

SOUTHERN DISTRICT OF N.Y. CLARIFIES “ISSUE EXHAUSTION,” BROADENS COMPASSIONATE RELEASE IN SENTENCE REDUCTION VICTORY

June 23, 2020

Two brothers and non-violent drug offenders, whose crimes left them in prison for more than half of their lives, are now free per a first-of-its-kind compassionate care release granted by the United States District Court for the Southern District of New York ruling on “issue exhaustion” and considering the broad health implications of the COVID-19 pandemic.

In a decision that may usher in a wave of federal sentence reductions, on June 1, Judge Sidney H. Stein granted a sentence reduction for brothers Jorge and Victor Torres from life without the possibility of parole to time served. The two men had each served 33 years behind bars by the time they were released on June 4. The Torres brothers were represented by Bell Nunnally attorneys Arianna G. Goodman and Katherine M. Devlin, in partnership with Brittany Barnett of the [Buried Alive Project](#).

The Torres brothers were arrested and charged with crimes related to drug conspiracy. Jorge and Victor Torres were 29 and 25 years-old, respectively, at the time of their conviction in July 1988.

Goodman, Devlin and the Buried Alive Project, sought a sentence reduction for the Torres brothers under the First Step Act provisions of the 2010 Fair Sentencing Act (FSA), which allow courts “to reduce prison terms on the full array of grounds reasonably encompassed by the phrase “extraordinary and compelling reasons.”

The federal government, opposing the sentence reduction, cited “issue exhaustion” in saying that the defendants must bring before the court every possible issue raised in a motion, even the COVID-19 pandemic, before a “compassionate-release motion” may be considered. In a decision that has potential implications for other prisoners seeking sentence reductions under the provisions of the FSA, Judge Stein found that issue exhaustion is not required for a compassionate release motion to be

considered. He noted that the brothers not citing COVID-19 previously was “an unsurprising fact, given that their (previous) requests were filed in November 2019, well before the declaration of the pandemic.”

On the potential precedent and impact of the case Goodman commented:

‘Issue exhaustion’ has been a successful procedural tactic by the federal government to keep First Step Act sentence reduction motions in limbo in certain districts. This was an issue of first impression for the Southern District of New York. Judge Stein’s decision on the limits of issue exhaustion and on the applicability of the unexpected and significant impact of COVID-19 not only opened the door to freedom for the Torres brothers, it also is potentially precedent-setting caselaw coming out of one of the nation’s most-influential districts. Freedom for the Torres brothers also means hope for so many more. As we continue to watch this pandemic unfold, this decision will have a significant impact on how courts view “extraordinary and compelling” in compassionate release cases.

During their incarceration the Torres brothers had exemplary conduct records and enrolled in, and completed, extensive coursework, worked in-prison jobs, gained the support of both fellow incarcerated inmates and the Federal Bureau of Prisons staff and engaged in community service and mentorship opportunities.

In a letter of support for the brothers’ sentence reductions, then-U.S. District Judge John M. Walker, who sentenced both originally, commented “In more than 32 years on the bench, this is the first time that I have supported a commutation. But it is the first time that I have encountered convicted individuals whom I have sentenced that have rehabilitated themselves so completely and have rejected their criminal pasts so resoundingly.”

Stein, in announcing the brothers’ sentence reductions, concurred that the required conditions were met:

In sum, the Court holds that the totality of the Torres Brothers’ circumstances—their thorough and long-term rehabilitation, exemplary community service, and the high risk presented by the COVID-19 pandemic—provides “extraordinary and compelling reasons” for a sentence reduction. Thus, the Court finds that the statutory criteria for a sentence reduction are satisfied and that a sentence reduction is warranted.

In a joint-statement, the Torres brothers – who now plan to travel the U.S. sharing their stories of rehabilitation and hope to at-risk youth – thanked Bell Nunnally and Buried Alive for their exemplary efforts:

Ever since our release from federal prison it has been a whirlwind of emotions with our family members and friends, who throughout the past 33 years have been there through every petition and disappointing decision in our fight for freedom. We thank and recommend our legal team not just because they won us the victory, but because of the love, care, compassion, dedication and hard work they put into vigorously defending our cause.

Bell Nunnally’s involvement with the Buried Alive Project is a part of the firm’s robust Pro Bono program, which works in conjunction with its community partners. The firm’s Pro Bono Committee facilitates the initiative, encourages firm attorneys to provide legal services to those in need and assists with finding opportunities. Bell Nunnally is also partnered with the Dallas Volunteer Attorney Program (DVAP), the Human Rights Initiative of North Texas (HRI) and Texas Appleseed, among other activities. In partnership



with DVAP (a joint program of the Dallas Bar Association and Legal Aid of NorthWest Texas), the firm provides services for the organization's Dallas Veterans Clinic and acts as pro bono counsel on cases for indigent clients. Through its involvement with HRI, Bell Nunnally attorneys represent individuals in the affirmative asylum process and in deportation trials. And, working with Texas Appleseed, the firm helps further that group's mission of working to change unjust laws and policies that prevent Texans from realizing their full potential. In 2018, Bell Nunnally received the group's "Pro Bono Leadership Award" in recognition of firm efforts on behalf of residents of Port Isabel, Texas who sued the city over alleged housing discrimination in the aftermath of Hurricane Dolly in 2008.

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