

To be argued by:  
David Billingsley  
*15 minutes requested*

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SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

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THE PEOPLE OF THE STATE OF NEW YORK,

*Respondent,*

-against-

RANDY JASQUEZ,

*Defendant-Appellant.*

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BRIEF FOR DEFENDANT-APPELLANT  
RANDY JASQUEZ  
Ind. Nos. 205-2015 & 4420-2015

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Supreme Court of the State of New York  
Appellate Division: First Department

The People of the State of New York,  
Respondent,

— against —

Randy Jasquez,  
Defendant-Appellant.

Ind. Nos. 205-2015 &  
4420-2015

PRELIMINARY STATEMENT

This is an appeal from a judgment rendered on March 25, 2016, by Supreme Court, New York County. Randy Jasquez was convicted after guilty pleas of one count of Attempted Robbery in the Second Degree, N.Y. Penal Law §§ 110 & 160.10(1), under Indictment No. 205-2015, and one count of Criminal Possession of a Weapon in the Third Degree, N.Y. Penal Law § 265.02(1), under Indictment No. 4420-2015. Mr. Jasquez received two years' imprisonment and three years' post-release supervision on the robbery count, to run concurrently with one-and-a-third to four years' imprisonment on the weapon possession count.

Justice Michael Sonberg presided over the pleas and sentencing. Timely notice of appeal was filed. No stay of execution has been sought. Mr. Jasquez is currently serving his term of imprisonment.

## QUESTION PRESENTED

Was Randy Jasquez's indeterminate sentence of one-and-a-third to four years for weapon possession, combined with two years' imprisonment and the maximum three-year term of post-release supervision for attempted robbery, unduly harsh and excessive given his youth and his reduced culpability and potential for rehabilitation?

## STATEMENT OF FACTS

As a teenager, Randy Jasquez had some run-ins with the law. On January 6, 2015, at approximately 1:40 AM, Randy Jasquez approached a person inside of the building at 142 Laurel Hill Terrace and showed them a gun, demanding money, while another unknown individual waited outside as a lookout. Presentence Investigation Face Sheet (hereinafter, "PSI") at 3. Mr. Jasquez took from this person a cell-phone, a backpack, and \$10 in cash, and threw these items to the lookout, who left the scene. *Id.* This entire incident was captured on video, leading the police to identify and arrest Mr. Jasquez. *Id.* Mr. Jasquez was indicted and charged with first-degree and second degree robbery. *See* Indictment No. 205-2015.

On October 22, 2015, Mr. Jasquez was out on bail from the robbery case when he was stopped at 2:05 AM by police in the subway station at 42<sup>nd</sup> Street and 8<sup>th</sup> Avenue after jumping a turnstile. The police found that Mr. Jasquez was carrying a switchblade. PSI at 3. As a result, he was charged with weapon possession and theft of services. *See* Indictment No. 4420-2015. Mr. Jasquez was 18 years old at the time



of both of these offenses, and he was employed as a gardener. PSI at 1, 5.

On March 11, 2016, during a hearing in the robbery case, Mr. Jasquez pled guilty to one count of Attempted Robbery in the Second Degree, N.Y. Penal Law §§ 110 & 160.10(1), in satisfaction of indictment 205-2015, and Criminal Possession of a Weapon in the Third Degree, N.Y. Penal Law § 265.02(1), in satisfaction of indictment 4420-2015. P. 49-53<sup>1</sup>. Mr. Jasquez admitted his guilt to the probation department in both offenses, stating that he “had [the switchblade] for protection.” PSI at 4. As to the robbery, he “professed no motive.” *Id.*

Mr. Jasquez had no prior felonies, although he did have three previous youthful offender adjudications. PSI at 4. On March 25, 2016, Mr. Jasquez was sentenced to one-and-a-third to four years’ imprisonment, to run concurrently with two years’ imprisonment and three years’ post release supervision on the attempted robbery conviction. S. 5-6.

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<sup>1</sup> Citations to “P” refer to the combined hearing and plea proceedings that took place on March 11, 2016. Citations to “S.” refer to sentencing proceedings that took place on March 25, 2016.

## ARGUMENT

### POINT

RANDY JASQUEZ'S INDETERMINATE PRISON TERM OF ONE-AND-A-THIRD TO FOUR YEARS FOR WEAPON POSSESSION, COMBINED WITH TWO YEARS' IMPRISONMENT AND THE MAXIMUM THREE-YEAR TERM OF POST RELEASE SUPERVISION FOR ATTEMPTED ROBBERY, WAS UNDULY HARSH AND EXCESSIVE GIVEN HIS YOUTH, REDUCED CULPABILITY, AND POTENTIAL FOR REHABILITATION.

Randy Jasquez's offenses are representative of the recklessness and failure to appreciate consequences that all youth possess, categorically reducing his culpability. Given Mr. Jasquez's youth, his lack of prior felonies, and his record of employment, Mr. Jasquez shows potential for rehabilitation. He was sentenced to a term of one-and-a-third to four years in the weapon possession case, to run concurrently with two years in prison and the maximum term of three years of post-release supervision in the attempted robbery case. This aggregate sentence was unduly harsh and excessive. This Court should reduce his sentence in the interest of justice.

This Court has "broad, plenary power to modify a sentence that is unduly harsh or severe under the circumstances . . . without deference

to the sentencing court.” *People v. Delgado*, 80 N.Y.2d 780, 783 (1992). Moreover, this plenary power exists even when an individual’s conviction was the result of a negotiated guilty plea rather than a trial verdict. *People v. Thompson*, 60 N.Y.2d 513, 520 (1983); *see, e.g., People v. Reyes*, 89 A.D.3d 401, 402 (1st Dep’t 2011) (defendant’s sentence reduced after negotiated plea). This Court’s discretionary power may be exercised “without deference to the sentencing court.” *Delgado*, 80 N.Y.2d at 783; *People v. Wiggins*, 24 A.D.3d 263, 263 (1st Dep’t 2005) (quoting *Delgado*). The Court should consider “the nature of the crime, the defendant’s circumstances, the need for societal protection, and the prospects for the defendant’s rehabilitation.” *People v. Fernandez*, 84 A.D.3d 661, 664 (1st Dep’t 2011) (internal quotation omitted). The Court should also consider these factors with a view toward imposing the “minimum amount of confinement” necessary. *People v. Notey*, 72 A.D.2d 279, 282-83 (2d Dep’t 1980) (internal citation omitted).

The United States Supreme Court has recognized that youth is a mitigating factor because young people are categorically less deserving of severe punishment due to “their diminished culpability and greater prospects for reform.” *Miller v. Alabama*, 567 U.S. 460, 471 (2012).

“[T]he distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Id.* at 472. Youths are less culpable because they have an “inherent lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.” *Id.* at 471 (internal quotation omitted). As young people mature, their ability to appreciate the consequences of their actions improves. *Id.* at 471-72. With less fixed character traits than older people, young defendants show a greater capacity to respond positively to rehabilitation. *Id.*

Accordingly, New York courts have often reduced sentences for armed or weapon-related offenses in view of the defendant’s youth. *See People v. Hampton*, 113 A.D.3d 1131, 1133 (4th Dep’t 2014) (sentence reduced for robbery in the first degree in part because defendant was “relatively young”); *People v. Carter*, 74 A.D.3d 1375, 1376 (3d Dep’t 2010) (sentence reduced on four counts of robbery and assault where defendant was 20 years old); *People v. Dyer*, 60 A.D.3d 690, 690-91 (2d Dep’t 2009) (sentence reduced for criminal possession of a weapon in the third degree due in part to defendant’s youth); *People v. Wilt*, 18 A.D.3d

971, 973 (3d Dep’t 2005) (reducing sentence for assault in the first degree in part because defendant was 16 at the time of offense); *People v. Strawbridge*, 299 A.D.2d 584, 594 (3d Dep’t 2002) (sentence for second degree murder reduced in part due to 21-year-old defendant’s youth).

As to the robbery, Mr. Jasquez “professed no motive,” and committed the offense in full view of security cameras that captured the entire incident. PSI at 4. This shows that Mr. Jasquez’s offense was an unthinking and impulsive act resulting from Mr. Jasquez’s youth, making him inherently more immature and reckless than older people, and thus reducing his culpability. *Miller*, 567 U.S. at 471.

Further, this Court has reduced sentences where the offense resulted from the defendant’s fear for their physical safety. *See People v. Matias*, 161 A.D.2d 292, 292 (1st Dep’t 1990) (sentence was excessive where defendant was convicted of manslaughter after shooting the decedent, who “had a known history of threatening behavior directed at defendant and other tenants of [his] building”); *see also People v. Roldan*, 222 A.D.2d 132, 136-141 (1st Dep’t 1996) (sentence was excessive where defendant was a security guard who shot the decedent

during a physical altercation, and decedent had been involved in numerous violent confrontations with security personnel in the past).

In the weapon possession case, police found Mr. Jasquez with a switchblade at 2:05 AM in a subway station on 42<sup>nd</sup> Street in Manhattan. PSI at 3. He stated that he “had it for protection.” PSI at 4. This shows that Mr. Jasquez was afraid for his safety travelling on the subway so late at night, and made a misguided attempt to be able to defend himself. While it is not an excuse, it demonstrates the “inherent lack of maturity and ... underdeveloped sense of responsibility” that is common among 18-year-olds, as Mr. Jasquez was at that time. *Miller*, 567 U.S. at 471. Thus, Mr. Jasquez’s culpability for this non-violent offense was also reduced.

Although Mr. Jasquez did have a youthful offender record prior to these offenses, as a young person, he shows potential for rehabilitation. PSI at 4. Mr. Jasquez was 18 or younger at the time of each of his offenses, meaning that his character traits are less fixed and he has a greater capacity for reform. *Miller*, 567 U.S. at 471-72. This is especially evident given that Mr. Jasquez had no prior felonies, and had maintained employment. PSI at 4-5. This Court has reduced sentences

even for violent offenses where the defendant showed such characteristics. *See People v. Pagan*, 159 A.D.2d 6, 14 (1st Dep’t 1990) (reducing sentence where defendant had a “history of productive employment” and no prior felonies); *see also People v. Charles*, 124 A.D.3d 986, 988 (3d Dep’t 2015) (sentence reduction warranted where defendant had no prior felonies). Further, “[t]he first step toward rehabilitation is a sincere admission of the wrongdoing.” *In re Umer K.*, 257 A.D.2d 195, 196 (1st Dep’t 1999). Mr. Jasquez accepted responsibility by pleading guilty and admitting his offense to the Probation Department in both cases. P. 9; PSI at 4.

Mr. Jasquez received a determinate sentence of two years in prison and the maximum post-release supervision term of three years in the attempted robbery case. S. 6; N.Y. Penal Law § 70.02(3)(c), 70.45(2)(e). In the weapon possession case, Mr. Jasquez received an indeterminate term of one-and-a-third to four years in prison. S. 6. In view of Mr. Jasquez’s reduced culpability, and potential for rehabilitation, Mr. Jasquez’s aggregate sentence to these terms imposed more than the “minimum amount of confinement necessary,” and was thus unduly harsh and excessive. *Notey*, 72 A.D.2d 282-83. In the

interest of justice, this Court should reduce his prison sentence on the indeterminate term of one-and-a-third to four years or reduce the maximum three-year term of post-release supervision<sup>2</sup> on his determinate sentence of two years in the interest of justice to terms closer to the minimum.

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<sup>2</sup> The prison term in the attempted robbery case was the minimum allowed, thus only the term of post-release supervision can be reduced. N.Y. Penal Law § 70.02(3)(c).



## CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court reduce Mr. Jasquez's indeterminate prison term or post-release supervision term closer to the minimum.

Dated: New York, New York  
September 28, 2018

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## ADDENDA

Supreme Court of the State of New York  
Appellate Division: First Department

The People of the State of New York,  
Respondent,

— against —

Randy Jasquez,  
Defendant-Appellant.

Ind. Nos. 205-2015 &  
4420-2015

### Statement Pursuant to Rule 5531

1. The indictment numbers in the court below were 205-2015 and 4420-2015.
2. The full names of the original parties were “The People of the State of New York” against “Randy Jasquez.”
3. These actions were commenced in Supreme Court, New York County.
4. These actions were commenced by the filing of indictments.
5. This is an appeal from a judgment rendered on March 25, 2016, by Supreme Court, New York County. Randy Jasquez was convicted after guilty pleas of one count of Attempted Robbery in the Second Degree, N.Y. Penal Law §§ 110 & 160.10(1), under Indictment No. 205-2015, and one count of Criminal Possession of a Weapon in the Third Degree, N.Y. Penal Law § 265.02(1), under Indictment No. 4420-2015. Mr. Jasquez received two years’ imprisonment and three years’ post-release supervision, to run concurrently with one and one third to four years’ imprisonment, respectively.
6. Mr. Jasquez has been granted leave to appeal as a poor person on the original record and typewritten briefs.

Supreme Court of the State of New York  
Appellate Division: First Department

The People of the State of New York,  
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— against —

Randy Jasquez,  
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Ind. Nos. 205-2015 &  
4420-2015

Printing Specification Statement

1. The following statement is made in accordance with First Department Rule 600.10.
2. Mr. Jasquez's brief was prepared with Microsoft Word 2010 with Garamond typeface 14 point in the body and 12 point in the footnotes.
3. The text of the brief has a word count of 1,706, as calculated by the processing system and is 11 pages.