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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MONTEREY**

12 **PEOPLE OF THE STATE OF CALIFORNIA,**

13 Plaintiff,

14 vs.

15 **PATRICIA CONKLIN**

16 Defendants.

COURT CASE NO: SS130600A

**PEOPLE'S SENTENCING
MEMORANDUM**

Date: **September 13, 2013**

Time: 8:45 A.M.

Department: 3

17 **STATEMENT OF THE CASE**

18 The defendant was convicted by jury of three counts of elder abuse, Penal Code section 368b.
19 One was for physically abusing her mother and two were for endangering her mother, Margarita
20 Zelada. The facts were relatively straight forward. On March 1, 2013 the defendant pushed her
21 mother causing a fractured hip. The jury found true special allegation of great bodily injury on a
22 victim over 70 years of age. On March 2, 2013 the victim had surgery to repair the fractured hip,
23 including metal inserts placed into her bones. On March 4, 2013, the probate court granted the
24 public guardian's office temporary conservatorship of the person of Margarita Zelada. On March 9,
25 2013 the defendant removed her mother from a care facility without any steps taken to protect her
26 mother's wellbeing or safety. The defendant then took her mother home to their rented home where
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1 she had failed to prepare the home for her mother's return. The testimony of the treating surgeon,
2 Dr. James Lin, was that the fracture was in essentially the same state after one week as it was at the
3 time of the fracture.

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5 The defendant's attitude towards her mother is shocking and alarming. Having relied upon
6 her mother her entire life, the defendant demonstrated how self absorbed, oblivious and therefore
7 dangerous she is to her mother with her actions in this case. This court should have no confidence
8 that this defendant would obey any reasonable order which this court imposed in order to protect the
9 victim.

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11 As the court is well aware, the victim in this case, Margarita Zelada, is suffering from some
12 sort of cognitive impairment with dementia like symptoms. The People requested input from those
13 closest to the victim regarding what they believed her wishes would be since she may not be able to
14 express her own thoughts and feelings.

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16 Chris Campbell, who testified for the People at trial, has been the victim's attorney since
17 October 2012. She submitted the following comments, in part:

18 As you know, I spent a great deal of time working with Patty and Margarita in the months
19 between October and the incident, and I was able to observe them at very close range. They
20 were absolutely devoted to each other, and Margarita repeatedly told me that Patty was all she
21 had. She talked about her disappointment that Patty had not been able to put her good
22 education to good use and get a real job, about her worry that Patty would be taken advantage
of by some man, about her concern about Patty's bad decisions in the past and her tendency to
hang around with people who took advantage of her "soft heart." I know how damaged and
dysfunctional Patty is, but Margarita adores her, plain and simple.

23 I think that Patty should be released with a suspended sentence and put on felony probation
24 with conditions that her visits with her mother be supervised and that they be conducted at
25 the discretion of the conservator. I believe that she should have an additional condition that
she obtain counseling and provide proof of that counseling to her probation officer.

26 As you know, I believe that Patty never intended to hurt Margarita when she pushed her, and
27 I believe that she would not risk another Windsor Gardens-type incident if the threat of
28 further incarceration was hanging over her. Without the access to money, I can't imagine
Patty ever thinking that she and Margarita could survive if she attempted to "disappear" with

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her. And surely it would be easy enough to call 9-1-1 if Patty ever showed up at Senior Paradise acting inappropriately.

Margarita is safe and happy and she'll remain that way for the rest of her life. The idea that she would not get to see Patty again is just heartbreaking to me, and I don't think that there's anything about the facts of this case that would justify continued incarceration. There will come a time when Margarita won't even recognize Patty any longer, and to deprive her of contact with Patty during the limited time she has left in which she can enjoy that contact just seems like the wrong thing to do on every level.

Margaret "Meg" Camara, has been one of the principal caregivers for the victim since she was discharged from Windsor Care Center. She owns the home that provides live in, 24 hour care in a homelike setting. She provided the following information:

Margarita is doing really well since the trial. She has not asked about Patty. We have not had any major melt down. Since Bonnie has not visited and Irene has not called things are better. She is sleeping a little better, medications are kicking in, fewer outburst/nightmares about "ALL THE MEN" that Patty allowed into the house.

We have grown to love her as our own. We want to make sure she is as happy and as calm as can be, all her medical appointments are taken care of. She enjoys the day care and all the festivals and outings in town, etc.

It breaks our hearts to think that her only daughter did these horrible things to her. I think to incarcerate Patty for 11 years maybe too much because of Margarita's age. However letting Patty go free is sending a wrong message to her in our opinion. 5 years with mandated professional help and med compliance and supervised visits makes more sense.

Supervised visitation per your authority is great (not at the Day Care or our home), we would prefer to take her where ever and whenever. We know her and she has grown close to us. We know how to sense the meltdown and we can talk to the doctor about a booster med to keep her calm. She will also not tell anyone she does not know if she has to go to the restroom. We know her habits, schedule and we have a change of all clothing at all times in case of an accident. We can calm her if something agitates her. A stranger will know not about some of the stories she tells.

Jennifer Empasis, the designated conservator for the victim on behalf of the Public Guardian's office, has submitted a separate letter. Based on her experience in dealing with the defendant she is requesting a mental health evaluation of the defendant, supervised and scheduled

1 visitation limited to the defendant (not the defendant's friends or family members) and an
2 enforceable treatment plan.

3 **THE FOLLOWING IS THE PEOPLE'S SENTENCING RECOMMENDATION:**

4 <u>Count 1.</u>	PC 368(b)(1)	3 years
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6 Enhancement	PC 12022.7(c)	5 years Consecutive
7		
8 <u>Count 2.</u>	PC 368(b)(1)	3 years Concurrent
9		
9 <u>Count 3.</u>	PC 368(b)(1)	1 year Consecutive

10 **The People recommend that Defendant be sentenced to a determinate term of 9 years,**
11 **execution of said sentence suspended.**

12
13 **CASE LAW/SENTENCING ISSUES**

14 The California criminal sentencing scheme is a tangle of statutes, cases and rules. The
15 general rules for sentencing are contained in Penal Code sections 1168 - 1170. Consecutive
16 sentences are discussed in PC 1170.1.

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18 The base range for each of the counts of Elder Abuse is 2-3-4 years. PC 368(b)(1). The
19 enhancement for great bodily injury on an elder over 70 years of age is 5 years. PC 368(b)(2)(B) and
20 PC 12022.7(c).

21 The defendant is presumptively ineligible for probation. PC 1203(e)(3). This means the
22 court must find unusual circumstances where the interests of justice would best be served by granting
23 probation. Rule of Court 4.413 establishes the criteria for a finding of unusual circumstances. The
24 only unusual circumstance the People see is perhaps 4.413(c)(1)(A).

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26 The purpose of imprisonment for crime is punishment. This purpose is best served by terms
27 proportionate to the seriousness of the offense with uniformity for sentencing offenders committing
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1 the same offense under similar circumstances. (Penal Code § 1170(a)(1).) When determining an
2 appropriate sentence, the court must consider the objectives of sentencing. (Cal. Rules of Court, rule
3 4.409.) The California Rules of Court provide the following general objectives in sentencing under
4 rule 4.410(a)[1]-[7]: protecting society; punishing the defendant; encouraging the defendant to lead
5 a law abiding life; deterring others from criminal conduct by demonstrating its consequences;
6 preventing the defendant from committing new crimes by isolating her for the period of
7 incarceration; securing restitution for the victim; and achieving uniformity in sentencing. Each of
8 these factors weighs in favor of incarceration.
9

10 Probation vs. Prison

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12 With those objectives in mind, the court is guided by Rule 4.414 on the decision to grant
13 probation or to deny probation.

14 Rule 4.414 Criteria affecting probation

15 (a) Facts relating to the crime, including:

- 16 1. The nature, seriousness and circumstance of the crime compared to other similar crimes
- 17 2. Was defendant armed with or used a weapon
- 18 3. Vulnerability of the victim
- 19 4. Whether defendant inflicted physical or emotional injury
- 20 5. Degree of monetary loss (Victims of Crime- Cost to the state)
- 21 6. Whether defendant was an active or passive participant
- 22 7. Crime was committed because of an unusual circumstance unlikely to recur
- 23 8. Whether manner of crime demonstrates sophistication
- 24 9. If defendant took advantage of position of trust

25 (b) Facts relating to the defendant,

- 26 1. Prior record
- 27 2. Prior performance
- 28 3. Willingness to comply
4. Ability to comply
5. Effect of imprisonment
6. Adverse collateral consequences
7. Remorseful
8. If not imprisoned danger to others

The People would agree that not all of these factors indicate a prison sentence is appropriate

1 but many of them do. The victim was vulnerable in that she had her back turned when the defendant
2 pushed her thereby inflicting physical injury. She was an active participant in the crime. This crime
3 is likely to reoccur if the defendant is allowed to be with her mother as the financial issues have not
4 changed for either defendant or her mother and her mother's deterioration will only be more
5 frustrating for the defendant. The People would argue that she does not have a willingness or an
6 ability to comply because she lacks insight into her own behavior. She is paranoid and usually sees
7 herself as a victim. She is not remorseful.
8

9 If the court imposes a prison sentence the court must first do an analysis under Penal Code
10 section 654. Rule of Court 4.424 states "Before determining whether to impose either concurrent or
11 consecutive sentences on all counts on which the defendant was convicted, the court shall determine
12 whether the proscription in section 654 against multiple punishments for the same act or omission
13 requires a stay of execution of the sentence imposed on some of the counts." Rule 4.424.
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15 While case law may permit the finding of separate acts or intent and thus avoid the pro-
16 scription of PC 654, the People are not seeking any additional sanction for the second count of
17 endangerment. The People are seeking consecutive sentences for Counts 1 and 3 and do not believe
18 there is any PC 654 issue.
19

20 If the court does grant probation, the court must impose conditions as mandated in Penal
21 Code section 1203.097 because of the familial relationship of the defendant and victim.
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23 Custody credits should be awarded at the "50%" rate if the defendant is placed on probation
24 but are limited to "15%" if she is sentenced to prison. PC 2933.1. **See *In re Carr*** (1998) 65
25 Cal.App.4th 1525, 1535-1536; ***People v. Daniels*** (2003) 106 Cal.App.4th 736, 739.
26

27 The People will ask that as a condition of probation, should it be granted, that the defendant
28 surrender her passport to further ensure she does not remove her mother.

1 CONCLUSION

2 The defendant has committed an initial violent offense and then compounded the situation by
3 acting in disregard of the probate court's orders, the advice of her mother's counsel, and all common
4 sense. Were it not for consideration of allowing a mother to see her only child while she still is able
5 to recognize her, the People, would not consider her an appropriate candidate for probation. The
6 People urge this court, should it grant probation, to make it clear to the defendant that any violation
7 related to inappropriate conduct related to her mother, will land her in prison.
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10 Dated: September 3, 2013

11 Respectfully submitted,

12 **DEAN D. FLIPPO,**
13 **DISTRICT ATTORNEY**

14 By: _____
15 David Rabow
16 Deputy District Attorney
17 Attorney for Plaintiff
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