

STATE V. GONZALEZ

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STATE OF NEW MEXICO,
Plaintiff-Appellee,
v.
JUAN GONZALEZ,
Defendant-Appellant.

No. 33,942

COURT OF APPEALS OF NEW MEXICO

December 8, 2014

APPEAL FROM THE DISTRICT COURT OF BERNALILLO COUNTY, Ross C.
Sanchez, District Judge

COUNSEL

Gary K. King, Attorney General, Santa Fe, NM, Jane A. Bernstein, Albuquerque, NM,
for Appellee

Law Office of the Public Defender, Jorge A. Alvarado, Chief Public Defender, B.
Douglas Wood, III, Assistant Appellate Defender, Santa Fe, NM, for Appellant

JUDGES

LINDA M. VANZI, Judge. WE CONCUR: JONATHAN B. SUTIN, Judge, M. MONICA
ZAMORA, Judge

AUTHOR: LINDA M. VANZI

MEMORANDUM OPINION

VANZI, Judge.

{1} Defendant has appealed from a commitment, following a determination that he committed multiple criminal offenses. We previously issued a notice of proposed

summary disposition in which we proposed to affirm in part and reverse in part. Both Defendant and the State have filed responsive memoranda. After due consideration, we adhere to our initial assessment of the merits. We therefore affirm in part, reverse in part, and remand for further proceedings.

{2} Defendant has raised two issues, challenging both the portion of the term of commitment that correlates with the commission of kidnapping, and the district court's determination that he does not meet the statutory definition of mental retardation.

{3} With respect to the first issue, in our calendar notice we proposed to hold that insofar as kidnapping is not among the felonies that trigger commitment, and insofar as Defendant's commission of that offense did not entail the infliction of great bodily harm, as that term has been statutorily defined, a reduction in the term of commitment was in order. Defendant has indicated his concurrence with our analysis of this issue, and the State has indicated that it does not oppose. We therefore stand by our analysis of this matter.

{4} With respect to the second issue, Defendant continues to assert that the district court's determination that he does not satisfy the statutory definition of mental retardation is against the weight of the evidence and constitutes an abuse of discretion. [MIO 7-12] As we previously observed, conflicting evidence was presented below. The testing yielded mixed results. [RP 110-11] Although one or more of these tests suggested an IQ below 70, the probative value of that testing was compromised by Defendant's own efforts "to make himself look bad" and "inconsistent responses." [MIO 5; RP 111-12] Under the circumstances, the district court reasonably rejected the test or tests that suggested an IQ below 70; and insofar as at least one test suggested an IQ above 70, [MIO 1-2, 10; RP 111] there was evidence to support the court's determination. "[T]he trial court is in a better position [than is an appellate court] to judge the credibility of witnesses and resolve questions of fact[.]" *State v. Garcia*, 2005-NMSC-017, ¶ 27, 138 N.M. 1, 116 P.3d 72. Although Defendant contends that the district court should have drawn different inferences and arrived at a different conclusion, [MIO 7-12] we cannot re-weigh the evidence on appeal. *See generally State v. Schaaf*, 2013-NMCA-082, ¶ 11, 308 P.3d 160 ("The question for us on appeal is whether the district court's decision is supported by substantial evidence, not whether the district court could have reached a different conclusion." (alteration, internal quotation marks, and citation omitted)); *State v. Estrada*, 2001-NMCA-034, ¶ 41, 130 N.M. 358, 24 P.3d 793 ("[A]s a reviewing court, we do not reweigh the evidence or attempt to draw alternative inferences from the evidence.").

{5} Defendant also argues that, to the extent that the testing was inconclusive, additional tests should have been ordered. [MIO 8, 10-11] However, Defendant cites no authority in support of this proposition, and we are aware of nothing that could be said to require additional testing. The district court had before it evidence of multiple tests concerning Defendant's mental competency, and it engaged in a thoughtful evaluation of that evidence, drawing rational conclusions therefrom. Under the circumstances, we reject Defendant's unsupported assertion that additional testing is required. *See*

generally State v. Leon, 2013-NMCA-011, ¶ 33, 292 P.3d 493 (“ In the absence of cited authority, we [may] assume that none exists and decline to consider the argument further.”).

{6} Accordingly, for the reasons stated in our notice of proposed summary disposition and above, we affirm in part, reverse in part, and remand for proceedings consistent herewith.

{7} IT IS SO ORDERED.

LINDA M. VANZI, Judge

WE CONCUR:

JONATHAN B. SUTIN, Judge

M. MONICA ZAMORA, Judge