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SUPERIOR COURT OF NEW JERSEY
CRIMINAL DIVISION - MIDDLESEX COUNTY
INDICTMENT NOS. 07-10-1579, 06-9-1414

STATE OF NEW JERSEY,

Complainant,

vs.

Transcript of Proceedings
(Sentence)

PABLO MACHADO,

Defendant.

(With An Interpreter)

Place: Middlesex County Courthouse
56 Paterson Street
New Brunswick, N.J. 08903

Date: AUGUST 27, 2009

B E F O R E:

THE HONORABLE BARBARA STOLTE, J.S.C.

TRANSCRIPT ORDERED BY: MARCIA MUNOZ, ESQ., A.D.P.D.
(Middlesex Region)

A P P E A R A N C E S:

MANUEL SAMEIRO, ESQ.
Middlesex County Assistant Prosecutor
Attorney for the State

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APPELLATE DIVISION

SEP 09 2010

DANIEL GONZALEZ, ESQ.
(Perez & Gonzalez)
Attorney for the Defendant



JAMES FARRELL, Spanish Interpreter

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SUPERIOR COURT
OF NEW JERSEY

Georgeann Crowell, C.C.R.
Official Court Reporter
Middlesex County Courthouse
P.O. Box 964
New Brunswick, New Jersey

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1 (Whereupon, the following discussion occurred
2 with the use of a Spanish Interpreter.)

3 THE COURT: Thank you, folks. Please have a
4 seat.

5 Okay. We have State versus Pablo Machado.
6 We're on for sentencing today. 07-10-1579. I believe
7 we also have a Violation of Probation. 06-9-1414.

8 I'm just trying to see if he pled guilty.

9 MR. GONZALEZ: He has not. He was actually
10 found guilty of the charge while on probation.

11 MR. SAMEIRO: He has not.

12 MR. GONZALEZ: The Court can take judicial
13 notice.

14 THE COURT: Nothing else is outstanding with
15 regard to his probation?

16 MR. GONZALEZ: There is no other violation.

17 THE COURT: I think there was, unless this is
18 an old one.

19 But I certainly can take judicial notice of
20 the conviction. I will certainly do that. But it
21 looks to me like there is still two specifications
22 outstanding. There is a failure to report and a
23 failure to pay financial obligations.

24 State, are you withdrawing those? What's
25 your position?

1 MR. SAMEIRO: Judge, let me ask what
2 Violation of Probation you have. Because there was a
3 second violation filed, based upon him committing this
4 offense. I don't recall seeing other specifications.
5 Your Honor may be looking at the first violation.

6 THE COURT: Maybe it is. Hold on.

7 He pled to --

8 MR. SAMEIRO: He pled to it and was given
9 continued probation, as I recall.

10 THE COURT: You're absolutely right. Let me
11 just check the Violation of Probation addendum. Let me
12 just work backwards. I can certainly take judicial
13 notice that he was found guilty.

14 MR. SAMEIRO: Unless I'm mistaken. I see
15 that the original Violation of Probation had all of
16 those failures to report, failure to make payment.
17 But, perhaps, he was given a second violation, before
18 he pled on the first one. I want to retract that
19 statement. I don't have a notation on the file. The
20 State's file, the 06-244 one, that he pled guilty or
21 was sentenced on the first VOP. And since I didn't
22 handle that case, from its inception, I was there for
23 the guilty plea, I know that.

24 THE COURT: But Nicholas Sewitch did the
25 Indictment, and did the sentencing, in Judge DeVesa's

(Sentence)

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1 court, on that other tampering with the witness charge.
2 I just don't want my lack of paperwork to persuade me
3 into thinking, that he didn't plead guilty and was
4 sentenced on that Violation of probation.

5 MR. SAMEIRO: Right.

6 THE COURT: My notes indicate here, he had a
7 VOP on July 13th of 07.

8 MR. SAMEIRO: Right. Which would be the
9 older one, I believe.

10 THE COURT: Okay.

11 MR. SAMEIRO: It says here, a Violation of
12 Probation Hearing, dated 7/13/07, Judge DeVesa ordered
13 Mr. Machado's probation term to be continued.

14 THE COURT: Right. And that's in the
15 Violation of Probation summary, that is dated August
16 15th, '07.

17 MR. SAMEIRO: That would coincide with the
18 same date that the second violation was filed.

19 THE COURT: Right.

20 MR. SAMEIRO: I don't have the judgment on
21 the first VOP.

22 THE COURT: I don't either. My notes
23 indicate the same thing. There is a guilty plea, he
24 was continued on probation, to remain drug free. That
25 is what I have.

(Sentence)

5

1 MR. SAMEIRO: Right.

2 MR. GONZALEZ: Then with regard to the second
3 VOP, is there two other specifications on that?

4 THE COURT: No. No. That's from the first
5 one.

6 MR. GONZALEZ: That's what I thought.

7 THE COURT: You are absolutely right. The
8 only one on this one is the arrest of -- the new
9 offense, which he had been convicted of.

10 MR. GONZALEZ: So, we can take judicial --

11 THE COURT: I can take judicial notice.

12 MR. SAMEIRO: I ask you to do that.

13 THE COURT: Then I will find him guilty of
14 violating probation a second time.

15 MR. SAMEIRO: While we're on the subject, I'm
16 going to tell you why I'm going to ask that you
17 sentence him to four years State Prison, consecutive to
18 what you'll be sentencing him to on the armed robbery.

19 THE COURT: Okay. Okay. I will take
20 judicial notice of the conviction, which does then
21 violate his probation. And, therefore, he'll be
22 sentenced on that as well.

23 So, let's kind of start from the very
24 beginning, and ask Mr. Gonzalez, have you received a
25 copy of the presentence report?

(Sentence)

6

1 MR. GONZALEZ: I have received a copy of the
2 presentence report.

3 THE COURT: Any additions, corrections or
4 deletions?

5 MR. GONZALEZ: The additions, corrections or
6 deletions are as follows: There is the State's version
7 of the facts always included in every PSI. My client,
8 as per his version of the facts, maintains his
9 innocence. So, with regard to the facts, that the
10 State is relying upon, and upon the finding of guilt,
11 Mr. Machado has maintained his innocence from day one.
12 And will maintain his innocence, I imagine, until the
13 end of time.

14 Now, that's as far as the additions and
15 corrections and deletions. The only thing that --
16 Judge, I think that the only thing is, if I may, as to
17 the sentencing, it's very difficult when someone has,
18 as a defense attorney, to compose a sentencing argument
19 for a person who you think is innocent. And who
20 necessarily, by virtue of the way the jury trial
21 occurred, should have -- Well, was subject to, I would
22 say, an unfair trial. That's for another Court. That
23 is why we have other Courts. He is going to be
24 appealing his conviction immediately.

25 There are a variety of things that happened

(Sentence)

7

1 during that trial that were disturbing. So, with that,
2 Judge, I wonder what to say with regard to Mr. Machado.
3 What I do know is that, I've been doing this for quite
4 some time. I've done hundreds and hundreds of cases.
5 And a lot of people have pled guilty. That's how we
6 resolve the cases. This gentleman maintain his
7 innocence from day one. I believe in his innocence.
8 That's why I fought hard for him at the trial.

9 I think that Mr. Machado is a good young man.
10 18 years old. Excuse me. Not 18 years old any more.
11 When this occurred, he was 18 years old. Now, Mr.
12 Machado is 22. He's been incarcerated for quite some
13 time. The corrected -- I'm sorry -- the corrected jail
14 credits are 764 days. I added them up. Up until
15 today. The presentence report is dated up to April
16 30th. I added April 30th, till yesterday, to come up
17 with 764.

18 Mr. Machado is going to go through hard times
19 as a result of him being sentenced. I imagine, your
20 Honor, because this is a first degree offense, is not
21 going to sentence him to probation. I ask that the
22 sentence, on the probation violation, because the only
23 reason for the Violation of Probation, at least, this
24 Violation of Probation, was this case. I ask that they
25 be concurrent. Your range is from 10 to 20 years, on a

(Sentence)

8

1 first degree armed robbery. So, your Honor has
2 discretion in this case, based on his youth, based on
3 the fact that he has a bright future, based on all
4 these things, I would ask your Honor to sentence him
5 towards the lower range of the first degree.

6 You know, I would get into arguing about the
7 mitigating factors. But it's almost inevitable. I
8 would argue all, except the ones -- I would argue
9 almost everything. I would argue that Mr. Machado
10 believe in his innocence. I'll just repeat that.

11 I believe that Mr. Machado is going to be
12 back here before your Honor in about a year, on his
13 appeal. So, I'm confident that our Appellate Division
14 and other Courts, that Mr. Machado is going to come
15 back, and we'll see him again. If we have to do a new
16 trial, we will.

17 So, with that, Judge, I will submit, and I
18 would just ask if your Honor could recall the testimony
19 of the victim. There, allegedly, was a group of
20 gentlemen that committed this armed robbery of the taxi
21 driver. The original description of Mr. Machado was
22 not anywhere close to what Mr. Machado is.
23 Additionally, there is a telephone call that came in,
24 as a result of a ruling made by your Honor, that we
25 argued was hearsay. That is neither here nor there.

(Sentence)

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1 He was put at this scene as a result of him
2 living in the area. And I think the State had needed
3 someone to match to that armed robbery. So, what I can
4 only say is that, I'm confident that he'll be back.
5 And I hope that he will be. Because this kid deserves
6 a chance at life, not to be incarcerated for the amount
7 of years, that our Criminal Code has for a first
8 degree.

9 What is interesting here, your Honor, looking
10 at the verdict sheet, is that he was found not guilty
11 of the possession of a weapon for an unlawful purpose.
12 But found guilty of the armed robbery. Which kind of
13 doesn't make sense. The jury was a little confused.
14 But all I can say is, that we ask your Honor for mercy.
15 I don't think I have asked your Honor for mercy before,
16 as many times as I have sentenced someone in front of
17 your Honor. But I think Mr. Machado deserves good
18 things in his future. I would only ask that your Honor
19 keep all of that in mind. And, hopefully, the
20 Appellate Division will do the right thing.

21 THE COURT: Thank you, Mr. Gonzalez.

22 Mr. Machado, is there anything that you'd
23 like to say, before the Court sentences you?

24 THE DEFENDANT: Yes, your Honor.

25 I would like to say that I am sorry -- I

1 would like to say that I'm sorry for what happened to
2 the victim; but I didn't do this. And I continue to
3 assert my innocence. And I do want my lawyer to appeal
4 my case. That's it.

5 THE COURT: All right. Thank you, Mr.
6 Machado.

7 State?

8 MR. SAMEIRO: Thank you, Judge. Before I
9 begin, just a few housekeeping matters. I am not in
10 possession of a sentencing brief, or any kind of motion
11 for a new trial. I know that on May 15th of 2009, when
12 Mr. Gonzalez stood before you, asking for one of these
13 several adjournments in this case, he said that he
14 needed time to incorporate the presentence report into
15 a sentencing memo that he wrote. That he wrote. And
16 he was given time for that.

17 Now, I'm assuming, he did write a sentencing
18 memo, because he said he did. And I don't know that
19 one was filed.

20 MR. GONZALEZ: I did not file one, Judge.
21 Period.

22 THE COURT: Okay.

23 MR. SAMEIRO: And believing, as much as he
24 does, that this defendant deserves a new trial, I would
25 have expected a new trial motion to be filed. And I

1 assume he did not file one, and I am just not missing
2 one.

3 MR. GONZALEZ: Did you see one?

4 THE COURT: I don't have one.

5 MR. SAMEIRO: So, it hasn't been filed.

6 THE COURT: All right.

7 MR. SAMEIRO: All right. Judge, I want to
8 address the defendant's sentencing, because that is why
9 we're here. Then after he's committed to the
10 Department of Corrections, I want to address sanctions,
11 as per 1:2-4.

12 Regarding the sentence, this defendant was
13 convicted by a jury of first degree armed robbery. He,
14 obviously, is facing a sentence in the range of 10 to
15 20 years. He also was convicted of the conspiracy,
16 which doesn't merge, and can run consecutive to the
17 robbery. He was also convicted of the theft and
18 terroristic threats. I'll submit on whether they merge
19 or not. I believe they do merge into the robbery. But
20 if they don't, for some reason, then your Honor should
21 sentence him concurrently on those offenses.

22 You know, I was schooled in presumptive
23 sentencings. Of course, I can't talk about that today,
24 since the Courts have done away with that type of
25 analysis. But, you know, there is an amount, in the

1 middle, of a 15, that kind of jumps out here. Maybe
2 because this defendant has a history, and that can't be
3 ignored. In fact, Judge DeVesa did not ignore it when
4 he sentenced him to probation on the prior witness
5 tampering. The defendant, according to Judge DeVesa,
6 has a high risk that he will commit another offense.
7 And Judge DeVesa, in his judgment, said that this risk
8 is high, given his juvenile and criminal history, and
9 his return to criminality, after the prior periods of
10 probation and incarceration.

11 Judge DeVesa was quite right about the
12 defendant's risk. Because after being sentenced to
13 probation for tampering with another witness, he
14 committed this offense. And I'm arguing to the Court,
15 that the risk that this defendant will re-offend, is
16 just as high as when Judge DeVesa found it to be a
17 strong risk for this defendant. I ask that you take
18 into account the defendant's prior history, and finding
19 aggravating factor number six. And the defendant's
20 history of committing offenses exists. It should be
21 counted here. Then there is, of course, the need to
22 deter this defendant and others from violating the law.

23 There are no mitigating factors in this case.
24 None have been proffered by Mr. Gonzalez. Therefore, I
25 would submit that the three aggravating factors, which

1 I have cited, clearly and substantially, outweigh any
2 mitigating factors. I would point you to the middle --
3 to the upper end of the sentencing range. This
4 defendant does not deserve the benefit of a minimum
5 sentence. This was a violent crime. One of the most
6 violent crimes we have in our code. It's interesting
7 to point out that, in this case, the defendant, after
8 robbing Wilmer Cedillo, threatened him on the street
9 afterwards. This was a chance meeting, where the
10 victim testified how the defendant said to him, if you
11 go to the police, I'm going to get you, or words to
12 that effect.

13 MR. GONZALEZ: Judge, unfounded. That wasn't
14 charged. It shouldn't be considered, although the
15 State is relating that.

16 MR. SAMEIRO: Judge, I didn't interrupt Mr.
17 Gonzalez.

18 MR. GONZALEZ: Judge, the jury couldn't have
19 found that, because it wasn't charged.

20 MR. SAMEIRO: There is testimony that was
21 developed.

22 THE COURT: You're right. He wasn't charged
23 with that.

24 MR. GONZALEZ: I don't want your Honor
25 finding that.

1 MR. SAMEIRO: I am presenting my arguments
2 based on the testimony in the case. What I'm telling
3 you, clearly telling you, is clearly based upon what
4 was before the jury.

5 It's interesting to note, that his prior
6 conviction is for similar conduct. Tampering with a
7 witness. He threatened a witness in another matter.
8 There is nothing to put forward, unless he suffered
9 bodily harm. I'm paraphrasing what I read from the
10 presentence report.

11 So, you have a violent individual, who is
12 known to retaliate against his accusers. And that, I
13 think, I also believe, shows great risk that he will
14 re-offend. I think you need to take that into account,
15 when you fashion a sentence for this defendant.

16 To say, that he didn't receive a fair trial
17 is astounding to me. There was a victim, who looked at
18 a photo array, who pointed to this man's picture. Your
19 Honor ruled that the photo array was fair. The victim
20 pointed out the man's picture. The picture of the
21 defendant was identified in court by his accuser. And
22 we have that very critical piece of information, which
23 corroborated the out-of-court ID. Namely, the
24 defendant's phone, which was traced back to the call
25 that was made to the cabby right before the robbery

1 took place.

2 So, the proofs in the case are very solid.
3 This man was justly convicted of the crime, and he
4 should face anywhere from 15 to 20 years in State
5 Prison. You already heard me say, that the third
6 degree charge of witness tampering, which is the
7 subject of today's VOP, should run consecutive to the
8 armed robbery. I'm recommending that you sentence him
9 to four years State Prison on that, consecutive,
10 Judge. That's all I have to say.

11 When you're finished with the sentencing, we
12 can do it at sidebar, initially. I do want to address
13 the issue of why it is we're here on the case, on the
14 eight scheduled sentencing dates for this case. Eight
15 scheduled sentencing dates that Pablo Machado was ready
16 to be sentenced. He was convicted on December 23rd.

17 According to a review of my notes and Promis
18 Gavel, we have the following sentencing dates: March
19 20th, April 24th, May 1st, May 15th, August 7, August
20 21st, August 26th, which was yesterday, and now today.
21 And I do want to go into detail concerning my
22 application for sanctions. But I want you to sentence
23 this defendant first. Thank you.

24 THE COURT: Mr. Gonzalez, did you wish to be
25 heard? I mean, my intent is to merge count six and

1 five, into count two. And then -- I don't believe that
2 the conspiracy necessarily merges in with the robbery.
3 I was going to sentence that separately. Do you wish
4 to be heard regarding that, first of all?

5 MR. GONZALEZ: Judge, I think, as per --
6 There is no other defendants in that case. This is the
7 only defendant --

8 THE COURT: This is the only defendant.
9 Uh-hum.

10 MR. GONZALEZ: -- that was found guilty, or
11 even charged in this particular case. I would argue
12 that, we have no information that he agreed with anyone
13 to do anything. He was found guilty of the conspiracy.
14 I believe that they should merge, as they encompass all
15 the same elements as the robbery itself. It's a
16 conspiracy to commit a robbery, which encompasses all
17 the other counts, which he was found guilty of. On the
18 agreement, we don't know much about the agreement. But
19 there were no other people involved there.

20 If there was a co-defendant, that said that
21 they previously agreed upon something, there is
22 something that intimated to the fact that there was
23 some conspiring done, my analysis may be different.
24 But, in this case, I believe, it should merge, by
25 virtue of what I just stated.

1 Additionally, the other counts, by virtue of
2 what they are, also merge into the first degree armed
3 robbery, the threat, the theft, they all merge with
4 that, Judge. I'd ask for the concurrency. I think he
5 is going to be sentenced on the Violation of Probation,
6 which I imagine, your Honor would be, despite my asking
7 for a concurrency, will probably be giving a
8 consecutive sentence on that, Judge. I'd ask for
9 concurrency on the conspiracy. I think he is entitled
10 to it. I think that's what your Honor should sentence
11 him to.

12 THE COURT: Okay. I believe that counts five
13 and six do merge in with count two, the robbery. I
14 will sentence him on the robbery and the conspiracy.
15 On the robbery, which is count two, the defendant is
16 sentenced to the custody of the Commissioner of the
17 Department of Corrections for a term of 13 years. He
18 must serve 85 percent of this sentence, pursuant to the
19 No Early Release Act. Upon release, he is subject to
20 five years parole supervision. He is given credit for
21 764 days. There is a \$50.00 Violent Crimes assessment,
22 a \$75.00 Safe Neighborhood Services assessment, a
23 \$30.00 Law Enforcement Officers training and Equipment
24 penalty. He must provide a DNA sample and pay for the
25 cost of that sample.

1 As to the conspiracy, the sentence of the
2 Court is that he be committed to the custody of the
3 Commissioner of the Department of Corrections, for a
4 period of seven years. It will be concurrent to count
5 two. The same days credit. He has -- There is an
6 additional \$50.00 Violent Crimes Compensation, and an
7 additional \$75.00 Safe Neighborhood Services Fund
8 assessment.

9 And I'll sentence him regarding the
10 Violation of Probation in just a moment. In sentencing
11 him to this term, on this trial, that this Court had
12 the benefit of seeing, the Court, in conjunction with
13 the testimony at trial, and the presentence report,
14 looks to the following aggravating factors: I do give
15 aggravating factor three weight here. And that's the
16 risk that the defendant will commit another offense.

17 I also give aggravating factor six weight
18 here, which is the extent of the defendant's prior
19 record, and the seriousness of the charge, which he has
20 been convicted of. And number nine, which is the need
21 for deterring the defendant and others from violating
22 the law. I believe that these aggravating factors are
23 equally strong. And I will go through them more in my
24 statement of reasons. But his record isn't extremely
25 lengthy. But I do believe it is an aggravating factor

1 here. It's one that this Court can consider.

2 Now, as to the mitigating factors, the Court
3 has to deal with the mitigating factors argued, and
4 there really have been no mitigating factors argued.
5 Quite honestly, when I reviewed the mitigating factors,
6 I didn't find any mitigating factors to balance against
7 the aggravating factors here. So, therefore, there is
8 clearly a presumption of incarceration. It's clear
9 that the aggravating factors outweigh the mitigating.
10 Because I found no mitigating. Really there were none
11 that the Court was being asked to consider.

12 The defendant was found guilty at a trial of
13 one count of conspiracy to commit robbery in the second
14 degree, one count of robbery, first degree. There is
15 also a theft charge, third degree, and a count of
16 terroristic threats, third degree. On April 24th of
17 '07, Wilmer Cedillo came into police headquarters,
18 reporting a robbery. His cab, which he was driving,
19 had been dispatched to Lee Avenue. And there he picked
20 up individuals. The individuals began to punch him and
21 other males joined in. One of the suspects put a gun
22 to the victim's head, and told him to give him all his
23 money.

24 The defendants then took five hundred dollars
25 and the cell phone from him. The victim was able to

1 retrieve the number, that the cab was dispatched to,
2 which came back to this defendant. The victim also
3 picked this defendant out of a photo line-up, as one of
4 the individuals who robbed him. This was information
5 that was testified to at trial. The defendant, as an
6 adult, has been arrested four times. And this is his
7 second conviction for an Indictable offense.

8 It also appears as though he has two
9 Municipal convictions. As a juvenile, he had four
10 complaints. And he had been placed on probation, and
11 violated his probation. All of this information gives
12 the Court the basis to find aggravating factor three,
13 which is the risk that the defendant will commit
14 another offense. And it also can be considered
15 important regarding number six, which is the extent of
16 his record, and the seriousness of the charge that he's
17 been convicted of.

18 The defendant does not appear to "have a"
19 substance abuse history. He, apparently, attended
20 school through the tenth grade. And from the
21 presentence report has held sporadic employment. He is
22 not married, and has no children. It appears from the
23 facts, that this Court has heard, as though financial
24 gain was the only motivating factor here. The only one
25 that I can see. The aggravating factors outweigh the

1 mitigating factors. I believe this is the appropriate
2 sentence for Mr. Machado, when one balances the
3 aggravating and mitigating, given the Court's scheme,
4 the sentencing scheme, that the Court must focus on.

5 And looking to the Violation of Probation,
6 it's the State's request to have Mr. Machado sentenced
7 to four years consecutive to the sentence he's just
8 received. I don't know if there are any additional
9 comments that you'd like to make, Mr. Gonzalez, or if
10 your client would like to say anything else regarding
11 that?

12 MR. GONZALEZ: Judge, we only -- I would only
13 ask for the lower end, Judge, if your Honor is inclined
14 to sentence him to State Prison. I'd ask that it be
15 continued probation. But I don't think that's in the
16 cards at this point.

17 So, actually, Judge, I'd ask for the lowest
18 end possible. 13 years, with 85 percent, is a
19 significant amount of years. More than 10. So, with
20 that, Judge, I've had a small amount of time to reflect
21 on the things, as to what happened in Mr. Machado's
22 life.

23 So, with regard to the Violation of
24 Probation, Judge, it's my duty to ask that it be
25 concurrent. It's my duty to ask that your Honor,

1 again, give Mr. Machado a chance, when he gets out, and
2 the least amount of time that your Honor can impose on
3 Mr. Machado. I think that would be sufficient to deter
4 him from committing crimes. Again, I think, with that,
5 I'll submit, Judge.

6 THE COURT: All right. Regarding the
7 Violation of Probation, the Court has taken judicial
8 notice of the violation, which was the conviction on
9 this particular charge. And the State has requested a
10 consecutive sentencing. At this point, the Court will,
11 in fact, commit Mr. Machado to the custody of the
12 Commissioner of the Department of Corrections -- I will
13 make the term consecutive -- I will make it three years
14 consecutive to the term I have already imposed.

15 It's important to note, that he was sentenced
16 originally, on the tampering a witness charge, back in
17 '06, when he was placed on a period of probation, there
18 was then a violation of probation, where he was
19 continued on probation. And then, now, we have this
20 second violation. They are completely separate acts
21 accomplished -- completely separate crimes. And we are
22 told that, under State vs. Yarbrough, there should be
23 no free crimes. Therefore, the Court, in other words,
24 feels, at this time, the need to run this consecutive.
25 Give him a lower amount of jail time on the charge.

1 So, I will run it consecutive. The most
2 recent number of days that I have, Mr. Gonzalez,
3 probably needs to be updated. I'm not a hundred
4 percent certain. I see 364 days credit here. I'm not
5 certain if that's the number. That's the number that
6 I'm going to use. If there is additional information,
7 that you wish to give me, about the Violation, please
8 let me know. But that's how the judgment of conviction
9 will give him those dates. I don't believe he was
10 getting any time on this charge. I'm not certain.

11 MR. GONZALEZ: I don't think he was getting
12 any time on the Violation of Probation. But I argue
13 that, at the time he was found guilty, on this
14 particular offense, I know that he's being held on both
15 of them, essentially. So, I think it was December 24th
16 when he was found guilty of the armed robbery. I would
17 argue that, he is being held on both of those things.
18 There is judicial notice, on that date particularly,
19 he was in violation of his probation. I would ask,
20 your Honor, to count those days, from December 24th.
21 I'm not sure exactly how many they are. But in the
22 judgment of conviction, I only ask your Honor to
23 include those days as credit.

24 THE COURT: All right. State, I don't know
25 if you have a position regarding that. I mean, it's a

1 relatively strong argument to say, that's the date he
2 was convicted. That is what makes up the Violation of
3 Probation, so --

4 MR. SAMEIRO: Judge, I'll submit.

5 THE COURT: I'll give him those days. I
6 don't know what that turns out to be, Mr. González. I
7 will give him those dates.

8 Mr. Machado, do you understand the sentence
9 of the Court?

10 THE DEFENDANT: A little. I think. You're
11 giving me 13 for the robbery; right?

12 THE COURT: 13, with 85 percent.

13 THE DEFENDANT: And 7 for the conspiracy;
14 right?

15 THE COURT: Right. That runs along with it.

16 THE DEFENDANT: And, now, how much would it
17 be with the 13?

18 THE COURT: You mean how much time will you
19 serve on the 13?

20 THE DEFENDANT: Yes.

21 THE COURT: 10 years, 10 months, 3 days. And
22 the 7 years, it runs concurrent with that.

23 THE DEFENDANT: What's going to happen to the
24 probation?

25 THE COURT: Well, probation is terminated.

1 You have three years as a sentence on that, consecutive
2 to what you've received. But you already have 364
3 days, plus seven more months on that, toward that three
4 years.

5 MR. GONZALEZ: Eight more months.

6 THE COURT: Okay.

7 MR. GONZALEZ: That sentence, although it
8 starts after the 85 percent --

9 THE COURT: Right.

10 MR. GONZALEZ: -- is almost done.

11 THE COURT: He's got a lot of time in on that
12 sentence.

13 MR. GONZALEZ: Yes.

14 THE COURT: Okay?

15 THE DEFENDANT: I understand.

16 THE COURT: Now, you have the right to appeal
17 the sentence, Mr. Machado. But you have to do it
18 within 45 days. If you don't do it within 45 days, you
19 can seek an extension for 30 days. But you'd have to
20 show good reason why you didn't appeal in the original
21 45 days.

22 MR. GONZALEZ: Judge, do you have a copy of
23 the appeals rights form?

24 THE COURT: I didn't look for it. I will
25 check as I go through this.

1 MR. GONZALEZ: I believe, just so you know,
2 Judge, the copy machines aren't working.

3 THE COURT: I do know that.

4 MR. SAMEIRO: Judge, is the form required
5 even, as to his appeal rights? He knows he can appeal.

6 THE COURT: He knows he can appeal the
7 sentencing. I just told him that. Normally the form
8 is with the plea. We do not have the form.

9 MR. SAMEIRO: I was just asking.

10 MR. GONZALEZ: We went over it together.

11 THE COURT: I understand that.

12 It contains like the 45 days is starting to
13 toll today. You indicated, that you wanted to that, I
14 would do that immediately, if not sooner.

15 MR. GONZALEZ: Yes, Judge.

16 THE COURT: Then certainly, if you can't
17 afford private counsel, you can always get the
18 assistance of the Public Defender. Do you understand
19 that right to appeal?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Okay.

22 You indicated that you have the form? I
23 don't think it is here. I'll keep looking, Mr.
24 Gonzalez. It could have gotten separated.

25 THE DEFENDANT: Can I get a copy of that,

1 with the number of days?

2 THE COURT: Yes. You're going to get a
3 judgment of conviction. Mr. Machado, the 13, with the
4 85 percent, and the conspiracy, which is the 7 years,
5 you will be getting 764 days credit. On the Violation
6 of Probation, which showed you have 364 days, you're
7 also going to have an additional seven to eight months
8 of credit. I don't know what that number is exactly.
9 But it will be reflected on the judgment. You'll get a
10 judgment of conviction for those.

11 Okay?

12 THE DEFENDANT: Okay. Thank you.

13 THE COURT: Anything further, Counsel?

14 MR. SAMEIRO: Yes, Judge. If we can just go
15 to sidebar, off the record?

16 THE COURT: Yes. Sidebar. Off the record.

17 (Whereupon, a discussion was held at sidebar
18 off the record.)

19 (Whereupon, the hearing continued.)

20 MR. SAMEIRO: Thank you.

21 MR. GONZALEZ: Thank you.

22 THE COURT: Thank you.

23 (Whereupon, a short recess was taken.)

24 (Whereupon, the hearing continued outside of
25 the presence of the defendant, without an Interpreter.)

1 THE COURT: We were involved with the
2 sentencing of Pablo Machado.

3 Can you come up, Counsel?

4 I was just looking for the number.

5 MR. SAMEIRO: 07-10-1579.

6 THE COURT: We sentenced Mr. Machado earlier
7 But the Prosecutor wished to address the Court
8 regarding that; right?

9 MR. SAMEIRO: Yes, Judge. I have asked my
10 colleagues to just step outside. Nobody is in the
11 courtroom. I hoped that we can do this with some
12 privacy for Mr. Gonzalez.

13 MR. GONZALEZ: Judge, I don't mind other
14 people in the room. Just so you know, it doesn't
15 matter to me.

16 THE COURT: Then we'll proceed.

17 MR. SAMEIRO: Judge, I'm going to try to do
18 it briefly. I understand you have to leave soon.

19 THE COURT: I have to leave at 4:30.

20 MR. SAMEIRO: I don't think I can fully
21 explore all the issues in four minutes. I'll do my
22 best. I can speak quickly.

23 I'm asking the Court to entertain sanctions
24 against Mr. Gonzalez for his inattention to the case.
25 Specifically, as it deals with the sentencing of Mr.

1 Pablo Machado. Rule 1:2-4 provides, it's a vehicle by
2 which you can sanction an attorney who fails to give
3 reasonable attention to the matter, by not appearing
4 when he's supposed to. And that clearly happened in
5 this case.

6 I'm asking that he listen very carefully to
7 what I have to say, because I haven't put it in
8 writing. But the issue is straightforward. He has not
9 been in court when he was supposed to on numerous
10 occasions. And despite orders by this Court, to
11 explain his absence, he failed to do that, as recently
12 as today.

13 On March 20th, this case was set for
14 sentencing, and the defense attorney didn't appear. On
15 April 24th, there was a sentencing date, and there was
16 no appearance. On May 1st, there was a sentencing
17 date, and there was no appearance. May 15th, I have
18 notes from Mr. Gonzalez's statement to the Court, that
19 he wanted more time to incorporate the PSI into a
20 sentencing memorandum that he wrote. The PSI was
21 received that day, just for the record.

22 I have never known an attorney to write a
23 memo and not submit it to the Court. We found out
24 today, that he did not submit a court document. And I,
25 frankly, believe that May 15th, when he asked for more

1 time to incorporate something into the memorandum, that
2 he wrote, he was making a misrepresentation to the
3 Court. So, we got another date. On May 15th, I
4 explained to the Court, I had a murder trial that was
5 pending on June 23rd. A case which since has pled out.
6 So, the Court gave us until August 7th, to come back
7 for the sentencing. The case was not heard on that
8 day.

9 No one asked me for any consent for an
10 adjournment, and it was around that time, that I
11 started hearing, through the grapevine, that Mr.
12 Gonzalez has a girlfriend, or, perhaps, a wife, who, at
13 the time was pregnant, and had some medical issues.

14 MR. GONZALEZ: Judge, I'm just going to
15 object.

16 MR. SAMEIRO: I need to make my point. This
17 is my understanding of the allegations.

18 MR. GONZALEZ: I just want to head this off,
19 before this gets personal.

20 There is nothing that needs to be said to Mr.
21 Sameiro, with regard to what's happening in my personal
22 life.

23 THE COURT: Okay.

24 MR. GONZALEZ: I'm personally -- I don't
25 understand where he's going with this, Judge.

1 MR. SAMEIRO: Judge, can I just finish? He
2 attempted to cut me off. In another minute or so, the
3 Court has to leave.

4 MR. GONZALEZ: I object.

5 MR. SAMEIRO: I'd ask Counsel to sit down so
6 I can finish.

7 MR. GONZALEZ: I think he should have been
8 cut off a long time ago. He probably never should have
9 even started this. This is not necessary.

10 THE COURT: Here's the thing: He certainly
11 has the ability to request the Court to consider the
12 rule.

13 MR. GONZALEZ: I'm waiting to hear -- just,
14 you know, the fact that some of the adjournments have
15 been because of personal issues, I don't want him to
16 get involved in things in my personal life.

17 MR. SAMEIRO: I'm creating a record. I need
18 to create the record. Let me continue, please. I was
19 informed that Mr. Gonzalez's girlfriend had some sort
20 of medical issues. And that Mr. Gonzalez wanted to be
21 there for certain medical appointments.

22 He started petitioning the Court for
23 adjournments without my consent. And I heard that
24 through Elaine Malanga, who is here in court, and who
25 can disavow anything I'm saying.

1 All right. So, from August 7th, we got
 2 another date of August 21st, which is recent. I then
 3 heard, through Miss Malanga, that Counsel had requested
 4 time for some sort of medical issue. I'm assuming that
 5 it has to do with his girlfriend or wife. So, I told
 6 Miss Malanga, I would not consent. That's when she
 7 directed Counsel to call me. He did. I told him that
 8 I did not consent to an adjournment.

9 And that was the day before. That was on
 10 Thursday, August 20th, when Counsel was here earlier in
 11 the day, on another matter, with Nicole Albert. And he
 12 never said anything personally to anybody about this.
 13 At least, not to my knowledge. So, I get a phone call
 14 message from Counsel. I returned the call, and I told
 15 him that I opposed the adjournment request.

16 The next day was Friday, August 21st. I'm in
 17 court, ready for sentencing. I'm told by Miss Malanga,
 18 based upon some note she has, that Mr. González's
 19 girlfriend or wife had a miscarriage. The impression
 20 that was left with me, and I know with your Honor, was
 21 that that happened overnight, from Thursday into
 22 Friday.

23 So, I looked at your Honor, when you told me
 24 that. Miss Malanga told me that. I says, well, you
 25 know, I guess, there is nothing we can do about that.

1 Obviously, that would be a valid reason for an
 2 adjournment. An emergency that could happen overnight.
 3 It was then that I heard from Nicole Albert, that she
 4 was told personally, by Mr. Gonzalez that day before,
 5 that that had happened. Which suggests that the
 6 message, that was given to the Court, was misleading.

7 I remember telling your Honor about that,
 8 after I learned that, this could not have happened
 9 overnight. This miscarriage issue. So, when we had
 10 this conversation, the three of us, your Honor, myself,
 11 and Miss Malanga, I note that you directed Mr. Gonzalez
 12 to come to court with proof, because I asked for that,
 13 with some sort of medical documentation, that this
 14 actually occurred.

15 And you set the case for yesterday, which
 16 would have been the 26th, at 9:00 a.m. So, at 10:00
 17 o'clock, after waiting here for sometime, I get word,
 18 from your Sheriff's Officer, that Mr. Gonzalez was in
 19 another court -- Amboy -- excuse me -- Asbury Park
 20 Municipal Court. And I was befuddled by that. I
 21 told -- your Honor's Law Clerk is here, and he can
 22 disavow this, if I am not telling it accurately. That
 23 a message was left for Mr. Gonzalez to be here on the
 24 26th, at 9:00 o'clock in the morning.

25 THE COURT: The Court said, I did not know

1 if he had gotten the message.

2 MR. SAMEIRO: I know that I conferred with
3 Mr. Boda since that time, and he told me he left that
4 message.

5 THE COURT: Okay. He left that message.

6 MR. SAMEIRO: The message was that he should
7 bring proof, medial documentation, to support his
8 adjournment request. Now, August 27th, today, he
9 finally shows up, and the defendant gets sentenced,
10 eight months after the case was tried to a jury.

11 First of all, the State was deprived of the
12 time that this defendant could spend in State Prison,
13 number one. And, number two, the defendant, himself,
14 is deprived of the time he needs to perfect his appeal.
15 You know, they tell us, through the Appellate Division
16 decisions, that we have to be interested in justice, as
17 Prosecutors. We have to look at it in both ways.

18 If this defendant has such a meritorious
19 appeal, he is seven months behind in filing it, or six
20 months, or five months. Let's say, typically, a
21 sentencing happens within six weeks after verdict. I
22 know that the presentence reports are backlogged.
23 Defendants typically get sentenced within six weeks
24 after a verdict. Let's say two months.

25 THE COURT: Right.

1 MR. SAMEIRO: This case dragged on and on and
2 on and on. I had to come to court, and to be told,
3 there is an adjournment. My adversary never had the
4 courtesy to call me in advance, to ask me for an
5 adjournment.

6 THE COURT: It's 4:35. I'm already late.

7 MR. SAMEIRO: I believe he should, by way of
8 a certification, explain to the Court, under penalty of
9 perjury, why Rule 1:2-4 should not be applied to him,
10 because this is sanctionable. I can tell you that the
11 County Prosecutor and defense attorneys have been
12 sanctioned for a lot less, and have been asked to sign
13 certifications for a lot less. I can tell you I
14 personally had to sign a certification for showing up
15 an hour and a half late in a case that I did not diary
16 in my calendar. I wasn't sanctioned for that. I, at
17 least, had to explain why I shouldn't be.

18 My application is to have Counsel explain to
19 you why he shouldn't be sanctioned. By the way, if
20 there is a sentencing memo drafted, that was written,
21 he can pull it out of his valise right now, and make me
22 a liar. Because he did say -- I can get that
23 transcript -- that he wrote that sentencing memo. I
24 don't know any attorney who writes a sentencing memo
25 and doesn't file it.

1 THE COURT: Okay. All right.
2 I'm going to take a moment, before I order
3 anything, to review the Rule, to determine whether or
4 not I'm going to require that Mr. Gonzalez, in fact,
5 answer, via certification. I may have to. I don't
6 know. I have to look at the rule. I have to take a
7 look at it. That is probably the best thing I can say,
8 Counsel. I'll make a decision. I mean, I'm out next
9 week. I'm pretty busy all day tomorrow.

10 MR. SAMEIRO: It is not urgent for me, Judge.
11 I'd just like --

12 THE COURT: I don't, obviously, want this --

13 MR. SAMEIRO: I don't want to call this
14 trivial; but compared to the issues that come up with
15 every case, this pales in comparison to the more
16 serious matters that defendants have to face here in
17 court. But your Honor, obviously, heard what I had to
18 say.

19 THE COURT: Okay. I don't think I need much
20 time to figure out whether he needs to write a
21 certification. I just won't be here next week. What I
22 would like to do is, I'll call Counsel with dates, that
23 I'll ask them to come in, just to put my decision on
24 the record, so to speak, when I have had a chance to
25 review it. It will probably be the week after next.

1 If Counsel are in the Courthouse, we can find a good
2 time for the both of you. Okay. So, I won't give you
3 a time.

4 MR. GONZALEZ: Just so you know, Judge, I'm
5 not going to respond.

6 THE COURT: Your position is that you object
7 to any requests at this point.

8 MR. SAMEIRO: If you order him to file a
9 certification, because I'm applying for sanctions.

10 THE COURT: I want to give him the benefit
11 of, at least, explaining why he shouldn't be
12 sanctioned. I will take a look at it. I note you do
13 object. It's a potential, just from the little I know
14 about the rule, I haven't used it myself, it can be
15 ordered to be accomplished. I note that you object at
16 this point to the Prosecutor's request.

17 MR. GONZALEZ: That's it, Judge.

18 THE COURT: Thank you.

19 MR. SAMEIRO: Thank you.

20 MR. GONZALEZ: Thank you.

21 (Whereupon, the hearing concluded.)
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25

C E R T I F I C A T I O N

I, GEORGEANN CROWELL, C.C.R., License Number XI00983, an Official Court Reporter in and for the State of New Jersey, do hereby certify the foregoing to be prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of my stenographic notes taken in the above matter to the best of my knowledge and ability.

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Date: OCTOBER 16, 2009