

IN THE SUPREME COURT OF IOWA

No. 18-1985

JESUS LOZANO CAMPUZAON,

Plaintiff,

v.

IOWA DISTRICT COURT FOR POLK COUNTY,

Defendant.

**ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HONORABLE JUDGE FARRELL**

PLAINTIFF'S FINAL REPLY BRIEF

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CERTIFICATE OF SERVICE

On August 19, 2019, the undersigned certifies that a true copy of the foregoing instrument was served upon the Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to:

Jesus Lozano-Campuzano #6129731
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RESPECTFULLY SUBMITTED,

/s/Philip B. Mears

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STATE STATUTES

Iowa Code Section 124.4017, 8, 9, 11
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Iowa Code Section 902.89
Iowa Code Section 902.119

STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. USING THE NORMAL RULES OF STATUTORY CONSTRUCTION THE COURT SHOULD CONCLUDE THAT THE 2016 LEGISLATION REDUCING MANDATORY SENTENCES FOR DEFENDANTS SERVING SENTENCE UNDER 124.401 (1)(b) SHOULD APPLY TO LOZANO CAMPUZANO**

Iowa Code Section 124.401

HF2064

Iowa Code Section 902.8

Iowa Code Section 902.11

Purposes of a Reply Brief

In any reply brief, it is appropriate to do three things. First, the brief can update the case law if there have been any changes in the time since the original brief. There is no such new law.

Second, the brief can reply to specific statements by the State in its brief.

Finally, the brief can point out the places in the State's brief where there is an agreement as to certain points, perhaps because the matter was not contested.

STATEMENT OF THE CASE

There is no disagreement as to the Statement of the case, or the facts or the proceedings below.

ARGUMENT

I

USING THE NORMAL RULES OF STATUTORY CONSTRUCTION THE COURT SHOULD CONCLUDE THAT THE 2016 LEGISLATION REDUCING MANDATORY SENTENCES FOR DEFENDANTS SERVING SENTENCE UNDER 124.401(1)(b) SHOULD APPLY TO LOZANO-CAMPUZANO

Standard of Review and preservation of error:

The parties agree as to the standard of review and that the issue is preserved.

Places where there is agreement between the parties

The parties agree as to the facts in this case.

The parties agree that Lozano was sentenced after a guilty plea on April 5, 2016 for a B Felony drug offense under 124.401. The specific B felony was 124.401(1)(b)(7).

The sentence he received was enhanced because of the firearm element under subsection 124.401(1)(e). The enhanced punishment of 50 years was subject to a one-third mandatory minimum. That mandatory minimum was reduced by the

sentencing judge by one-third because he pled guilty. The entire sentence, including the mandatory, was subject to reduction for earned time.

In 2016 the legislature enacted House File 2064, which went into effect on July 1, 2016, several months after Lozano-Campuzano had been sentenced.

The legislature specifically provided that the reduction for drug offenses would have retroactive effect to certain sentences.

It would apply to convictions under 124.401(1)(b).

The legislature said it would not apply if the defendant had either a prior drug felony or a prior forcible felony.

The parties stipulate that neither of those disqualifiers applied for Lozano-Campuzano.

In a somewhat piece of irony, both sides say that HF2064 has a plain meaning. At the same time, the parties significantly disagree about what that plain meaning is.

Response to specific statements in the State's brief

The State suggests that HF2064 is, “expressly not applicable to him.” State’s Brief pg. 13. The State notes the statute is applicable to persons sentenced under

124.401 (1)(a), (b) or (c). The State asserts that Lozano Campuzano was convicted under subsection (e).

Response: Lozano-Campuzano was clearly sentenced under "b" with that sentence enhanced by subsection "e". The statement that he was convicted only under subsection "e" is simply not correct.

The State on page 14 of its brief discusses whether the enhancement creates a different crime. The State mentions cases that require that enhancements based on an additional element, be pled and proven.

Response: This is apples compared with oranges. The fact that the enhancement is based on an additional element does not avoid the fact that it is an enhancement to the underlying offense. The enhancement is not a crime by itself. This is true whether the enhancement is for two prior felonies, in the case of the habitual offender in 902.8, or is for having a prior forcible felony, when the enhancement is under 902.11. The underlying offense for Lozano-Campuzano was 124.401 (1)(b).

The State discusses Lozano's reference to absurd results at page 18 of its brief.

Response: Lozano in his brief talked about avoiding absurd results in two contexts. First, he responded to Judge Farrell's decision, which had supported its conclusion by identifying what the judge thought was an absurd result. See Ruling page 9; Appx. p. 51.

Judge Farrell wrote that Lozano's interpretation would produce the absurd result that defendants with C and B Felonies would have their enhancements reduced but defendant's with D Felonies or Aggravated Misdemeanors would not get it. See ruling pg. 9. Appx.51.

Lozano's response of course was that there is no mandatory minimum sentence at all for D Felonies or aggravated misdemeanors. For that reason, the mandatory minimum cannot be enhanced by "e".

The State in its brief makes no effort to respond to this argument or to defend this flaw in the judge's reasoning.

Lozano had also argued that the State's interpretation would itself lead to an absurd situation. Lozano pointed out that the legislature in 2017 definitively eliminated all mandatory sentences for people with C drug Felonies. The State's interpretation that an enhancement under "e" essentially stands alone, would mean that anyone with a C Felony which had been enhanced, would still have that mandatory. That is clearly contrary to the legislature's intent.

The State's brief does not respond to this analysis. Rather it says that drugs and guns rationally could be treated more harshly. That argument misses the point. The enhancement under "e" can only enhance what has been given in the rest of the statute. If there is no mandatory for D felonies or C felonies, there is no mandatory to enhance.

In the case of 124.401(1)(b) there is a mandatory. That mandatory is subject to enhancement. The legislature said it is also subject to the 50% reduction, unless there is a prior drug felony or a prior forcible felony. Lozano-Campuzano had neither of those prior offenses.

CONCLUSION

This appeal presents an issue of statutory construction. Lozano-Campuzano was sentenced in April, 2016. He was sentenced under 124.401(1)(b) and given a mandatory minimum sentence.

In 2016, the Legislature enacted a statute, HF 2064, which went into effect on July 1, 2016. That statute specifically said it applied retroactively to persons already sentenced.

The new legislation cut in half a good number of the mandatory minimum sentences imposed under 124.401(1). The legislature said the new statute should apply retroactively to convictions under 124.401(1)(b).

The legislature set out two exceptions where the reduction would not apply.

The State and the lower court agreed that neither of the exceptions applied to Lozano-Campuzano.

The statute is unambiguous. This Court should direct the IDOC to give Lozano-Campuzano the further reduction in sentence required by the new statute.

RESPECTFULLY SUBMITTED,

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ATTORNEY'S CERTIFICATE OF COSTS

I, Philip B. Mears, Attorney for the Appellant, hereby certify that the cost of preparing the foregoing Appellant's Final Reply Brief was \$1.50.

RESPECTFULLY SUBMITTED,

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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS
AND TYPE-VOLUME LIMITATION**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(f)(1) or (2) because:

this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 1,006 words, excluding the parts of the brief exempted by Iowa Rs. App. P. 6.903(1)(f)(1)

/s/ Philip B. Mears
Signature

08/19/19
Date