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Attorneys for Plaintiff.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

| | | |
|---------------------------|---|------------------------------|
| UNITED STATES OF AMERICA, |) | Criminal No. R-76-88-BRT |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | RESPONSE TO DEFENDANT'S |
| |) | MOTION UNDER RULE 35, |
| PHILLIP CRAIG GARRIDO, |) | RULES OF CRIMINAL PROCEDURE, |
| |) | TITLE 18, USC |
| Defendant. |) | |

COMES NOW plaintiff, UNITED STATES OF AMERICA, by and through B. MAHLON BROWN, United States Attorney, and LELAND E. LUTFY, Assistant United States Attorney, and moves this Honorable Court to deny the above-entitled motion for the following reasons:

Pursuant to Rule 35, Federal Rules of Criminal Procedure, the Court may reduce a sentence within 120 days after the sentence is imposed. The defendant's motion was filed approximately one year after his sentence. It is, therefore, outside the time limits set forth in Rule 35.

While defendant GARRIDO'S motion might at first blush appear to be one made by a repentant criminal, the Court should keep in mind the nature of the crime for which GARRIDO was convicted and the circumstances surrounding it. GARRIDO kidnapped a girl in her early 20s and took her from California to Nevada. During the kidnapping he handcuffed the girl's hands behind her back, pushed her head down between her legs and tied

1 a rubber strap around her legs and the back of her head. He taped
2 her mouth, tossed her in the back seat of the automobile and threw
3 some kind of a blanket or cover over her. In this manner he
4 transported her from California to Nevada during which time he told
5 the girl what he was going to do to her when he got her to his
6 warehouse in Nevada. GARRIDO treated this girl no better than he
7 would a side of beef, and the Court's imposition of sentence was
8 equal to GARRIDO'S actions.

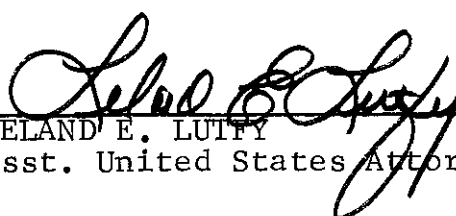
9 Pursuant to the Court's Order dated March 24, 1978,
10 attached hereto and incorporated herein are the pertinent medical,
11 psychiatric and educational records from the United States
12 Penitentiary, Leavenworth, Kansas.

13 For the foregoing reasons, the government respectfully
14 moves the Court to deny this defendant's motion for reduction of
15 sentence, since the sentence imposed is equal to the crime
16 committed by this defendant.

17 Respectfully submitted,

18 B. MAHLON BROWN
19 United States Attorney

20
21 By:


LELAND E. LUTY
Asst. United States Attorney

CERTIFICATE OF SERVICE BY MAIL

UNITED STATES OF AMERICA

v.

Criminal No. R-76-88-BRT

PHILLIP CRAIG GARRIDO

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the _____ District of Nevada and is a person of such age and discretion as to be competent to serve papers.

That on May 10, 1978, she served a copy of the attached RESPONSE TO DEFENDANT'S MOTION UNDER RULE 35, RULES OF CRIMINAL PROCEDURE, TITLE 18, USC

by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail ~~at~~ in a regular mail depository.

Addressee(s):

Phillip Craig Garrido
United States Penitentiary
Leavenworth, Kansas 66048

DOJ-

Alga P. Farrell

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

UNITED STATES PENITENTIARY
LEAVENWORTH, KANSAS 66048
April 12, 1978

U. S. ATTORNEY, Reno, Nev.

Mr. Leland E. Lutfy
Asst. U. S. Attorney
Fed. Bldg. & US Court House
300 Booth St., Room 5011
Reno, Nevada 89502

APR 24 1978

RECEIVED

Re: GARRIDO, Phillip Craig
Reg. No. 36377-136

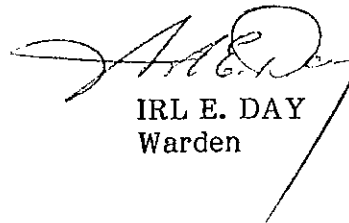
Dear Mr. Lutfy:

Thank you for your letter of March 27, 1978, regarding Mr. Phillip Garrido, a federal offender presently committed to the custody of the United States Penitentiary, Leavenworth, Kansas. In your letter, you have requested information regarding Mr. Garrido's medical, psychiatric, and educational progress and status, in order to comply with U. S. District Judge Thompson's order dated March 24, 1978, directing the government to include this information in response to Mr. Garrido's motion for reduction of sentence.

An up-to-date progress report is enclosed which outlines Mr. Garrido's adjustment and program involvement since his commitment to Leavenworth on January 1, 1977. Within the progress report, Mr. Garrido's medical status is summarized. Please be advised that Mr. Garrido has had no contact with our psychiatric staff; therefore, no psychiatric reports are available. However, Mr. Garrido has been involved in individual counseling with our psychology staff and a report from that department is enclosed for your use.

We trust this information will be helpful to you, and if we can be of further assistance, please advise us.

Sincerely,



IRL E. DAY
Warden

Encl.

BP-Class-3
(Rev. 11/74)Date: April 5, 1978UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONSUSP, LEAVENWORTH, KANSAS
(INSTITUTION)

Inmate Reviewed and/or Received Copy

Phillip Garrido
(SIGNATURE AND DATE)

PROGRESS REPORT

IRH Interim Annual XX OtherName: GARRIDO, Phillip Craig Reg. No.: 36377-136Offense: Kidnapping Age: 27Sentence: 50 years Began: 04-11-77 Months Served: 12Days EGT: 18 Days FGT: 0 Tentative Release: 10-18-2010Last Board Action and Date: Eligible for parole on April 10, 1987.

Detainers: 07-11-77, 207 PC-2 counts, 261 PC Felonies, Sheriff's Office, El Dorado, County, Placerville, California; 07-11-77, Judgment and sentence, Life (with a possibility of parole, concurrent with federal sentence), Sheriff's Office, Washoe County, Reno, Nevada.

Codefendants: None.NEW INFORMATION

No new information.

INSTITUTIONAL ADJUSTMENT

Mr. Garrido has demonstrated an above average adjustment in all areas of his confinement since his commitment to USP, Leavenworth on July 1, 1977. Mr. Garrido has maintained a clear conduct record while at Leavenworth.

Mr. Garrido was initially classified at USP, Leavenworth on July 27, 1977. At that time, he was designated close custody and regular duty status. The Classification Team assigned Mr. Garrido to work in the Carpenter Shop and recommended

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UNITED STATES PENITENTIARY
LEAVENWORTH, KANSAS 66048
Date: April 5, 1978

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that he seek educational instruction to prepare for future college enrollment and that he also seek counseling to improve his self-control in avoiding future chemical abuse.

Mr. Garrido is presently assigned to the Carpenter Shop, where he is employed as an apprentice carpenter. Within this position, Mr. Garrido is responsible for the operation of woodworking equipment, cabinet making, and installation of cabinets. Mr. Garrido receives on the job training within the Carpenter Shop, and weekly classroom training with regards to the carpenter trade. His work supervisor has rated him average for quality of work, quantity of work, general attitude, care of equipment, and work habits. His supervisor states that he shows regular attendance on the job, gets along well with others, reacts well to authority, and accepts responsibility. Mr. Garrido is presently receiving Meritorious Good Time for his responsibilities within the Carpenter Shop.

Mr. Garrido has been an active participant in the educational program on a half-day basis since August 1, 1977. Initially, Mr. Garrido's interest within the educational program was to improve his level of academic performance and understanding pursuant to enrollment in college level courses. His supervisor within the Education Department states that Mr. Garrido has been successful in significantly elevating his academic level of performance. On March 16, 1978, Mr. Garrido was reassigned from the basic educational program to half-day participation in the Drafting Vocational Training program. Additionally, it is reported that Mr. Garrido has enrolled in 8 hours of college course work for the Summer session. Mr. Garrido's supervisor within the Education Department states that he is an exemplary student and cooperative in all respects. Mr. Garrido states that his long range goal is to successfully complete the Computer Programming Vocational Training program at this institution.

In addition to Mr. Garrido's educational pursuit, he has been actively involved in individual counseling with the psychology staff since September, 1977. Mr. Garrido states that he utilizes his spare through studying, playing the guitar, regular participation in church related activities, exercising on the athlete yard, and occasional attendance of institution movies.

Mr. Garrido maintains contact with the outside community through monthly telephone calls to his mother and weekly correspondence to his parents and other family members. Mr. Garrido has received no visits since his commitment to Leavenworth.

Mr. Garrido appears to be in good physical and mental health and complains of no health problems at this time. Medical records compiled at this institution reflect no significant problems. It would not be anticipated that health problems would seriously restrict future employability.

RESIDENCE & USPO: Reno, Nevada

Dictated by R. S. ROSE, Senior Case Manager
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PSYCHOLOGICAL EVALUATION

GARRIDO, Phillip

Reg. No. 36377-136

04-17-78

REFERRAL: Mr. Garrido is referred for psychological assessment by Assistant United States Attorney Leland E. Lutfy, in connection with a motion for reduction of sentence currently under consideration. The request is made in behalf of United States District Judge Thompson, of the District of Nevada, and no specific referral question is asked.

HISTORY AND BEHAVIORAL OBSERVATIONS: Mr. Garrido presents in the interview situation as an adequately nourished and pleasant appearing 27 year old Caucasian male who looks his stated age. He is verbal from the outset of contact, being known to this examiner in a treatment situation since September, 1977. He is cooperative, candid, and volunteers information readily, even if self-critical, over all the contacts held in this evaluative process. Somatic complaints are denied, and Mr. Garrido follows a very active work and leisure activities schedule and seems quite healthy in his interests.

History is as reported elsewhere, so does not bear repetition here. Significant is that since his seventeenth year and prior to the instant offense, Mr. Garrido was extensively involved in the use of hallucinogenic and psychotomimetic drugs, and, to a lesser extent, the subculture that evolves around persons of that orientation. The only two arrests in his history which preceeded the instant offense were drug related and involved jail time and probationary dispositions. There is currently an active detainer from Nevada for the included offense of Forcible Rape in the instant matter.

Mr. Garrido is the product of a prosocial middle class family, now broken, from which he inculcated generally appropriate values, though he describes himself as over-condoned and pampered by his parents. A high school graduate, he has had no military service or work record of consequence, describing himself as a "semi-professional musician". There is a current marriage of unknown prospect, and no children have resulted from it. One brother from the family has encountered no difficulties with law enforcement.

Highly significant is Mr. Garrido's record of accomplishment in training, education, and treatment since his arrival here in September, 1977. He has achieved conspicuously in educational self-development, on-the-job training in carpentry, and in a drafting vocational training course which is current. He has become active in the group of inmates participating in Jehovah's Witness religious ceremonies, and impresses as very absorbed in their doctrine and behavioral proscriptions. He has been regular, active, and highly productive in psychological treatment which, in light of the length of his current sentence, has been addressed toward developing basic personality strengths, resolving immediate conflict areas, and familiarizing him with the significance of his lifestyle patterns. He is acutely conscientious in the exercise of all activity areas; his prime concern at the instant series of testing contacts was that he was taking a very great deal of time away from his work detail responsibilities, so inconveniencing his supervisor.

The only current sequel to the prolonged and extensive drug use noted is a series of "flashback" experiences involving feelings of depersonalization and mild hallucinations. These are diminishing both in frequency and severity over time, and any organic effects which resulted from the drug use seem to be in a positive reversal process. The instant interviews reveal no indication of a functionally psychotic state, past or current, or of debilitating organic syndrome activity.

TESTS ADMINISTERED: The Wechsler Adult Intelligence Scale, Minnesota Multiphasic Personality Inventory, Bender Motor Gestalt Test, Rotter Incomplete Sentences Blank, Thematic Apperception Test, Rorschach Psychodiagnostic Instrument, and Mental Status Examination.

TEST RESULTS: Testing reveals an intelligence quotient at the upper end of the average range (numerically, 110) for Mr. Garrido. This impresses as consistent with his verbalizations and mannerisms, though it seems likely that his functional intelligence is progressively improving with his recovery from drug effects and with progression in educational pursuits.

The Minnesota Multiphasic Personality Inventory shows all clinical scales within normal limits (two standard deviations beyond the mean) for Mr. Garrido. The validity scales show an elevation on L (lie scale), items from which were specifically discussed with him and reconciled satisfactorily for their significance to him. In addition, 12 omissions in the protocol were discussed and their significance resolved in such a fashion as to reflect not only a healthy outcome, but a comparatively healthy approach to the overall testing circumstance.

The Bender Motor Gestalt Test, administered due to presumptive organicity, produces a non-remarkable outcome from the standpoint of the likelihood of organic brain syndrome activity. Considerable dependency was reflected in this testing approach with the psychology intern administrator, and direction of activity and approval seeking behaviors were a strongly recurrent phenomena. The protocol reflected careful attention to detail and manner of presentation without significant derogatory indicators.

The Incomplete Sentences Test reflects Mr. Garrido as a sensitive young man who is deeply committed religiously and goal oriented in management of life problems and aims. Suggested is a driven quality to his commitment, that is, when he commits to a cause or purpose, he tends to approach it with extreme zeal and diligence, so might appear personally rigid or even compulsive in many of his pursuits. Appropriate degrees of secondary narcissism and considerable conflict with regard to his current marital situation are also clear in the responses to items.

The Thematic Apperception Test buttresses these observations, reflecting a strong identification with stimuli, heavy reliance on symbolic aspects of the pictured situations presented, and an active imagination but tentative approach to story construction. Invitations to hostile interpretation were avoided or dealt with secondarily by Mr. Garrido, reflecting his characteristic tendency to exercise the defenses of denial and negation in areas of hostile sensation or expression. Even with those items that impacted him emotionally, he showed a good ability to reconstitute and reconstrue situations so as to make them palatable in expression.

for himself. The depth of his religious commitment and its impact on his life philosophy are clear in the protocol developed, and his style of dealing with these phenomena is, on balance, quite healthy.

The Rorschach performance produces a 22-response protocol with characteristically low latencies that reflect a positive test taking approach and performance. Responses are essentially form determined (97%) and follow a characteristic progression from whole through large to rare detail in perception and reporting. Secondary identification of percepts is accurate and positive, and a portion of animal responses less than 30% suggests an active imagination and good reality testing capabilities. Somewhat less movement than expected is observed; his level of functional intelligence is underestimated from this protocol. The arousal quality of color cards is evident for him, 45% of responses made being to full color presentations. Nonetheless, responses even to those cards are essentially form determined and appropriate in content, suggesting a non-remarkable ability to handle usual arousal situations. Content analysis suggests an appropriately emotional response to the conflict areas noted heretofore, with adequate depth of control and a tendency toward need resolution through non-deleterious fantasy activities.

Mental Status Examination reveals a positivistic and prosocial attitudinal structure in a man whose manner is dependently cooperative and sincere. Personal style suggests a measure of personality constriction and rigidity for Mr. Garrido, but is consonant in all respects with his strongly held religious belief and depth of commitment to current life pursuits. Mood is concerned but confident of positive outcomes as a result of his endeavors, and affect, while labile, is appropriate to content under discussion. Relationships with those present are very positive; he is an affable and likeable young man whose bearing excites the positive regard of others. Self concept is verbalized as in a process of correcting recognized personal faults and working to redevelop his functional mental capacities. He sees himself as one whose life is and will be based on his strongly held religious beliefs, and all indications are that he is conducting his affairs in accord with the principles implied therein. Aspirations for ten years hence are positive and generally non-remarkable; he aspires to work in computer science and sees an orderly progression of skill development to attainment of those capabilities. Recent memory is intact, though some deficiencies in remote memory reflect the long term abuse syndrome discussed earlier. The sensorium is clear and orientation in the spheres of time, place, and person very adequate. Delusions and hallucinations are denied and absent from evidence, and there is evidence neither of tangential thinking nor loosening of associations in his verbal portrayal of himself.

As noted via behavioral observation, current testing indications are absent of signs of past or current functional psychosis or of serious organic brain syndrome activity.

SUMMARY: In overview, Mr. Garrido is a young man of average intelligence who presents a well controlled and goal oriented pattern of personality function at this evaluation. Aspects of apparent personality rigidity and constriction are mediated by his deeply held religious and philosophical convictions and by his strongly disciplined orientation to goal accomplishment. These are in no sense debilitating, and appear to contribute to his healthy function. He has progressed remarkably

well in treatment and in educational and training pursuits during his period of service to date, and appears to have reoriented his life dramatically from the derogatory pattern which characterized him earlier.

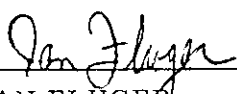
There seems little question that Mr. Garrido was a "spoiled" child, though he inculcated values and aims appropriate to a prosocial existence during the early formative years. It is characteristic of him to go to extremes in whatever commitments are made or programs are undertaken; depending on the character of pursuit, this can be contributory to excellence or extreme derogation. The current personality picture shows some excessive reliance on defenses of denial and negation, but these are expected to diminish over time with continued treatment and personal growth on his part. Via his religious pursuits, he has been able to sublimate impulses quite well, and depth of control is sufficient to sustain him here or in the free societal situation.

He continues in a process of remitting from long term drug usage and will probably continue to do so for some years to come. At this point in time, only occasional feelings of depersonalization, cognitively construed hallucinations, and nightmares plague him from the earlier toxicity. He is in good management of impulses in the psychosexual realm, and appropriately oriented toward their prosocial expression throughout his future years. In effect, it does appear that the instant offense evolved from the potentiation by drug use of what were comparatively normal drives to abnormal forms of expression and intensity. He has gained measurably with respect to these over his period of service to date, but will, when released, require psychological assistance during his transition to the free societal situation to insure continued growth as he acclimates.

In discussion with Mr. Garrido, this examiner offered to recommend the client's release from incarceration to a program of psychological treatment in the very near future. Interestingly, Mr. Garrido asked that he be permitted another three years of incarceration in lieu of that, in order that he could complete his current program of training and religious development. All things considered, then, this examiner recommends 1) a modification of the current sentence to indeterminate parole eligibility, and 2) a recommendation that he be paroled when treatment and training goals are accomplished unless there is some dramatic change in his condition in the interim. Also recommended whenever he is released, is 3) a program of psychological treatment as part of the transition from institution to community; parole supervision is seen as a positive motivational vehicle for him, though not an imperative for his effecting a prosocial adjustment.

Prognosis for successful transition to the community is considered very good. The likelihood of further extralegal behaviors on Mr. Garrido's part is seen as minimal. It is predicted, however, that in the unlikely event that he would regress toward an unacceptable behavior pattern, he would signal the regression with reinvolverment in substances or patterns deleterious to his prosocial adjustment, so that his supervising officer could be carefully attuned to and intervene hopefully, intervene, any process that might lead to negative acting out.

If there are any further questions in this case, please do not hesitate to contact me.


IAN FLUGER
Psychologist Trainee


J. B. KIEHLBAUCH, Ph.D.
Clinical Psychologist