

5-14-73 Denied
See FRONT FILE

- FILED -
APR 19 1973
HONORABLE CLERK
BOARD OF BRINKER

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
COUNTY, FLORIDA

CRIMINAL DIVISION

No. 72-7137

STATE OF FLORIDA,)
)
 Plaintiff,)
)
 v.)
)
 RAMON DONESTEVEZ,)
)
 Defendant.)

MOTION FOR SENTENCING COURT
RECOMMENDATION TO
UNITED STATES AUTHORITIES

The Defendant, RAMON DONESTEVEZ, by and through his undersigned counsel respectfully requests this Court, pursuant to the authority of 8 U.S.C. Section 1251(b)(2), to recommend to the Attorney General of the United States that the conviction of Ramon Donestevez for the above styled charge not be applicable to any proceeding to exclude and deport or to expel and deport him as an alien. As grounds therefor the Defendant states:

A. JURISDICTION OF THIS COURT

The United States government has exclusive control of proceedings regarding naturalization, immigration and alien status. U.S. Const. art. 1, Sec. 8, clause 4. However, the United States Congress has created a statutory exception to the exclusive federal jurisdiction which permits any court-- including those judicial bodies of the several states--to recommend upon sentencing a defendant for a crime committed against that state, or within 30 days of the date of sentencing, that such alien not be deported. 8 U.S.C. Sec. 1251(1)(2), Rasmussen v. Robinson, (CA3, 1947) 163 F.2d 732. This recommendation is held applicable to subsequent excludability proceedings of aliens for the same convicted state offense. Matter of H- and Y-, 3 I&N Dec. 236 (C.O. 1948); Matter of K-, 9 I&N Dec. 121 (BIA 1960); Rasmussen v. Robinson, supra.

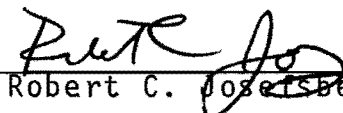
B. REASONS FOR MAKING SUCH RECOMMENDATION.

The Defendant regrets the commission of the offense charged herein; his first and only offense. He is paying for it by having to admit to his wrong doing, by having spent ten days in the Dade County Jail, by being under the control of the Florida Probation & Parole Commission and reporting regularly to one of its agents for a several year period, and by knowing the shame it brings to him and his family.

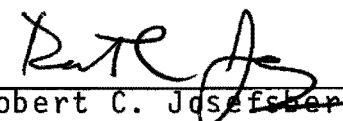
Nonetheless, the Defendant is sole provider for his wife and four children, who live in Dade County, owns and manages a good business in Dade County Florida, and is contributing to the overall betterment of this community.

WHEREFORE, the Defendant RAMON DONESTEVEZ, prays that this Court will help give him the opportunity to remain in this community of greater Miami; to stay with and provide for his family; and to add to the improvement of this State.

Respectfully submitted,
PEARSON & JOSEFSBERG, P.A.

By 
Robert C. Josefsberg

WE HEREBY CERTIFY that true and correct copies of the foregoing Motion for Sentencing Court Recommendation to United States Authorities was mailed this 19 day of April, 1973, to THE STATE ATTORNEY'S OFFICE, 1351 N. W. 12th Street, Miami, Florida, and to IMMIGRATION AND NATURALIZATION, 51 S. W. 1st Avenue, Miami, Florida.

By 
Robert C. Josefsberg

B

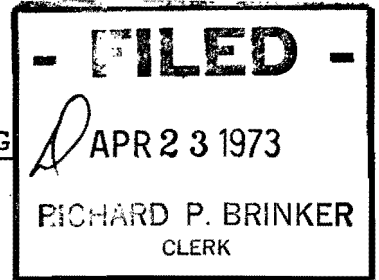
IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA

CRIMINAL DIVISION

NO: 72-7137A

STATE OF FLORIDA,)
)
 Plaintiff,)
)
 vs.)
)
 RAMON DONESTEVEZ)
)
 Defendant.)
)
 _____)

NOTICE OF HEARING



TO: Immigration and Naturalization Service
51 S. W. First Ave.
Miami, Florida

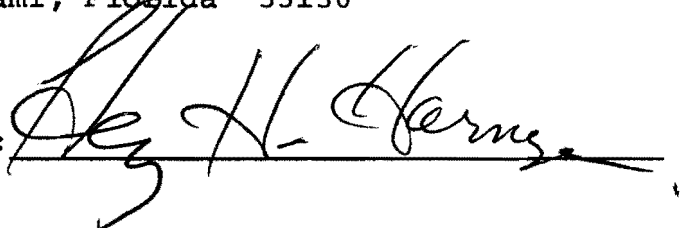
STATE ATTORNEY'S OFFICE
1351 N. W. 12th St.
Miami, Fla. 33125

PLEASE TAKE NOTICE THAT on Monday, May 14,
1973, at 2:00 o'clock, p. m., or as soon thereafter as
counsel can be heard, a hearing will be held before the Honorable
H. PAUL BAKER, Circuit Judge, in his Chambers at
the Dade County Courthouse, Miami, Florida, on the following:

Defendant's request to the sentencing Court that it recom-
mend to the Attorney General of the United States that the
conviction of Ramon Donestevéz for the charge herein, not
be applicable to any proceeding to exclude and deport or
expel and deport.

I HEREBY CERTIFY that a true copy of this Notice of
Hearing was delivered by mail, this 19th day of April,
1973 to the above named addressee.

PEARSON & JOSEFSBERG, P. A.
Attorneys for the
733 City National Bank Building
Miami, Florida 33130

BY: 

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO: 72-7137

THE STATE OF FLORIDA,)
)
 Plaintiff,)
)
 vs.)
)
 RAMON DONESTEVEZ)
)
 Defendant.)

NOTICE OF HEARING

FILED
JAN 22 AM 9 57
CLERK OF COURT
DADE COUNTY
FLORIDA

TO: THE HONORABLE RICHARD E. GERSTEIN
State Attorney
1351 N. W. 12th Street
Miami, Florida 33125

PLEASE TAKE NOTICE that on FRIDAY
~~Thursday~~,
the 23rd day of January, 1976, at 9:00
o'clock A.M., Defendant, RAMON DONESTEVEZ,
will call up for hearing before the Honorable ELLEN J.
MORPHONIOS, Judge of the Circuit Court for the
Eleventh Judicial Circuit of Florida, in and for Dade County,
Criminal Division, in open court at the Metropolitan Justice
Building, 1351 N. W. 12th Street, Miami, Florida, Defendant's
MOTION TO CORRECT ILLEGAL SENTENCE.

I HEREBY CERTIFY that a true and correct copy
of the foregoing Notice of Hearing was ~~mailed~~ hand-delivered to
the above-named addressee(s) this 22nd day of January,
19 76.

PLEASE BE GOVERNED ACCORDINGLY.

Respectfully submitted,

MECHANIC & GOLDSTEIN
Attorneys for Defendant
1125 N. E. 125th Street
North Miami, Florida 33161
Phone: 893-0455

by: Stephen J. Goldstein
STEPHEN J. GOLDSTEIN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO: 72-7137

76 JAN 22 AM 9 57
CLERK OF COURT
DADE COUNTY
03

THE STATE OF FLORIDA,)
)
 Plaintiff,)
)
 vs.)
)
 RAMON DONESTEVEZ,)
)
 Defendant.)

MOTION TO CORRECT ILLEGAL
SENTENCE

COMES NOW the Defendant, RAMON DONESTEVEZ, by and through his undersigned attorneys, and respectfully moves this Honorable Court pursuant to Rules of Criminal Procedure 3.800, to correct an illegal sentence imposed in this case and would state as grounds the following:

1. On October 2, 1974, the Defendant, RAMON DONESTEVEZ, was sentenced by the Honorable Judge H. Paul Baker.
2. Said sentence provided that the Defendant, RAMON DONESTEVEZ, "be imprisoned by confinement at hard labor in the Dade County Jail for a term of one year, sentence to begin from date of incarceration, provided, however, that after you have served two months of said sentence, ten months shall be stayed and withheld and you be placed on probation.....for a period of five years".
3. On December 18, 1975, the Defendant's probation, as imposed above, was revoked by order of this Court based upon Affidavit of Violation filed October 24, 1975 and amended December 15, 1975.
4. By order of this Court, the Defendant, RAMON DONESTEVEZ, was sentenced to a term of imprisonment in the State Prison for a period of seven (7) years.

EJM
JAN 23 1976
J Woodard
S Goldstein
K Wyatt
Sery

5. The imposition of such sentence was contrary to law and, therefore, illegal.

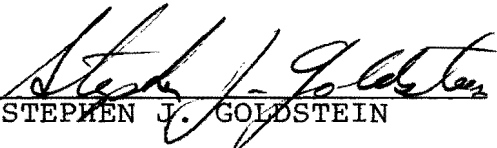
6. The maximum allowable sentence as provided by Section 948.01(4), Florida Statutes as interpreted by the Third District Court of Appeal in: HUTCHINS V. STATE, Fla. App. 1973, 286 So. 2d 244; WILLIAMS V. STATE, Fla. App. 1973, 280 So. 2d 518 and REYNOLDS V. STATE, Fla. App. 1974, 293 So. 2d 743, was the unserved portion of the sentence originally imposed and withheld (see paragraph "2" above), to-wit: ten (10) months in the Dade County Jail.

7. At the time the Defendant was originally sentenced (as provided in paragraph "2" above) by the Honorable Judge H. Paul Baker, it was the intention of the Court that the Defendant, upon a violation of the probationary term, receive no more than that portion of the sentence which was withheld, to-wit: ten (10) months in the Dade County Jail.

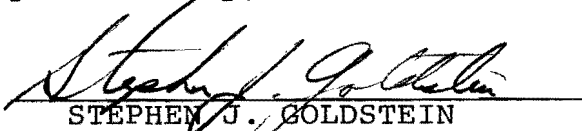
WHEREFORE, Defendant, RAMON DONESTEVEZ, respectfully requests this Honorable Court grant the foregoing Motion to Correct Illegal Sentence.

Respectfully submitted,

MECHANIC & GOLDSTEIN
Attorneys for Defendant
1125 N. E. 125th Street
North Miami, Florida 33161
Phone: 893-0455

By: 
STEPHEN J. GOLDSTEIN

I HEREBY CERTIFY that a true and correct copy of the foregoing MOTION TO CORRECT ILLEGAL SENTENCE was delivered by hand to the State Attorney's Office, 1351 N. W. 12th Street, Miami, Florida 33125, this 22nd day of January, 1976.


STEPHEN J. GOLDSTEIN