

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DISTRICT COURT
COUNTY OF JEFFERSON
STATE OF COLORADO
100 Jefferson County Parkway
Golden, Colorado 80401

Plaintiff:
PEOPLE OF THE STATE OF COLORADO

v.

Defendant:
JERRY GARCIA

^FOR COURT USE ONLY^

Case No. 12M1734
Division C

TRANSCRIPT OF RECORDED PROCEEDINGS
August 23, 2012

The motion to reconsider sentence in the above-entitled matter commenced on Thursday, August 23, 2012, before THE HONORABLE Bradley A. Burbach, Judge of the County Court.

This is a full and complete transcript of the proceedings had on this date in the aforementioned matter.

A P P E A R A N C E S

For the People:
Alison Connaughty, Esq.
Deputy District Attorney, First Judicial District
500 Jefferson County Parkway
Golden, Colorado 80401
(303) 271-6800

For the Defendant:
Kevin Churchill, Esq.
The Law Office of Kevin R. Churchill
789 Sherman Street, Suite 660
Denver, Colorado 80203
(720)889-1719

ALSO PRESENT:
Jerry Garcia
Jessie Garcia

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

PAGE

Findings of Fact, Conclusion and Law, and Orders

11

PROCEEDINGS

MORNING SESSION, THURSDAY, AUGUST 23, 2012

(At 11:50 a.m., the following proceedings were conducted and entered for the record:)

(All parties appear, and the defendant was represented by counsel.)

THE COURT: This is case 12M1734, the People of the State of Colorado versus Jerry Garcia. Okay. Counsel, if you can enter your appearance, please.

MR. CHURCHILL: Thank you, Your Honor. Kevin Churchill on behalf of Mr. Garcia, who appears in custody, Your Honor.

THE COURT: Okay. Thank you, Mr. Churchill. Mr. Garcia, good morning.

THE DEFENDANT:: Good morning, Your Honor.

THE COURT: Matter comes before the Court on the motion to reconsider, and we'll need to have the DA come in, it is a victim's rights case and I'm guessing that that call has been made so we'll standby. Ms. Connaughty, good morning, again.

MS. CONNAUGHTY: Good morning, Your Honor.

THE COURT: Okay. We're on the record on Mr. Garcia's case, it's a motion to reconsider the sentence that was imposed?

MS. CONNAUGHTY: Yes, Your Honor.

THE COURT: It is a victim's rights case, do the People have any record regarding victim's rights?

MS. CONNAUGHTY: Yes, Your Honor. Both Ms. Knowles and

1 Deena Hahn (phonetic), our victim advocate who's assigned to
2 this case, have made efforts to contact the victim. The phone
3 number we have for her she's no longer residing at the location,
4 and it's my victim advocates understanding that she's moved out
5 of state, that we don't even have a good address for her any
6 more.

7 THE COURT: Okay. Thank you. Reasonable efforts were
8 made?

9 MS. CONNAUGHTY: Yes, Your Honor.

10 THE COURT: All right. The Court does find compliance
11 with victim's rights, and do the People have any position on the
12 hearing today?

13 MS. CONNAUGHTY: Your Honor, I had an opportunity to
14 speak with the medical professionals that are here from the
15 jail. It's my understanding that were -- if the Court were to
16 grant the motion to reconsider Mr. Garcia would reside in his
17 daughter's home. His daughter is present, I spoke with her, she
18 has some children that live at the home with her and that's it.

19 Based on the circumstances, the expense that the jail
20 would have to incur to take care of him, and the logistics that
21 would go into taking care of him the People don't object to the
22 motion for reconsideration being granted. We would ask that the
23 sentence be converted to an in-home detention sentence, however,
24 so Mr. Garcia is still being supervised for the duration of the
25 sentence that the Court imposed.

1 THE COURT: Okay. Thank you.

2 MS. CONNAUGHTY: Thank you.

3 THE COURT: Is the People's -- I just want to make sure
4 I understand the People's position. Is this based upon cost and
5 inconvenience to the jail? Because here's my concern, in the
6 affidavit Mr. Garcia stated, "Next time I'll kill her and my
7 family's going to take care of that bitch," regarding the
8 victim, that's why this Court imposed a two year county jail
9 sentence.

10 MS. CONNAUGHTY: Um-hmm.

11 THE COURT: If it's just based because it's
12 inconvenient for the jail and it's going to cost a lot of money
13 I want to know that that's what in fact the People are saying.
14 Is that the People's position?

15 MS. CONNAUGHTY: Yes, Your Honor.

16 THE COURT: Okay. Mr. Churchill.

17 MR. CHURCHILL: Thank you, Your Honor. As the Court
18 has been made aware from my written motion, Mr. Garcia is
19 terminally ill, he's been given six months if not less to live.
20 As the District Attorney has indicated he'll require extensive
21 medical care, also expensive medical care. It's difficult for
22 the jail to administer the necessary healthcare to him but it
23 also puts Mr. Garcia at a disadvantage in terms of dealing with
24 his health crisis, which is terminal and has no possibility of
25 recovery. We do have medical staff here, a Dr. Brill, his

1 treating physician at the detention center, is present, as well
2 as Luane Lizynski (phonetic) who's the R.N. that's assigned to
3 Mr. Garcia as well. They are here and available for testimony
4 if the Court wishes to hear that.

5 Our request for the Court, and I'm not sure if I
6 should summarize the conclusion of my arguments at this point,
7 include everything from we are asking the Court for mercy. Mr.
8 Garcia is in rapid decline. I met him about two months ago and
9 even since I've met him I can -- not being a physician myself --
10 can just notice that his physical appearance is clearly
11 deteriorating and noticeably so within the past couple of months
12 since I've met him. In addition to that, Judge, I think that a
13 lot of the original intentions of the sentence such as
14 containment and behavior modification through punitive sanction
15 I think that those interests are rapidly deteriorating. I don't
16 think Mr. Garcia is a risk to reoffend. I don't think, frankly,
17 he has the strength or the capability to do so, and I think it's
18 in the best interest of the jail and of Mr. Garcia if the Court
19 would consider resentencing him to in-home detention.

20 THE COURT: Okay. Thank you. You indicated you had
21 someone you wanted to speak to the Court?

22 MR. CHURCHILL: Yes, Your Honor. Would the Court like
23 to take formal testimony or just have them --

24 THE COURT: I don't need sworn testimony, but if
25 there's anyone who wants to address what we're doing here today

1 that's fine.

2 MR. CHURCHILL: Yeah, I would call Dr. Brill.

3 THE COURT: Okay. Sir. Okay. Good morning, if you
4 could just state your name for the record.

5 MR. BRILL: Good morning, I'm Dr. James Brill,
6 B-R-I --

7 THE COURT: Okay. Doctor --

8 MR. BRILL: -- L-L.

9 THE COURT: -- Brill, what would you like to tell me?

10 MR. BRILL: Well, just that Mr. Garcia is in -- has
11 terminal cirrhosis of the liver. That problem creates problems
12 for fluid electrolyte management, problems for coagulopathy, a
13 bleeding disorder, and as he progressively becomes more ill we
14 have problems of safety in the jail and if -- his Serum Ammonia
15 can climb and he can become unstable on his feet in the concrete
16 environment and hit his head and bleed into his head, the
17 coagulopathy can go ahead and bleed internally. He's not in
18 a -- he's not in a safe environment in the jail at all given his
19 medical condition, and we're not able to maintain it as he gets
20 sicker with 24 hour nursing or just an environment where it's
21 not suitable to maintain somebody at the end stage of their
22 life. So -- may have to go out --

23 THE COURT: All right. And --

24 MR. BRILL: -- numerous times to the hospital either
25 for transfusion or for drainage of fluid from his abdomen. We

1 feel that it's not -- it's not an environment that's suitable
2 for this care of his illness.

3 THE COURT: Okay. Thank you, Dr. Brill. It sounds
4 like the prognosis is -- this is terminal cirrhosis; is that
5 correct?

6 MR. BRILL: It is.

7 THE COURT: Is there any sort of a medical opinion as
8 to what the life expectancy is for Mr. Garcia at this point?

9 MR. BRILL: Well, it's difficult to say. He's under
10 excellent control now because we can weigh him daily, we can
11 make sure he takes his medicines, he can -- but an outside
12 environment if he gets into Chinese restaurants or fails to take
13 his medicine or is unsupervised it could be fairly rapid
14 decline. It's -- I mean it's impossible to predict. I doubt
15 that he'll go six months to a year though. I think it's very
16 unlikely.

17 THE COURT: Okay. All right. Anything further, Dr.
18 Brill?

19 MR. BRILL: I don't think so.

20 THE COURT: Okay. Thanks for being here today.

21 MR. BRILL: You're welcome.

22 THE COURT: Is there anybody else, Mr. Churchill, that
23 you wanted the Court to hear from?

24 MR. CHURCHILL: Yes, I would like the Court to briefly
25 hear from Jerry Garcia, who's Mr. Garcia's daughter, who will

1 essentially be his primary caregiver if he is released. If you
2 could, please, step forward.

3 MS. GARCIA: Hello.

4 THE COURT: Ma'am, good morning.

5 MS. GARCIA: I'm the one who wrote -- Jerry Garcia who
6 wrote you the letter for my father, and it's basically --

7 THE COURT: Okay. And do you have that letter?

8 MS. GARCIA: -- the self-explanatory. I know I can't
9 take -- I don't want to talk either --

10 MR. GARCIA: Your Honor, if I may speak for my sister?

11 THE COURT: Okay. Sir, if you can just tell me your
12 name, please.

13 MR. GARCIA: Good morning, Your Honor. For the record
14 my name is Jessie Garcia, I'm the oldest son of my dad's five
15 children. As you know we are here as a family to plead for --
16 to the Court for reconsideration of our dad's sentence. Of
17 course our main concern is his health, his well-being. I'm sure
18 the Court is very familiar. I'd like to thank the medical staff
19 of Jefferson County for taking care of him while being in
20 custody here.

21 I'm an 18 year veteran of the Denver Sheriff Department
22 and I understand and totally agree with the -- one of our main
23 aspects are of public safety and I can -- when you mentioned
24 earlier about the, you know, the cuss words that my dad was
25 mentioning in a drunken state is not excusable by no means

1 during alcohol. The volatile relationship he had was
2 unfortunately based on alcohol and he said my family will take
3 care of it. Being his oldest son there's absolutely no validity
4 to the drunk words of that if the Court is concerned about that.

5 One of the reasons why we're here, well, of course, is
6 trying to get him out of here. I'd like to thank my sister. He
7 will be going to her home, he's going to be out of the
8 environment that he's been in for the last, you know, 25, 30, 40
9 years. It's -- he's going to be living in her home away from
10 everything that he's been around. The relationship that he was
11 had, like I mentioned, was based on alcohol. The young lady
12 that I've met a few times she had moved out of state like the DA
13 had mentioned. I know her on a few basis and every time it
14 was -- it was always during that time of drinking. She had
15 since left the state, they are no longer in that relationship,
16 and I can guarantee you if you do consider my dad's sentence,
17 Your Honor, that he is absolutely no threat to the public at
18 all. He will be home with us, and I thank you for hearing our
19 statements, sir.

20 THE COURT: Okay. Thank you, sir.

21 MR. GARCIA: Thank you.

22 THE COURT: Anything further, Mr. Churchill?

23 MR. CHURCHILL: Just one final comment. I believe that
24 one thing that Dr. Brill didn't mention, and I would have asked
25 him had we taken formal testimony, is as Mr. Garcia continues to

1 decline what is typical in a case like this is for him to
2 receive narcotics to deal with the pain that he will experience
3 as he declines and that is not a possibility at the jail. It's
4 one of the things that he can only obtain if he's out of jail
5 and one of the additional reasons that I wanted to point out to
6 the Court that we're asking the Court to reconsider.

7 THE COURT: Okay. Thank you. Ms. Connaughty, anything
8 further from the People?

9 MS. CONNAUGHTY: No, Your Honor.

10 THE COURT: All right. Well, this Court sentenced Mr.
11 Garcia to two years in the county jail, the maximum sentence in
12 this case, on May 8th of this year, and I did so based upon,
13 first of all, Mr. Garcia's extensive criminal history, which
14 dates back to 1971, including prior felony convictions,
15 including prior assaultive behavior, including prior domestic
16 violence. And the facts of this case, which were aggravated, in
17 that Mr. Garcia attacked the victim with his cane and assaulted
18 her with that, and then, again, after being taken into custody
19 by police while on route to the station made the statements that
20 I referred to earlier, "Next time I'll kill her and my family is
21 going to take care of that bitch," and Mr. Garcia did not
22 express at the time of sentencing in May any kind of remorse or
23 real acceptance of responsibility in this case and did file a
24 motion pro se at the end of May, just about three weeks after
25 the sentencing, in which he was asking for a reconsideration.

1 Said that his plea was not entered voluntarily which I found to
2 be not the case because of the advisement that the Court gave
3 him at the time of the plea and sentencing. And the extremely
4 high risk to community safety that exists in this case the Court
5 denied that motion back in May.

6 It does appear based upon information that I've
7 received since that time and based upon what Dr. Brill has had
8 to say here today that Mr. Garcia is in significant health
9 difficulties. I noticed alcohol related cirrhosis, that
10 apparently is the cause of Mr. Garcia's problems, so it's
11 apparently after decades of alcohol abuse that Mr. Garcia finds
12 himself in the health situation that he's in. And my concern,
13 again, about reconsidering and releasing Mr. Garcia from custody
14 and imposing some sort of an in-home detention sentence is that
15 is a much lesser degree of containment than can be offered by
16 the county jail because, again, in the county jail I am assured
17 that Mr. Garcia is not in a position where he could decide to
18 make good on his threat and kill the victim in this case.

19 I don't know where the victim is, it sounds like she's
20 moved out of state or at least the People are unable to get
21 ahold of her but with that kind of a threat and this kind of a
22 criminal history and this kind of an assault it's extremely
23 concerning to contemplate releasing Mr. Garcia from custody,
24 and, again, it sounds like the majority of this request is based
25 -- and, frankly, I don't care about Mr. Garcia's physical

1 condition. I don't care about that. Mr. Garcia has put himself
2 in this position. Mr. Garcia has, again, after decades of
3 alcohol abuse finds himself with cirrhosis that's terminal and
4 that's unfortunate but that's Mr. Garcia's choice, he chose to
5 do that. And Mr. Garcia, again, with this extensive of a
6 criminal history finds himself serving a two year county jail
7 sentence because of his own actions and his own decisions. So,
8 frankly, I don't care about Mr. Garcia being in a difficult
9 health situation over at the jail, that's not entering into my
10 consideration at all.

11 What this is coming down to is it's expensive and it's
12 inconvenient and it's difficult to maintain Mr. Garcia over at
13 the jail, and so that essentially is why we're here is because
14 it's becoming more and more complicated to maintain Mr. Garcia
15 in the jail. And, again, my concern is if this Court releases
16 Mr. Garcia, I mean, even on in-home detention, if he somehow
17 gets out of that situation and does find the victim and kills
18 the victim it would be kind of inadequate for this Court to look
19 at the relatives of that person and say "Well, I'm sorry that he
20 killed her and I let her (sic) out but it was expensive and it
21 was inconvenient to keep him in the jail. So sorry for your
22 loss." That really doesn't seem to cover it for me. So while I
23 understand the circumstances I do not find a compelling reason
24 to reconsider the sentence.

25 MS. GARCIA: Oh my God.

1 THE COURT: The sentence will remain in effect as
2 previously ordered on May the 8th.

3 MS. GARCIA: Are you kidding me?

4 THE COURT: Anything further for the record?

5 MR. CHURCHILL: No, thank you, Your Honor.

6 THE COURT: Okay. Thank you.

7 MS. CONNAUGHTY: Thank you, Your Honor.

8 UNIDENTIFIED SPEAKER: May I say something, Your Honor?

9 THE COURT: I don't know who you are, ma'am, and I --
10 this hearing is concluded.

11 THE DEFENDANT:: Cold hearted judge up. Poor excuse
12 for a judge.

13 UNIDENTIFIED SPEAKER: I'm his sister, and that woman
14 did get ahold of me and she wanted to tell the Court --

15 THE COURT: Ma'am, this hearing is concluded.

16 (This concludes the hearing for the day.)

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TRANSCRIBER'S CERTIFICATE

I, Tiffany L. Porter, transcriber in and for the First Judicial District State of Colorado, duly appointed to transcribe the within hearing, certify that the hearing was electronically recorded at the time and place hereinabove set forth and was thereafter reduced to typewritten form by the use of computer-aided transcription under my direct supervision; that the same is a full, true, and correct transcription to the best of my ability of the electronic recording then and there taken.

DATED this 7th day of August, 2012.

"/s/ Tiffany L. Porter"
Tiffany L. Porter.
Transcriber