

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2004-017912-001 DT

09/20/2005

HON. RONALD S. REINSTEIN

CLERK OF THE COURT
G. Nevitt
Deputy

FILED: 09/23/2005

STATE OF ARIZONA

GERALD R GRANT

v.

CHRISTOPHER LINTON (001)

CHRISTOPHER LINTON
#191539
PO BOX 24403
TUCSON AZ 85734-4403
GARRETT W SIMPSON

COURT ADMIN-CRIMINAL-PCR
VICTIM SERVICES DIV-CA-CCC

PCR DISMISSED

Defendant's Petition For Post-Conviction Relief, the State's Response, and Defendant's Reply have been reviewed by the Court. Defendant entered a plea of guilty to all charges in the indictment on 10/15/2004. Defendant pled to the indictment rather than to the plea agreement offered by the State so that the Court could have full discretion within the sentencing ranges provided by law. Defendant's potential sentence in effect was no less than seven and no more than 60 years in prison. Under the plea offer, the range of sentences available to the Court would have been between fourteen and eighteen years in prison.

Prior to the entry of plea the Court discussed the plea offer with Counsel for the State and Defense in chambers. The Court previously met with Counsel at a separate settlement conference. The Court believes both Counsel were informed that in multiple victim cases consecutive sentences were seriously considered. Defendant's trial Counsel believed Defendant stood a better chance with the Court having full discretion. The Court informed Counsel that the full range of sentences was available. The Court, however, informed both Counsel of other cases similar to this one in which consecutive sentences were imposed.

Defendant claims the Court misapprehended the law by considering the sentences were to be presumptively consecutive, citing *State v. Garza*, 192 Ariz. 171, 962 P 2d 898 (1998). However, this is not a case of the Court being under any misapprehension of the law, but rather a
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case of Defendant mischaracterizing the Court's statements in the interview conducted. Defendant in effect has dealt in semantics attempting to latch onto the Court's use of the term "presumptive" when it was made clear to both trial and Rule 32 Counsel what the Court's position was as to A.R.S. § 13-708.

As the Court informed Counsel, prior to 1985, Arizona law required that sentences be concurrent for multiple counts, unless the Court expressly directed otherwise. If the Court imposed consecutive sentences it had to state the reasons for such on the record. In 1985 the legislature changed A.R.S. § 13-708 to require the Court to impose sentences consecutively "unless the Court expressly directs otherwise, in which case the Court shall state on the record the reason for the sentence."

This Court has sentenced thousands of defendants in the last twenty years. It is well aware that it has the discretion to sentence a defendant to either a consecutive or concurrent term. In fact, this Court still believes it should state specific reasons why it imposes consecutive terms of imprisonment despite the provision of A.R.S. § 13-708 because consecutive sentences are a harsh punishment. Likewise, if a case involves multiple counts and especially multiple victims, the Court believes, as the law provides, that it should state the reasons for imposing concurrent terms.

Multiple victim cases are unique, especially when they involve sex crimes or homicides. Counsel in fact was informed as to the Court's position on those cases. The so-called "Mountain" to climb for a defendant in dealing with any sentencing judge, not just this one, is that every victim should be treated separately. The Court in fact cited specific examples to trial and Rule 32 Counsel of other cases sentenced by other judges when multiple victims were involved. (The Court believes it cited to Rule 32 Counsel cases sentenced by Judges Martin, Galati, and Donahoe close in time to Defendant's sentence.) However, this Court has sentenced many cases involving multiple victims to concurrent terms depending on the circumstances. The Court in fact informed Rule 32 Counsel of examples, including a recent vehicular homicide.

As to the claim the Court has a "policy" of always imposing consecutive sentences in multiple homicide cases, as the Court told Counsel in the interview, it has no such policy and the Court's sentencing record over twenty years would reflect that. However, as stated above, when there are multiple homicide victims or multiple sex crimes victims, or even multiple armed robbery victims, while the Court looks at each case individually, these types of cases are far more likely to draw a consecutive sentence than, for example, multiple auto thefts, multiple burglaries, or multiple drug sales. There are very few judges who would take a different position.

This case as presented was one of the most emotional and difficult decisions this Court has had. It involved a human tragedy of the Defendant, a young man who had a clean record, was by all accounts a very decent person, with a great family, but who made one serious, tragic mistake. But that mistake resulted in a horrible automobile crash where the victims were a

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family of four totally innocent people. A mother and her young daughter died. A father suffered injuries that were serious, life-threatening, and left him a shell of the person he once was. A young son, while suffering less serious injuries was left without a mother, without a sister, and with a father who simply could no longer do all the things fathers like to do with their sons. Defendant's one tragic mistake left an entire extended family with a tremendous emotional loss and trauma.

The State in fact at the time of sentencing requested four consecutive sentences totaling, if memory serves, about twenty-eight years. The victims' family members almost all requested four consecutive sentences totaling no less than 20.5 years. The defendant's family asked the Court to impose four minimum concurrent terms. The Court ended up giving two consecutive mitigated sentences for the mother and daughter homicide victims, and concurrent terms for the father and son's counts. In fact the Court did not make up its mind until it heard every witness testify at the presentence hearing and the arguments from both Counsel, because of the emotional posture of the case and the tragic circumstances from both sides. While concurrent terms for all counts were considered, the Court determined that would not be appropriate under the circumstances. In fact, the Court ultimately waived between fourteen years and twenty-one years in prison as the sentence. The sentence imposed was actually within the parameters of the original plea offer.

This Court understands the emotions involved from both sides. Mr. McDonald informed the Court and Ms. Green some days after sentencing that Defendant's family was upset with him, despite the fact he truly did an excellent job for his client. The Court is well aware that Defendant's family was upset at the sentence imposed. Some members of the victims' family likely felt the sentence was too lenient. But it is also clear that Defendant had no interest in taking the case to trial. First, he wanted to save the victims, and his own family from the trauma of trial, but also there were no legitimate defenses in this case either. The Court, after consulting with both trial Counsel, contacted the Director of the Department of Corrections to recommend Defendant not be placed in a maximum security facility despite the classification of the crimes, and also requested efforts be made to place him in a prison near his family in Ohio. The Court later learned Defendant's family decided against that due to his father's employment.

In Defendant's conclusion in his Reply he "submits that the Court might well impose concurrent sentences if its analysis were unburdened by the unwarranted presumption of consecutive time." As the Court has explained, it wasn't constrained or "burdened" by any presumption in this case. The Court knew it could impose concurrent sentences if deemed appropriate. After having heard all the testimony and arguments, and upon review of the memoranda and exhibits presented, as well as all the letters written on behalf of the victims and the Defendant, the Court determined that four concurrent sentences were not appropriate and neither were four consecutive sentences. That position has not and would not change in this difficult case.

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Based on all the above, the Court finds Defendant has failed to present a colorable claim for Rule 32 relief.

IT IS ORDERED summarily dismissing Defendant's Petition pursuant to Rule 32.6(C) of the Arizona Rules of Criminal Procedure.