

2016

**State of Utah Plaintiff/ Appellee vs. Richard Simon Garcia
Defendant/ Appellant**

Utah Court of Appeals

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Case No. 20160321-CA

IN THE
UTAH COURT OF APPEALS

State of Utah
Plaintiff/Appellee

vs.

RICHARD SIMON GARCIA
Defendant/Appellant

BRIEF OF APPELLANT

APPEAL FROM A CONVICTION OF ONE COUNT OF
AGGRAVATED ROBBERY IN THE THIRD DISTRICT COURT

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Counsel for Appellee

The Defendant is Incarcerated in the Utah State Prison

FILED
UTAH APPELLATE COURTS

SEP 30 2016

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

Plaintiff/Appellee

vs.

RICHARD SIMON GARCIA

Defendant/Appellant

Case No. 20160321-CA

JURISDICTION OF COURT OF APPEALS

Defendant Richard Simon Garcia was charged in the Third District Court in and for Salt Lake County in an Information charging Aggravated Robbery, a First Degree Felony, Utah Code Ann. §76 – 6 – 302; and Failure to Respond to Officer’s Signal to Stop in violation of Utah Code Ann. § 41-6a-210, a Third Degree Felony; False Information to a Law Enforcement Officer, a Class A Misdemeanor, , Utah Code Ann. § 76-8-506; Failure to Stop at the Command of a Police Officer, a Class A misdemeanor, Utah Code Ann.§76-8-305.5; and Driving On a Suspended or Revoked Operator’s License, a Class C Misdemeanor, Utah Code Ann. §53-3-227(1). R. 1-4. The Information is appended as Addendum A.

Mr. Garcia's statement in advance of his plea of guilty, R.55-61, is appended hereto as Addendum B. Mr. Garcia was convicted by a plea of guilty of one count of Aggravated Robbery, a first degree felony, with the remaining charges in this case dismissed and the charges in district court cases numbered 141909663 and 141910615 dismissed with prejudice. R.62-63;R.157-174. The minutes and transcript of the proceedings are included in Addendum C.

Mr. Garcia was sentenced to serve the indeterminate term of 5 years to life in the Utah State prison. R.73-74;R.175-184. Mr. Garcia did not move to set aside his plea of guilty. From the Sentence, Judgment, and Commitment (Addendum D), R. 84 – 85, Mr. Garcia filed an untimely Notice of Appeal. R. 75-78. The Supreme Court transferred the case to this Court. R.91-94. This Court dismissed for lack of appellate jurisdiction and remanded to the district court. R.120-121.

Mr. Garcia moved in the district court pursuant to Utah R. App. P. 4(f) to reinstate the time in which to appeal. R.108-115. The district court ordered the time to appeal reinstated. R.136-137. Mr. Garcia timely appealed from the order of reinstatement. R.136-137.

The Supreme Court again transferred this case to the Court of Appeals, R.148-150, which has jurisdiction in this matter pursuant to Utah Code Ann. § 78A-4-103(2)(j) (2008), governing cases transferred to the Court of Appeals from

the Supreme Court.

STATEMENT OF ISSUE PRESENTED FOR REVIEW, STANDARD OF APPELLATE REVIEW, PRESERVATION AND GROUNDS FOR APPEAL

A. **Issue:** Did the court abuse its discretion in sentencing Mr. Garcia to five to life in the Utah State Prison?

B. **Standard of Review and Preservation:** Sentencing decisions are reviewed for abuse of discretion. See *State v. Miera*, 2015 UT App 46, ¶ 5, 345 P.3d 761.

RULES, STATUTES AND CONSTITUTIONAL PROVISIONS

There are no constitutional or statutory provisions of particular or central importance to this appeal.

STATEMENT OF THE CASE AND FACTS

On September 22, 2014, Mr. Garcia was charged in the Third District Court Aggravated Robbery, a First Degree Felony, Utah Code Ann. §76 – 6 – 302; and Failure to Respond to Officer’s Signal to Stop in violation of Utah Code Ann. § 41-6a-210, a Third Degree Felony; False Information to a Law Enforcement Officer, a Class A Misdemeanor, § 76-8-506; Failure to Stop at the Command of a Police Officer, a Class A misdemeanor, 76-8-305.5; and Driving On a Suspended or Revoked Operator’s License, a Class C Misdemeanor, Utah Code Ann. §53-3-

227(1). R. 1-4. Pursuant to a plea agreement, Mr. Garcia entered a plea of guilty to Aggravated Robbery on February 3, 2015. R.55-61;R.73-74;R.157-174.

On March 23, 2015, Mr. Garcia was sentenced to five years to life for the Aggravated Robbery. R. 84-85;R.174-184. A copy of the sentencing transcript is appended hereto as Addendum E. Mr. Garcia has appealed his sentence. R.140-141.

At the time of sentencing, Garcia brought the court's attention to the fact that he had taken Xanax, a medication he was unaware of at the time, and that he had absolutely no memory of the events surrounding the robbery. R.178-179,181. Mr. Garcia did however accept full responsibility for the crime of which he was convicted. R.178. Mr. Garcia was very contrite, stating on the record: "I don't really recollect anything, but I'm not trying to minimize my crime or take anything away from Mr. King (the victim). I pray every night that I - that what I did to this gentleman, this young man, does not affect his life . . ." R.181.

His counsel brought to the court's attention the fact that at 45 years old he was beginning to "age out" of criminal conduct and, during his current incarceration awaiting disposition, had been accepted and wait listed to enter into the substance abuse program at Odyssey House. R.178. It can take up to a year to gain entrance to that program and he had already been waiting many months

working his way toward that much needed program. Id. He indicated his desperate desire to obtain treatment for his methamphetamine substance abuse problem. R.178-179. Further Garcia's counsel noted the substantial work which Garcia had accomplished during his time in jail awaiting disposition. R.178. He exhibited the Certificates of Completion he had received while incarcerated for completing the Mind-Altering Substances Anonymous course requirements, R.68-69, and the Certificate of Attendance and Completion of the ten classes in the LDS Addiction Recovery Program, R.70. R.178. These Certificates are included in Addendum F.

Counsel first requested that, given the circumstances, the court consider sentencing Mr. Garcia to one degree lower than the first degree felony, i.e., a one to 15. R.178. Although, if this were to occur and he were placed on probation, he would nevertheless do substantially more jail time awaiting placement, he could then take advantage of the Odyssey House program. R.179. He had stopped drinking and quit using other substances, but needed help in ridding himself of his methamphetamine addiction. R.179. Mr. Garcia, speaking for himself, acknowledged that he had a serious problem with amphetamine. R.180-181. He had been enrolled in Stevens-Henager College prior to this incident, when he "messed up," and believed that if given one more chance, this time he could

receive the treatment he needed and become a productive citizen. R.181.

Nevertheless, even with these most compelling circumstances, the district court sentenced Mr. Garcia to five to life in the Utah State Prison on the First Degree Felony. R.84-85;R.182.

SUMMARY OF ARGUMENT

Mr. Garcia argues that the district court abused its discretion when it imposed the sentence he received.

ARGUMENT

THE COURT ABUSED ITS DISCRETION WHEN IT SENTENCED MR. GARCIA.

Mr. Garcia maintains the court abused its discretion in this case. A criminal sentence "should be appropriate for the defendant in light of his background and the crime committed and also serve the interests of society which underlie the criminal justice system." *State v. Wanosik*, 2001 UT App 241, ¶ 34, 31 P.3d 615 (internal quotation marks omitted). "[A] trial court's sentencing decision will not be overturned unless it exceeds statutory or constitutional limits, the judge failed to consider all the legally relevant factors, or the actions of the judge were so inherently unfair as to constitute abuse of discretion." *State v. Killpack*, 2008 UT 49, ¶ 59, 191 P.3d 17 (internal quotation marks omitted). "'An abuse of discretion

results when the judge fails to consider all legally relevant factors or if the sentence imposed is clearly excessive." *State v. Maez*, 2015 UT App 55, ¶ 2, 346 P.3d 671, quoting *State v. Valdovinos*, 2003 UT App 432, ¶ 14, 82 P.3d 1167.

The due process clause of the Utah Constitution "requires that a sentencing judge act on reasonably reliable and relevant information in exercising discretion in fixing a sentence." *Wanosik*, 2001 UT App 241, 1134. Although the sentencing judge has discretion in determining what punishment fits both the crime and the offender, Utah courts "have consistently sought to shore up the soundness and reliability of the factual basis upon which the judge must rely in the exercise of that sentencing discretion." *Id.* (internal quotation marks omitted).

Mr. Garcia, in addition to his accomplishments while incarcerated, at the time of allocution indicated that he had a reentry plan, that he strongly desired to address his meth addiction problem which was at the root of his criminal behavior, and was on the wait list to enter Odyssey House for that essential treatment. R.175-184. It is his position that this was an abuse of discretion.

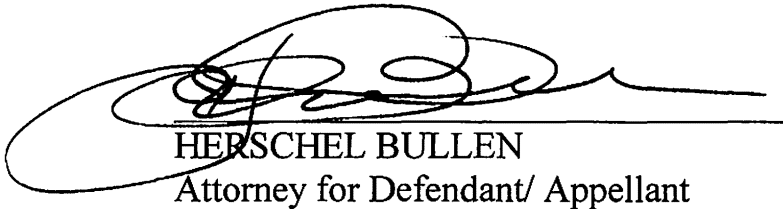
Mr. Garcia maintains that the district court abused its discretion at his sentencing hearing because his sentence is unfair "in light of [his] background and the crime committed," under unusual circumstances, as well as "the interests of society which underlie the criminal justice system." *Wanosik*, 2001 UT App 241,

1134. (internal quotation marks omitted). It is his position that the court failed to “consider all legally relevant factors.” *State v. Maez*, 346 P.3d at ¶ 2. Society would be far better served by allowing Mr. Garcia to rehabilitate himself in the rigorous program provided by Odyssey House in lieu of warehousing him in prison, where his urgent need for treatment will undoubtedly go unmet.

CONCLUSION

Mr. Garcia respectfully requests that this court reverse and remand for a new sentencing hearing.

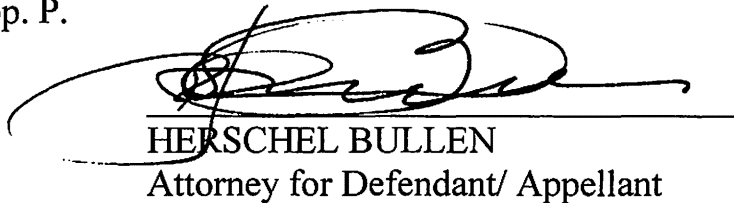
RESPECTFULLY SUBMITTED this / day of October, 2016.



HERSCHEL BULLEN
Attorney for Defendant/ Appellant

CERTIFICATE OF RULE 24 COMPLIANCE

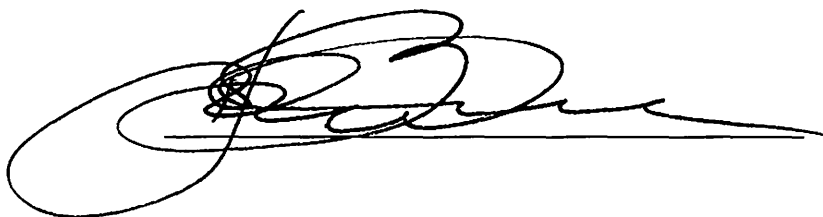
Appellant certifies pursuant to Rule 24(f)(1)(C) Utah R. App. P. that the foregoing principal Brief of Appellant contains fewer than 1700 words in compliance with Rule 24(f)(1)(A) Utah R. App. P.



HERSCHEL BULLEN
Attorney for Defendant/ Appellant

CERTIFICATE OF SERVICE

I, Herschel Bullen, hereby certify that I have caused to be served by hand delivery or United States Mail, postage pre-paid: 2 copies with a pdf CD to the Attorney General's Office, Heber M. Wells Building, 160 East 300 South, 6th Floor, Salt Lake City, Utah 84114 this ____/____ day of October, 2016.

A handwritten signature in black ink, appearing to read 'Herschel Bullen', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

ADDENDUM A

SIM GILL, Bar No. 6389
District Attorney for Salt Lake County
HOLLY A. COCCO, Bar No. 11495
Deputy District Attorney
111 East Broadway, Suite 400
Salt Lake City, UT 84111
Telephone: (385) 468-7600

FILED DISTRICT COURT
Third Judicial District

SEP 22 2014

SALT LAKE COUNTY

Cy Deputy Clerk

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT

IN AND FOR THE COUNTY OF SALT LAKE, STATE OF UTAH

THE STATE OF UTAH

Plaintiff,

vs.

RICHARD SIMON GARCIA
DOB: 11/21/1969,
AKA: OSO, BEAR, BEAR GARCIA
3301 West 4740 South
Taylorsville, UT 84118
D.L.# 153400909
OTN 43487206
SO# 163218

Defendant.

SHELLY JUNE CARLSEN
DOB: 07/10/1981

Co. Defendnat

Screened by: HOLLY A. COCCO
Assigned to: ORGANIZED GANG PROSC

INFORMATION

DAO # 14022151

ECR Status: NON-ECR

Bail: \$50,007 CASH ONLY
Warrant/Release: IN JAIL/CHARGES &
WARRANTS

Case No. *WVR 10607*

DAO# 14022152

The undersigned Detective L. Lloyd - WEST VALLEY POLICE DEPARTMENT, Agency Case No. 14I044079, upon a written declaration states on information and belief that the defendant, RICHARD SIMON GARCIA, committed the crime(s) of:

COUNT 1

AGGRAVATED ROBBERY, 76-6-302 UCA, First Degree Felony, as follows: That on or about September 16, 2014 at 4210 West 3500 South, in Salt Lake County, State of Utah, the defendant did (a) unlawfully and intentionally take or attempt to take personal property in the possession of another from his or her person, or immediate presence, against his or her will, by means of force or fear, and with a purpose or intent to deprive the person permanently or temporarily of the personal property; or

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STATE vs RICHARD SIMON GARCIA

DAO # 14022151

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- (b) intentionally or knowingly use force or fear of immediate force against another in the course of committing a theft or wrongful appropriation; and
- (1) in the course of committing the before mentioned act,
 - (a) used or threatened to use a dangerous weapon;
 - (b) caused serious bodily injury upon another; or
 - (c) took or attempted to take an operable motor vehicle.

COUNT 2

FAILURE TO RESPOND TO OFFICER'S SIGNAL TO STOP, 41-6a-210 UCA, Third Degree Felony, as follows: That on or about September 16, 2014 at 1546 West 2320 South, in Salt Lake County, State of Utah, the defendant did , as an operator who received a visual or audible signal from a peace officer to bring the vehicle to a stop, (a) operate the motor vehicle in willful or wanton disregard of the signal so as to interfere with or endanger the operation of any vehicle or person; or

- (b) attempt to flee or elude a peace officer by vehicle or other means.

COUNT 3

FALSE INFORMATION TO A LAW ENFORCEMENT OFFICER, GOVERNMENT AGENCIES OR SPECIFIED PROFESSIONALS, 76-8-506 UCA, Class A Misdemeanor, as follows: That on or about September 16, 2014 at 1821 W Parkway Blvd #3, in Salt Lake County, State of Utah, the defendant did knowingly give or cause to be given

- (a) false information to any peace officer or any state or local government agency or personnel with a purpose of inducing the recipient of the information to believe that another had committed an offense;
- (b) to any peace officer, any state or local government agency or personnel, or to any person licensed in this state to practice social work, psychology, or marriage and family therapy, information concerning the commission of an offense, knowing that the offense did not occur or knowing that he had no information relating to the offense or danger; or
- (c) false information to any state or local government agency or personnel with a purpose of inducing a change in the person's licensing or certification status or the licensing or certification status of another.

COUNT 4

FAIL TO STOP AT COMMAND OF LAW OFFICER, 76-8-305.5 UCA, Class A Misdemeanor, as follows: That on or about September 16, 2014 at 1546 West 2320 South, in Salt Lake County, State of Utah, the defendant did flee from or otherwise attempt to elude a law enforcement officer

- (a) after the officer issued a verbal or visual command to stop;
- (b) for the purpose of avoiding arrest; and
- (c) by any means other than a violation of Utah Code Section 41-6a-210.

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COUNT 5

DRIVING ON SUSPENDED OR REVOKED OPERATOR'S LICENSE, 53-3-227(1) UCA, Class C Misdemeanor, as follows: That on or about September 16, 2014 at 1546 West 2320 South, in Salt Lake County, State of Utah, the defendant did drive any motor vehicle upon the highways of this state while the defendant's driving privilege was denied, suspended, disqualified or revoked.

THIS INFORMATION IS BASED ON EVIDENCE OBTAINED FROM THE FOLLOWING WITNESSES:

M. Aguilera, B. Armstrong, A. Belcher, L. C., R. Carver, J. Dolan, B. Fredrickson, D. Hoover, V. Jeppson, Anthony king, Detective L. Lloyd, A. Ricci, G. Tan, C. Wells

DECLARATION OF PROBABLE CAUSE:

Your Declarant bases this Information on the following:

The statement of West Valley City Police Officer Armstrong that on September 16, 2014, at approximately 3:00 p.m., he responded to 1821 Parkway Boulevard, Salt Lake County, State of Utah, on the report of three men in an apartment who didn't belong there. As Officer Armstrong spoke to the man who answered the door, he noticed another man slumped over at the kitchen table, who kept sliding into the wall. Officer Armstrong was given permission to check on the man, who identified himself as Richard Montoya with a birth date of March 9, 1970, and observed that he was drooling, incoherent, and could not walk straight. Montoya, who was later identified as defendant RICHARD SIMON GARCIA, said he took a blue pill that he bought from someone, but didn't know what it was. GARCIA was taken to Pioneer Valley Hospital for treatment. Officer Armstrong later learned that when GARCIA was at the hospital, he pulled the I.V. out of his arm and just walked out.

The statement of Anthony King that on September 16, 2014, at approximately 5:45 p.m., he was delivering a pizza at 4210 West 3500 South, Salt Lake County, State of Utah, when the defendant GARCIA approached and asked for a ride. King told GARCIA he couldn't because it was against company policy and started to get into his vehicle to leave. GARCIA slammed the car door on King and began hitting King in the face. GARCIA told King it was his life or his car, so King got out and GARCIA left in the vehicle which was an orange Dodge Neon.

STATE vs RICHARD SIMON GARCIA

DAO # 14022151

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The statement of West Valley City Police Officer Tan that on September 16, 2014, he responded on a suspicious vehicle which was the orange Dodge Neon GARCIA was in possession of. Spikes were deployed and Officer Tan observed GARCIA swerve and avoid the spikes. Officer Tan began following GARCIA who avoided a second set of spikes and then lost control of the vehicle, striking a wooden power pole. GARCIA continued driving and struck a chain link fence post at 1546 West 2320 South. GARCIA then exited the vehicle and ran. GARCIA's passenger, later identified as defendant SHELLY JUNE CARLSEN, also fled on foot. Officer Tan caught up with GARCIA and took him into custody. While GARCIA was at the hospital being treated for injuries received in the accident, Officer Armstrong recognized him as the man who earlier identified himself as Richard Montoya. Richard Montoya is another actual person. GARCIA was found to have a suspended driver's license and active warrants.

The statement of Officer Belcher that he pursued CARLSEN and yelled at her to stop, but she continued running. Officer Belcher caught up with CARLSEN and assisted her to the ground. CARLSEN struggled and refused to pull her hands out from under her stomach. CARLSEN actively resisted until responding officers assisted in taking her into custody. CARLSEN had a broken glass pipe in her pocket along with a pocket knife. In a search of CARLSEN's backpack, a syringe, two baggies, and CARLSEN's identification were located.

Pursuant to Utah Code Annotated § 78B-5-705 (2008) I declare under criminal penalty of the State of Utah that the foregoing is true and correct to the best of my belief and knowledge.

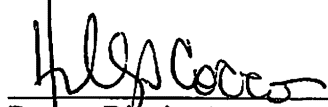
Executed on: 9/22/14

 DE/168

Detective L. Lloyd
Declarant

Authorized for presentment and filing

SIM GILL, District Attorney



Deputy District Attorney

22nd day of September, 2014

AM / WOW / DAO # 14022151

00004

ADDENDUM B

FILED DISTRICT COURT
Third Judicial District

FEB 03 2015

SALT LAKE COUNTY

Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH

Plaintiff,

vs

Richard GARCIA

Defendant

STATEMENT OF DEFENDANT
IN SUPPORT OF GUILTY PLEA
AND CERTIFICATE OF
COUNSEL

Case No. 1A190 0607 ES

I, Richard Garcia hereby acknowledge and certify that I have been
advised of and that I understand the following facts and rights:

Notification of Charges

I am pleading guilty (or no contest) to the following crimes:

	Crime & Statutory Provision	Degree	Punishment Min/Max and / or Minimum Mandatory
A.	<u>Aggravated</u> <u>Robbery</u>	<u>1st</u>	<u>5 yrs — LIFE</u> <u>0 — \$10,000 fine</u>
B.	<u>All other counts to be dismissed</u>		
C.	<u>Case #'s 1A190 9663</u> <u>1A191 0615</u> <u>to be dismissed</u>		
D.			

I have received a copy of the (Amended) Information against me. I have read it, or had it read to me, and I understand the nature and the elements of crime(s) to which I am pleading guilty (or no contest).

The elements of the crime(s) to which I am pleading guilty (or no contest) are:

On/about 9/16/14, in St. County

I unlawfully and intentionally took ~~possessed~~ a motor vehicle from another person by use of force or fear.

I understand that by pleading guilty I will be admitting that I committed the crimes listed above. (Or, if I am pleading no contest, I am not contesting that I committed the foregoing crimes). I stipulate and agree (or, if I am pleading no contest, I do not dispute or contest) that the following facts describe my conduct and the conduct of other persons for which I am criminally liable. These facts provide a basis for the court to accept my guilty (or no contest) pleas and prove the elements of the crime(s) to which I am pleading guilty (or no contest):

On 9/16/14 in St. County I took a car from Anthony King by force.

Waiver of Constitutional Rights

I am entering these pleas voluntarily. I understand that I have the following rights under the constitutions of Utah and of the United States. I also understand that if I plead guilty (or no contest) I will give up all the following rights:

Counsel: I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me. I understand that I might later, if the judge determined that I was able, be required to pay for the appointed lawyer's service to me.

I (have not) (have) waived my right to counsel. If I have waived my right to counsel, I have done so knowingly, intelligently, and voluntarily for the following reasons:

If I have waived my rights to counsel, I certify that I have read this statement and that I understand the nature and elements of the charges and crimes to which I am pleading guilty (or no contest). I also understand my rights in this case and other cases and the consequences of my guilty (or no contest) plea(s).

If I have not waived my right to counsel, my attorney is DAVID MANN. My attorney and I have fully discussed this statement, my rights, and the consequences of my guilty (or no contest) plea(s).

Jury Trial: I know that I have a right to a speedy and public trial by an impartial (unbiased) jury and that I will be giving up that right by pleading guilty (or no contest).

Confrontation and cross-examination of witnesses: I know that if I were to have a trial, a) I would have the right to see and observe the witnesses who testified against me and b) my attorney, or myself if I waived my right to an attorney, would have the opportunity to cross-examine all of the witnesses who testified against me.

Right to compel witnesses: I know that if I were to have a trial, I could call witnesses if I chose to, and I would be able to obtain subpoenas requiring the attendance and testimony of those witnesses. If I could not afford to pay for the witnesses to appear, the State would pay those costs.

Right to testify and privilege against self-incrimination: I know that if I were to have a trial, I would have the right to testify on my own behalf. I also know that if I chose not to testify, no one could make me testify or make me give evidence against myself. I also know that if I chose not to testify, the jury would be told that they could not hold my refusal to testify against me.

Presumption of innocence and burden of proof: I know that if I do not plead guilty (or no contest), I am presumed innocent until the State proves that I am guilty of the charged crime(s). If I choose to fight the charges against me, I need only plead "not guilty," and my case will be set for a trial. At a trial, the State would have the burden of proving each element of the charges(s) beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous, meaning that each juror would have to find me guilty.

I understand that if I plead guilty (or no contest), I give up the presumption of innocence and will be admitting that I committed the crime(s) stated above.

Appeal: I know that under the Utah Constitution, if I were convicted by a jury or judge, I would have the right to appeal my conviction and sentence. If I could not afford the costs of an appeal, the State would pay those costs for me. I understand that I am giving up my right to appeal my conviction if I plead guilty (or no contest). I understand that if I wish to appeal my sentence I must file a notice of appeal within 30 days after my sentence is entered.

I know and understand that by pleading guilty, I am waiving and giving up all the statutory and constitutional rights as explained above.

Consequences of Entering a Guilty (or No Contest) Plea

Potential penalties: I know the maximum sentence that may be imposed for each crime to which I am pleading guilty (or no contest). I know that by pleading guilty (or no contest) to a crime that carries a mandatory penalty, I will be subjecting myself to serving a mandatory penalty for that crime. I know my sentence may include a prison term, fine, or both.

I know that in addition to a fine, an ninety percent (90%) surcharge will be imposed. I also know that I may be ordered to make restitution to any victim(s) of my crimes, including any restitution that may be owed on charges that are dismissed as part of a plea agreement.

Consecutive/concurrent prison terms: I know that if there is more than one crime involved, the sentences may be imposed one after another (consecutively), or they may run at the same time (concurrently). I know that I may be charged an additional fine for each crime that I plead to. I also know that if I am on probation or parole, or awaiting sentencing on another offense of which I have been convicted or which I have plead guilty (or no contest), my guilty (or no contest) plea(s) now may result in consecutive sentences being imposed on me. If the offense to which I am now pleading guilty occurred when I was imprisoned or on parole, I know the law requires the court to impose consecutive sentences unless the court finds and states on the record that consecutive sentences would be inappropriate.

Plea agreement: My guilty (or no contest) plea(s) (is/are) (is/are not) the result of a plea agreement between myself and the prosecuting attorney. All the promises, duties and provisions of the plea agreement, if any, are fully contained in this statement, including those explained below:

Trial judge not bound: I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing, made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the judge may do are not binding on the judge.

Immigration/Deportation: I understand that if I am not a United States citizen, my plea(s) today may, or even will, subject me to deportation under United States immigration laws and regulations, or otherwise adversely affect my immigration status, which may include permanently barring my re-entry into the United States. I understand that if I have questions about the effect of my plea on my immigration status, I should consult with an immigration attorney.

Defendant's Certification of Voluntariness

I am entering this plea of my own free will and choice. No force, threats or unlawful influence of any kind have been made to get me to plead guilty (or no contest). No promises except those contained in this statement have been made to me.

I have read this statement, or I have had it read to me by my attorney, and I understand its contents and adopt each statement in it as my own. I know that I am free to change or delete anything contained in this statement, but I do not wish to make any changes because all of the statements are correct.

I am satisfied with advice and assistance of my attorney.

I am 45 years of age. I have attended school through the 12 grade. I can read and understand the English language. If I do not understand English, an interpreter has been provided to me. I was not under the influence of any drugs, medication, or intoxicants which would impair my judgment when I decided to plead guilty. I am not presently under the influence of any drug, medication, or intoxicants which impair my judgment.

I believe myself to be of sound and discerning mind and to be mentally capable of understanding these proceedings and the consequences of my plea. I am free of any mental disease, defect, or impairment that would prevent me from understanding what I am doing or from knowingly, intelligently, and voluntarily entering my plea.


I understand that if I want to withdraw my guilty (or no contest) plea(s), I must file a written motion to withdraw my plea(s) before sentence is announced. I understand that for a plea held in abeyance, a motion to withdraw from the plea agreement must be made within 30 days of pleading guilty or no contest. I will only be allowed to withdraw my plea if I show that it was not knowingly and voluntarily made. I understand that any challenge to my plea(s) made after sentencing must be pursued under the Post-Conviction Remedies Act in Title 78, Chapter 35a, and Rule 65C of the Utah Rules of Civil Procedure.

Dated this 3 day of Feb, 2015.


DEFENDANT'S SIGNATURE

Certificate of Defense Attorney

I certify that I am the attorney for Richard Garcia, the defendant above, and that I know he/she has read the statement or that I have read it to him/her; I have discussed it with him/her and believe that he/she fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crime(s) and the factual synopsis of the defendant's criminal conduct are correctly stated; and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.


ATTORNEY FOR DEFENDANT
Bar No. 4370

Certificate of Prosecuting Attorney

Richard Garcia I certify that I am the attorney for the State of Utah in the case against defendant. I have reviewed this Statement of Defendant and find that the factual basis of the defendant's criminal conduct which constitutes the offense(s) is true and correct. No improper inducements, threats, or coercion to encourage a plea has been offered to defendant. The plea negotiations are fully contained in the Statement and in the attached Plea Agreement or as supplemented on the record before the Court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense(s) for which the plea(s) is/are entered and that the acceptance of the plea(s) would serve the public interest.


PROSECUTING ATTORNEY
Bar No. 11577

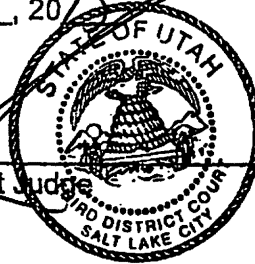
Order

Based on the facts set forth in the foregoing Statement and the certifications of the defendant and counsel, and based on any oral representations in court, the Court witnesses the signatures and finds the defendant's guilty (or no contest) plea(s) is/are freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED that the defendant's guilty (or no contest) plea(s) to the crime(s) set forth in the Statement be accepted and entered.

Dated this 3 day of Feb, 2015

District Court Judge



3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, : MINUTES
Plaintiff, : JURY TRIAL
 :
vs. : Case No: 141910607 FS
RICHARD SIMON GARCIA, : Judge: PAUL B PARKER
Defendant. : Date: February 3, 2015

PRESENT

Clerk: shantec
Prosecutor: COOLEY, BRADFORD D
Defendant
Defendant's Attorney(s): MACK, DAVID P S

DEFENDANT INFORMATION

Date of birth: November 21, 1969
Sheriff Office#: 163218
Audio
Tape Number: S32-9.59 Tape Count: 10.10

CHARGES

1. AGGRAVATED ROBBERY - 1st Degree Felony
Plea: Guilty - Disposition: 02/03/2015 Guilty
The following case(s) will be dismissed: 141909663
141910615

Defendant waives time for sentence.

A pre-sentence investigation was ordered.

The Judge orders Adult Probation and Parole to prepare a Pre-sentence report.

Adult Probation and Parole
36 West Fremont Ave. (1100 So)
Salt Lake City UT 84111
(801) 239-2100
Change of Plea Note
States motion to dismiss counts 2-5 is granted.

HEARING

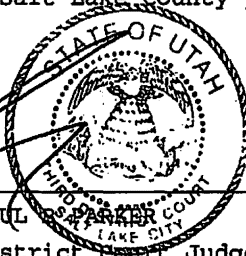
Defendant waives his right to a jury trial and will go forward with a change of plea.
CUSTODY

Case No: 141910607 Date: Feb 03, 2015

The defendant is present in the custody of the Salt Lake County jail.

Date: _____

2/3/15


PAUL S. [Signature]
District Court Judge

ADDENDUM C

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH, : MINUTES
Plaintiff, : JURY TRIAL
 :
vs. : Case No: 141910607 FS
RICHARD SIMON GARCIA, : Judge: PAUL B PARKER
Defendant. : Date: February 3, 2015

PRESENT

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Prosecutor: COOLEY, BRADFORD D
Defendant
Defendant's Attorney(s): MACK, DAVID P S

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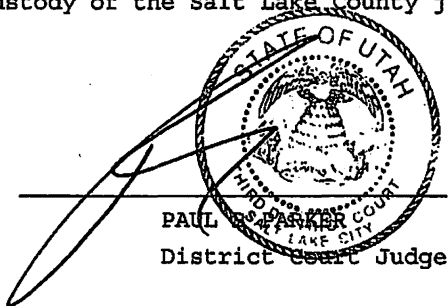
CUSTODY

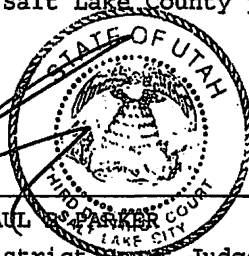
Case No: 141910607 Date: Feb 03, 2015

The defendant is present in the custody of the Salt Lake County jail.

Date: _____

2/3/15


PAUL S. FOSTER
District Court Judge



Change of Plea Hearing - February 3, 2015

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE

SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

Case No. 141910607

v.

RICHARD SIMON GARCIA,

Defendant.

TRANSCRIPT OF CHANGE OF PLEA HEARING

BEFORE THE HONORABLE PAUL B. PARKER

FEBRUARY 3, 2015

Change of Plea Hearing - February 3, 2015

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3 Bradford Cooley

4 SALT LAKE DISTRICT ATTORNEY'S OFFICE

5 111 East Broadway, Suite 400

6 Salt Lake City, UT 84111

8 FOR THE DEFENDANT:

9 David P.S. Mack

10 SALT LAKE LEGAL DEFENDERS ASSOCIATION

11 424 East 500 South, Suite 300

12 Salt Lake City, UT 84111

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Change of Plea Hearing - February 3, 2015

3

1 SALT LAKE COUNTY, UTAH - FEBRUARY 3, 2015

2 HONORABLE PAUL B. PARKER

3 P R O C E E D I N G S

4 THE COURT: This is the Garcia matter?

5 MR. MACK: Yes, Judge.

6 THE COURT BAILIFF: Go to the podium with your
7 attorney. Keep your eyes on the judge.

8 THE COURT: Good morning, sir. Come to the podium if
9 you would, please.

10 THE DEFENDANT: Good morning, Your Honor.

11 THE COURT: This is the matter of the State of Utah
12 v. Richard Simon Garcia. Is that you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: What's your birth date?

15 THE DEFENDANT: 11-21-1969.

16 THE COURT: All right. This is case 141910607. We
17 have a couple trailing (inaudible)?

18 MR. MACK: Yeah. If you want to get those numbers,
19 Judge. I think I've got them if you don't. Because those are
20 part of this disposition.

21 THE COURT: Okay. Let me log onto the computer so I
22 can make sure that I save the information. Counsel, state your
23 appearances, please.

24 MR. MACK: David Mack for Mr. Garcia.

25 MR. COOLEY: Bradford Cooley for the State.

Change of Plea Hearing - February 3, 2015

4

1 THE COURT: All right. And tell me what is proposed.

2 MR. MACK: Judge, Mr. Garcia's going to plead to
3 Count I in this case, aggravated robbery, a first degree
4 felony. In return, the other counts will be dismissed, as will
5 two other cases. The two cases that are still open.

6 THE COURT: Okay.

7 MR. MACK: Which are cases 141909663 and 141910615.

8 THE COURT: Do you have (inaudible)?

9 THE COURT CLERK: (Inaudible).

10 THE COURT: (Inaudible) on the screen so (inaudible).

11 Sir, is that what you want to do?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Now, you understand today is the set for
14 trial. If you don't want to plead guilty, you can move the
15 trial date. Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Now, you're charged--on the other two,
18 have the information--have prelims been done on all these
19 cases?

20 MR. MACK: There was a waiver.

21 MR. COOLEY: Yes, there was, Judge.

22 THE COURT: Okay. Sir, are you under the influence
23 of drugs or alcohol today?

24 THE DEFENDANT: No, sir, I'm not.

25 THE COURT: Do you have any physical or mental

Change of Plea Hearing - February 3, 2015

5

1 Disabilities, or illnesses that would impact your ability to
2 make a decision?

3 THE DEFENDANT: No, Judge.

4 THE COURT: Has anyone threatened or coerced you or
5 used force against you to get you to plead guilty today?

6 THE DEFENDANT: No.

7 THE COURT: Okay. Has anyone made any promises other
8 than those contained in this plea agreement to get you to plead
9 guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: And are there promises concerning
12 sentencing?

13 MR. MACK: No.

14 MR. COOLEY: No.

15 THE COURT: So the entire plea agreement really is
16 the dismissal of the other counts and charges for a plea of
17 guilty to Count I?

18 MR. MACK: The other counts in this Information as
19 well as the other two cases.

20 MR. COOLEY: Yes.

21 THE COURT: All right. If you are not a citizen of
22 this country, do you understand this will have immigration
23 consequences?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: The maximum penalty for a first degree

Change of Plea Hearing - February 3, 2015

6

1 felony is five years to life in the Utah State Prison, a
2 \$10,000 fine plus a 90 percent surcharge. Do you understand
3 that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And if your attorney has made you any at
6 least estimates on what will or will not be the sentence, none
7 of those are binding on me. Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. If there's restitution that is
10 required by either one of these cases that can be part of the
11 sentence. Do you understand that?

12 THE DEFENDANT: I do, Your Honor.

13 THE COURT: And that a robbery can be used to enhance
14 a theft (inaudible). Do you understand that?

15 THE DEFENDANT: I do, Your Honor.

16 THE COURT: Now, are there restitution concerning the
17 cases or the counts to be dismissed?

18 MR. MACK: There will be. Probably, yes, Judge. But
19 I think that they're going to require some sort of hearing, at
20 least on one of the matters.

21 THE COURT: All right.

22 MR. COOLEY: We can talk about that (inaudible).

23 MR. MACK: Okay.

24 THE COURT: At least we agree, sir, it sounds like
25 you're going to pay restitution on some of the cases you're not

Change of Plea Hearing - February 3, 2015

7

1 pleading guilty to but you'll have an opportunity to consent
2 that specific amount. Is that correct?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Is that still what you want to do?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: Have you had sufficient time to go over
7 this matter with your attorney?

8 THE DEFENDANT: We have, sir.

9 THE COURT: Did you get all your questions answered?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And are you satisfied with the advice and
12 counsel of your attorney?

13 THE DEFENDANT: I am, sir.

14 THE COURT: Have you had a chance to look over this
15 plea form in front of you?

16 THE DEFENDANT: I did, Your Honor.

17 THE COURT: Do you read and understand the English
18 language?

19 THE DEFENDANT: I do.

20 THE COURT: How far in school did you go?

21 THE DEFENDANT: I completed high school.

22 THE COURT: All right. Now, did you understand the
23 rights that you would be giving up if you plead guilty?

24 THE DEFENDANT: I do, Your Honor.

25 THE COURT: Let me go over a couple of those

Change of Plea Hearing - February 3, 2015

8

1 contained in that form. All right?

2 THE DEFENDANT: Okay.

3 THE COURT: One is the right to be presumed innocent.
4 Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: The other is the right to a speedy trial,
7 a public trial, before an impartial jury. Do you understand
8 that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: The other is the right against self-
11 incrimination. Do you understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: The right to confront and cross examine
14 in open court the prosecution witnesses. Do you understand
15 that?

16 THE DEFENDANT: I do, sir.

17 THE COURT: The right to compel the attendance of
18 defense witnesses at no cost to you. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Now, there's also a right to appeal
21 convictions that's going to be greatly--in fact, (inaudible)
22 all rights in general (inaudible). Do you understand that?

23 THE DEFENDANT: Yes, I do, Your Honor.

24 THE COURT: Okay. You can only really appeal certain
25 portions of the sentence. Do you understand that?

Change of Plea Hearing - February 3, 2015

9

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Now, Mr. Mack, have you had a chance to
3 go over the nature of these proceedings with your client?

4 MR. MACK: I have.

5 THE COURT: The charges that he's going to plead
6 guilty to?

7 MR. MACK: Yes.

8 THE COURT: And his constitutional rights?

9 MR. MACK: Yes.

10 THE COURT: And did you go over all those that we've
11 discussed here in court today?

12 MR. MACK: We did.

13 THE COURT: Did you go over the effect and meaning of
14 his decision?

15 MR. MACK: I believe so.

16 THE COURT: And do you believe his decision to plead
17 guilty to be intelligently, knowingly and voluntarily waived?

18 MR. MACK: I do.

19 THE COURT: Is there any reason why he should not be
20 allowed to plead guilty?

21 MR. MACK: Not that I'm aware of, Judge.

22 THE COURT: Now, in this case--I suppose there's
23 (inaudible) theories on the elements of this?

24 MR. MACK: Yeah. It's based on the one that relates
25 to taking a car from another person. I think it's the last

Change of Plea Hearing - February 3, 2015

10

1 prong in that (inaudible).

2 THE COURT: The last prong. So the State would be
3 required, Mr. Garcia, to prove the following: that you did
4 unlawfully and intentionally take or attempt to take personal
5 property in possession of another from his or her person or
6 immediate presence against his will by means of force or fear
7 and with the purpose to and intent to deprive the person
8 permanently or temporarily of the personal property. And the
9 added enhancement was took or attempted to take an automobile.
10 That's what we're talking about?

11 MR. MACK: Yes, Your Honor.

12 THE COURT: You understand those are the elements,
13 the pieces of this crime, that the State would have to prove
14 beyond a reasonable doubt?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, what is the factual basis for this
17 plea?

18 MR. MACK: Judge, on September 16 of last year, 2014,
19 Mr. Garcia by force took a car from (inaudible).

20 THE COURT: Is that what you did, sir?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And are you pleading guilty because you
23 are in fact guilty?

24 THE DEFENDANT: I am, sir.

25 THE COURT: All right. Does the State need any

Change of Plea Hearing - February 3, 2015

11

1 additional facts for this (inaudible)?

2 MR. COOLEY: No, Your Honor.

3 THE COURT: All right. Sir, do you have any
4 questions before you sign the form?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. Go ahead and sign the plea
7 form them. I see the plea form has been filled out, signed by
8 the defendant's attorney and the State's attorney. I will
9 (inaudible) and adopt it by reference to the colloquy.

10 Sir, how then do you plead to Count I in the
11 Information in case 141910607, aggravated robbery, a violation
12 of 76-6-302 of Utah Code Annotated, a first degree felony as
13 follows: that on or about September 16, 2014, at 4210 West 3500
14 South, Salt Lake County, State of Utah, you did unlawfully and
15 intentionally take or attempt to take personal property in
16 possession of another from his person or immediate presence
17 against his or her will by means of force or fear and
18 (inaudible) or intent to deprive a person permanently or
19 temporary of personal property. And that you took in, took or
20 attempted to take, an (inaudible) motor vehicle. How do you
21 plead?

22 THE DEFENDANT: Guilty, Your Honor.

23 THE COURT: I'll accept your guilty plea and find
24 that it was knowingly, intelligently and voluntarily made. I
25 find that the defendant understands his constitutional rights

Change of Plea Hearing - February 3, 2015

12

1 and waives those. He understands the nature of the proceedings
2 and the elements of the crime pleaded to and the factual basis.
3 He understands the sentence that could be imposed.

4 I need to tell you a couple of other rights that you
5 have now at this moment. One is the right to be sentenced in
6 no less than two and no more than 45 days.

7 I anticipate a pre-sentence report?

8 MR. MACK: Yes.

9 THE COURT: I can set that on the 16th. I think that
10 is pretty close to 45 days. If it goes beyond a few days, do
11 you waive the maximum time for sentencing?

12 THE DEFENDANT: Yes.

13 MR. MACK: Can we go another week?

14 THE COURT: To the 23rd?

15 MR. MACK: Yes.

16 THE COURT: All right. Is that all right with you,
17 sir?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. The other right you have is the
20 right to remove or withdraw (inaudible) or request to withdraw
21 it. If you do so, you must do that in writing stating cause
22 and you must do so before the time of sentencing. Do you
23 understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: You also have the right to appeal a

Change of Plea Hearing - February 3, 2015

13

1 sentence if you're unhappy with it. But you must do so within
2 30 days of the sentence itself. You understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. So we'll order a pre-sentence
5 report from Adult Probation and Parole and set sentencing for
6 the 23rd of March. We'll dismiss the remaining counts in the
7 Information ending in 0607 and also dismiss the case ending in
8 9663 and the case ending in 0615. The defendant will agree to
9 pay restitution on those cases and counts that have been
10 dismissed.

11 MR. MACK: Reserving the right to contest on the--

12 MR. COOLEY: Yeah, we'll file our request for
13 restitution.

14 THE COURT: Do we need to set a time when the State
15 is to file request for restitution? Would that be helpful?

16 MR. MACK: Well, if he's--I mean, we don't want you
17 to lose jurisdiction over it. Hopefully we can (inaudible).
18 If not, then maybe we could address it then.

19 THE COURT: All right. We'll see what happens.

20 MR. COOLEY: I'll get (inaudible).

21 THE COURT: Okay. Any questions at all, sir?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: All right. Well, good luck to you.
24 We'll see you in about a month.

25 THE DEFENDANT: Thank you, Your Honor.

Change of Plea Hearing - February 3, 2015

14

1 THE COURT: All right. Thank you.

2 (COURT IS IN RECESS)

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C E R T I F I C A T E

I, Jayme Mackay, do hereby certify that the foregoing
pages contain a true and accurate transcript of the
electronically recorded proceedings and was transcribed by me
to the best of my ability.

Jayme Mackay

I, Kelly Thacker, do certify this transcription was
prepared under my supervision and direction.

Kelly Thacker

	9:21	computer (1) 3:21	12:6,10,10;13:2	eyes (1) 3:7
\$	B	concerning (2) 5:11;6:16	decision (3) 5:2;9:14,16	F
\$10,000 (1) 6:2	BAILIFF (1) 3:6	confront (1) 8:13	DEFENDANT (44) 3:10,13,15;4:12, 16,24;5:3,6,10,24; 6:4,8,12,15;7:3,5,8, 10,13,16,19,21,24; 8:2,5,9,12,16,19,23; 9:1;10:15,21,24; 11:5,22,25;12:12, 18,24;13:3,8,22,25	fact (2) 8:21;10:23
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ability (1) 5:1	basis (2) 10:16;12:2	consequences (1) 5:23	defense (1) 8:18	factual (2) 10:16;12:2
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address (1) 13:18	Bradford (1) 3:25	convictions (1) 8:21	discussed (1) 9:11	felony (3) 4:4;6:1;11:12
adopt (1) 11:9	C	COOLEY (9) 3:25,25;4:21; 5:14,20;6:22;11:2; 13:12,20	dismissal (1) 5:16	few (1) 12:10
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ADDENDUM D

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
vs.	:	Case No: 141910607 FS
RICHARD SIMON GARCIA,	:	Judge: PAUL B PARKER
Defendant.	:	Date: March 23, 2015

PRESENT

Clerk: shantec

Prosecutor: COOLEY, BRADFORD D

Defendant

Defendant's Attorney(s): MACK, DAVID P S

DEFENDANT INFORMATION

Date of birth: November 21, 1969

Sheriff Office#: 163218

Audio

Tape Number: S34-2.09 Tape Count: 2.17

CHARGES

1. AGGRAVATED ROBBERY - 1st Degree Felony

Plea: Guilty - Disposition: 02/03/2015 Guilty

SENTENCE PRISON

Based on the defendant's conviction of AGGRAVATED ROBBERY a 1st Degree Felony, the defendant is sentenced to an indeterminate term of not less than five years and which may be life in the Utah State Prison.

COMMITMENT is to begin immediately.

To the SALT LAKE County Sheriff: The defendant is remanded to your custody for transportation to the Utah State Prison where the defendant will be confined.

Restitution Amount: \$10350.00 Plus Interest

Pay in behalf of: ANTHONY KING

Restitution Amount: \$13085.54

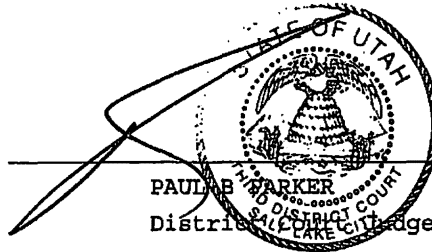
Pay in behalf of: ROCKY MOUNTAIN POWER

Case No: 141910607 Date: Mar 23, 2015

CUSTODY

The defendant is present in the custody of the Salt Lake County jail.

Date: 3/24/15



ADDENDUM E

THIRD JUDICIAL DISTRICT COURT - SALT LAKE

SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

v

RICHARD SIMON GARCIA,

Defendant.

: Case No. 141910607 FS

:

: Appellate Court Case No. 20150470

:

:

:

:

:

: With Keyword Index

SENTENCING MARCH 23, 2015

BEFORE

THE HONORABLE PAUL B. PARKER

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER

1775 East Ellen Way
Sandy, Utah 84092
801-523-1186

APPEARANCES

For the Plaintiff:

BRADFORD D. COOLEY
Assistant District Attorney

For the Defendant:

DAVID P. S. MACK
Attorney at Law

* * *

INDEX

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6

SENTENCE

1 SALT LAKE CITY, UTAH - MARCH 23, 2015

2 JUDGE PAUL B PARKER

3 (Transcriber's note: Identification of speakers

4 may not be accurate with audio recordings.)

5 P R O C E E D I N G S

6 MR. MACK: Judge, will you call the Richard Garcia

7 matter?

8 THE COURT: All right.

9 (Concludes previous case)

10 THE COURT: This is 141910607, State vs. Richard

11 Simon Garcia. Mr. Mack for the defendant. Mr. Cooley for

12 the State. This is also a sentencing.

13 MR. MACK: Yes.

14 THE COURT: Are you Richard Simon Garcia?

15 DEFENDANT GARCIA: Yes, I am, Your Honor.

16 THE COURT: All right. What are we doing?

17 MR. MACK: This is the time for sentencing, Your

18 Honor.

19 THE COURT: Do you have a copy of the pre-sentence

20 report?

21 MR. MACK: I do.

22 THE COURT: Any corrections or additions?

23 MR. MACK: No, Your Honor.

24 THE COURT: Go ahead then.

25 MR. MACK: Your Honor, we have a couple of requests.

1 First is we would ask you to consider sentencing
2 Mr. Garcia one degree lower to a one to 15. He is on the
3 list for inpatient treatment at the Odyssey House. He's been
4 on the list for many months, but it does require almost a
5 year usually - nine, 10, 12 months to get into the program.
6 He's working his way up that list. That is our first
7 request, Your Honor.

8 Secondly, if I may approach to - I've shown these
9 to Mr. Cooley.

10 THE COURT: Certainly.

11 MR. MACK: If I can show you what he's been involved
12 in while he's been in custody?

13 He's taken advantage of any treatment opportunities
14 that have been available to him.

15 He's 45 years old. He's getting to that point
16 where most people age out of criminal conduct. And in this
17 case, I know that he has great remorse for his behavior. He
18 - and I think there's some mention by his part, but at least
19 in the police report, there's some mention of him having
20 taken a medication that he was unaware of.

21 THE COURT: Xanax?

22 MR. MACK: Yes, Xanax. And, in fact, did enter a
23 plea in this case, but had very little memory of the
24 incident.

25 I guess, that's the second reason for - that we'd

1 ask you to consider sentencing in one degree lower. He's
2 acknowledging responsibility. He was found in his car, and
3 he's not contesting that he did what he's accused of doing,
4 but he is saying that under usual circumstances and the
5 behavior that he's more recently been involved in, that this
6 would not have happened.

7 Also, though, he recognizes that he has a substance
8 abuse issue. Not for Xanax particularly, but for
9 methamphetamine.

10 He's been through and quit other substances during
11 his life. He's stopped drinking. He's stopped using
12 tobacco. He's stopped using other drugs, but he has not
13 stopped using or didn't - had not stopped using
14 methamphetamine. That's a difficult one to overcome, and he
15 is looking, if he could, to enter a serious inpatient program
16 to address that, which in this case would be at the Odyssey
17 House.

18 He's done a fair amount of time in jail on this.
19 He would also do a lot more jail before he would even be
20 eligible to go to the top of the list at Odyssey House.

21 That is our request, Your Honor.

22 THE COURT: The State?

23 MR. COOLEY: Your Honor, the State's joining that
24 you keep these recommendations. Nothing in the defendant's
25 history suggests that any sent - any other sentence would be

1 appropriate. It maxes out on the sentencing matrix with
2 landing firmly in the imprisonment category with the 10 year
3 presumptive initial sentence.

4 On top of that, the conduct here - it's - arguably,
5 anything can fall under the header of drug induced activity,
6 but there are property crimes that people do in order to
7 obtain drugs, and then there are the crimes that the
8 defendant has committed, which were violent felonies. Not
9 obviously motivated by any sort of desire for drugs or any
10 desire for anything other than to behave violently.

11 One of the cases was dismissed at preliminary
12 hearing, but the other, an aggravated burglary, was dismissed
13 in exchange for the plea in this case.

14 The defendant's history support the prison
15 sentence. The defendant's conduct here doesn't say anything
16 about drug use. It says the defendant's a dangerous
17 individual and represents a significant threat to society.
18 Imprisonment is the only appropriate sanction.

19 THE COURT: Sir, is there anything you want to say
20 to me before I impose sentencing?

21 DEFENDANT GARCIA: Yes, Your Honor. I'd like to
22 address this. I do have a serious problem. I understand
23 that, and I just would be - like to be given one chance to
24 address this.

25 I know that right before I came in here, I didn't

1 have a problem with amphetamines. And just as Mr. Mack said,
2 I don't really recollect anything, but I'm not trying to
3 minimize my crime or take anything away from Mr. King.

4 I pray every night that I - that what I did to this
5 gentleman, this young man, does not affect his life, and I
6 just want to - I'd like to address this one last issue.

7 I feel that if given one more chance or one
8 opportunity, I think that I can probably become a proper - a
9 very prosper - or a good part of society. You know, I just
10 feel that given - I just - I took a class when I was in a
11 federal prison, and I completed it, but that was in a
12 controlled environment. I would - I know that a serious test
13 would be would be out in the streets where there are other
14 controlled - where there's other substance is, where whatnot,
15 and that's where you really test my - show my - what I want
16 to do with my life and not just sit here and give you empty
17 promises.

18 I know that given a chance - I was - as I said
19 right before I came to jail - about six months before I came
20 to jail, I was enrolled to go to Stevens-Henager College, and
21 I - just like I say, I just messed up. I lost my place to
22 live, and I'm not making excuses for my behavior. I did
23 something very terrible that I can never be excused for to
24 this young man.

25 THE COURT: All right, thank you. Is the victim

1 here that he would like to speak?

2 MR. MACK: He is not. No, Your Honor.

3 THE COURT: All right. On the first degree felony
4 charge, I am going to impose five years to life in the Utah
5 State Prison, impose restitution in the amount of \$10,350 to
6 Anthony King, and \$13,085.54 to Rocky Mountain Power.

7 Sir, I understand what you're saying, that you
8 would like a chance, but at some level I have to balance your
9 interests with the society - with society's interests, and I
10 certainly do try that in a lot of cases, and I'm willing to
11 go out on a limb in the appropriate case. Unfortunately,
12 your history is such that I just cannot do that. The nature
13 of this crime is such - if, in fact, it is frightening crime.
14 You found someone, beat him up, and stole his car, ran it
15 into a telephone post. You're a danger, not only to the
16 person you beat up, but everybody on the road in between as
17 this chase occurred. You simply need to be in prison, and
18 your history has shown that. That's what I have to impose.

19 DEFENDANT GARCIA: Okay.

20 THE COURT: So good luck to you, sir.

21 DEFENDANT GARCIA: May I ask for a forthwith, Your
22 Honor?

23 THE COURT: A forthwith? Absolutely.

24 DEFENDANT GARCIA: Okay, thank you, Your Honor.

25 THE COURT: All right. (Concluded) (8-5-15)

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<p>minimize 5:3 months 2:4,5 5:19 motivated 4:9 mountain 6:6</p> <hr/> <p>N</p> <hr/> <p>nature 6:12 need 6:17 never 5:23 night 5:4 nine 2:5 note 1:3 nothing 3:24</p> <hr/> <p>O</p> <hr/> <p>obtain 4:7 obviously 4:9 occurred 6:17 odyssey 2:3 3:16,20 old 2:15 one 2:2,2 3:1,14 4:11,23 5:6,7,7 only 4:18 6:15 opportunities 2:13 opportunity 5:8 order 4:6 out 2:16 4:1 5:13 6:11 overcome 3:14</p> <hr/> <p>P</p> <hr/> <p>parker 1:2 part 2:18 5:9 particularly 3:8 paul 1:2 people 2:16 4:6 person 6:16 place 5:21 plea 2:23 4:13 point 2:15 police 2:19 post 6:15 power 6:6 pray 5:4 preliminary 4:11 pre-sentence 1:19 presumptive 4:3 previous 1:9 prison 4:14 5:11 6:5,17 probably 5:8</p>	<p>problem 4:22 5:1 program 2:5 3:15 promises 5:17 proper 5:8 property 4:6 prosper 5:9</p> <hr/> <p>Q</p> <hr/> <p>quit 3:10</p> <hr/> <p>R</p> <hr/> <p>ran 6:14 really 5:2,15 reason 2:25 recently 3:5 recognizes 3:7 recollect 5:2 recommendations 3:24 recordings 1:4 remorse 2:17 report 1:20 2:19 represents 4:17 request 2:7 3:21 requests 1:25 require 2:4 responsibility 3:2 restitution 6:5 richard 1:6,10,14 road 6:16 rocky 6:6</p> <hr/> <p>S</p> <hr/> <p>salt 1:1 sanction 4:18 saying 3:4 6:7 says 4:16 second 2:25 secondly 2:8 sent 3:25 sentence 3:25 4:3,15 sentencing 1:12,17 2:13:1 4:1,20 serious 3:15 4:22 5:12 show 2:11 5:15 shown 2:8 6:18 significant 4:17 simon 1:11,14 simply 6:17</p>	<p>sit 5:16 six 5:19 society 4:17 5:9 6:9 society's 6:9 someone 6:14 sort 4:9 speakers 1:3 state 1:10,12 3:22 6:5 state's 3:23 stevens-henager 5:20 stole 6:14 stopped 3:11,11,12,13,13 streets 5:13 substance 3:7 5:14 substances 3:10 suggests 3:25 support 4:14</p> <hr/> <p>T</p> <hr/> <p>telephone 6:15 terrible 5:23 test 5:12,15 threat 4:17 tobacco 3:12 took 5:10 top 3:20 4:4 treatment 2:3,13 try 6:10 trying 5:2</p> <hr/> <p>U</p> <hr/> <p>unaware 2:20 under 3:4 4:5 understand 4:22 6:7 unfortunately 6:11 using 3:11,12,13,13 usual 3:4 utah 1:1 6:4</p> <hr/> <p>V</p> <hr/> <p>victim 5:25 violent 4:8 violently 4:10</p> <hr/> <p>W</p> <hr/> <p>whatnot 5:14 willing 6:10 working 2:6</p> <hr/> <p>X</p> <hr/>	<p>xanax 2:21,22 3:8</p> <hr/> <p>Y</p> <hr/> <p>year 2:5 4:2 years 2:15 6:4 young 5:5,24</p>
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ADDENDUM F

MIND-ALTERING SUBSTANCES ANONYMOUS

CERTIFICATE

This document certifies that RICHARD SIMON GARCIA **SO#** 163218
has completed the requirements of the

MIND-ALTERING SUBSTANCES ANONYMOUS
criteria and is awarded this certificate in the State of Utah.

Date: 1-28-2015

Authorized Signature: _____

JAILS INSPECTED
BY: FY7

CERTIFICATE OF ATTENDANCE

PRESENTED TO

Richard Govea

COMPLETED TEN CLASSES IN THE
LDS ADDICTION RECOVERY PROGRAM

SALT LAKE COUNTY
ADULT DETENTION CENTER

3/5/15
DATE

Elder [Signature]
MISSIONARY SIGNATURE

AA Meeting Attendance Sign-In Form

Date	Time	AA Volunteer Signature	Date	Time	AA Volunteer Signature
1/6/15	6:30	BA A L	3/3/15	6:30	BA A L
1/13/15	6:30	BA A L	3/10/15	6:30	BA A L
1/20/15	6:30	BA A L	3/17/15	6:30	BA A L
1/27/15	6:30	BA A L			
2/24/15	6:30	BA A L			

This certificate is for the completion of 10 AA meetings at the ADC or Oxbow facilities

Inmate Name: Richard S. Gaccia SO# 163218

AA Volunteer Signature: _____

God, grant me the

.....**S**erenity

To accept the things I cannot change

.....**C**ourage

To change the things I can and

.....**W**isdom

To know the difference...

THE DIRECTIONS FOR TAKING THE TWELVE STEPS OF MIND-ALTERING SUBSTANCES ANONYMOUS

- Step 1 *We admitted we were powerless over all mind altering substances—that our lives had become unmanageable.*
This step is described on Roman numeral pages 23–30 (xxiii–xxx), and on pages 1–43.
[The directions for taking Step One are on page 30, para. 2, lines 1-3.]
- Step 2 *Came to believe that a Power greater than ourselves could restore us to sanity.*
This step is described on pages 44–60.
[The directions for taking Step Two are on page 47, para. 2, lines 1-3.]
- Step 3 *Made a decision to turn our will and our lives over to the care of God as we understood Him.*
This step is described on pages 60–63.
[The directions for taking Step Three are on page 63, para. 2, lines 1-8.]
- Step 4 *Made a searching and fearless moral inventory of ourselves.*
This step is described on pages 63–71.
[The directions for taking Step Four are on page 64, para. 1, lines 1-9; para. 2, lines 1-6.]
- Step 5 *Admitted to God, to ourselves, and to another human being the exact nature of our wrongs.*
This step is described on pages 72–75.
[The directions for taking Step Five are on page 75, para. 1, lines 1-4; para. 2, lines 1-2.]
- Step 6 *Were entirely ready to have God remove all these defects of character.*
This step is described on pages 75–76.
[The directions for taking Step Six are on page 76, para. 1, lines 3-5.]
- Step 7 *Humbly asked Him to remove our shortcomings.*
This step is described on page 76.
[The directions for taking Step Seven are on page 76, para. 2, lines 1-7.]

M.A.S.A.

THE DIRECTIONS FOR TAKING THE TWELVE STEPS OF MIND-ALTERING SUBSTANCES ANONYMOUS

(Continued)

- Step 8 *Made a list of all persons we had harmed, and became willing to make amends to them all.*
This step is described on page 76.
[The directions for taking Step Eight are on page 76, para. 3, lines 3-5.]
- Step 9 *Made direct amends to such people wherever possible, except when to do so would injure them or others.*
This step is described on pages 76–84.
[The directions for taking Step Nine are on page 76, para. 3, lines 6-11.]
- Step 10 *Continued to take personal inventory and when we were wrong promptly admitted it.*
This step is described on pages 84–85.
[The directions for Step Ten are on page 84, para. 2, lines 1-14]
- Step 11 *Sought through prayer and meditation to improve our conscious contact with God as we understood Him, praying only for knowledge of His will for us and the power to carry that out.*
This step is described on pages 85–88.
[The directions for taking Step Eleven are on page 86, para. 1, lines 1-14; para. 2, lines 1-5; para. 3, lines 1-6.]
- Step 12 *Having had a spiritual awakening as the result of these steps, we tried to carry this message to addicts, and to practice these principles in all our affairs.*
This step is described on pages 89–103 and pages 569–570.
[The directions for taking Step Twelve are on page 89, para. 1, lines 1-7.]
(Instructions on how to carry A.A.'s life saving message of recovery to others can be found throughout pages 89-103).

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(Rev. 01/01)

M.A.S.A.

JAILS INSPECTED
BY: FY7