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ARTICLE

WHO IS MY BROTHER'S KEEPER?

RUDY MARTINEZ*

What would you do if you were twenty-six years old and just given a federal mandatory life sentence without the possibility of parole as a first-time, non-violent drug offender? You are being housed at one of the oldest and toughest federal penitentiaries in America—Leavenworth. Less than half a year later you find out you have been charged with the capital offense of first-degree murder, and you are taken to one of the oldest and toughest county jails in America—Cook County Jail in Chicago, Illinois, to face these charges. What would you do?

I am Rudy Martinez, and in April 1991, I was convicted in the Northern District of Illinois and sentenced to a mandatory life sentence without the possibility of parole for violating the Continuing Criminal Enterprise Statute,¹ also known as “The Kingpin Statute.”² I received this mandatory sentence as a first-time, non-violent drug offender. During my allocution, I admitted to the judge sentencing me that I had, in fact, sold drugs—but nowhere near the amount that I was being charged for. Incidentally, these

* Rudy Martinez is a former first-time, non-violent offender who was sentenced to mandatory life in prison without the possibility of parole in 1992. He was granted clemency by President Barack Obama in August of 2016 and was released from prison on September 14, 2016. During his incarceration, Martinez began advocating for prisoners' rights and against unfair treatment, including his own, which landed him in eleven different prisons. Today, Rudy Martinez continues his advocacy work for prisoners' rights as well as against unfair sentencing practices. He is currently pursuing an associate degree in social work at Oakton Community College in Des Plaines, Illinois. Rudy Martinez would like to thank those responsible for his commutation: to President Barack Obama, and to Bruce Rubenstein for his friendship and twenty-five years of advocating for his freedom. A special thanks to Professor Mark Osler who, without his commitment to believing in second chances and redemption, none of this would have been possible. To the dean, faculty, and students of the University of St. Thomas School of Law for their continuous hard work in pursuing justice for all. Finally, to his sons, Julian and Edwin Martinez, and his granddaughter, Juliana Martinez, for whom “without the thoughts of you I would have never kept my sanity.”

1. 21 U.S.C. § 848 (2006).

2. Kenisha Day, *Issues Involving the Continuing Criminal Enterprise (CCE) Act: How the CCEA is a Politically Generated “Quick Fix” to the “War on Drugs”*, THE CHALLENGE, Oct. 2016 at 7.

facts would come to light almost twenty-two years later in a story titled “No Way Out” by Bruce Rubenstein, published in the *Mpls St Paul* magazine.³

Originally, I was charged with three counts of possession and intent to distribute twenty kilograms of cocaine. Approximately ten months later, I was notified by my court-appointed attorney that a plea deal had been offered by the assistant United States attorney (“AUSA”). The offer was a blind plea—ten to fifteen years in prison for a guilty plea to possession and with the intent to distribute twenty kilograms of powder cocaine.⁴

A blind plea is when a defendant admits to guilt and receives an offer made by the AUSA with a recommended range of time.⁵ It was my understanding that if I took full responsibility for the twenty kilograms *without cooperating* with the government, I would receive the ten to fifteen years. I was taken to the Federal Dirksen Building to meet with my attorney and the AUSA for proffer negotiations. There, I was offered eight years *if I cooperated* with the government and testified against my codefendant, who was the alleged supplier and still a fugitive at the time.⁶ I refused the government’s offer, and three days later, a superseding indictment for seven extra counts was brought against me.⁷ The most serious count was brought under the Continuing Criminal Enterprise Statute. I was being charged for distributing over 150 kilograms of cocaine.⁸ That amount was grossly exaggerated by the government. This information was provided by the cooperating codefendants, all of whom received lenient sentences based on their cooperation and the fabricated amount of cocaine they alleged that we had sold within the last two years. The more the codefendants claimed we sold, the less time they received; none of my codefendants served more than three years in federal prison.

I was sentenced on April 23, 1992 and housed at the federal penitentiary in Leavenworth, Kansas.⁹ On September 11, 1992, I was called down to “receiving and discharge” in the basement of Leavenworth, where there were five Chicago police homicide detectives waiting for me. I was told that I was being returned to Chicago, Illinois, where I would face capital murder charges. I would be housed at the Cook County Jail in Chicago for two years. These fabricated charges were orchestrated by a corrupt Chicago detective named Reynaldo Guevara. Guevara is, at the time of writing, currently pending indictment in Chicago for coercing witnesses to falsely tes-

3. Bruce Rubenstein, *No Way Out*, Mpls ST PAUL (May 1, 2012, 12:00 AM), <http://mspmag.com/arts-and-culture/no-way-out/>.

4. *Id.*

5. Franklin Kanin, Note, *Three Cheers (and Years) for the MVP: The Strange Case of a Defendant Requesting Extra Prison Time*, 27 GEO. J. LEGAL ETHICS 607, 612–613 (2014).

6. Rubenstein, *supra* note 3.

7. *Id.*

8. *Id.*

9. *Commutations Granted by President Barack Obama (2009–2017)*, THE U.S. DEP’T OF JUSTICE (last updated July 11, 2018), <https://www.justice.gov/pardon/obama-commutations>.

tify in several other murder cases.¹⁰ I had personally encountered Guevara in the past when he tried to extort my drug profits. As of June 2018, eighteen men have had their convictions thrown out over allegations of misconduct by Guevara.¹¹ It could cost the City of Chicago millions of dollars to settle these lawsuits.¹² Fortunately, upon my return to Chicago for the alleged murder charges, I was appointed a public defender who, along with her investigator, worked vigorously to exonerate me of the most serious charge in state court—capital murder. This charge paired well with the most serious charge you could get in federal court—continuing criminal enterprise—of which I was convicted.

As one could imagine, after being convicted in federal court by a jury and sentenced to a mandatory life sentence, I did not have much faith in the legal system. It was for that reason that I attempted to escape from the Cook County Jail three separate times. While I was attempting to escape for the fourth time, just days before my murder trial was to begin, my attorney, along with her investigator, discovered the corruption of Detective Guevara. During my bench trial, I was found not guilty of first-degree capital murder, based, in part, upon the wrongful acts taken by Detective Guevara.

My stay at the Cook County Jail came at a hefty price. I was physically, mentally, and emotionally exhausted. Because of my repeated escape attempts, I was placed in restraints for 108 days. Every morning at 7:00 a.m., a guard would come to my cell and place me in leg shackles, a belly chain, and handcuffs. They would escort me into the day room with other inmates who were not in restraints. At 9:00 p.m., I would be returned to my cell. This treatment continued for over three months. By the end, I had sores on my body where the shackles rubbed all day, I was down to skin and bones, and many times, I was struggling to hold on to my soundness enough to advocate for and defend myself effectively.

I was finally removed from that housing area and transferred to a new area where I was locked down for twenty-three hours a day, but no longer in restraints. Here, I discovered a book that would change my life. It was not the Holy Bible, but a tattered book, that I discovered would restore the faith in me again. The book was written by Daniel Manville and John Boston, and its title was “The Prisoners’ Self-Help Litigation Manual”¹³ (hereinafter “PLM”), or as we say in the “joint,” “the prisoner’s bible.”

I was born and raised in Chicago. I left home at the age of fifteen and only attended about three months of high school. I got into dealing drugs:

10. Jason Meisner, *Former Chicago Detective Takes the Fifth More Than 200 Times in Wrongful Conviction Trial*, CHIC. TRIB. (June 12, 2018), <https://www.chicagotribune.com/news/breaking/ct-met-wrongful-conviction-trial-reynaldo-guevara-20180612-story.html>.

11. *Id.*

12. *Id.*

13. DANIEL E. MANVILLE & JOHN BOSTON, *PRISONERS’ SELF-HELP LITIGATION MANUAL* (2d ed. 1986).

cannabis, Quaaludes (714s/lemonheads), and other pills, eventually graduating to cocaine. I was not the brightest bulb on the tree, but I knew right from wrong, and I knew what the Cook County administration was doing to me was wrong. Reading the PLM, I discovered a wonderful amendment in our Constitution—the Eighth Amendment. The Eighth Amendment states that the government cannot impose excessive bail, excessive fines, or cruel and unusual punishment.¹⁴ I continued to read the cases in the PLM and discovered that I was not alone.¹⁵ The treatment I had been receiving at the Cook County Jail had been addressed by the United States Supreme Court, and it was happening to other inmates throughout the country.¹⁶ I did not know much about the court system back then, even though I had been given a life sentence. But I knew enough to know that if the Supreme Court ruled that the Department of Corrections cannot chain up a man without a hearing, beat him, or deprive him of food, showers, or five hours of fresh air a week, then someone was in trouble.¹⁷

I followed the PLM's instructions on how to file a lawsuit, beginning with my statement of facts. My first pro se motion was accepted in *Martinez v. J.W. Fairman, Jr., et al.*¹⁸ I learned everything about writing the motion and the court system from that manual. As the years continued, I would learn how to advocate not only for myself but for other inmates as well.¹⁹

Although I was not victorious in all of my filings, I am happy to say that none were ever ruled frivolous. But of course, this too came at a price. I was transferred to at least ten different federal penitentiaries, which I attribute to my advocating for other inmates through lawsuits or other administrative grievances. These types of transfers are generally referred to as “administrative transfers” or “223 transfers, closer supervision,” and only once was I ever transferred for “disciplinary reasons”—until I filed my grievance and won.

There is no worse feeling in the world than to be alone, especially when you are incarcerated and injustice is being done to you—regardless of whether it is by the courts or by the institution you are being housed in. There are too many inmates who are illiterate and who cannot even spell their own names, let alone defend themselves. I am by far not an expert in the law, but I do know a bully when I see one. I believe that it is our duty as humans to stand up for those who cannot stand up for themselves, even if it may put us in harm's way. This is called sacrifice.

14. U.S. CONST. amend. VIII.

15. MANVILLE & BOSTON, *supra* note 13.

16. *Id.* at 139.

17. *Id.* at 27, 29, 127, 139, 168.

18. *Martinez v. J.W. Fairman, Jr., et al.*, No. 93 C 6225, 1995 WL 383072 (N.D. Ill. June 22, 1995).

19. *See* *Martinez v. Hedrick*, 36 F. App'x 209 (7th Cir. 2002); *see also* *Martinez v. True*, 128 F. App'x 714 (10th Cir. 2005).

Many of us do not even know what our purpose in life is yet. Try asking yourself that question. Why are we here and what can we do to help others? Many of the students at the University of St. Thomas School of Law are going to make career choices that may affect many people in the future, or perhaps just one. Maybe you will be the one to answer an inmate's prayer or the prayer of someone who is in need of help. Maybe you will be the voice of reason, compassion, and change. Maybe you will be the one who says we must make this right—today.

I wish I could say that I have lived a righteous life, but I know that I have broken the law. I was conscious of my actions and did not heed the warnings from others who cared about me. I always say that the road less traveled is less traveled for very good reason. The road that I walked cost me twenty-seven years of my life with much hardship along the way. The people most affected were my two sons, who were four and five years old at the time. Although I am not a religious man, I do believe in karma. I believe that the Almighty, whoever that may be, decided to guide my case to the attention of Mark Osler, a professor at the University of St. Thomas School of Law. With his help and the help of law students in his Federal Commutations Clinic, I was given the opportunity to present my situation to the president of the United States, Barack Obama, and had my sentence commuted on August 30, 2016.²⁰

I was given a second chance at life, one that I have not wasted. Today, I have my own apartment and car; I am certified in supply chain management; I have a forklift certification and a commercial driver's license; and I am currently enrolled in my second year of community college trying to obtain my associate degree in social work. I continue to do my part in my community by being active in our local shelter for displaced youth, and largely with the help of Professor Osler, I continue to advocate for sentence reform when time allows me to do so. Like I mentioned, I have a great admiration for the law, having learned that what was being used against me could be used in my favor and in favor of others to fight for what is just and fair. Last but not least, I am trying to be a father to my sons, a grandfather to my granddaughter, and a friend to those who need one.

One of the most valuable assets of the human spirit is that, given enough time, it can adjust to anything. God figured that if we have the power to reason and justify and make decisions, then we are going to make a lot of mistakes—big mistakes. God understood that and then gave us the ultimate human power, the power of redemption.

20. *Commutations Granted by President Barack Obama (2009–2017)*, *supra* note 9.