerard W. Treich, Jr., Assistant District Attorney, for Plaintiff-Respondent State of New
Mexico