



CIRCUIT COURT
ELEVENTH JUDICIAL CIRCUIT OF FLORIDA

NUSHIN G. SAYFIE
CIRCUIT JUDGE

RICHARD E. GERSTEIN JUSTICE BUILDING
1351 N.W. 12TH STREET
MIAMI, FLORIDA 33125

July 19, 2013

Senator Marco Rubio
317 Senate Hart Office Building
Washington DC, 20510

Dear Senator Rubio:

I am currently the Administrative Judge for the Criminal Division of the Eleventh Judicial Circuit. I am writing this letter in response to a recent article that suggested that you may have questions concerning a sentence given by Judge Thomas to a defendant who had been charged with "Leaving the Scene of an Accident".

I know you understand more than most how frustrating it is to see inaccurate information disseminated by the media. I wanted to make sure you had the true facts related to the disposition of the case. To that end I reviewed a copy of the sentencing hearing transcript, a letter from the prosecuting attorney and a letter from the defense attorney, all of which are attached to this correspondence. In sum, the facts are as follows:

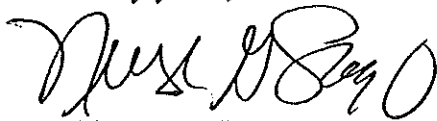
- 1) Unlike the media has reported, the Defendant was not charged with the death of the victim. The Defendant was charged with leaving the scene of an accident (involving death). He had no prior convictions or contact with the criminal justice system.
- 2) The sentencing guidelines called for a minimum sentence of twenty-two (22) months at and a maximum of 35 years.
- 3) At the sentencing hearing the State recommended a sentence of six (6) years. The family and friends of the victim requested the maximum sentence.
- 4) The Defendant filed a motion for downward departure on the grounds that he suffered from a rare blood disease that caused him to have a compromised immune system placing him at risk of death in the state prison sentence.
- 5) After hearing from all the witnesses, Judge Thomas denied the Defendant's motion for a downward departure.

- 6) Judge Thomas sentenced the Defendant to twenty-three (23) months state prison followed by two (2) years of community control, **a sentence within his guideline range.**
- 7) In order to accommodate the Defendant's unique and verified medical condition, Judge Thomas ordered that the Defendant serve his sentence locally.

I hope this communication helps to answer some of the concerns that you may have. I have known Judge William Thomas as a colleague and friend for approximately nineteen (19) years. It was my pleasure to serve as a reference for him for the federal bench (and be interviewed at length by the ABA, the FBI and the White House Counsel's Office!) He is a dedicated, intelligent, compassionate and hard-working public servant.

If I can provide any further information please contact me at 305-548-5721.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Nushin G. Sayfie". The signature is fluid and cursive, with the first name "Nushin" being more prominent and the last name "Sayfie" following in a similar style.

Nushin G. Sayfie
Administrative Judge, Criminal Division

JANE ANDERSON | 786.316.1824 | christajane@mac.com

January 25, 2013

Senator Marco Rubio
Attn: Leonard Collins, General Counsel
317 Hart Senate Office Building
Washington, DC 20510

RE: The Honorable Judge William Thomas

Dear Senator Rubio:

It is with pleasure that I write you about my experience practicing before the Honorable Judge William Thomas. I am an Assistant State Attorney currently assigned to the Human Trafficking Unit of the Miami Dade State Attorney's Office. I was assigned as the "A" prosecutor in Judge Thomas' Division from February 2012 until earlier this month.

I tried numerous cases and litigated many issues in front of Judge Thomas and I would be happy to share my broader thoughts; however in this letter I would like to share the details of one recent experience:

On January 16, 2013, Judge Thomas held a Sentencing Hearing for a twenty-six year old man who had plead guilty in two cases: 1) possession of cocaine and 2) leaving the scene of an accident with death, leaving the scene of an accident with seriously bodily injury, and unknowingly driving with a suspended sentence. The defendant had driven into two cyclists on the Rickenbacker Causeway at 5:45am on February 15, 2012. The defendant ultimately surrendered to the City of Miami Police later that evening, too late for any alcohol testing to be preformed.

Prior to the accident, the defendant had been in Drug Court for the cocaine charge. He had one other dismissed possession of marijuana charge from 2009. According to the State's sentencing guidelines, the young man scored 22.6 months in state prison, and was facing up to 35 years.

The courtroom was packed and the Hearing was incredibly emotional. The man killed was Aaron Cohen, a pillar of the community, an active cyclist and a husband with two young children. Members of his family called for Judge Thomas to sentence the defendant to the maximum to send a message to the community. The State recommended that the defendant be sentenced to six years in state prison, followed by five years of probation. Defense counsel asked for his client to be immediately released to community control.

In the media, the defendant had been called a drug addict and it was widely assumed that he was intoxicated the morning he hit and killed Aaron Cohen. Unfortunately, the State could not prove he was driving under the influence and he was not charged with that offense. At a Sentencing Hearing, Florida Rule of Criminal Procedure 3.720(b) states that, "the court shall entertain submissions and evidence by the parties that are relevant to the sentence." This rule allowed Judge Thomas to hear evidence and argument that would otherwise not be admissible at Trial. The State was allowed to present the fact that anonymous callers reported that the defendant had been partying in Coconut Grove immediately prior to getting in his car and driving home to Key Biscayne. Defense counsel testified on his client's behalf telling the Court that the defendant called him within an hour of the accident and asked him to arrange for his surrender; it was only the defense counsel's busy schedule that delayed that surrender.

In support of the defendant's request to be released from custody to serve a non-jail sentence, the defendant's physician testified that he had a rare congenital immune deficiency that was so severe that the defendant's life was in danger if he did not have access to immediate, intense medical treatment. An expert from the Florida prison system testified that the defendant would not receive the necessary medical attention in the Florida prison health system.

Judge Thomas listened patiently to both sides, asking his own questions of the witnesses and counsel. He allowed family members to share memories of their loved ones and explain how this case had affected all of their lives. The family of Aaron Cohen begged for justice. The defendant's family begged for mercy.

This is the type of case that prosecutors, defense attorneys and judges dread; an innocent life was taken too soon, another young man committed a cowardly criminal act in leaving the scene; however there was no proof that the defendant had driven under the influence or recklessly, legally it was an accident.

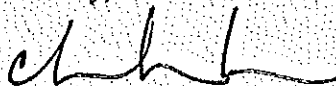
Judge Thomas had the unenviable task of meting out a just punishment for the defendant that served the victim's family, the community and addressed the actual crime charged. I can only imagine how difficult it must be to make such a decision when faced with these heart-wrenching circumstances, a courtroom packed with friends and family, and the media looking on.

Ultimately, Judge Thomas found that the defendant's health condition provided him with a legal reason to downward depart from the guidelines. However, the Judge declined to depart and he sentenced the defendant to 22.6 months in state prison to be followed by two years of community control (house arrest) with random drug testing. The Judge then gave the defendant the option to serve his time locally so that he could be in close proximity to his family, lawyer, and treating physician. To legally sentence the defendant to serve his time locally, the Judge had to convert the 22.6 month sentence to 364 days in the Dade County Jail without any credit for the eleven months that the defendant had already served pending sentencing. Practically, the defendant will serve 23 months in the local jail, followed by two years on house arrest. It should be noted that the media misreported that the Judge departed from the sentencing guidelines and that the defendant would only serve 364 days in jail.

While the sentence was ultimately disappointing to the State and the victim's family, Judge Thomas legally sentenced the defendant after hearing from all parties and conducting the Sentencing Hearing with compassion and careful judgment.

Please feel free to contact me with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jane Anderson', with a stylized, cursive script.

Jane Anderson



Law Office of

Ramon de la Cabada

January 30, 2013

The Honorable United States Senator Marco Rubio
Attention Leonard Collins, General Counsel
317 Hart Senate Office Building
Washington D.C., 20510

re: State of Florida v. Michele Traverso
Case No.: F12003845 & F11012568

Dear Mr. Collins:

I am the attorney who represented Michelle Traverso on both of the above-referenced cases. Throughout this matter, there has been much misinformation which has resulted in errant perceptions as to many of the facts of the case. I am sending you this correspondence to clarify some of the misconceptions, primarily the sentence issued by the Honorable William Thomas, Circuit Court Judge, because it is grossly unfair for one to be judged based on incorrect information.

The sentence handed down by Judge Thomas was the following:

- 23 months incarceration (based on a 22.6 month bottom of the Sentencing Guidelines calculation)
- Judge Thomas crafted the above sentence by requiring the defendant to waive credit for the 329 days he had already served in Dade County jail and imposing an additional 364 days in Dade County jail.
- Followed by two years community control (i.e., house arrest)

It has been widely reported that Judge Thomas departed from the Guidelines in issuing this sentence. That is simply wrong. I requested a downward departure, but that was denied by Judge Thomas. It would make this correspondence intolerably cumbersome to provide all of the issues presented by the defendant for Judge Thomas' consideration. Consequently, in case you feel the need, I have enclosed for your consideration a copy of the sentencing memorandum which provides a synopsis of most of the arguments and evidence submitted by the defendant in support of that downward departure sentence.

One of the reasons for the request for a downward departure was a life threatening
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condition named cyclic neutropenia, which has afflicted the defendant since birth. Regarding this condition, Judge Thomas heard testimony from: the defendant's treating physician of twenty three years describing the dangers of this condition; a prison consultant who discussed the unavailability and unreliability of medical treatment in the Florida prison system; and the defendant's mother who testified as to how this condition had taken the life of her sister at the age of 33 and her brother at the age of 2. Both those deaths occurred within 3 to 4 days and resulted from lack of treatment.

The physician and the prison consultant both strongly opined that the defendant would not receive the type of treatment necessitated to combat this health condition and that, as a result, they both feared for the well being of the defendant to the extent that he could die in a prison. The State did not present any evidence to controvert or call to question the opinions, credentials or veracity of either witness.

Judge Thomas did not accept the testimony of either of these two witnesses as fact. He questioned each extensively and then even inquired from me as to why I had not filed motions on this issue previously if this was such a grave concern. I explained that because the defendant had been serving his incarceration locally up to that point, his family and I had been successful in establishing proper lines of communication with the jail and could react immediately to a potential danger, even summoning his treating physician if needed. I even went as far as providing an example of an incident which had occurred early on in his incarceration on a Saturday evening and how I had managed to reach the treating physician in the local jail that evening to ensure that proper medical treatment was provided to the defendant. It was that ability to react at the local level which allowed us to deal with the situation without troubling the court with a motion.

While I was disappointed that Judge Thomas denied my motion, I will forever be grateful that he considered the evidence to the extent that he ingeniously crafted a sentence which ultimately may save the defendant's life. It is that medical issue which compelled Judge Thomas to design a sentence which adhered to the Guidelines while taking into account a very real and substantial danger. By allowing the defendant to serve his sentence locally, Judge Thomas addressed all balanced compelling arguments made from both sides - State's request for a sentence which, at a minimum, would abide by the Guidelines and would provide deterrence, versus defendant's legitimate health concerns.

Judge Thomas even went as far as calling a status conference a few days after the sentence to give an update of what steps were being taken by the Dade County jail to monitor the Defendant's health issues.

The noise heard from the critics of Judge Thomas's sentence stems from ignorance. People equated justice with a maximum sentence without knowing all of the facts. Many erroneous facts were provided by the media in the reporting of this case which resulted in misconceptions about the defendant. All of those misconceptions were addressed during the

sentencing hearing and are addressed in the memorandum.

Anyone who is critical of this sentence simply did not hear the evidence presented. I commend Judge Thomas for having the internal fortitude and conviction to make decisions based on the evidence and not cave to the court of public opinion. Judge Thomas had an unenviable task and did what a judge is supposed to do - follow the law after having fully considered ALL of the evidence. Judge Thomas exemplified precisely what is expect from the judiciary - balanced analysis of arguments and evidence presented by both sides followed by an application of all of those factors to the law. Please feel free to contact me should you have any questions or concerns about this case or any of the content of this letter. Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. de la Cabada', with a stylized flourish at the end.

Ramon de la Cabada

Enclosure as described

1 IN THE CIRCUIT COURT OF THE
2 11TH JUDICIAL CIRCUIT, IN AND
3 FOR MIAMI-DADE COUNTY, FLORIDA

4 CASE NO: F11012568, F12003845

5 JUDGE: THOMAS

6 STATE OF FLORIDA,

7 Plaintiff,

8 vs.

9 MICHELLE TRAVERSO,

10 Defendant.
11 _____/

12 EXCERPT

13 January 16, 2013

14 The above-styled cause came on for hearing
15 before the HONORABLE WILLIAM THOMAS, one of the Judges
16 in the Circuit Court of the 11th Judicial Circuit, at
17 the Richard E. Gerstein Justice Building, 1351 N.W.
18 12th Street, Miami, Florida on Wednesday, January 16,
19 2013, commencing at or about 1:30 p.m. and the
20 following proceedings were had:

21 Reported by: Amber N. Gabel
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1 APPEARANCES:
2

3 OFFICE OF THE STATE ATTORNEY, by,
4 JANE ANDERSON, ASA
On behalf of the Plaintiff

5 LAW OFFICES OF RAMON DE LA CABADA, P.A., by,
6 DE LA CABADA, ESQUIRE
7 On behalf of the Defendant

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2 THE COURT: All right. The Court having
3 heard two excellent presentations, and I hope that the
4 family is -- the family, that is Mr. Cohen, are
5 particularly pleased with how the State represented
6 their interest in court today.

7 Ms. Anderson, you, I think, did an excellent
8 job. You never seem to disappointment in terms of
9 your zealous advocacy that you provide to victims that
10 you ultimately represent as assistant state attorney.

11 Mr. De La Cabada, again, Mr.
12 Traverso should be very pleased with everything that
13 you've done, from the sentencing memorandum to your
14 advocacy from the day you first appeared in court on
15 his behalf. You've been nothing but a zealous
16 advocate, and this Court appreciates all of the
17 information that ultimately would assist this Court in
18 deciding what sentence to ultimately impose.

19 Look, this is difficult. I see a lot of
20 people here in this courtroom, and it's even difficult
21 for this Court to address everyone, particularly
22 Patty, because she came day one. She sat here, and I
23 remember when I -- when we talked about what was going
24 to happen in terms of this case having some type of
25 resolution, and I think she -- she searched her heart

1 and she searched her soul and she found a place,
2 although maybe not totally at peace with it, she where
3 something she could live with that, and that is the
4 sentencing recommendation that was made by the State,
5 asking that Mr. Traverso be sentenced to six years in
6 prison for the death of her husband as well as the
7 injuries to Mr. Walsh, and other charges that were
8 pending.

9 And I know how difficult this happens to be.
10 As I'm listening to all of talk about how beautiful he
11 was, I -- I -- we all have losses, and I experienced
12 one recently myself. And this is always the part of
13 the sentencing that I never enjoy, and I don't enjoy
14 it because someone is ultimately going to be
15 disappointed, but it's what we do. It's what I've
16 been asked to do. It's what I've taken on to do.

17 I want to say to everybody who spoke and all
18 the letters that I've received, I read them all when I
19 got them. I promise you I did, and I also want to
20 tell you that nothing that this Court does, whether
21 it's with respect to Mr. Traverso, or it's full
22 consideration of your family, do I do lightly. I
23 listened carefully to whatever everybody said, not
24 just the attorneys, but to all the parties who spoke
25 on behalf of both families. That is the family for

1 Mr. Traverso, as well as the family of Mr. Cohen. And
2 I accept, I don't think anybody who -- I feel I know
3 Mr. Cohen, because of everything that you all shared
4 with me, and I don't think for one minute that A.C.
5 and L.C. are going to grow up not knowing who their
6 father was, because there's just too much love for him
7 that remains. And I don't think you nor all the
8 people who come to support him, love him, grandparents
9 and the like will allow that to happen. That doesn't
10 make better the fact that he's not here do to the
11 things that he would naturally do, but there is some
12 solace that he was so loved. He did leave such an
13 impression, even though he was taken away from us
14 way, way too soon, way too soon.

15 In processing what this Court is ultimately
16 going to do, I have never heard anyone testify the way
17 our former warden testified. I've never heard anyone
18 make those kinds of accusations against the Department
19 of Corrections, at least not publicly make those
20 allegations against the Department of Corrections, and
21 I am concerned. Particularly concerned of its truth,
22 and I don't know if it's true. I know what he said,
23 but I will tell you, Mr. De La Cabada, Mr. Traverso,
24 that even if everything that you presented to this
25 Court is true, this Court recognizes that it does have

1 the ability to downward depart, but I'm declining to
2 exercise that discretion, and I want to make it clear
3 for the record, that I am finding that I do have the
4 ability to, but I'm declining to exercise the
5 discretion that is mine on whether or not to downward
6 depart. So I'm not downward departing.

7 However, I am taking into full consideration
8 everything that was presented to this Court on behalf
9 of Mr. Traverso, in terms of what sentence he should
10 receive. And one of things that this Court is going
11 to do is, of course, this is with the approval of
12 Mr. Traverso, this Court is sentencing Mr. Traverso to
13 22.8 months in state prison. However, because
14 Mr. Traverso already has 11 months in custody, this
15 Court is willing to sentence him to 364 days, waving
16 all his credit time served, which means that he will
17 serve his time locally rather than being sent off to
18 a prison. It would be followed by two years of
19 community control, and that would be -- and would be
20 followed by two years of community control. The Court
21 will also impose -- this Court having -- I should say,
22 and I didn't say it. I need to say it.

23 Mr. Traverso, you having taken a plea with
24 respect to these charges, the Court is going to
25 adjudicate you guilty as to the possession of cocaine.

1 The Court is going to adjudicate you guilty as to
2 leaving the scene of a crash involving a death. The
3 Court is going to sentence you to -- adjudicate you
4 with respect to leaving the scene of the crash
5 involving personal injury. That is to the actual
6 injury involving Mr. Walsh, and I don't want you to
7 think you're being forgotten in all of this,
8 Mr. Walsh, because you are a victim in all of this as
9 well.

10 And the Court is -- having adjudicated you,
11 the Court is going to sentence you to the 22.8 months
12 in state -- well, I'm sorry. The Court is going to
13 sentence you to 364 days in the Dade County Jail.
14 That's with the understanding that you're waiving all
15 credit time served.

16 Can I get an acknowledgement on the record
17 that he is waiving all credit time served?

18 MR. DE LA CABADA: Your Honor, on behalf of
19 Mr. Traverso, yes, we waive all credit for time
20 served, based on the recommendation.

21 THE COURT: All credit time served will be
22 waived, followed by two years of community control.

23 Mr. Traverso, you are immediately to report
24 to your community control officer upon your release
25 from custody. During the time that you are on

1 community control, it would be -- require random drug
2 testing. That is not evaluation treatment, but random
3 drug testing at the hands of the Department of
4 Corrections.

5 And, again, and I'm really speaking to Patty
6 and the two kids that are not here, I don't want you
7 to think this was something that I did lightly. I
8 took everything into consideration, and I know there
9 are a lot of people in this room who may not agree
10 what I ultimately did, and that's okay, and that's
11 okay. I did what I thought was most appropriate in
12 light of everything that's been presented to me, and I
13 don't expect a reaction from you all, but please,
14 please, thank Ms. Anderson for all the work she did
15 because she did an excellent job in representing you
16 all in this matter. She really did.

17 The Court will be recess, and thank you.
18 Both cases are to run -- both cases are to run
19 concurrent and coterminous.

20 (Whereupon, the hearing was concluded.)
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1 CERTIFICATE

2 STATE OF FLORIDA:
3 COUNTY OF MIAMI-DADE:4 I, Amber N. Gabel, Shorthand Reporter and
5 Notary Public for the State of Florida at large, do
6 hereby certify that the foregoing proceedings were
7 taken before me at the date and place as stated in
8 the caption hereto on Page 1; that the foregoing
9 computer aided transcription is a true record of my
10 stenographic notes taken at said proceedings.11
12 WITNESS my hand this 21st day of February,
13 2013.14
15 _____
16 Amber N. Gabel
17 Court Reporter and Notary Public
18 in and for the State of Florida
19 Commission Number EE163713
20 Expires: January 26, 2016
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