

IN THE SUPREME COURT OF IOWA

NO. 18-1985

JESUS LOZANO-CAMPUZANO,

Petitioner/Appellant,

vs.

STATE OF IOWA,

Respondent/Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HONORABLE JEFFERY FARRELL, JUDGE

APPELLEE'S FINAL BRIEF AND ARGUMENT

THOMAS J. MILLER
Attorney General of Iowa

WILLIAM A. HILL
Assistant Attorney General
Special Litigation Division
Hoover State Office Building
Des Moines, IA 50319
(515) 281-7055
ATTORNEYS FOR APPELLEE

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
STATEMENT OF ISSUES	5
ROUTING STATEMENT	7
STATEMENT OF THE CASE	
Nature of the Case	7
Course of Proceedings	7
Factual Background	8
ARGUMENT	11
I. THE TRIAL COURT CORRECTLY HELD THAT LOZANO-CAMPUZANO WAS NOT ENTITLED TO A FURTHER REDUCTION OF HIS MANDATORY MINIMUM TERM BASED ON THE PROVISION IN IOWA CODE SECTION 901.12(1)(2017) WHICH WAS ENACTED AFTER LOZANO-CAMPUZANO WAS SENTENCED	11
Standard of Review	11
Error Preservation	11
Argument	11
CONCLUSION	18
REQUEST FOR ORAL ARGUMENT	20
CERTIFICATE OF COMPLIANCE	21

TABLE OF AUTHORITIES

<u>CASES</u>	Page
<i>Anderson v. State</i> , 801 N.W.2d 1 (Iowa 2011)	14
<i>Kucerra v. Baldazo</i> , 745 N.W.2d 481 (Iowa 2008)	16
<i>Lowery v. State</i> , 822 N.W.2d 739 (Iowa 2012)	11
<i>Memmer v. State</i> , No. 11-0513 * 2, 2012 WL 2406129 (Iowa Ct. App. filed June 27, 2012)	14
<i>State v. Hearn</i> , 797 N.W.2d 577 (Iowa 2011)	17
<i>State v. Helmers</i> , 735 N.W.2d 566 (Iowa 2008)	16
<i>State v. Iowa Dist. Ct.</i> , 616 N.W.2d 575 (Iowa 2000)	11
<i>State v. Jacobs</i> , 644 N.W.2d 695 (Iowa 2001)	14
<i>State v. Walden</i> , 870 N.W.2d 842 (Iowa 2015)	14
<u>STATUTES AND MISCELLANEOUS</u>	
Iowa Code Section 124.401(1)(a)	13, 15
Iowa Code Section 124.401(1)(b)	16
Iowa Code Section 124.401(1)(c)	13
Iowa Code Section 124.401(1)(e)	13, 15, 16
Iowa Code Section 124.401(1)(f)	15
Iowa Code Section 124.413	9, 14

Iowa Code Section 124.413(1) 15

Iowa Code Section 711.2 15

Iowa Code Section 711.3 15

Iowa Code Section 901.12(1)(2017) 7, 11, 12, 13, 15, 16

STATEMENT OF ISSUES

- I. WHETHER THE TRIAL COURT CORRECTLY HELD THAT LOZANO-CAMPUZANO WAS NOT ENTITLED TO A FURTHER REDUCTION OF HIS MANDATORY MINIMUM TERM BASED ON THE PROVISION IN IOWA CODE SECTION 901.12(1)(2017) WHICH WAS ENACTED AFTER LOZANO-CAMPUZANO WAS SENTENCED?**

CASES AND MISCELLANEOUS:

Section 901.12(1) Iowa Code (2017)

State v. Iowa Dist. Ct., 616 N.W.2d 575 (Iowa 2000)

Lowery v. State, 822 N.W.2d 739 (Iowa 2012)

Section 124.401(1)(e)

Section 124.401(1)(a) - (c)

Anderson v. State, 801 N.W.2d 1 (Iowa 2011)

State v. Walden, 870 N.W.2d 842 (Iowa 2015)

Iowa Code section 124.413

State v. Jacobs, 644 N.W.2d 695 (Iowa 2001)

Memmer v. State, No. 11-0513 * 2, 2012 WL 2406129 (Iowa Ct. App. filed June 27, 2012)

Iowa Code section 711.3

Iowa Code section 711.2

Iowa Code section 124.401(1)(f)

Iowa Code section 124.413(1)

State v. Helmers, 735 N.W.2d 566 (Iowa 2008)

Kucerra v. Baldazo, 745 N.W.2d 481 (Iowa 2008)

State v. Hearn, 797 N.W.2d 577 (Iowa 2011)

ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals as it involves the application of established law to the limited procedural and factual background presented in this case. Iowa Court Rule 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case. The Appellant, Jesus Lozano-Campuzano, is an offender incarcerated in the Iowa Department of Corrections and is serving a drug sentence. After being sentenced for the drug sentence, Lozano-Campuzano filed the present action challenging the length of his mandatory minimum term which he must serve prior to becoming parole eligible. Specifically, Lozano-Campuzano challenged whether the enactment of Section 901.12(1) Iowa Code (2017) applied to his mandatory minimum. The State of Iowa resisted the request to reduce the mandatory minimum of Lozano-Campuzano. The trial court denied the request. Following the denial of his request, Lozano-Campuzano filed a petition for writ of certiorari which granted review of this issue.

Course of Proceedings. The procedural background of this case is limited. On July 2, 2018 Lozano-Campuzano filed what was captioned as Motion to Correct Illegal Sentence. (Motion to Correct Illegal Sentence, July 2, 2018; App. pp. 9-13). An Answer was filed on behalf of the State of Iowa denying the

allegations. (Answer, August 15, 2018; App. pp. 14-16). Prior to the scheduled hearing, the parties filed a stipulation as to the facts and background as to the case. (Stipulation Filing, September 10, 2018; App. pp. 17-23). After a hearing, the request of Lozano-Campuzano was denied. (Ruling on Motion to Correct Illegal Sentence, October 18, 2018; App. pp. 42-52). Lozano-Campuzano filed a motion to reconsider, (Motion to Reconsider and to Amend the Findings, October 18, 2018; App. pp. 53-58), which was denied. (Order, October 26, 2018; App. pp.59-61) .

Following the denial of the request at the trial court, Lozano-Campuzano filed a request for discretionary review, which was resisted by the State of Iowa. The Iowa Supreme Court granted the request for review. (Order, December 17, 2018; App. p. 62).

Factual Background. The parties filed a stipulation which contained all applicable facts and background. (Stipulation Filing, September 10, 2018; App. pp. 17-23). The trial court succinctly summarized the background as:

On April 5, 2016, defendant Jesus Lozano-Campuzano entered a guilty plea to possession of a controlled substance with intent to deliver methamphetamine in violation of Iowa Code section 124.401(1)(b)(7). Defendant also pled guilty to the firearms enhancement in Iowa Code section 124.401(1)(e). The delivery count is a class B felony which normally carries a twenty-five year indeterminate term.

Iowa Code § 902.9(1)(b). However, the firearms enhancement doubles the original term, so the court entered a total sentence of fifty years. The court also entered a mandatory minimum sentence of one-third pursuant to Iowa Code § 124.413(1). The court granted a one-third reduction in the mandatory minimum due to defendant's agreement to plead guilty. *See* Iowa Code § 901.10(2). The court denied probation and defendant was committed to the custody of the Iowa Department of Corrections (DOC). (*See* Exhibit A.)

DOC conducted a calculation to determine when defendant would be eligible for parole after serving the mandatory minimum portion of this sentence. DOC first applied all good time credit (assuming it is earned) to determine a tentative discharge date (TDD). Defendant can potentially earn 1.2 days of good time credit for each day served. Iowa Code § 903A.2. DOC determined the TDD by dividing the fifty year sentence by 2.2. Defendant's TDD was set at approximately 22.7 years. Defendant did not dispute this calculation. (Stipulation; Exhibit B).

DOC calculated the minimum parole date (MPD) based on the TDD. Because the one-third mandatory minimum was reduced by one-third following the defendant's guilty plea, DOC multiplied the TDD by two-ninths to determine the MPD. That resulted in a MPD of approximately 5.05 years. Defendant did not dispute this calculation. If this calculation stood, DOC projects that defendant would first be eligible for parole in April of 2021. (Stipulation; Exhibit B).

The dispute concerns a bill passed by the legislature in 2016 that amended Iowa Code section 124.413 and created Iowa Code section 901.12. Defendant claims that those provisions reduce the mandatory minimum by one-half. If true, defendant's MPD would be reduced to approximately

2.52 years. That would make him first eligible for parole on or about October 10, 2018. (Stipulation; Exhibit C).

DOC does not dispute the calculation, but disputes the premise. DOC argued that defendant is not eligible for the one-half reduction in the mandatory minimum because he was sentenced under the firearms enhancement in subsection (e). In response, defendant argued that the 2016 legislation only created two exceptions to the one-half reduction: 1) prior conviction for a forcible felony, or 2) prior conviction under section 124.401(1)(a), (b), or (c). *See Iowa Code § 901.12(1)*. Defendant claimed that there is no exception for the firearms enhancement. The parties stipulated at hearing that defendant does not have a prior conviction for a forcible felony or pursuant to section 124.401(1)(a), (b), or (c). The only question concerns the impact of the firearms enhancement on defendant's mandatory minimum.

(Ruling on Motion to Correct Illegal Sentence, pp 1-2; App. pp. 42-43).

ARGUMENT

I. THE TRIAL COURT CORRECTLY HELD THAT LOZANO-CAMPUZANO WAS NOT ENTITLED TO A FURTHER REDUCTION OF HIS MANDATORY MINIMUM TERM BASED ON THE PROVISION IN IOWA CODE SECTION 901.12(1)(2017) WHICH WAS ENACTED AFTER LOZANO-CAMPUZANO WAS SENTENCED.

Standard of Review. On review, “[w]e review a district court's interpretation of statutes for correction of errors at law....” *State v. Iowa Dist. Ct.*, 616 N.W.2d 575, 578 (Iowa 2000); *see also Lowery v. State*, 822 N.W.2d 739, 741 (Iowa 2012) (“[W]e also review statutory interpretation for errors at law.”)

Preservation of Error. The issue of whether Lozano-Campuzano was entitled to a further reduction in his mandatory minimum based on a change in law, was raised by him. (Motion to Correct Sentence, 7/2/18; App. pp. 9-13). The trial considered the issue and denied it. (Ruling on Motion to Correct Illegal Sentence, October 18, 2018; App. pp. 42-52). Accordingly, the issue raised in this appeal was properly raised and preserved for appeal.

Argument. Jesus Lozano Campuzano, an offender in the Iowa Department of Corrections (“IDOC”), is serving a fifty (50) year drug sentence from Polk County which has a tentative discharge date (“TDD”) of December 24, 2038. The IDOC has calculated the minimum parole date (“MPD”) of Campuzano as 11

years, one month and nine days – which then must be reduced by earned time.

The resulting 5 plus year mandatory minimum term established a parole eligibility date of April 20, 2021.¹

The issue raised by Lozano-Campuzano is the application of the enactment of Section 901.12(1) in House File 2064 which provided:

1. Effective July 1, 2016, and notwithstanding section 124.413, a person whose sentence commenced prior to July 1, 2016, for a conviction under section 124.401, subsection 1, paragraph “b”, who has not previously been convicted of a forcible felony, and who does not have a prior conviction under section 124.401, subsection 1, paragraph “a”, “b”, or “c”, shall first be eligible for parole or work release after the person has served one-half of the minimum term of confinement prescribed in section 124.413.

Section 901.12(1) Iowa Code (2017).

Based upon such a statute, Lozano-Campuzano asserted that he was entitled to a *further 50%* reduction in the length of his mandatory minimum term. The State of Iowa argued that based on the sentencing order of Lozano-Campuzano –

¹ Lozano-Campuzano has an 11 year, one month and nine day mandatory minimum. The calculation to arrive at such a term is that originally he has a fifty year sentence. The first step in the mandatory minimum calculation is that the term is to be a one third term. One third of the fifty year term is 16 years, 243 days. The next step is that the one third term is to be reduced by an additional one-third. Reducing the one third term, by an additional term, results in a minimum term of 11 years, one month and nine day term.

he was sentenced for a violation of Section 124.401(1)(e) – and was not subject to the reduction in the mandatory minimum terms for convictions of Section 124.401(1)(a) - (c) as set forth in Section 901.12(1). Therefore, it is not a question of statutory construction at all – Lozano-Campuzano was not entitled to a further reduction based on the language of the statute.

As a result, Lozano-Campuzana, was ordered to have a one-third mandatory minimum – reduced by a further one-third reduction. This was the only mandatory minimum reduction ordered. That is, Lozano-Campuzano was not ordered to receive the one half mandatory minimum. If such a reduction would be ordered or applicable, it would be applied by the IDOC.

Even if the issue with regard to the enactments in Section 901.12(1) are subject to statutory construction, Lozano-Campuzano can not prevail.

Lozano-Campuzano asserts that he is entitled to a one-half reduction of his mandatory minimum sentence based upon section 901.12(1)'s provisions based on statutory construction. The State of Iowa disagrees with such a claim.

The provisions of Iowa Code section 901.12, as amended, are expressly not applicable to him. Iowa Code section 901.12 provides that the earlier parole eligibility is available only to an individual sentenced under section 124.401(1)(a), (b), or (c). Lozano-Campuzano was convicted of subsection (e). When

interpreting the provisions of a statute the court reads the statute and applies the law as written without questioning the legislative rationale. *Anderson v. State*, 801 N.W.2d 1, 1 (Iowa 2011) (*superseded by statute on other grounds as stated in State v. Walden*, 870 N.W.2d 842, 845 (Iowa 2015)). As a result, by the express terms of the statute, Lozano-Campuzano is not entitled to a further reduction in his mandatory minimum term.

Lozano-Campuzano tries to create ambiguity in the statute by referring to Iowa Code section 124.413 as an enhancement rather than a stand alone crime. The distinction is irrelevant and unnecessarily confuses the issue. As the court recognized in *State v. Jacobs*, the court or legislature can use the labels “sentencing fact” or “element” as they choose but any fact other than a prior offense that increases the range of punishment is an element that must be charged, submitted to the jury, and proved beyond a reasonable doubt. 644 N.W.2d 695, 698 (Iowa 2001) (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)); *see also Memmer v. State*, No. 11-0513 * 2, 2012 WL 2406129 (Iowa Ct. App. filed June 27, 2012) . By adding an element to the base crime that increases the punishment, a new crime is created which has to be pled and proven.

A simple analogy can be drawn to any crime that increases by degree based upon the addition of a weapon. For instance, robbery in the second and third

degree become robbery in the first degree by adding an element of use of a dangerous weapon. If the legislature hypothetically removed the minimum for the offense of robbery in the second degree by reference to Iowa Code section 711.3, there would be no basis for insisting the reduction should apply to robbery in the first degree because the “armed with a dangerous weapon” alternative under section 711.2 is simply an enhancement of robbery in the second degree. Similarly, assault while displaying a weapon is an aggravated form of simple assault. While neither has a minimum, it would be incorrect to assert they are not separate crimes for the purpose of sentencing. Many other such examples can be found in the code. Once that basic premise is established, the interpretation of this statute is clear.

The legislature enacted a provision that reduced the mandatory minimum sentence applicable to convictions under Iowa Code sections 124.401(1)(a), 124.401(b), and 124.401(c). However, the minimum sentence applies to any conviction under Iowa Code sections 124.401(1)(a), 124.401(b), and 124.401(c), 124.401(1)(e) and 124.401(1)(f). Iowa Code § 124.413(1). The distinction is glaring when juxtaposed. Section 124.413(1) names each section to which a minimum applies, while 901.12(1) eliminates subsections (e) and (f). The choice was purposeful. An individual sentenced for possession with intent to deliver while in the possession of a firearm is both convicted and sentenced under section

124.401(1)(e) and that offense has a minimum that may not be reduced. As the trial court noted, even if relevant, such an intent by the legislature was rationale given that possession of drugs with weapons is justly treated differently than possession of drugs.

While sentencing factors have been traditionally treated differently than elements under the law in Iowa and the language used in such provisions follows that tradition, *Apprendi* changed that treatment and the exclusion in section 901.12(1) recognizes the change. *See State v. Helmers*, 735 N.W.2d 566, 568 (Iowa 2008) (noting the distinction that the court had previously drawn between sentencing factors and elements was no longer valid). The distinction that Lozano-Campuzano wants to draw between something that only enhances the base crime is equally invalid. It is simply another way to say sentencing factor. In effect, while one alternative of the crime is created in section 124.401(1)(b) or (c) another alternative is created and sentenced pursuant to 124.401(1)(e). The fact that they share element is common or that the second alternative bases its penalty in part on a lesser offense does not mean that a separate crime is not created or that the legislature did not recognize that distinction when providing for potential reductions is unpersuasive.

Lozano-Campuzano counters that by rules of statutory construction (*expressio unius est exclusio alterius* and the rule of lenity) that he is eligible for a further reduction in the mandatory minimum term. See *Kucerra v. Baldazo*, 745 N.W.2d 481, 487 (Iowa 2008); *State v. Hearn*, 797 N.W.2d 577, 585 (Iowa 2011).

However, the trial court expressly rejected such a claim holding that:

First, the legislature did not strike the inclusion of subsection (e) from section 124.413(1) at the time the law changed. If it had intended to remove the firearms enhancement from consideration of those defendants who are eligible for the one-half reduction, that would have been the place to do so. The legislature did not make that change, thus indicating its intent to maintain the one-third mandatory minimum for defendants sentenced under the firearms enhancement.

This interpretation is supported by two language choices used in the 2016 amendments. One, the legislature preceded the application of the new provisions with the words “[e]xcept as.” This indicates that the language used in subsection 124.413(1) is the rule unless one of the exceptions applies. None of the exceptions expressly include subsection (e). Two, each of the exceptions only applies to defendants who are “serving a *sentence* pursuant to [subsection (b) or (c)]” or to a defendant “whose *sentence* for a conviction under [subsection (b) or (c)]” (emphasis added). If the legislature had referred to defendants “*convicted* under [subsections (b) or (c)],” defendant’s argument that subsection (e) is not a standalone criminal charge would be more persuasive. Instead, the focus on the word “sentence” shows that the legislature intended to capture those sentenced under subsection (e) regardless of conviction.

(Ruling on Motion to Correct Illegal Sentence, pp 8-9; App. pp. 49-50) .

Lozano-Campuzano also claims that by not allowing him to receive a further reduction, an absurd situation would result. The trial court expressly rejected such a proposition concluding that:

This interpretation is supported by other grounds as well. There is a valid public policy ground to deny the one-half reduction to defendants who are sentenced under the firearms enhancement. Drug dealing is a major societal problem on its own, but the combination of drugs and guns carries a significantly greater threat to the public welfare. There are good reasons for the legislature to require a longer minimum sentence for defendants sentenced for drug delivery offenses with the firearms enhancement.

Ruling on Motion to Correct Illegal Sentence, pp. 8-9; App. pp. 49-50).

The result is that the there is only way to interpret the plain language of the statute. Lozano-Campuzano is not entitled to an additional reduction of his mandatory minimum term – other than what he has already been provided.

CONCLUSION

The decision of the trial court denying a further reduction in the mandatory minimum must be affirmed.

THOMAS J. MILLER
Attorney General of Iowa

/s/ William A. Hill
WILLIAM A. HILL (AT0003532)
Assistant Attorney General
Special Litigation/Corrections
Hoover State Office Building
Des Moines, IA 50319
(515) 281-7055
FAX: (515) 281-4902
ATTORNEYS FOR APPELLEE

REQUEST FOR ORAL ARGUMENT

Counsel for the Appellee does not request oral argument in this matter. The issues raised are legal issues and the applicable law is well established.

/s/ William A. Hill
WILLIAM A. HILL (AT0003532)
Assistant Attorney General
Special Litigation/Corrections
Hoover State Office Building
Des Moines, IA 50319
(515) 281-7055
FAX: (515) 281-4902
ATTORNEY FOR APPELLEE

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P.6.903(1)(g)(1) or (2) because:
 - This brief contains 2,780 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1)

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:
 - This brief has been prepared in a proportionally spaced typeface using WordPerfect 8.0 in Times New Roman font, size 14.

WILLIAM A. HILL
WILLIAM A. HILL (AT0003532)
Assistant Attorney General
Special Litigation/Corrections
Hoover State Office Building
Des Moines, IA 50319
(515) 281-7055
FAX: (515) 281-4902
ATTORNEY FOR APPELLEE

8/19/2019
Date