

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
v.) 21-cr-10322-MLW
)
ADELAIDA YUDIT GARIBAY)

DEFENDANT’S SENTENCING MEMORANDUM

I. Introduction

For 24 years, from age 21 to age 45, Adelaida Garibay lived a fully law-abiding life. PSR ¶¶ 13, 41, 42.¹ During that time she raised five children. PSR ¶¶ 55-65. She married in 2000 and remains in that loving, committed relationship to this day. PSR ¶¶ 64-67. She worked for 18 of those years until chronic lower back pain resulting from 12 years of long days on her feet as a make-up artist and hair stylist forced her to stop. PSR ¶¶ 76-79; ¶¶ 68-69; Exhibit A, Letters of Support. She was a loving wife, mother and grandmother, and a positive member of her community for more than two decades.

Then, at 46 years old, she severely damaged the life she had worked so hard to build when she agreed to travel from California to Boston to transport two kilograms of fentanyl a few miles from Jamaica Plain to Dorchester. PSR ¶¶ 9-13. She was in fact bringing the fentanyl to an undercover officer and was arrested immediately. PSR ¶¶ 11,12. She was held in jail for more than two months, 3,000 miles from any friends or family. PSR p.1. Since release she has been

¹ As the final Presentence Report (PSR) has not yet been disclosed, PSR references are to the Initial Presentence Report dated August 3, 2022.

subject to conditions that include a curfew and an electronic monitoring bracelet. Dkt. 16. She has fully accepted responsibility by admitting her conduct shortly after her arrest, pleading guilty and agreeing that it is time for her to report to jail and begin serving her sentence. Dkt. 63, 65.

Adelaida Garibay now stands ready to be sentenced on September 7, 2022 for her crime. The defense agrees with the probation department that the advisory guidelines range in this case is 46-57 months. PSR ¶ 87. In light of Ms. Garibay's minor role in the offense, actions since her arrest, medical conditions that will make incarceration more difficult, and long period of positive contributions to her family and community, the defense recommends a sentence of 24 months incarceration and two years supervised release. For this particular case and this particular defendant, a sentence of 24 months in federal prison and two years supervised release is one that is "*minimally* sufficient to achieve the broad goals of sentencing." *United States v. Rodriguez*, 527 F.3d 221, 228 (1st Cir. 2008) (emphasis added).

II. The nature and circumstances of the offense justify both a minor role reduction and a downward variance.

In the importation and distribution of two kilograms of fentanyl that occurred in this case, Adelaida Garibay's role was entirely limited to bringing it the last few miles to the purported buyer. She was directed by others to meet unknown individuals to receive the package in Jamaica Plain. PSR ¶ 19. She was directed to take the package to the South Bay Home Depot in Dorchester. PSR ¶ 11. Within minutes of taking possession of the drugs she was arrested. *Id.*

The probation department is correct that on these facts a minor role adjustment of a two-point reduction in offense level applies. PSR ¶ 31, citing USSG §3B1.2(b). When the Sentencing Commission amended the application notes to USSG §3B1.2 in 2015, it clarified the

circumstances under which minor role adjustments should be granted. The Commission amended the guideline out of concern that “mitigating role is applied inconsistently and more sparingly than the Commission intended.” U.S.S.C., “Amendments to the Sentencing Guidelines,” Apr. 30, 2015, p. 34, available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/20150430_Amendments_0.pdf Ms. Garibay’s participation matches an example given in the Application Notes: “For example, a defendant who is convicted of a drug trafficking offense, whose participation in that offense was limited to transporting or storing drugs and who is accountable under §1B1.3 only for the quantity of drugs the defendant personally transported or stored may receive an adjustment under the guideline.” USSG §3B1.2, Application Note 3(A).

The Guidelines list five factors when determining whether the defendant should receive a two or four level reduction for her role in the offense. Those factors are:

- (i) the degree to which the defendant understood the scope and structure of the criminal activity;
- (ii) the degree to which the defendant participated in planning or organizing the criminal activity;
- (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
- (iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;
- (v) the degree to which the defendant stood to benefit from the criminal activity.

USSG §3B1.2, Application Note 3(c).

The probation department carefully considered these factors in determining that a two-level reduction applies. PSR ¶ 31. Ms. Garibay played no part in bringing the drugs to Boston in the first place. She was told where to pick up the drugs from women she never met and where to bring them to a buyer she never met. Although she had some knowledge of other participants in the crime, her knowledge was limited. She did not plan or organize the offense, but did willingly participate, most obviously in driving from California to Boston to do so. She also expected to be paid for her participation, but far less than other participants would have received. PSR ¶¶ 10, 17. On balance, the factors support a two-level reduction rather than three or four levels. Ms. Garibay ultimately qualifies for the reduction because she is “substantially less culpable than the average participant.” USSG § 3B1.2, Application Note 3.

In addition to the minor role reduction, the Court should also consider how drug quantity is the overwhelming factor in the advisory range even though Ms. Garibay played no part in determining the quantity. There are only four factors that determine the advisory range in this case: drug quantity, minor role, acceptance of responsibility, and USSG § 2D1.1(b)(18). While drug quantity sets the offense level at 30, the other three factors result in a total of a seven-point reduction, for a total offense level of 23. PSR ¶¶ 28-38. This is thus one of many cases in which drug quantity drives the guidelines but is a “particularly poor proxy for the culpability of low level offenders...who do not share in the profits or decision-making.” U.S.S.C., *Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System is Achieving the Goals of Sentencing Reform*, at 50 (Nov. 2004), available at https://www.usc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/15-year-study/15_year_study_full.pdf. As Judge Gertner wrote, “false uniformity occurs when we treat equally individuals who are not remotely equal because we

permit a single consideration, like drug quantity, to mask other important factors.” *United States v. Cabrera*, 567 F. Supp. 2d 271, 273 (2008)

A bipartisan Congressional task force has also noted the problem in relying too heavily on quantity in calculating guideline ranges in drug cases. Charles Colson Task Force on Federal Corrections, *Transforming Prisons, Restoring Lives: Final Recommendations of the Charles Colson Task Force on Federal Corrections*, at 23 (January 2016), available at <https://www.urban.org/sites/default/files/publication/77101/2000589-Transforming-Prisons-Restoring-Lives.pdf>. The task force has suggested that the Sentencing Commission revise the guidelines “to better account for role and culpability and to rely less on imprecise proxies such as drug quantity.” *Id.* It recommended that the Commission revisit the guidelines to account more for “revenue or profit derived from drug trafficking,” “clearly defined aggravating and mitigating role factors,” and “alternatives to incarceration for lower-level drug trafficking offenses.” *Id.* The fact that Ms. Garibay’s advisory range is inflated due to overreliance on drug weight is an additional reason why this Court should consider a downward variance based on the nature and circumstances of the offense.

III. Ms. Garibay’s personal characteristics support a downward variance because they show that she is less likely to reoffend.

Adelaida Garibay committed two marijuana offenses in 1996 and 1998 when she was 20 and 21 years old, respectively. PSR ¶¶ 41, 42. After being released from her 10-month sentence in the latter, she then spent more than two decades raising her children, PSR ¶¶ 56-65, working hard to support them, PSR ¶¶ 76-79, and loving and supporting her husband. PSR ¶¶ 64-67. See also Exhibit A, Letters of Support. Adelaida Garibay clearly has the ability to live a fully law-

abiding life.

That extended period of success and stability would not have seemed likely given the difficult circumstances of her childhood and early adulthood. Although she was born in California, her parents moved to Mexico when she was approximately five years old. PSR ¶ 49. Her mother suffered from alcoholism and at times was absent from the home due to her drinking. PSR ¶ 50. As a child she witnessed domestic violence between her parents. *Id.* Although she enjoyed school and was a fast learner, her father prohibited her from attending beyond 6th grade, apparently out of a belief that girls should focus on caring for the home and family rather than pursuing their own education and careers. PSR ¶ 75. Her father's expectation that she stop attending school and instead begin to take on traditional responsibilities around the house may also have been exacerbated by her mother's alcoholism and lack of reliability. PSR ¶ 50.

Having been removed from school and having experienced substance abuse and domestic violence within her home, it is perhaps not surprising that Ms. Garibay became pregnant at 15 years old. PSR ¶ 49. Her daughter was born when Ms. Garibay was only 16. PSR ¶ 56. She then had a son two years later at age 18. PSR ¶ 58. With a 6th grade education and two young children at 18 years old, Ms. Garibay then agreed to transport marijuana at ages 20 and 21. PSR ¶¶ 41, 42. She served 10 months in prison for the second offense.

At this point, at 21 years old with two young children and having just been released from prison, Adelaida Garibay's life was clearly at a crossroads. There were many forces that would have pushed her back to crime in a shortsighted attempt to earn money to support her family. Yet she chose not to do that. For the next 24 years she worked demanding jobs, supported her family, and abided the law. Such a change would not have happened without hard work.

Ms. Garibay's loving family is the product of that hard work. She has loving relationships

with her husband and all of her children, although there are times when she and one of her daughters have drifted apart. PSR ¶¶ 55-67. Her husband and three of her children have submitted letters of support to the Court attesting to Ms. Garibay's enormous impact on them all. Exhibit A.

The letters express two main common themes- the physical consequences of Ms. Garibay's years of working through pain to support her family and her sincere remorse for the harm she caused. *Id.* Her son Luis recalls accompanying her to her cosmetology job as a child and watching her stand for hours, then seeing her back problems cause her increasing pain that resulted in surgery. Exhibit A, Letter of Luis Escalante III. After surgery, he saw her get up at 3:00 a.m. to go back to work on long shifts in a factory job. *Id.* This level of dedication has been an inspiration to her son and all his siblings. *Id.* Her daughters America and Yajaira also note Ms. Garibay's work ethic, and the chronic, severe back pain that it has caused her. Exhibit A, Letters of America Saidawi and Yajaira Garibay. As the one who lives with her every day, Ms. Garibay's husband Luis provides the clearest description of her medical problems as well as of her related depression. Exhibit A, Letter of Luis Escalante; See also PSR ¶ 73. Ms. Garibay's husband also spoke to the presentence report writer, describing how in addition to supporting her children she also has provided him great support, including through his struggles with his own back problems. PSR ¶ 67. Adelaida Garibay has clearly affected the people closest to her in very positive ways.

Because of those close relationships, Ms. Garibay has been able to be honest with her family about her crime. Each of the letter writers describes how she has expressed her sincere regret and shame at her actions. Exhibit A. They acknowledge, and Ms. Garibay has acknowledged to them, the serious harm from controlled substances, particularly fentanyl. Ms. Garibay's honesty with

her family, and her acknowledgement of the harm caused by fentanyl, are important indicators of true acceptance of responsibility, which in turn make Ms. Garibay less likely to reoffend.

Yet despite her serious crime, Adelaida Garibay's family remains completely supportive of her. They each benefited greatly from her dedication to them, and in turn they now are dedicated to her. This type of support matters because Ms. Garibay will return to an intact, stable, loving family. Ms. Garibay has already demonstrated her ability to change her life under much more difficult circumstances when she was a young mother fresh off a prison sentence. Now she will serve a much longer sentence, but she will have a support network waiting for her. This support network is further support for a downward variance because a guidelines sentence is not necessary to accomplish the goals of sentencing, including deterrence from future criminal conduct.

IV. Adelaida Garibay's medical conditions support a downward variance because they will make her incarceration more difficult.

This Court is aware of some of Ms. Garibay's medical problems from the litigation involved in her request to remain on release pending sentencing. See Dkt. 44, 50, 58, 61, 63. Although Ms. Garibay sought release pending sentencing in order to receive treatment and complete medical consultations, she has advised the Court that no more medical appointments are anticipated and thus agreed that she should report to jail and begin serving her sentence. Dkt. 63. This Court has ordered her to report to the marshals in the Central District of California by noon on August 29th.

Although additional medical appointments are not scheduled or anticipated at this time, Ms. Garibay's medical conditions remain relevant to her sentencing. Ms. Garibay suffers from

chronic back pain, high blood pressure, high cholesterol, pre-diabetes, and obesity, all of which have been verified by medical records provided to the probation department. PSR ¶¶ 68-70.

Ms. Garibay's back pain is caused by foraminal stenosis and degenerative disc disease at two locations in her back that cause significant pain. PSR ¶ 69. Foraminal stenosis is the narrowing of openings in the vertebrae through which nerves pass, connecting the spine to other parts of the body. "What is Foraminal Stenosis," WebMD at <https://www.webmd.com/back-pain/what-is-neural-foraminal-stenosis>. When the openings put pressure on the nerves, the patient can experience pain, weakness, and numbness or tingling. *Id.* Ms. Garibay has suffered from all these symptoms. PSR ¶¶ 69, 70, 72. Her family has seen firsthand how the pain has severely limited her mobility. Exhibit A, Letters of Support. Her condition resulted in surgery both 2013 and 2020. PSR ¶ 69. Although her pain decreased after the 2013 surgery, she experienced no improvement after the 2020 surgery. *Id.* Due to the lack of improvement she became depressed about her condition, and has subsequently been treated for depression, anxiety, and panic attacks. PSR ¶¶ 72, 67; Exhibit A.

With no foreseeable treatment to provide any relief, Ms. Garibay's back pain will continue to be a constant presence throughout her incarceration. She previously has been prescribed Hydrocodone for pain relief, PSR ¶ 70, but is not currently prescribed opioids and certainly will not be prescribed any during her incarceration. She simply will live with the pain, which reduces her mobility and leads to depression. This means that incarceration will be even more difficult due to the constant pain. Each day will be worse than if she were pain free, and thus the impact of incarceration will be greater. Her suffering means that the lesson of her wrongdoing will be taught more quickly.

Ms. Garibay's other medical conditions are also relevant to the Court's determination of

what sentence is “sufficient, but not greater than necessary” to accomplish the goals of sentencing. 18 U.S.C. § 3553(a). She suffers from hypertension, high cholesterol, pre-diabetes, and obesity. PSR ¶ 70. Treatment of these conditions would normally include changes to diet and lifestyle, including efforts to reduce stress. Prison, however, is incredibly stressful by its nature, and thus the most Ms. Garibay can hope for is to manage her conditions rather than improve them. This result is of course a natural consequence of her actions. The knowledge that, in addition to harming the community and her family, she has also harmed her ability to treat her medical conditions, is another factor that supports a downward variance.

VII. Conclusion

Adelaida Garibay worked hard to create a loving, stable life for herself and her family, and then threw it all away for one terrible decision. She alone caused the terrible consequences discussed above, and she has admitted that to her family. She agrees that her actions justify incarceration. The question for the Court is how much is “necessary” to accomplish the goals of sentencing. In light of Ms. Garibay’s role in the offense, actions since arrest, personal characteristics and numerous medical conditions, a sentence of 24 months incarceration and two years supervised release is sufficient but not greater than necessary.

Respectfully submitted,
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Certificate of Service

I, Joshua R. Hanye, hereby certify that this document was this day filed through the ECF system and will be sent electronically to the registered participants as *Identified* on the Notice of Electronic Filing (“NEF”).

Date: August 24, 2022

/s/ Joshua R. Hanye

Joshua R. Hanye