IN THE SUPREME COURT, STATE OF WYOMING

2019 WY 22

October Term, A.D. 2018

February 27, 2019

GILBERT SHERMAN WASHINGTON, **Appellant (Defendant),** **v.** **THE STATE OF WYOMING,** **Appellee (Plaintiff).**	**S-18-0213**

ORDER AFFIRMING THE DISTRICT COURT'S JUDGMENT AND SENTENCE

[¶ 1] **This matter** came before the Court upon its own motion following notification that Appellant has not filed a *pro se* brief within the time allotted by this Court. Pursuant to a plea agreement, Appellant entered an unconditional guilty plea to one count of first degree sexual assault. Wyo.Stat.Ann. § 6-2-302(a)(i). The district court imposed a sentence of 40 to 50 years. Appellant filed this appeal to challenge the district court's June 25, 2018, "Judgment, Sentence and Order of Incarceration."

[¶ 2] On November 1, 2018, Appellant's court-appointed appellate counsel filed a "Motion to Withdraw as Counsel," pursuant to *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967). The next day, this Court entered an "Order Granting Motion for Extension of Time to File *Pro Se* Brief." This Court ordered that Appellant "may file with this Court a *pro se* brief specifying the issues he would like this Court to consider in this appeal." This Court also provided notice that, after the time for filing a *pro se* brief expired, this Court would "make its ruling on counsel's motion to withdraw and, if appropriate, make a final decision on this appeal." After an extension of time, Appellant's *pro se* brief was due for filing on or before January 31, 2019. Appellant did not file a *pro se* brief or other pleading in the time allotted.

[¶ 3] Now, following a careful review of the record and the "*Anders* brief" submitted by appellate counsel, this Court finds that appellate counsel's motion to withdraw should be granted and the district court's "Judgment, Sentence and Order of Incarceration" should be affirmed, subject to a correction. At the sentencing hearing in this matter, Appellant's counsel requested the district court find Appellant unable to pay the court automation fee, the indigent civil legal services fee, the crime victims' compensation surcharge, and a substance abuse assessment fee. The district court ruled it would "waive" certain fees, stating: "We're going to impose $75 for the substance abuse, the court will waive the remainder." (Sentencing Transcript, p. 19) Despite that, the written judgment requires Appellant to pay the court automation fee, the indigent civil legal services fee, and the crime victims' compensation surcharge. "A long-recognized rule of this Court is that where there is conflict between the sentence as articulated at sentencing, and the written sentence, the oral sentence prevails." *Pinker v. State*, 2008 WY 86, ¶ 7, 188 P.3d 571, 574 (Wyo. 2008); *Medina v. State*, 2013 WY 119, 309 P.3d 1247 (Wyo. 2013). This Court concludes it should order the district court to correct the judgment to conform to the oral pronouncement.

[¶ 4] **ORDERED** that the Wyoming Public Defender's Office, court-appointed counsel for Appellant, Gilbert Sherman Washington, is hereby permitted to withdraw as counsel of record for Appellant; and it is further

[¶ 5] **ORDERED** that the district court's June 25, 2018, "Judgment, Sentence and Order of Incarceration" be, and the same hereby is, affirmed, subject to the correction noted below; and it is further

[¶ 6] **ORDERED** that this matter is remanded to the district court for entry of an order correcting the "Judgment, Sentence and Order of Incarceration" so that the Appellant is not required to pay the court automation fee, the indigent civil legal services fee, and the crime victims' compensation surcharge.

[¶ 7] **DATED** this 27th day of February, 2019.

BY THE COURT:*

/s/

MICHAEL K. DAVIS
Chief Justice

*Justices Fox and Boomgaarden would have denied appellate counsel's motion to withdraw and ordered counsel to file a brief addressing the merits of this appeal. Specifically, appellate counsel should have considered whether Appellant, at arraignment, was properly advised regarding the number of counts charged and the potential penalties. See *Stalcup v. State*, 2013 WY 114, ¶¶ 38-39, 311 P.3d 104, 114-15 (Wyo. 2013); *Rodriguez v. State*, 917 P.2d 172, 175 (Wyo. 1996).