

1 (The proceedings began at 8:30 a.m.)

2 (The case was called)

3 THE CLERK: Please come forward, sir. Please raise
4 your right hand to be sworn.

5 JOE ERLINDO MEDRANO, DEFENDANT, SWORN

6 THE CLERK: May I have appearances of counsel,
7 please?

8 MR. LAZARUS: Philip Lazarus for the United States.

9 MS. GARZA: Cynthia Garza for Mr. Medrano.

10 THE COURT: What is your name?

11 THE DEFENDANT: Jose Erlindo Medrano.

12 THE COURT: I have before me a petition to consider
13 the revocation of your supervised release. I see it's quite
14 old. You must have been an absconder?

15 MS. GARZA: No, Your Honor, he was in TDC custody.

16 THE COURT: I see.

17 MS. GARZA: Four or five years.

18 THE COURT: And that's also the basis of this
19 revocation?

20 MS. GARZA: That's one of the violations, Your
21 Honor.

22 THE COURT: Are you represented by an attorney?

23 THE DEFENDANT: Yes, sir, I am.

24 THE COURT: Have you received a copy of the super-
25 vised, of the petition for the revocation of your supervised

1 release?

2 THE DEFENDANT: Yes, sir, I have.

3 THE COURT: Do you understand that you have the
4 right to object to the revocation of your supervised release,
5 that you have the right to be represented by an attorney to
6 challenge the facts asserted against you that would establish
7 the violations?

8 THE DEFENDANT: Yes, sir, I do.

9 THE COURT: The right to see and hear the witnesses
10 as they testify, the right to question and cross-examine
11 them, the right to object to the evidence brought by the
12 Government. You have the right to present your own witnesses
13 and your own evidence and your own testimony. You also have
14 the right to remain silent. Do you understand that?

15 THE DEFENDANT: Yes, sir, I do.

16 THE COURT: Have you discussed all these matters
17 with Ms. Garza?

18 THE DEFENDANT: Yes, sir, I have.

19 THE COURT: And what is your intention today with
20 respect to your plea?

21 MS. GARZA: Your Honor, it's a plea of true on all
22 violations except I believe that the Government is going to
23 abandon 3B as well as 7. But otherwise Mr. Medrano will
24 enter a plea of true.

25 THE COURT: You understand that if your supervision

1 is revoked that I have the power to return you to the
2 penitentiary for a period of five years?

3 THE DEFENDANT: Yes, sir, I do.

4 THE COURT: And are you ready to proceed?

5 THE DEFENDANT: Yes, sir, I am.

6 THE COURT: Do you understand, Ms. Garza, Mr.
7 Medrano was convicted in this Court in Cause Number 89-89.
8 He was sentenced in January of 1990 for possession with
9 intent to distribute 230 kilograms of marijuana. He received
10 32 months apparently on a safety valve, or a motion for down-
11 ward departure. There was a five-year supervised release
12 term, so that if he is revoked he can be returned to the
13 penitentiary for a period of up to five years. Three years?
14 Where's my -- three years.

15 MR. JAIME: Three years, Your Honor.

16 THE COURT: Three years. There has been previous
17 court action. There was a revocation hearing scheduled for
18 July the 10th based on a cocaine failure and there was some
19 -- apparently the defendant did not report and did not
20 appear. I'm going to ask you how you plead to these allega-
21 tions. How do you plead to the allegation known as violation
22 number 1, that you violated the law of the State of Texas by
23 committing the offense of aggravated sexual assault, in
24 violation of Section 22.02A, 22.021A1 and B1, on or about
25 August the 26th, 1995, how do you plead to that allegation?

1 THE DEFENDANT: I pled guilty, Your Honor.

2 THE COURT: That is the knowing and intentional
3 penetration of a female sexual organ of a child.

4 THE DEFENDANT: I pled guilty at the time, Your
5 Honor.

6 THE COURT: What was the sentence that this
7 defendant received?

8 MS. GARZA: Five years, Your Honor.

9 THE COURT: Five years?

10 MS. GARZA: Was it five years?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: How do you plead to the allegation known
13 as violation number 2, alleging a violation of condition num-
14 ber 2, leaving the judicial district without permission?
15 It's alleged that you left the Southern District of Texas
16 without permission on or about August the 26th, 1995. How do
17 you plead to that?

18 THE DEFENDANT: True, Your Honor.

19 THE COURT: How do you plead to the allegation
20 alleging a violation of condition number 3, that you failed
21 to report as instructed in that you failed to report to the
22 Probation Office on June 9, 13, 15 and 19 of 1995, how do you
23 plead to that?

24 THE DEFENDANT: True, Your Honor.

25 THE COURT: Violation number 4 alleges a failure to

1 submit monthly reports, a failure to submit monthly reports
2 for May and June. How do you plead to that?

3 THE DEFENDANT: True, Your Honor.

4 THE COURT: Violation number 7 is, again, basically
5 a repeat of number 2 and number 3 and number 4, a different
6 way to state an absconder status. This is the failure to
7 advise the Probation Office of your change in residence
8 alleged to have occurred on or about June the 15th, 1995.
9 How do you plead to that?

10 THE DEFENDANT: True, Your Honor.

11 THE COURT: Allegation number 6 alleges possession
12 and use of controlled substances. You should be aware that
13 if I find that you in fact possessed controlled substances
14 during your supervision, it is my obligation to revoke your
15 supervised release and return you to the penitentiary. Do
16 you understand that?

17 THE DEFENDANT: Yes, I do, sir.

18 THE COURT: How do you plead to the allegation that
19 you possessed and used cocaine on or about March the 6th of
20 1995 and on April the 13th, 1995?

21 THE DEFENDANT: I plead guilty, Your Honor. True.

22 THE COURT: I'm sorry? Are you feeling all right?

23 THE DEFENDANT: Yes.

24 THE COURT: Condition number 8, violation number 8
25 alleges that you failed to report an arrest within 72 hours

1 of the arrest. It's alleged that you were arrested on August
2 the 26th and made no attempt and failed to report to your
3 Probation Officer or the Probation Office the event of your
4 arrest. How do you plead to that?

5 THE COURT: True, Your Honor.

6 THE COURT: Violation number 9 alleges various
7 violations of special condition number 1. Special condition
8 number 1 requires that you comply with drug aftercare regula-
9 tions. It alleges that you committed various violations of
10 your drug aftercare regulations, specifically the use and
11 possession of cocaine on May the 13th and May the 9th of
12 1995. How do you plead to that?

13 THE DEFENDANT: True, Your Honor.

14 THE COURT: Also, your failure to report on June 16
15 and June 21st for the collection of urine specimens and
16 counseling, how do you plead to that?

17 THE DEFENDANT: True, Your Honor.

18 THE COURT: Basically alleged that you withdrew from
19 the program on your own?

20 THE DEFENDANT: Yes, sir, I left the jurisdiction.

21 THE COURT: Number 10 says that you failed to pay
22 for your fine as directed. There was \$500 fine that you only
23 made one payment of \$35 in March of 1995. How do you plead
24 to that allegation?

25 THE DEFENDANT: True, Your Honor.

1 THE COURT: What's the Government's proof?

2 MR. LAZARUS: Your Honor, the Government offers nine
3 exhibits. Government Exhibit 1 is the sentencing judgment
4 dated June 26th, 1990. 2 is the Probation Form 7A. 3 is the
5 Lamb County, Texas sentencing judgment when the defendant was
6 sentenced to five years in the Texas Department of Criminal
7 Justice after pleading guilty to aggravated sexual assault of
8 a child younger than 14 years of age. 4 is the drug
9 aftercare referral packet. 5 is the March 6th, 1995 lab
10 results, 6 and 7 are the April 13th lab results and the May
11 9th, 1995 lab results, all positive for cocaine. 7 is the
12 May 9, 1995 positive lab result for cocaine. 8 is the April
13 and May 1995 monthly treatment reports from the Tropical
14 Texas drug aftercare provider. 9 is the fine-payment
15 history. Offer them into evidence at this time.

16 THE COURT: Any objection?

17 MS. GARZA: We have no objections, Your Honor.

18 THE COURT: Admitted.

19 (Government's Exhibits 1 through 9 admitted
20 into evidence)

21 THE COURT: May I see them, please. Government
22 Exhibit Number 3 is a copy of a judgment on your plea of
23 guilty to the aggravated sexual assault of a child under the
24 age of 14. Do you agree that you committed that offense?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: You agree that this conviction is a
2 valid conviction?

3 MS. GARZA: May we have a moment, Your Honor? Thank
4 you.

5 (Off the record momentarily)

6 THE DEFENDANT: I plead guilty.

7 THE COURT: Do you remember what my question was?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you agree that this conviction is a
10 valid conviction?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And that you committed the offense and
13 were lawfully convicted of it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you agree with these exhibits that
16 reflect that you possessed and used cocaine and that you
17 failed to attend your counseling sessions as required?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you agree that you knew the
20 conditions of your probation? That is to say, rather, your
21 supervised release?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Anything further from Government?

24 MR. LAZARUS: Yes, Your Honor, we have several
25 proffers. For violation number 3 we would proffer the

1 testimony of the Probation Officer that the defendant failed
2 to report as instructed, based on the case notes of the
3 defendant's file. For violation number 4, also proffer the
4 testimony of the Probation Officer from the case notes that
5 the defendant failed to report within the first five days.
6 Proffer the testimony of the Probation Officer for violation
7 number 5, that the Probation Officer visited the defendant's
8 last residence, spoke with the occupants and determined that
9 the defendant, was told that the defendant was living with
10 his cousin, went to the cousin's house and was thereupon told
11 that the defendant was there but his whereabouts were
12 unknown. And proffer the testimony of the Probation Officer
13 as to violation number 8 from the case notes that there's no
14 record that the defendant reported his arrest within 72
15 hours.

16 THE COURT: Position of defense on revocation and
17 punishment?

18 MS. GARZA: Well, we have no objection as to the
19 proffer, Your Honor, of the Probation Officer's testimony.

20 THE COURT: Admitted.

21 MS. GARZA: And then --

22 THE COURT: Do you have anything you would like to
23 offer on whether or not these violations have been committed?

24 MS. GARZA: We have no evidence, Your Honor.

25 THE COURT: The Court finds that the violations have

1 been committed as alleged. What's the recommendation of the
2 United States?

3 MR. LAZARUS: Your Honor, Probation recommends
4 revocation for 36 months.

5 THE COURT: Position of defense?

6 MS. GARZA: Your Honor, for several reasons I
7 believe that that is excessive. For one, all of these
8 violations are violations that occurred during 1995, and
9 since then Mr. Medrano has been in TDC custody for five years
10 based on violation number 1. He served the full five years.
11 He has now been writted over here to answer for violations
12 that were committed in 1995. Our request of Your Honor would
13 be a sentence within the guidelines. The guideline range for
14 Mr. Medrano is 12 to 18 months. He was in TDC custody and a
15 federal detainer was placed on him in January of 1995, so
16 theoretically his revocation hearing could have occurred
17 sooner than now. Mr. Medrano also would benefit from, I
18 believe that he hasn't been using drugs while he's been in
19 TDC but I believe he would benefit from some type of drug
20 treatment program. And I say that, Your Honor, because he
21 committed the cocaine violations and then within a month or
22 two months later then he committed the serious offense in
23 violation number 1, and I know that he has not gotten
24 treatment at TDC for any type of drug addiction.

25 THE COURT: Do you have anything you would like to

1 say?

2 THE DEFENDANT: Yes, sir. For the past 11 years of
3 my life I've been incarcerated, basically. On my previous
4 time here in this courtroom, Your Honor, before your
5 presence, I was told that I was being sent to prison where I
6 would receive help, I was told that I wasn't in the right
7 state of mind at the time to be in society. And previously,
8 before that I had been sent to --

9 THE COURT: Do you think I was right?

10 THE DEFENDANT: Yes, sir. Previously, before that I
11 had been sent to Springfield, Missouri to undergo psychologi-
12 cal treatment and medical welfare where I was being mis-
13 treated and I was transferred here to the hospital in Corpus
14 Christi, Nueces County, to undergo further nourishment so
15 that I could come here before you in Court. And further,
16 going to prison, after I was sent to prison I didn't receive
17 any treatment but rather just bad, worse treatment from
18 guards and whatever have you. And I was left out from a cage
19 to the world and I had never received any type of, I didn't
20 know anything, anything different.

21 THE COURT: Did you know not to sexually assault a
22 13-year-old girl?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You need somebody else in the world to
25 tell you that besides your own human decency?

1 THE DEFENDANT: Your Honor --

2 THE COURT: That's not something we require society
3 to train us out of.

4 THE DEFENDANT: Your Honor, that charge, I pled
5 guilty to it, sir.

6 THE COURT: Which says to me that you did it.

7 THE DEFENDANT: Yes, sir, that's what it says.

8 THE COURT: And you came before a judge and you
9 swore to him under oath that you committed that crime and you
10 were present with counsel.

11 THE DEFENDANT: Yes, sir. And, Your Honor, I paid
12 five years for that, and the past five years of my life have
13 been hectic also.

14 THE COURT: I'm sure.

15 THE DEFENDANT: And now I'm here again before you.
16 It's written in the bible that God's appointed every judge to
17 rule righteously and --

18 THE COURT: Which judges was he speaking about, was
19 he speaking about the civil judges at the time, the criminal
20 judges at the time, the church judges at the time? Which
21 judges was he talking about, was he talking about the judges
22 for all time? Was he talking about what righteousness is, by
23 following the guidelines, by using my judgment, by wondering
24 how you got five years from committing such a heinous crime?

25 THE DEFENDANT: I don't know, Your Honor.

1 THE COURT: I guess that's something I'll have to
2 deal with.

3 THE DEFENDANT: I just ask that you consider my past
4 life, sir --

5 MR. JAIME: Your Honor --

6 THE DEFENDANT: -- and that I also have a family.

7 MR. JAIME: My understanding, in Lamb County that
8 Mr. Medrano provided information related to, relating to a
9 murder.

10 MS. GARZA: Your Honor, excuse me, if we could
11 please approach the bench?

12 THE COURT: Yes, I think you need to be mindful of
13 where you are and who's present, don't you?

14 MR. JAIME: Yes, sir.

15 THE COURT: If that's what your concern is?

16 MS. GARZA: Yes, Your Honor, thank you.

17 THE COURT: Why don't we resolve it this way, let me
18 have an updated presentence investigation.

19 MS. GARZA: Thank you, Your Honor.

20 THE COURT: Due here, we'll sentence the defendant
21 in 30 days. Give you enough time?

22 MS. GARZA: Yes, Your Honor.

23 THE COURT: Defendant is remanded and counsel are
24 excused.

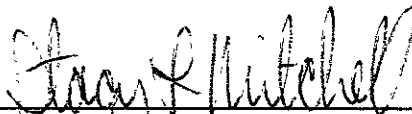
25 (The proceedings ended at 8:52 a.m.)

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EXHIBITS:

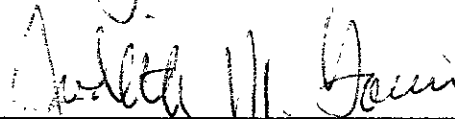
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We certify that the foregoing is a correct transcription from the electronic sound recording of the proceedings in the above entitled matter.



Stacy L. Mitchell

JAN 09 2001



Judith M. Garcia