

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 46676

STATE OF IDAHO,)
) Filed: October 22, 2019
 Plaintiff-Respondent,)
) Karel A. Lehrman, Clerk
 v.)
) THIS IS AN UNPUBLISHED
 JUAN ROBERTO JIMENEZ,) OPINION AND SHALL NOT
) BE CITED AS AUTHORITY
 Defendant-Appellant.)
)

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Lynn G. Norton, District Judge.

Judgment of conviction and unified sentence of three years, with a minimum period of confinement of six months, for felony possession of a controlled substance, affirmed.

Eric D. Fredericksen, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before GRATTON, Chief Judge; HUSKEY, Judge;
and LORELLO, Judge

PER CURIAM

Juan Roberto Jimenez entered an *Alford*¹ plea to possession of a controlled substance, Idaho Code § 37-2732(c)(2)(F). The district court imposed a unified three-year sentence, with six months determinate. At sentencing, the district court recognized it did not have the authority to run the state sentence consecutively to the federal sentence. Nonetheless, the written judgment of conviction indicates the state sentence is to run consecutively to the federal sentence. Jimenez appeals, contending that his sentence is excessive.

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

Sentencing is a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of the sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

Jimenez argues the case should be remanded to provide the district court the opportunity to correct the written judgment of conviction. The State asserts a remand is inappropriate because Jimenez must first make a motion to correct the judgment of conviction in the district court and then, should the district court decline to grant the motion, file an appeal. Where there is a discrepancy between the oral pronouncement and the written order, the oral pronouncement controls. *State v. Watts*, 131 Idaho 782, 786, 963, P.2d 1219, 1223 (Ct. App. 1998). Thus, we will analyze the sentence as orally pronounced. Applying these standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion.

However, we note that Idaho Criminal Rule 36 allows the district court to correct clerical errors in a judgment at any time. Here, the district court made a clerical error in the written judgment of conviction by indicating the state sentence would run consecutively to the federal sentence after orally stating the opposite at the sentencing hearing. Because that motion has not been presented to the district court, the district court has not had an opportunity to rule on the issue, and thus, the issue is not yet properly before this Court.

Therefore, Jimenez's judgment of conviction and sentence are affirmed.