

FILED
Court of Appeals
Division II
State of Washington
7/19/2019 4:16 PM
No. 52599-2-11

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

GUADALUPE SOLIS DIAZ

REPLY BRIEF OF APPELLANT

Thomas E. Weaver
WSBA #22488
Attorney for Appellant

The Law Office of Thomas E. Weaver
P.O. Box 1056
Bremerton, WA 98337
(360) 792-9345

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A. Argument in Reply

In his Brief of Appellant, Mr. Solis-Diaz argued that a sentence of 30 years for a sixteen-year-old boy with no criminal history who committed offenses that did not result in death or serious bodily injury was excessive and an abuse of discretion. Mr. Solis-Diaz was convicted of six counts of first degree assault for shooting at Jesse Dow, a person with whom he had an altercation earlier, in the vicinity of five bystanders. No one was hurt in the assault. At the sentencing hearing, the trial court heard from the primary victim, Jesse Dow, who asked the court to show mercy on Mr. Solis-Diaz because everyone “needs that second chance in life,” he had “spent long enough in” prison, and he “needs an opportunity.” RP, 62.

The Respondent takes umbrage with Mr. Solis-Diaz’ argument, claiming it does not adequately take into account the feelings of the five bystanders, who “became victims of Solis-Diaz’s intentional action of firing a gun out of the window of a vehicle into a crowded sidewalk outside a bar on a summer night.” Brief of Respondent, 15. The Respondent continues, “There were six victims in this case, and they all have names, Jesse Dow, Sheena Fisco, Cassandra Norkos [sic], Sean

Thomas, Doug Hoheisel, and Jonathan Freeman.” Brief of Respondent, 15.

Mr. Solis-Diaz does not downplay the severity of his offenses. Shooting out a car window into a group of people is clearly a reckless act that could have resulted in serious bodily injury. But the fact remains that no one was hurt. To sentence Mr. Solis Diaz as if he had killed or seriously injured a person does not adequately account for the negligible consequences of his intentional and reckless deeds.

Respondent places undue emphasis on the feelings of the bystander victims. In addition to Mr. Dow’s testimony, the record also reflects Declarations from two additional victims: Sean Thomas and Cassandra Norskog. Ms. Norskog calls Mr. Solis-Diaz’ original sentence “outrageous and unfair.” CP, 258. She compares Mr. Solis-Diaz’ sentence to the sentence imposed on James Reeder, a Lewis County man who received “37 years for raping and killing a little girl.”¹ CP, 258. Ms. Norskog opines that a sentence of approximately 15 years would be appropriate, taking into account that he was “on drugs at the time of the crime and 16 years old.” CP, 259.

¹ James Reeder, a Centralia resident, was 25 years old when murdered his girlfriend’s 2-year-old daughter. He “repeatedly raped the child and hurt her so badly that patches of skin were missing from her body and her toes, according to court documents.” <https://komonews.com/news/local/judge-gives-37-year-sentence-for-toddlers-murder-wishes-it-was-more>

Mr. Thomas Declaration is even more densely introspective and forceful than Ms. Norskog, if that is possible. He begins by saying he suffered no injury as a result of these offenses, including that it did not “emotionally damage or harm” him. CP, 256. Mr. Thomas was “very upset” by the “utter injustice” of the original sentence and continues to believe that even 30 years is “way too long a sentence.” CP, 256-57. Presciently, Mr. Thomas intuits the arguments made by the child development expert witnesses who testified at Mr. Solis-Diaz’ sentencing hearing, “As a 16-year-old kid, you are going to make mistakes. . . . But those mistakes just can’t define who you are. You just are not the same person once you are an adult. Junior just can’t be the same person now, 11 years later, as he was at 16. Everybody deserves a second chance. People grow and change. I absolutely believe Junior can come back to our community, where I still live, and make a positive life for himself. Junior has done his time and deserves a second chance.” CP, 257.

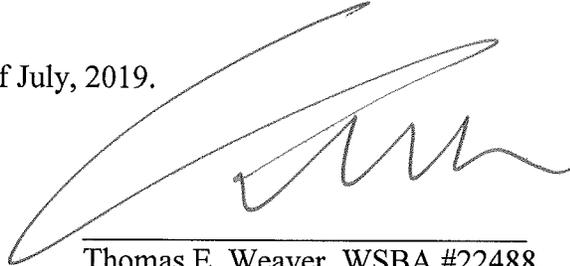
The Brief of Respondent concludes, “These five people, Ms. Fisco, Ms. Noskos [sic], Mr. Thomas, Mr. Hoheisel, and Mr. Freeman should be taken into account, in addition to Mr. Dow, who spoke on Solis-Diaz’s behalf.” Brief of Respondent, 17. Mr. Thomas specifically rejects any attempt to make this argument, saying, “I would ask the Judge not give

Junior a sentence of 30 years in my name.” CP, 257. This Court should reject this argument as well.

B. Conclusion

This Court should reverse and remand for resentencing.

DATED this 19th day of July, 2019.

A handwritten signature in black ink, appearing to read 'T. E. Weaver', is written over a horizontal line.

Thomas E. Weaver, WSBA #22488
Attorney for Defendant/Appellant

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,) Court of Appeals No.: 52599-2-II
)
Plaintiff/Respondent,) DECLARATION OF SERVICE
)
vs.)
)
GUADALUPE DIAZ,)
)
Defendant/Appellant.)

STATE OF WASHINGTON)
)
COUNTY OF KITSAP)

I, Alisha Freeman, declare that I am at least 18 years of age and not a party to this action.

On July 19, 2019, I e-filed the Reply Brief of Appellant in the above-captioned case with the Washington State Court of Appeals, Division Two; and designated a copy of said document to be sent to Lewis County Deputy Prosecuting Attorney Sara I Beigh via email to: sara.beigh@lewiscountywa.gov through the Court of Appeals transmittal system.

On July 19, 2019, I deposited into the U.S. Mail, first class, postage prepaid, a true and correct copy of the Reply Brief of Appellant to the defendant:

Guadalupe Diaz, DOC #313623
Washington State Penitentiary
1313 North 13th Avenue
Walla Walla, WA 99362

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1 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is
2 true and correct.

3 DATED: July 19, 2019, at Bremerton, Washington.

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5 _____
6 Alisha Freeman

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THE LAW OFFICE OF THOMAS E. WEAVER

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Transmittal Information

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Filing on Behalf of: Thomas E. WeaverJr. - Email: tweaver@tomweaverlaw.com (Alternate Email:)

Address:
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Bremerton, WA, 98337
Phone: (360) 792-9345

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