

A-2039-0674

SUPERIOR COURT OF NEW JERSEY  
ESSEX COUNTY  
LAW DIVISION, CRIMINAL PART  
INDICTMENT NO. 03-6-2254  
APP. DIV. NO. A-2039-06

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STATE OF NEW JERSEY, )

Plaintiff )

v. )

LUIS DASILVA,

Defendant )

**FILED**  
**APPELLATE DIVISION** TRANSCRIPT  
OF  
SENTENCING

SEP 4 2007

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**APPELLATE DIVISION**  
SEP 14 2007  
**SUPERIOR COURT**  
**OF NEW JERSEY**

Place: County Court House  
50 W. Market Street  
Newark, NJ 07102

Date: August 4, 2004

BEFORE:

HONORABLE PETER J. VASQUEZ, J.S.C.

TRANSCRIPT ORDERED BY:

ED GERMADNIG, (Office of the Public Defender)

APPEARANCES:

THOMAS MCTIGUE, ESQ. (Assistant Prosecutor)  
Attorney for plaintiff

RONALD S. SAMPSON, ESQ. (Pope Bergrin & Verdesco, PA)  
Attorney for defendant

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1 THE COURT: Luis F. Dasilva, indictment 3-6-  
2 2254. Appearances for the record.

3 MR. MCTIGUE: Assistant Prosecutor, Thomas  
4 McTigue, appearing on behalf of the State, Your Honor.

5 MR. SAMPSON: Ronald S. Sampson, on behalf  
6 of the defendant, Luis Dasilva.

7 THE COURT: Mr. Sampson, did you have an  
8 opportunity to review the PSI with your client?

9 MR. SAMPSON: Yes, Your Honor, we have, we  
10 have reviewed it at length. There are, perhaps, two  
11 corrections which should be made, Your Honor.

12 The first has to do with the defendant's  
13 prior criminal history. There is a notation in the  
14 body of the report which reflects five arrests, Your  
15 Honor. I believe that is an error.

16 It lists an arrest of May 4<sup>th</sup>, 2003 in  
17 Belleville. Your Honor, I believe that --

18 THE COURT: That was for this offense.

19 MR. SAMPSON: That was this offense, Judge.  
20 And, therefore, I believe the number of arrests should  
21 be four, as opposed to the five reflected in the body  
22 of the report.

23 In addition, Your Honor, as I indicated  
24 earlier, in the body of the report, the probation  
25 officer sets forth a version of the events which are

1 the -- which were the subject of the trial.

2 I would only indicate, Your Honor, because I  
3 believe that the reference as to -- where Mr. Chohinin  
4 (phonetic) made the last pick up and drop off, that is  
5 from Woodside Avenue to Niagara Street (phonetic) is  
6 at -- varies (phonetic) with the testimony at trial.  
7 It's not a critical point, Judge, but I think it  
8 should be noted for the record.

9 MR. MCTIGUE: Judge, with regard to the  
10 arrest, I think Your Honor will recall from the trial  
11 that the initial arrest of Mr. Dasilva was for a CDS  
12 paraphernalia charge by New York City Detectives and  
13 Belleville Police Officers.

14 Based upon that arrest and other  
15 circumstances known to them, he was subsequently  
16 brought to the Belleville Police Station where he was  
17 identified and found that there was an open homicide  
18 warrant for him.

19 It's a small technical point, Judge, but  
20 there were legally two arrests on that day.

21 THE COURT: Technically, you are correct.  
22 So we'll leave it at five. Mr. Sampson, do you wish  
23 to be heard?

24 MR. SAMPSON: Yes, Your Honor. Your Honor,  
25 the events that bring us here to court today are,



1 indeed, tragic. They are tragic for the family of the  
2 victim, as well as for the defendant and his family.  
3 Some of whom are present here in court today.

4           Your Honor, the court is aware, from the  
5 presentence investigation report, as well as the  
6 testimony at trial, that this defendant, Mr. Dasilva,  
7 at the present time is 23 years of age. That he has  
8 no juvenile history that we are aware of. And,  
9 heretofore, he has no prior criminal convictions.

10           Judge, it seems very surprising that an  
11 individual with a strong work history, who has close  
12 family ties, who is the father of a young child, as is  
13 Mr. Dasilva, who has a strong employment history and  
14 comes from a stable and supportive family -- would  
15 find himself not only charged but convicted of,  
16 perhaps, the most serious offense in ~~our~~ criminal  
17 justice system.

18           I would only indicate, Judge, that in  
19 assessing Mr. Dasilva that the court consider while he  
20 has had some involvement with the criminal justice  
21 system, as the Court has noted, technically five prior  
22 arrests. The Court should also note that he has no  
23 convictions.

24           That he has successfully completed a PTI  
25 program, a program of diversion in the state of New

1 Jersey. And that the other matters that were the  
2 subject of arrests were all administratively dismissed  
3 by the prosecutor's office.

4           And we believe, Judge, they should be of no  
5 -- no weight in this matter. They do constitute  
6 arrests, but since they are not convictions and were  
7 dismissed, that the court should not give them any  
8 undue weight.

9           Judge, in assessing what would be a fair  
10 sentence in this matter, Your Honor, we would ask the  
11 Court to consider several points.

12           At trial, Your Honor, he has been convicted  
13 of a number of offenses. The felony murder, murder,  
14 robbery, the unlawful possession of a weapon in the  
15 third degree, second degree possession of a weapon for  
16 an unlawful purpose, and third degree receiving stolen  
17 property.

18           Judge, as we discussed prior to the  
19 beginning of this sentencing procedure, it is the  
20 defense's position that under 2C:1-8(a), and the tests  
21 set forth by Blockburger vs. United States, United  
22 States Supreme Court case, that a number of these  
23 offenses, in fact, merge for purposes of sentencing.

24           We would respectfully submit, Your Honor,  
25 that the murder charge would merge into the felony

1 murder offense. That the first-degree robbery would  
2 merge into the felony murder offense.

3           And we believe also, Your Honor, that the  
4 second-degree possession of a weapon for unlawful  
5 purposes would also merge with the other -- with those  
6 other counts -- felony murder and robbery offenses  
7 (phonetic).

8           In assessing, Judge, what would be a fair  
9 and reasonable sentence in this matter, Your Honor, we  
10 would ask that the Court consider, as the Court is  
11 well aware, that it -- aggravating and mitigating  
12 factors in this case.

13           In terms of the aggravating factors, Judge,  
14 clearly given the gravity of the charge and the  
15 conviction against Mr. Dasilva, we understand that the  
16 Court is going to consider the risks ~~that~~ the  
17 defendant will commit another offense.

18           We would also expect that the Court would  
19 consider factor number nine, the need for deterring  
20 the defendant and others from violating the law.

21           Ordinarily, Judge, we would also expect that  
22 factor six would be considered, but he has no prior  
23 record, Judge. There's nothing about his past that  
24 would indicate that he's likely to be back here.

25           We believe, Judge, under all the

1 circumstances, that those are the proper aggravating  
2 factors for the Court to consider.

3           We would also suggest, most respectfully,  
4 Your Honor, that the absence of any prior involvement  
5 with the criminal justice system by this defendant is  
6 a mitigating factor that the Court should consider. I  
7 do anticipate that the assistant prosecutor will refer  
8 again to the number of prior arrests.

9           Since they have not resulted in any  
10 convictions, and that the defendant has previously  
11 completed a course of pretrial intervention, Your  
12 Honor, I believe that that mitigating factor, the  
13 absence of any prior convictions, should be  
14 considered.

15           Judge, with regard to the other factors, the  
16 other counts for which the defendant stands convicted,  
17 that is the third degree receiving stolen property, as  
18 well as the third degree unlawful possession of a  
19 handgun.

20           Your Honor, we believe that -- imposing  
21 sentence, we would respectfully request that the Court  
22 impose concurrent sentences on those charges.

23           Again, Judge, I think I have referred to --  
24 to the proper test -- under Blockburger and the merger  
25 now -- 2C:1-8(a). Your Honor, we certainly understand



1 that under our system of justice, there's no such  
2 thing as a free crime.

3           However, Your Honor, we would respectfully  
4 submit that the possession of a handgun and -- the  
5 possession of the handgun is such an integral part of  
6 the offenses charged to this defendant under the  
7 indictment and under the charges under which he has  
8 been convicted, Your Honor, that it would be  
9 essentially unfair to impose a separate sentence for  
10 that offense.

11           Certainly, Judge, one of the factors the  
12 Court -- consider and that is whether or not in, in  
13 and of itself, is a separate crime of violence. It's  
14 not, Judge, it's a possessory offense. And while, in  
15 fact, it possesses the potential for violence, it is  
16 not, in and of itself, a violent offense. And,  
17 therefore, Judge, we don't believe that a separate  
18 sentence would be fair.

19           And given, Your Honor, the gravity of the  
20 sentence that the Court is duty bound to impose upon  
21 this defendant for his conviction under the felony  
22 murder offense, Your Honor, we don't believe that --  
23 we don't believe that a separate consecutive sentence  
24 is warranted.

25           Judge, when you consider all the factors in

1 this case, we certainly understand that the defendant  
2 is facing a minimum 30 year jail sentence.

3           And Your Honor, we can certainly never  
4 downplay the seriousness of the offense that the  
5 defendant stands convicted of, Your Honor. It's  
6 felony murder, it's a conviction for taking a human  
7 life. And there's certainly nothing -- no offense  
8 that's more serious than that, Judge.

9           But we would urge the Court to consider that  
10 -- imposing sentence, that the sentence that the Court  
11 impose should be consistent with other sentences for  
12 people similarly situated as this defendant.

13           And given that this defendant has no prior  
14 history, that he has -- that he stands not even  
15 charged with any prior offense of violence, there's no  
16 -- there is nothing, Judge, there's nothing in his  
17 record heretofore that would indicate that he would be  
18 here facing these charges, Judge (phonetic).

19           Given his relative youth, Judge, at this  
20 point he's still 23 years of age, the minimum  
21 mandatory sentence of 30 years, Your Honor, is -- is --  
22 - is an extreme amount of time, Judge. I know these  
23 are extreme circumstances. I know this is an extreme  
24 offense.

25           But given all the Court knows about this

1 case and -- and this defendant, Your Honor, we believe  
2 that -- that the minimum sentence, the 30 years  
3 without parole, is a fair and just sentence in this  
4 matter. And we would ask that the Court impose that.

5           This is a young man who, at some point, will  
6 -- will be back in society. He does have, Judge,  
7 despite the seriousness of these charges and despite  
8 the fact that maybe during the trial it did not seem  
9 that he had much support, he does have family members  
10 here in court with him today, Judge.

11           He does have a one-year-old son who is, in  
12 fact, a United States citizen and will be returning to  
13 this country and (phonetic) who would still like, at  
14 some point, to resume a relationship with his father,  
15 the defendant.

16           So we would respectfully request that the  
17 court in imposing the sentence consider all of these  
18 factors. We certainly know that there's nothing that  
19 can be done to bring Mr. Chohinin back. We certainly  
20 know that there is nothing the court here can do to --  
21 to placate the family or make the family feel better  
22 about this.

23           But we do believe, Judge, that, as set forth  
24 by the legislature, a sentence of 30 years in one of  
25 our maximum-security prisons is a fair and reasonable

1 sentence under all the circumstances.

2           And we would respectfully request that the  
3 Court temper justice with mercy and to not, in effect,  
4 pile on. I know he's got several charges here, Judge,  
5 many of them merge.

6           The concept of merger -- is one that the  
7 legislature has -- has enacted, Judge. It's certainly  
8 -- it certainly is the law. And the sentence that the  
9 Court can impose is directed by the legislature.

10           So it is not, Your Honor, and cannot be  
11 fairly said that the defendant would be getting away  
12 with anything, or getting a free ride. Your Honor,  
13 the sentence that the Court imposes, even at 30 years  
14 without parole, is a devastating blow to anyone.

15           Taking 30 years out of a man's life is a --  
16 is a severe punishment. And I know ~~the~~ rejoinder  
17 would be that nothing will bring back Mr. Chohinin and  
18 we understand that, Judge, and that's not our point.

19           The point simply is that under our system,  
20 that the proposed sentence of 30 years is what the  
21 legislature envisioned. And we would ask the Court  
22 sentence the defendant accordingly. Thank you.

23           THE COURT: Anything else from the defense?

24           MR. SAMPSON: No, Your Honor.

25           THE COURT: Mr. McTigue?



1 MR. MCTIGUE: Yes, Judge, with the Court's  
2 permission, before I make my comments to the court,  
3 there are two family members, Mr. Chohinin's father  
4 and uncle who wish to address the Court.

5 THE COURT: Before we do that, I said  
6 anything else from the defense. But, specifically,  
7 did the defendant want to speak or not?

8 MR. SAMPSON: No, Your Honor.

9 THE COURT: Thank you. Okay, go ahead, Mr.  
10 McTigue.

11 MR. MCTIGUE: Thank you.

12 THE COURT: Please have him put his name on  
13 the record.

14 (Interpreter utilized for statement,  
15 interpreter not identified)

16 MR. C. CHOHININ: My name is Clever  
17 (phonetic) Chohinin. I come from Ecuador. I am the  
18 uncle of the victim.

19 Honorable Judge Vasquez, Judge of this  
20 criminal case -- distinguished prosecutor, Thomas  
21 McTigue, prosecutor of this case -- police authorities  
22 who are present here -- member of the press --  
23 Hispanic community here present -- Latin American  
24 friends, Ecuadorian friends -- dear family -- ladies  
25 and gentlemen.

1 I would like to express a few words as to  
2 this event that has destroyed our families and broken  
3 our spirits. Due to the heinous homicide committed  
4 against my nephew, Felix Leonardo (phonetic) Chohinin  
5 -- I would like to say to you honorable people present  
6 here -- this was -- this has to do with a child that  
7 was born in -- Province of Loha (phonetic) -- city,  
8 which belongs to our dear Ecuador. For those who do  
9 not know where Macara (phonetic) is located, it's next  
10 to the country of Peru.

11 He was a happy child. He was to be playful  
12 and mischievous as any other child in my country. He  
13 grew quickly. His primary and secondary education was  
14 imparted by -- through the brethren of -- Hermanos  
15 Maristas (phonetic). These are Brothers that come  
16 from Spain.

17 He was taught to love his neighbor. To  
18 follow the logical rules of justice. The law of  
19 studies and love of work. He grew under the  
20 protection of his parents and relatives.

21 He soon became a man of good. He married a  
22 nice young lady. And he -- had a son who is three  
23 years old at the moment.

24 But he wanted to improve his way of life.  
25 And he wanted to come to this great country up North

1 (phonetic). By that time, his father already was  
2 living here in this country of North America.

3 I will never forget the day which he called  
4 his father over the phone -- asking him to bring him  
5 to this land -- Abraham Lincoln's land.

6 And I remember when he told him -- father,  
7 take me -- because I would like to build the -- I  
8 would like to build the ladder that leads to success.  
9 And he brought him here, he came. Because he wanted  
10 to study and to work -- in order to support his  
11 family.

12 But, unfortunately, on November the 4<sup>th</sup>,  
13 2002, in a -- in the wee hours of the morning, on a  
14 very cold morning on this date -- someone took his  
15 life. In his prime youth, when he was starting to  
16 live.

17 For such a reason, Your Honor, and people  
18 present here -- I have come to this great country to  
19 be a witness of this legal process -- and for this act  
20 not to go unpunished.

21 I want a sentence -- that the sentence that  
22 is imposed would be an example. As member of a  
23 Catholic family -- we know that the creator of all  
24 things already has a punishment for him.

25 Honorable Justice Vasquez, I will receive

1 whatever -- whatever decision you impose and we hope  
2 that that decision would be exemplary. And that  
3 would be sort of a relief for the pain that we are  
4 bearing.

5 I would also like to take advantage of this  
6 opportunity -- to greatly thank the prosecutor, Mr.  
7 Thomas McTigue -- for the great way in which he  
8 conducted the process. Proving step by step the --all  
9 the details involved in the case -- in the crime. So  
10 the members of the jury would see and find him guilty.

11 I would like to express my infinite  
12 gratitude to them -- to the police authorities, to the  
13 detectives -- and in a very, very special way to  
14 Nicole Berian (phonetic). I'm very thankful to you.  
15 Because I know you took this case seriously. Because  
16 this also broke your heart. May God reward you.

17 And, of course, how will I not thank the  
18 members of the press, I think that Univision is  
19 present here -- who projected the photograph of my  
20 nephew and made it possible for the criminal to be  
21 captured.

22 My formal thanks to Juan Rodriguez also --  
23 from the Department of Victims of Crimes -- who has  
24 supported us psychologically -- as a man of faith, the  
25 Christian faith -- may God reward you.



1           And all the Hispanic friends -- who were  
2 helping my brother through this pain -- I only have to  
3 say thank and proceed with the justice and may the  
4 powerful God protect you. That's all.

5           THE COURT: Thank you for your eloquence,  
6 Mr. Chohinin.

7           MR. F. CHOININ: My name is Felix Chohinin.  
8 Father of the victim. First of all, I would like to  
9 greet the Honorable Vasquez -- the Court, the Hispanic  
10 community here present. I would first like to thank  
11 you, Your Honor, for the way you conducted the case.  
12 Mr. McTigue, Nicole, Juan -- Juan Rodriguez, and all  
13 of you.

14           On the November -- in the early hours of the  
15 morning of November the 4<sup>th</sup>, 2002, it was -- a  
16 heartbreaking case when I received the news about my  
17 son. A case which shattered my life.

18           As of that day, my life has changed, my  
19 family's life has changed -- my son's life, who is  
20 seven years old (phonetic). I don't have words to  
21 express the pain I feel. I'll be a little short about  
22 my son's biography.

23           I, as my brother said, my child was raised  
24 under people that believe in God. We taught him to  
25 work, we taught him to love his neighbor, to love God,

1 but the same way God gave him to me, God also has  
2 taken him away from me.

3 I ask you for the most severe sentence. Why  
4 the most severe? Because I wouldn't like any parent  
5 to go through what I'm going through. Why severe?  
6 Because I have a seven-year-old son and I would like  
7 him to grow securely. And I want the criminals that  
8 easily take other people's lives to be where they have  
9 to be.

10 I would like to be short -- and I thank all  
11 this Court, the press -- Univision -- who never forgot  
12 about me, they were always there. And specifically,  
13 as my brother said, to Mr. McTigue, Nicole, who I will  
14 always have in my heart. Thank you.

15 THE COURT: Thank you, Mr. Chohinin. Mr.  
16 McTigue?

17 MR. MCTIGUE: Yes. Your Honor presided over  
18 this case, and it's unusual, I think, when we get a  
19 feel for a victim as much as we have here.

20 Felix Chohinin is not physically in this  
21 courtroom, but through the comments that Your Honor  
22 just heard, we know Felix Chohinin. We know him  
23 through the warmth expressed by his co-workers, their  
24 feelings for him during the trial.

25 We know him through the tremendous dignity

1 with which his parents carried themselves through the  
2 ordeal of the trial that they attended each and every  
3 day, through all the difficult details.

4           Judge, this was a vicious and senseless  
5 killing. The jury convicted the defendant not only of  
6 knowing and purposely murder (phonetic), but felony  
7 murder.

8           We know from the testimony during the trial  
9 that the decedent, Felix Chohinin, was shot in the  
10 back of the head with no provocation -- merely as he  
11 was applying his trade, that of a livery cab driver in  
12 the city of Newark, New Jersey.

13           We know from testimony, Judge, that his  
14 still living body was dragged from that cab and,  
15 thereafter, he was robbed.

16           His life was taken, the proceeds that he had  
17 earned by the sweat of his brow -- and the DVD player  
18 that was his pride and joy that he showed off to his  
19 friends earlier that night.

20           I mention these facts, Judge, as part of the  
21 aggravating factors. Certainly, the Court must  
22 consider the nature of the offense and details  
23 therein.

24           We're cautioned by the Appellate Courts not  
25 to double count. But, certainly, Judge, I think you

1 can consider the callousness and the absolute horror  
2 of this senseless act -- perpetrated by a man who  
3 doesn't come to you as a person deprived of his  
4 childhood. He had advantages, Judge, that many  
5 defendants who appear before you do not have. He had  
6 education, a stable family.

7           But somewhere in the defendant's life,  
8 Judge, he took a wrong turn. And as he was making  
9 that turn, unfortunately, the person he ran into was  
10 the man whose life he took.

11           There is a certain horror about this crime,  
12 Judge, simply because of its -- just because of the  
13 nature of it and how a person going about his daily  
14 work, doing no wrong, the randomness of it, Judge --  
15 is shocking in and of itself.

16           What's also shocking, Judge, is the fact  
17 that it appears that the defendant who has a level of  
18 intelligence, we know that from his testimony on the  
19 stand, has perverted that intelligence. This crime  
20 bespoke a certain level of planning. There was a  
21 calculated nature to it. There was an escape route,  
22 there was a plan in effect where he could take the car  
23 that was driven by the decedent and leave.

24           We know from the behavior of the defendant  
25 after this crime was committed. He took steps to send



1 his wife and child to their native Brazil. He  
2 disguised his appearance. He abused the trust of  
3 people who extended kindness to him in the Hispanic  
4 community by sheltering him. And he only came to the  
5 surface, Judge, when, with the help of the media, he  
6 was flushed from his hideout by the publicity that was  
7 engendered by this case.

8           Again, Judge, I mention these as  
9 contributing to the overall gravity of the crime  
10 inflicted here and the nature of the defendant.

11           Your Honor had the chance to see the  
12 defendant on the stand. He has expressed no remorse.  
13 Understanding that he denies his guilt of this crime,  
14 there is no remorse whatsoever, Judge. Not to the  
15 general situation, not for the family of the victim.

16           There are other aggravating factors which  
17 apply, Judge, with equal force. Certainly, Judge,  
18 there is a risk that this defendant will commit  
19 another crime. How do we know that? Well, Judge, he  
20 was committing crimes up to and including the trial of  
21 this case.

22           During the trial of this case, Your Honor  
23 heard testimony about threats he made to a witness.  
24 Which may be the subject of additional charges, which  
25 the prosecution will weigh in the future as to whether

1 those charges should be lodged. But through the  
2 trial, he continued in his criminal conduct -- trying  
3 to escape the ultimate power of the jury.

4 He does pose a risk to society, Judge. And  
5 as Mr. Sampson noted, at some point he will be back in  
6 society. And given the path he has chosen in life,  
7 Judge, and given the choices he has made, I would  
8 submit that society would be best served by not having  
9 him in its presence.

10 Certainly, there is a need to deter. And,  
11 Judge, I firmly believe that, given this defendant,  
12 given his nature, the only thing that will deter him  
13 from further illegal conduct, from further violence is  
14 a long custodial term.

15 Your Honor, Mr. Sampson has made his  
16 comments regarding merger. I agree with him, that's  
17 the law. Certainly, the --

18 THE COURT: Can I interrupt one second, Mr.  
19 McTigue -- in that context, Mr. Sampson suggested that  
20 everything merges into felony murder. Originally, I  
21 had indicated that felony murder merges into murder.

22 Do you take the position that everything  
23 merges into Count One or that Count One merges into  
24 Count Two?

25 MR. MCTIGUE: Judge, I believe the felony

1 murder would merge with the knowing and purposeful  
2 murder. I believe the robbery would merge into the  
3 felony murder.

4 THE COURT: Continue.

5 MR. MCTIGUE: Thank you. With regard to the  
6 possession of the gun charge, Judge, I would submit  
7 that that does not merge and that there should be a  
8 consecutive sentence imposed in that case.

9 We know from testimony at trial, that was a  
10 gun that was stolen from a Newark Police Officer. And  
11 we know that months after the killing of Felix  
12 Chohinin, that gun was sold by the defendant to  
13 another person for \$300.

14 This is a separate regulatory offense,  
15 Judge. It stands on its own. There is sufficient  
16 evidence before this Court to indicate that the  
17 defendant possessed that gun, not only on the day of  
18 the murder, but at a time -- for a significant period  
19 of time before the murder and for a significant period  
20 of time after the murder. At which time he sold it by  
21 way of getting rid of evidence.

22 I would respectfully submit that sentence to  
23 be imposed on that Count should be consecutive, not  
24 concurrent, to the sentence to be imposed by Your  
25 Honor on the homicide counts.

1           Likewise, Judge, the receiving stolen  
2 property, which was the gun, should run consecutive to  
3 the homicide counts.

4           I will conceded that an argument may be made  
5 that if Your Honor imposes a consecutive sentence for  
6 possession of the gun, that the un -- that the  
7 receiving stolen property count perhaps run concurrent  
8 to there to. But they do involve separate crimes, one  
9 is regulatory and the other possessory crime.

10           Your Honor has a range of sentencing before  
11 you. Certainly, the defendant must serve a minimum of  
12 30 years without parole. But the homicide statute  
13 provides that the sentence which may be imposed for a  
14 murder is between 30 years and life.

15           Just looking at the aggravating factors,  
16 Judge, and the mitigating factors, to the extent Your  
17 Honor credits any of the mitigating factors, I would  
18 respectfully submit that within the nature of this  
19 offense, given the factors known to Your Honor as  
20 developed through the trial, the aggravating factors  
21 overwhelm any mitigating factors which may exist.

22           I think Your Honor can reasonably impose a  
23 sentence higher than 30 years for this offense. It's  
24 the State's position that a term of 50 years, subject  
25 to the No Early Release Act, be imposed on the



1 homicide Counts.

2           With the Counts -- with the sentences to be  
3 imposed on the Counts for possession of a weapon and  
4 receiving stolen property -- running consecutive to  
5 the homicide sentence, and consecutive to each other.

6           MR. SAMPSON: Your Honor?

7           THE COURT: Yes, Mr. Sampson?

8           MR. SAMPSON: Judge, just -- just one point,  
9 please. With regard to the aggravating and mitigating  
10 -- we certainly concede that -- that the death of Mr.  
11 Chohinin was -- was horrible and -- committed a  
12 callous act.

13           I believe the burden on the State under the  
14 -- under the law would be that there is something  
15 about this particular offense that is especially  
16 heinous, cruel or depraved. And I believe that would  
17 be the standard, Judge.

18           And I only point out with regard to any  
19 threats made by this defendant that, of all the  
20 charges against him, the only two in which he was  
21 acquitted were the terroristic threats and the witness  
22 tampering, Judge.

23           And so I believe that the State is probably  
24 barred by virtue of a rule on double jeopardy for re-  
25 indicting him on those charges.

1           Nonetheless, Judge, I don't believe that --  
2 the risk of committing another offense, nor the need  
3 to deter so preponderate over the one mitigating  
4 factor we suggested as to warrant above the  
5 presumptive 30 year term.

6           And, that would just be out point. Thank  
7 you.

8           MR. MCTIGUE: To reply very briefly, Judge.  
9 Mr. Sampson correctly points out that there was a  
10 terroristic threat and tampering charge in the  
11 indictment, for which he was acquitted. That involved  
12 one witness for this case, Alex Tixy (phonetic).

13           Your Honor will recall, when the case was  
14 being tried, within the precincts of this courtroom,  
15 this defendant threatened another witness, Carlos  
16 Marquines (phonetic).

17           And he did so, Judge, in a fashion typical  
18 to what I would characterize as his "egomaniac." He  
19 chose to threaten Mr. Marquines, speaking in Spanish  
20 and Portuguese. Not counting on the fact that there  
21 would be a Spanish-speaking court officer in the  
22 vicinity.

23           He thought he was threatening in anonymity,  
24 Judge. Unfortunately for him, it turned out  
25 differently. And that is a viable charge, Judge,

1 which is not in any way touched by principles of  
2 double jeopardy.

3           And it remains a decision for the  
4 prosecutor's office to make as to whether additional  
5 charges will be lodged in connection with that  
6 separate incident, which occurred in this courtroom.

7           THE COURT: Anything else?

8           (No audible response)

9           THE COURT: On June 22<sup>nd</sup> of this year, Mr.  
10 Dasilva was found guilty of felony murder, purposeful  
11 and knowing murder, first-degree robbery, unlawful  
12 possession of a weapon, possession of a weapon for  
13 unlawful purpose and receiving stolen property. A  
14 guilty verdict was returned by a trial jury after two  
15 weeks of trial.

16           I am familiar with the pertinent facts of  
17 the case since I presided over that trial. And I have  
18 also reviewed the presentence report. Listened to the  
19 statements made by the people who spoke today.

20           And also should mention that the Court  
21 received a letter with an accompanying translation  
22 from -- Mario Calderone (phonetic) Bohokef (phonetic),  
23 provincial councilman (phonetic) from Ecuador.

24           Based on my review of the presentence  
25 investigation report, and testimony at trial, I am

1 familiar with Mr. Dasilva's background. Born August  
2 25, 1980 in South Paolo Brazil. Attended school in  
3 Brazil and also attended, apparently, high school in  
4 New Jersey. There was no record of any juvenile --  
5 they have no juvenile record of him. As an adult, as  
6 has already been commented, there's a record of five  
7 arrests but this is his first indictable conviction.

8 That being the case, he is entitled to  
9 mitigating factor number seven because of no prior  
10 convictions.

11 As aggravating factors, aggravating factor  
12 number one, the nature and circumstances of the  
13 offense and the role of the actor therein, including  
14 whether or not it was committed in an especially  
15 heinous, cruel or depraved manner.

16 People can differ as to what's heinous,  
17 cruel and depraved, I'm not so much going to say that  
18 aggravating factor number one applies as to indicating  
19 the fact that I'm considering the way that this  
20 incident occurred -- in considering what penalties  
21 should be given.

22 Certainly, factors three and nine all  
23 concede -- apply. Three, the risk that he'll commit  
24 another offense. Based on his actions -- I have seen  
25 through the trial, and based on his history of



1 arrests. And nine, the need to deter him and others  
2 from violating the law.

3           Back to the offense itself. This was a  
4 planned, cold blooded -- execution, really -- of a  
5 defenseless young man trying to make a living.

6           The defendant took with him a handgun with  
7 the purpose of using it to rob and kill his victim so  
8 that there would not be a witness to identify him. He  
9 shot him in the back of the head, execution style.  
10 The victim was defenseless. Certainly there was no  
11 provocation on the part of the victim.

12           I think the prosecutor is accurate in using  
13 the words "vicious and senseless" killing. Or,  
14 perhaps, not senseless in the defendant's opinion  
15 since it was obvious to this Court that the killing  
16 was not only to facilitate the robbery, but to  
17 facilitate his escape and not being apprehended for  
18 same.

19           This is conduct that, in the scheme of  
20 things, is not your mildest murder, if any murder can  
21 be considered a mild murder or low on the scale of  
22 murder, because none really can. But there are  
23 certain murders that are more vicious than others.  
24 And this is one that is more vicious than others.

25           I recognize the -- that this is his first

1 conviction and, therefore, obviously, his first  
2 violent conviction. And that must be considered and  
3 considered heavily by the Court.

4           There is no presumptive term for murder.  
5 But in the grand scheme of things, our legislature has  
6 given us a very wide range from 30 years to life, with  
7 life being presumed to be a 75-year period. Or -- 75  
8 (phonetic).

9           Where does this fall in that scale. I don't  
10 think it would be -- far off to say it certainly was  
11 at least half way up the scale. And I don't think the  
12 State's request or recommendation that a sentence of  
13 50 years is appropriate (phonetic), is off the mark by  
14 much.

15           Considering both the viciousness of the act  
16 itself, but weighing that against the lack of a prior  
17 criminal history, I still find that the aggravating  
18 factors outweigh the mitigating factors.

19           Nevertheless, I'm going to sentence as  
20 follows. First of all, on Count One where he is found  
21 guilty of first-degree felony murder, we are merging  
22 that with Count Two. Purposeful and knowing murder.

23           Count Three, where he is found guilty of  
24 first-degree robbery, we are merging with Count One,  
25 felony murder.

1           And Count Five where he is found guilty of  
2 second-degree possession of a weapon for an unlawful  
3 purpose; we're merging with Count Two, purposeful and  
4 knowing murder.

5           And on Count Two, which he was charged with  
6 purposeful and knowing murder, found guilty of same by  
7 the jury in this case, Mr. Dasilva -- you are  
8 committed to the custody of the Commissioner of the  
9 Department of Corrections for a term of 45 years.

10           This is an offense under the No Early  
11 Release Act and, accordingly, 85 percent of that time  
12 would be parole ineligible. It's obvious from the  
13 testimony and the guilty verdict from the jury that  
14 the Graves Act would also apply.

15           There is a Safe Neighborhood Assessment of  
16 \$75 and a Violent Crimes Assessment of \$100.

17           On Count Four of the indictment that charges  
18 second-degree unlawful possession of a weapon -- you  
19 are sentenced to -- committed to the custody of the  
20 Commissioner of the Department of Corrections for a  
21 period of five years.

22           Safe Neighborhood Assessment of \$75, Violent  
23 Crimes of \$50.

24           And on Count Eight, which charges third  
25 degree receiving stolen property, you are committed to

1 the custody of the Department of Corrections for a  
2 term of five years.

3 Count Four will run consecutive to Count  
4 Two. Count Eight will run concurrent to Counts Two  
5 and Four.

6 There is a Law Enforcement Training  
7 Assessment of \$30. Jail credit is 458 days, from May  
8 4 of 2003 to August the 3<sup>rd</sup> of 2004.

9 Defendant was found not guilty on Count Six  
10 and Seven, those Counts are dismissed.

11 Mr. Dasilva, you do have the right to  
12 appeal. Any appeal must be filed within 45 days of  
13 your date of sentencing, which is today. If you  
14 cannot afford an attorney, one will be appointed to  
15 represent you. Do you understand your right to  
16 appeal?

17 MR. DASILVA: Yes, I do, Your Honor.

18 THE COURT: The aggregate sentence is 50  
19 years. On 45 years, there is a parole ineligibility  
20 of 85 percent.

21 The purpose of this statement is to inform  
22 the public of the actual period of time this defendant  
23 is likely to spend in jail or prison as a result of  
24 this sentence. That actual period of jail or prison  
25 time is not determined by this Judge, but by the



1 Statutes of New Jersey as applied to this sentence by  
2 the State Parole Board.

3 In this case, the period of estimated actual  
4 custody --

5 MR. MCTIGUE: Excuse me, Your Honor?

6 THE COURT: Yes.

7 MR. MCTIGUE: May I approach Mr. Sampson?

8 THE COURT: Sure, you can.

9 (Attorneys in discussion)

10 (Recording off)

11 THE COURT: -- 39 years, three months and  
12 five days -- according to the Parole Board's published  
13 parole eligibility tables. It is an approximate  
14 estimate; the estimate assumes that the defendant will  
15 get full credit for good time, work time and minimum  
16 custody time. All of those credits being provided for  
17 by New Jersey Statute. If defendant does not get  
18 those credits, the time served will be longer.

19 Furthermore, if at defendant's parole  
20 eligibility date -- the parole board determines that  
21 there is a substantial likelihood the defendant will  
22 commit a crime if released, parole will be denied at  
23 that time.

24 Presently, more than 40 percent of  
25 defendants are not released by the parole board at the

1 estimated time in the statement, serving another year  
2 or more. The actual calculation can be complex.

3 But for the majority of the defendants, the  
4 total real time that is served for this sentence is  
5 approximately what I have stated, namely 39 years,  
6 three months and five days.

7 This defendant has already served 458 days  
8 of that time. Defendant should not rely at all on  
9 this statement and, in particular, cannot rely on it  
10 on appeal. It is intended solely to inform the  
11 public.

12 Also, pursuant to No Early Release Act,  
13 there will be a five-year parole provision when he is  
14 ultimately released on parole.

15 There being nothing else?

16 MR. MCTIGUE: Nothing further, Judge.

17 THE COURT: Very good.

18 MR. MCTIGUE: Thank you, sir.

19 (Matter concluded)  
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21  
22  
23  
24  
25

1 I, Jean Mirza, the assigned transcriber, do  
2 hereby certify the foregoing transcript of proceedings  
3 on tape number 1, index number 1150 to 5099, is  
4 prepared in full compliance with the current  
5 Transcript Format for Judicial Proceedings and is a  
6 true and accurate non-compressed transcript of the  
7 proceedings as recorded.

8  
9 8/1/07  
Date

Jean Mirza  
Jean Mirza, AOC #541  
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