



Administrative Office of the Courts

FOR IMMEDIATE RELEASE

July 24, 2023

Contact: Barry Massey, public information officer
bmassey@nmcourts.gov
505-470-3436

Supreme Court orders the release of a state prison inmate incarcerated after his sentence ended

SANTA FE – The state Supreme Court today ordered the release of a prisoner because of an improper sentence for a series of burglaries and thefts in Alamogordo.

The Court unanimously concluded that Rufino Torres was entitled to release because his sentence legally ended on Feb. 4, 2017. He was ordered to prison the following year after a district court revoked his probation. In addition, the Court ruled Torres had been subjected to an impermissibly long term of probation. Torres pleaded guilty in 2011 to 16 charges in a plea agreement consolidating four separate criminal cases.

“Petitioner shall be immediately released from custody upon the issuance of our mandate in this case,” the Court wrote in an opinion by Justice Michael E. Vigil. The mandate is the order directing the district court to carry out the Supreme Court’s directive.

The Court ruled that the “consolidation of four separate cases resulted in a single judgment and sentence, and when the district court determined that Petitioner had completed serving his sentence and probation in one case, the legal effect was that the determination applied to the entire judgment and sentence.”

In one of the four cases, the justices found, the district court in Otero County issued an order in February 2017 that “not only terminated Petitioner’s probation but also determined that Petitioner satisfied his criminal liability for the crimes charged, and discharged Petitioner from any obligation imposed by the judgment and sentence ...”

Torres filed a petition for a writ of habeas corpus in 2018 to challenge his imprisonment after the district court had revoked his probation, sent him to state prison and imposed a new five-year term of probation.

“The core purpose of the writ of habeas corpus – to protect an individual from illegal custody or restraint – goes to the heart of this case,” the Court wrote.

Torres initially was sentenced to 27 years in prison but most of that was suspended and he was placed on probation — five years in one of the four consolidated cases and to be followed by additional probation in the other cases. Torres violated probation multiple times and the district court imposed several new periods of probation.

In his habeas corpus petition, Torres also argued that he was illegally sentenced to a series of consecutive or “stacked” five-year probation terms. The Supreme Court agreed.

The justices concluded that “when two or more cases are consolidated for a plea and sentencing, if the district court in its discretion suspends all or part of the sentence only a single term of probation, not to exceed five years, can be imposed.”

If a probation violation occurs during that original five-year term, the Court’s majority explained, the law allows the sentencing court to revoke the probation and order a new probation term of up to five years or require the probationer to serve the balance of the sentence or some lesser jail time.

After Feb. 4, 2017, Torres “was no longer subject to the judgment and sentence,” the justices stated.

Justice Briana H. Zamora concurred that Torres should be immediately released from prison, but dissented from the majority’s conclusion that state law allows courts to impose a new five-year period of probation each time there is a probation violation.

Justice Zamora wrote in her dissenting opinion that the language of the state’s probation law is “unambiguous” and “mandates that a probationary period is not to exceed five years in total.” The statutory interpretation endorsed by the Court’s majority, she explained, could result in defendants serving “*decades* of probation” if a district court starts a new five-year probationary period each time a defendant violates probation. “Surely, this cannot be what the Legislature intended,” the justice wrote.

The Court called for one of its rules committees – made up of lawyers, judges and others – to propose revisions to procedural rules to clarify the effects of case consolidation for district, metropolitan and magistrate courts.

In today’s opinion, the Court’s majority also concluded that Torres’ constitutional protections against double jeopardy – multiple punishments for the same offense – were violated by his convictions and sentences for two charges of conspiracy to commit non-residential burglary and one count of conspiracy to commit larceny.

The Court, based on facts about the crimes in the plea agreement, concluded that there was a singular conspiracy to burglarize and steal items from storage units and an Alamogordo museum over a three-day period in June 2010. Although Torres has already served his entire sentence, the Court’s majority vacated two of conspiracy convictions.

Justice Zamora dissented, stating that the Court should have returned the case to the district court to consider the double jeopardy issue. Torres did not raise the double jeopardy issue in the appeal he filed with the Supreme Court and “the State was deprived of an opportunity to develop a record below because the issue was not raised in the district court,” Justice Zamora wrote.

###

To read the decision in *Torres v. Santistevan*, No. S-1-SC-38147, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/521915/index.do>