

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs. 1 : 07 - CR - 45 - JAP

7 BENNY A. HURTADO,

8 Defendant.

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10 Transcript of Sentencing Hearing before The Honorable
11 James A. Parker, Senior United States District Judge, held in
12 Albuquerque, Bernalillo County, New Mexico, commencing on
Thursday, June 21, 2007, at 1:56 p.m., and concluding at 2:05
12 p.m.

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14 For the Plaintiff: Paul H. Spiers, Esq.

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17 For the Defendant: Thomas B. Jameson, Esq.

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22 John De La Rosa, CCR
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1 (In open court.)

2 THE COURT: The next case is Number 2007-45, United
3 States of America versus Benny A. Hurtado. Would counsel state
4 their appearances, please?

5 MR. SPIERS: Good afternoon, Your Honor, Paul Spiers
6 for the United States.

7 MR. JAMESON: Good afternoon, Your Honor, Tom Jameson
8 on behalf of Mr. Hurtado who appears.

9 THE COURT: Mr. Hurtado, have you read your Presentence
10 Report?

11 MR. HURTADO: Yes, sir.

12 THE COURT: Have you discussed it with your attorney?

13 MR. HURTADO: Yes, sir.

14 THE COURT: Are all of the statements of fact in your
15 report true and correct?

16 MR. HURTADO: Yes, sir.

17 THE COURT: Mr. Jameson, is there any need for an
18 evidentiary hearing on disputed facts?

19 MR. JAMESON: There is not, Your Honor.

20 THE COURT: I adopt as factual findings of the court
21 all of the factual statements in Mr. Hurtado's Presentence
22 Report. In addition to reading the Presentence Report, I have
23 read the addendum to the Presentence Report which sets forth
24 the defendant's statement of responsibility and a handwritten
25 copy of that.

1 Are there any other written materials that I should
2 take into account?

3 MR. JAMESON: No, sir.

4 MR. SPIERS: No, sir.

5 THE COURT: Based on the information provided by
6 Mr. Hurtado at his change of plea hearing and the information
7 in his Presentence Report, it is my finding that the defendant,
8 Benny A. Hurtado, knowingly, voluntarily and intelligently
9 entered a plea of guilty to the charge in Indictment 2007-45.

10 At this time, I will accept his plea of guilty.

11 According to the Presentence Report, the offense level
12 is 29, the Criminal History Category is VI, and the guideline
13 imprisonment range is 151 to 188 months.

14 Are you in agreement with that?

15 MR. SPIERS: Yes, sir.

16 MR. JAMESON: That's correct, Your Honor.

17 THE COURT: It is my intent to impose a sentence at the
18 bottom of the guideline range of 151 months given Mr. Hurtado's
19 age the length of that sentence.

20 Let me ask Mr. Jameson if you would like to make a
21 statement at this time.

22 MR. JAMESON: Your Honor, what I would like to
23 communicate to you is Mr. Hurtado -- and he can explain it to
24 you himself. He feels that his letter best expresses himself,
25 and I know you have just announced you have read it. He feels

1 that the act he committed in this case was a cry for help, that
2 it was in no way violent, and he feels that even a sentence at
3 the low end of the guideline range is too excessive, and he's
4 hoping that you will give him a sentence of not more than 10
5 years based on the lack of violence in this case. I think he
6 would like to address you also.

7 THE COURT: Mr. Hurtado, you may speak if you wish.

8 MR. HURTADO: Basically, sir, that's -- I don't have --
9 there isn't any reason for the court to consider that other
10 than the fact that throughout all my history of very low level
11 of violence, I have never intended to hurt anyone. There was a
12 period of time recently that I was strung out on heroin. I was
13 on the street. I didn't snatch any purses or cut anybody or
14 rob anybody. I just think that 10 years, I'll be 60, I think
15 that that's a long time. I just finished doing 15 years
16 straight. My level of security is very high, so it's --
17 maximum security is a very dangerous situation, and I just
18 think the 10 years is actually about what I can do and still
19 have some kind of chance.

20 THE COURT: Well, there wasn't a written request for
21 variance from the guideline sentence. Is that correct?

22 MR. JAMESON: That's correct, Your Honor.

23 THE COURT: Is that precluded by the plea agreement?

24 MR. JAMESON: I'm not certain, but I don't believe it
25 was. But the government can tell me if I'm wrong. I don't

1 think it was precluded by --

2 THE COURT: Well, let me ask what the government's
3 position is on a sentence of 10 years.

4 MR. SPIERS: Your Honor, we indicate in the plea
5 agreement we would not oppose the low end. The low end is 151
6 months. Anything more, we would oppose. I mean, anything less
7 than that, we would oppose. So in other words, we don't oppose
8 151 months, which is the low end of the guidelines, but any
9 variance on that or below that, we would oppose based on his
10 record, based on the offense. We don't concede that there is
11 not an aspect of violence to committing a bank robbery. He put
12 a lot of people in fear.

13 THE COURT: Well, this is a proposed sentence, and --
14 let me ask Mr. Jameson first, do you ask for a recommendation
15 of an FCI?

16 MR. JAMESON: Mr. Hurtado wanted you to know that he's
17 had problems with Texas prison gangs, and he would like a
18 recommendation to Victorville, California, and in the
19 alternative, not to a facility in Texas.

20 THE COURT: This is a proposed sentence. I have
21 reviewed the presentence report factual findings. I have
22 considered the sentencing guideline applications and the
23 factors under 18 United States Code Section 3553(a).

24 It is the judgment of the court as to Indictment
25 2007-45 that the defendant, Benny A. Hurtado, is committed to

1 the custody of the Bureau of Prisons to be imprisoned for a
2 term of 151 months. I recommend that he serve his sentence in
3 the Federal Correctional Institution Victorville, California,
4 if he is eligible, but not in an FCI in Texas.

5 Further, I recommend that the defendant participate in
6 the Bureau of Prisons 500-hour drug and alcohol treatment
7 program.

8 The defendant is placed on supervised release for a
9 term of three years. He must comply with the mandatory and
10 standard conditions of supervised release, including the
11 conditions that he submit to DNA collection in compliance with
12 statutory requirements while incarcerated, and that he not
13 possess firearms, ammunition, explosive devices, or other
14 dangerous weapons.

15 In addition, the following special conditions are
16 imposed:

17 First, the defendant must participate in and
18 successfully complete a substance abuse treatment program.
19 That program may include drug testing, outpatient counseling,
20 or residential placement. The defendant may be required to pay
21 all or part of the cost of that treatment as determined by the
22 probation office.

23 Second, the defendant must refrain from the use and
24 possession of alcohol and other forms of intoxicants.

25 Third, the defendant must submit to a search of his

1 person, property or automobile to be conducted in a reasonable
2 manner and at a reasonable time for the purpose of detecting
3 illegal drugs or weapons as directed by the probation officer.
4 The defendant must inform others living with him that the
5 premises may be subject to a search.

6 In accordance with the Mandatory Restitution Act of
7 1996, it is ordered that the defendant make restitution to the
8 Bank of America in the amount of \$634. Payments must be in the
9 amount of not less than \$50 per month.

10 Because of the defendant's lack of financial resources,
11 I will not impose a fine.

12 The defendant must pay a special assessment of \$100,
13 which is due immediately.

14 Under the terms of his plea agreement, Mr. Hurtado has
15 waived his right to appeal this proposed sentence.

16 Let me ask counsel if you have comments on that
17 proposed sentence.

18 MR. SPIERS: No, sir.

19 MR. JAMESON: Your Honor, we have no comments on the
20 sentence, although Mr. Hurtado would like me to ask you to
21 expedite his commitment to the Bureau of Prisons.

22 THE COURT: Well, I'll ask that they make a designation
23 as rapidly as possible.

24 MR. HURTADO: Thank you.

25 THE COURT: Anything else?

1 MR. JAMESON: No, sir.

2 THE COURT: We're in recess, then, in Number 2007-45.

3 (Court recessed at 2:05 a.m.)

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2 UNITED STATES OF AMERICA

3 DISTRICT OF NEW MEXICO

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5 I, John De La Rosa, RPR, CCR, Official Court Reporter for
6 the State of New Mexico, do hereby certify that the foregoing
7 pages constitute a true transcript of proceedings had before
8 the said Court held in the City of Albuquerque, New Mexico, in
9 the matter therein stated.

10 In testimony whereof, I have hereunto set my hand on this
11 19th day of December, 2016.

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