

To be argued by
DAVID BILLINGSLEY

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

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

HUGO RODRIGUEZ,

Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT
HUGO RODRIGUEZ

CHRISTINA SWARNS, ESQ.
Attorney for Defendant-Appellant

EUNICE C. LEE, ESQ.
Supervising Attorney

By: DAVID BILLINGSLEY, ESQ.
Staff Attorney

OFFICE OF THE APPELLATE DEFENDER
11 Park Place, Suite 1601
New York, NY 10007
(212) 402-4100
dbillingsley@appellatedefender.org

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT.....	iv
QUESTION PRESENTED.....	1
STATEMENT OF FACTS	2
A. Mr. Rodriguez is Arrested Following a Shooting.	2
B. The Trial Court Combines the Explanations of the Guilty Plea and Appeal Waiver, and States That a Waiver of Appeal Would Mean Mr. Rodriguez’s Case Could Not Be Heard by a Higher Court.	3
ARGUMENT	5
MR. RODRIGUEZ’S SENTENCE OF SIX AND A HALF YEARS IS UNDULY HARSH AND EXCESSIVE BECAUSE HE WAS ONLY NINETEEN YEARS OLD AT THE TIME OF THE UNPREMEDITATED, RECKLESS AND IMPULSIVE CONDUCT LEADING TO HIS CONVICTION, AND HE HAD NO PRIOR VIOLENT OR FELONY CONVICTIONS.	5
A. Mr. Rodriguez’s Sentence Should Be Reduced Because of His Diminished Culpability and His Increased Capacity for Reform Due to his Youth at the Time of the Offense, As Well As His Lack of Any Prior Felonies.	5
B. Mr. Rodriguez’s Purported Appeal Waiver Is Invalid.....	13
CONCLUSION	19
ADDENDA.....	1
Statement Pursuant to Rule 5531	A-1
Printing Specification Statement	A-2

TABLE OF AUTHORITIES

Cases

<i>Miller v. Alabama</i> , 567 U.S. 460 (2012).....	6, 7, 11
<i>People ex rel. Wayburn v. Schupf</i> , 39 N.Y.2d 682 (1976).....	12
<i>People v. Bradshaw</i> , 18 N.Y.3d 257 (2011)	13
<i>People v. Carter</i> , 74 A.D.3d 1375 (3d Dep’t 2010).....	8, 9
<i>People v. Christopher P.</i> , 136 A.D.3d 481 (1st Dep’t 2016).....	12
<i>People v. Delgado</i> , 80 N.Y.2d 780 (1992).	6
<i>People v. Dyer</i> , 60 A.D.3d 690 (2d Dep’t 2009).....	8, 10
<i>People v. Fernandez</i> , 84 A.D.3d 661 (1st Dep’t 2011)	6
<i>People v. Francis</i> , 30 N.Y.3d 737 (2018)	11
<i>People v. Hampton</i> , 113 A.D.3d 1131 (4th Dep’t 2014)	8, 9
<i>People v. Lopez</i> , 6 N.Y.3d 248 (2006)	13, 14, 15, 16
<i>People v. Milan</i> , 189 A.D.2d 627 (1st Dep’t 1993)	9
<i>People v. Notey</i> , 72 A.D.2d 279 (2d Dep’t 1980).....	6
<i>People v. Pagan</i> , 159 A.D.2d 6 (1st Dep’t 1990).....	9
<i>People v. Ramos</i> , 122 A.D.3d 462 (1st Dep’t 2014)	17, 18
<i>People v. Ramos</i> , 152 A.D.2d 209 (1st Dep’t. 1989)	13
<i>People v. Rudolph</i> , 21 N.Y.3d 497 (2013).....	11, 12
<i>People v. Santiago</i> , 119 A.D.3d 484 (1st Dep’t 2014).....	16, 17
<i>People v. Strawbridge</i> , 299 A.D.2d 584 (3d Dep’t 2002)	8, 10
<i>People v. Wilt</i> , 18 A.D.3d 971 (3d Dep’t 2005)	8, 10

Statutes

Crim. Proc. Law § 720.10(2)(1) 11

Crim. Proc. Law § 720.20(1)(a) 12

Other Authorities

Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, Am. Psych. 58:12, 1009-1018 (2003)...7, 12

Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, Dev. Psych. 41:4:625-35 (2005)..... 7

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

The People of the State of New York,
Respondent,

— against —

Hugo Rodriguez,
Defendant-Appellant.

Ind. No. 821-2015

PRELIMINARY STATEMENT

This is an appeal from a judgment rendered on August 5, 2016, by Supreme Court, New York County. Hugo Rodriguez was convicted after a guilty plea of one count of attempted assault in the first degree, N.Y. Penal Law § 110 & 120.10(1), and one count of criminal possession of a weapon in the second degree, N.Y. Penal Law § 265.03(1)(b). Mr. Rodriguez received six and one half years' imprisonment and five years' post-release supervision on both charges, to run concurrently.

Justice Robert Stolz presided over the plea and sentencing. Timely notice of appeal was filed. No stay of execution has been sought. Mr. Rodriguez is currently serving his term of imprisonment

QUESTION PRESENTED

Where Hugo Rodriguez was only nineteen years old at the time of the unpremeditated, reckless and impulsive conduct leading to his conviction, and he had no prior violent or felony convictions, is his sentence of six and one half years for attempted assault and criminal possession of a weapon unduly harsh and excessive?

STATEMENT OF FACTS

A. Mr. Rodriguez is Arrested Following a Shooting.

On February 28, 2015, Hugo Rodriguez was just two months past his nineteenth birthday. Presentence Investigation Report (hereinafter, “PSI”) at 1. Mr. Rodriguez and Joshua Monsanto were in a car together late at night. PSI at 3. A police officer saw Mr. Rodriguez and Mr. Monsanto get into an argument with a pedestrian. *Id.* That argument escalated, and a single shot was fired from the car, striking the pedestrian in the leg. *Id.* The police officer stopped his vehicle, and he and his partner placed Mr. Rodriguez and Mr. Monsanto under arrest, finding a gun in the backseat of the car. *Id.*

Mr. Rodriguez took responsibility for his role in the incident, specifically admitting his guilt to the Probation Department. PSI at 3. Police recorded no attempt by Mr. Rodriguez to flee the scene or deny his involvement. PSI at 3; Voluntary Disclosure Form (hereinafter, “VDF”) at 1-2. He agreed to plead guilty to attempted assault in the first

degree, and criminal possession of a weapon in the second degree. P. 7-9.¹

B. The Trial Court Combines the Explanations of the Guilty Plea and Appeal Waiver, and States That a Waiver of Appeal Would Mean Mr. Rodriguez's Case Could Not Be Heard by a Higher Court.

During Mr. Rodriguez's plea, the trial court alternated between explaining the nature of a guilty plea and a waiver of appeal, and conflated the two. The court began the allocution by asking whether Mr. Rodriguez had decided voluntarily to plead guilty and whether he had discussed his decision with his attorney. P. 7-8. The court then stated that by pleading guilty, Mr. Rodriguez would give up the right to trial, which included the right to call witnesses and have guilt proven beyond a reasonable doubt. P. 8. Next, the court asked whether Mr. Rodriguez was a citizen of the United States. *Id.* The court said that "you are also waiving your right to appeal on this case," and asked whether there were written waivers.² The court then said:

THE COURT:	By pleading guilty you are also giving up any right you may have to appeal this case. That is a separate and distinct right from
------------	--

¹ Citations to "P" refer to the guilty plea on June 28, 2016. Citations to "S" refer to the sentencing on August 5, 2016.

² Mr. Rodriguez pled guilty along with the co-defendant Joshua Monsanto at the same plea proceeding. P. 7-10.

your trial rights. It means that this case will not be heard by any higher Court. Do you understand that, Mr. Rodriguez?

MR. RODRIGUEZ: Yes.

P. 9. The court asked whether Mr. Rodriguez had discussed the appeal waiver with his attorney. *Id.* Mr. Rodriguez stated that he had. *Id.* After this, Mr. Rodriguez signed a written waiver of appeal. *Id.* See Written Waiver of Appeal dated June 28, 2016.

The court then returned to the allocution of the guilty plea, asking Mr. Rodriguez whether he was admitting the facts underlying the charges of attempted assault in the first degree and criminal possession of a weapon in the second degree. P. 9.

Mr. Rodriguez had a minimal criminal record. At the time of his arrest, he had no record of felony or violent convictions. PSI at 3. His only convictions were a petit larceny misdemeanor and a disorderly conduct violation. PSI at 3. On August 5, 2016, he was sentenced to six and one half years' imprisonment and five years of post-release supervision on each charge, to run concurrently. S. at 2.

ARGUMENT

MR. RODRIGUEZ'S SENTENCE OF SIX AND A HALF YEARS IS UNDULY HARSH AND EXCESSIVE BECAUSE HE WAS ONLY NINETEEN YEARS OLD AT THE TIME OF THE UNPREMEDITATED, RECKLESS AND IMPULSIVE CONDUCT LEADING TO HIS CONVICTION, AND HE HAD NO PRIOR VIOLENT OR FELONY CONVICTIONS.

- A. Mr. Rodriguez's Sentence Should Be Reduced Because of His Diminished Culpability and His Increased Capacity for Reform Due to his Youth at the Time of the Offense, As Well As His Lack of Any Prior Felonies.

Hugo Rodriguez was only nineteen years old at the time of this offense. Although his crime was serious, it was an unpremeditated, impulsive act that reflects the recklessness and impulsivity that categorically reduces the culpability of young people. He also shows the same capacity for reform that young people show, as he had no felonies nor any violent convictions prior to this offense. PSI at 3. For these reasons, his sentence of six and one half years' imprisonment should be reduced to a term closer to the statutory minimum of three and one-half years.

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).

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.*

Mr. Rodriguez was only nineteen years old at the time of this offense. PSI at 1. While not legally a child, he was a teenager – still squarely in that category of people who are at risk for impulsive decision-making, and who retain a high capacity for reform. Nineteen year-olds continue to show significant deficits with respect to appreciation of risk and ability to resist peer pressure, as compared to older adults. See Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, Dev. Psych. 41:4, 625-35, 630-32 (2005). Moreover, because a person's character is not usually fixed until the early twenties, nineteen year-olds also demonstrate an ability for reform similar to that of younger teenagers. Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, Am. Psych. 58:12, 1009-1018, 1014 (2003).

Accordingly, New York courts have often reduced sentences for violent or armed 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).

Here, Mr. Rodriguez engaged in an unpremeditated violent act following an altercation. PSI at 3. Mr. Rodriguez and his co-defendant Mr. Monsanto got into an argument with a pedestrian, resulting in the pedestrian getting shot in the leg. *Id.* All this occurred well within view of nearby police, further emphasizing the impulsive and

unpremeditated nature of the conduct. *Id.* This dangerous overreaction to the circumstances is therefore not evidence of Mr. Rodriguez's violent nature, but rather evidence that Mr. Rodriguez suffered from the same recklessness and diminished ability to consider the consequences that are inherent to young people.

In addition to his youth, Mr. Rodriguez's capacity to be a law-abiding member of society is further demonstrated by the fact that he had no violent or felony convictions prior to this offense. This Court has reduced sentences where the defendant had no prior felonies, and the offense was an "aberrational unpremeditated act." *People v. Pagan*, 159 A.D.2d 6, 14 (1st Dep't 1990); *see also People v. Milan*, 189 A.D.2d 627, 628 (1st Dep't 1993) (reducing sentence where defendant fired gun at police officers responding to 911 call during domestic dispute but his "prior criminal history consist[ed] solely of a 1981 conviction for harassment," showing that the instant offense was an "isolated incident"). New York courts in general have repeatedly reduced sentences for violent offenses where the defendant had little or no criminal history, and no previous violent offenses. *Hampton*, 113 A.D.3d at 1133 (noting defendant's lack of violent criminal history); *Carter*, 74

A.D.3d at 1376 (noting that defendant did not have an extensive criminal history); *Dyer*, 60 A.D.3d at 690-91 (noting defendant's lack of any criminal history); *Wilt*, 18 A.D.3d at 73 (same); *Strawbridge*, 299 A.D.2d at 594 (same).

Mr. Rodriguez's criminal history is minimal, consisting of a single petit larceny misdemeanor and a disorderly conduct violation prior to this offense. PSI at 3. Mr. Rodriguez also took responsibility for his conduct, not attempting to flee or deny his involvement, cooperating with police, pleading guilty, and again admitting guilt to the probation department. VDF at 1-2; P. 7-9; PSI at 3.

None of these facts excuses Mr. Rodriguez's conduct, nor do they negate its serious consequences. But his behavior was consistent with that of many other young people who have gotten themselves into trouble due to an inherently reduced ability to carefully consider the consequences of their actions. A shorter term of incarceration is appropriate in view of the evidence of the "transient rashness, proclivity for risk, and inability to assess consequences" that "lessen[] Mr. Rodriguez's moral culpability and enhance the prospect that ... [his]

deficiencies will be reformed.” *Miller*, 567 U.S. at 472 (internal quotation omitted).

It is also significant that, had Mr. Rodriguez been only approximately two months younger, he would have been eligible for youthful offender treatment. *See* Crim. Proc. Law § 720.10(2)(1); PSI at 1 (Mr. Rodriguez’s date of birth is Dec. 9, 2015; offense date is Feb. 28, 2015). Although the law does not allow Mr. Rodriguez to receive youthful offender treatment, there is little difference between an eighteen and nineteen year old with respect to those factors that reduce young people’s culpability. This Court should therefore apply to Mr. Rodriguez’s case the same considerations that motivated the legislature to create the youthful offender classification.

The youthful offender classification reflects the legislature’s recognition that “young people have a real likelihood of turning their lives around” and becoming “law-abiding, productive member[s] of society.” *People v. Rudolph*, 21 N.Y.3d 497, 458 (2013); *accord People v. Francis*, 30 N.Y.3d 737, 750 (2018) (“Certainly, the youthful offender statute reflects the Legislature’s recognition of the difference between a youth and an adult.”); *People ex rel. Wayburn v. Schupf*, 39 N.Y.2d 682,

687-88 (1976) (societal recognition that young people are not held to the same standard of individual responsibility because of their incomplete emotional, intellectual, and moral development, and lack of practical experience is “made manifest” in the youthful offender procedures). Prolonged incarceration of young people is often simply inconsistent with that recognition. *See People v. Christopher P.*, 136 A.D.3d 481, 482 (1st Dep’t 2016) (“...[I]t is unrealistic to conclude that one eligible for [youthful offender] treatment requires prolonged confinement to achieve the objectives of the legislation.”). Had Mr. Rodriguez received youthful offender treatment, the maximum prison sentence he faced would have been four years, whereas he actually received six and a half years. Crim. Proc. Law § 720.20(1)(a); S. 2.

In sum, a sentence closer to the minimum term of incarceration of three and one half years would be consistent with the nature of the offense, protection of the public, and the consideration of Mr. Rodriguez’s youth at the time of the offense. In the interest of justice, this Court should reduce his sentence accordingly.

B. Mr. Rodriguez's Purported Appeal Waiver Is Invalid.

During the plea proceeding, the court combined the explanations of rights waived by guilty plea and appeal waiver, and erroneously told Mr. Rodriguez that his waiver would prevent his case from being heard by a higher court. P. 7-9. The waiver is therefore invalid because the record is not clear that Mr. Rodriguez understood the rights purportedly waived.

A valid waiver of the right of appeal must be knowing, intelligent, and voluntary. *People v. Ramos*, 152 A.D.2d 209, 210 (1st Dep't 1989). “[A] trial court must make certain that a defendant’s understanding of the waiver, along with the other terms and conditions of a plea agreement is evident on the face of the record.” *People v. Bradshaw*, 18 N.Y.3d 257, 265 (2011) (internal quotation marks omitted). The right of appeal is a separate and distinct right from that of the right to trial, and certain claims survive even an express waiver of appeal. *People v. Lopez*, 6 N.Y.3d 248, 255-56 (2006).

When the court conflates an appeal waiver with the rights waived by a guilty plea, the waiver is invalid. *Lopez*, 6 N.Y.3d 248 at 256. “The record must establish that the defendant understood that the right to

appeal is separate and distinct from those rights automatically forfeited upon a plea of guilty--the right to remain silent, the right to confront one's accusers and the right to a jury trial, for example." *Id.* "When a trial court inaccurately employs the language of forfeiture in a situation of waiver," the waiver is invalid because the court "has mischaracterized the nature of the right a defendant was being asked to cede." *Id.* at 257. Thus, a waiver is rendered invalid when the court says to a defendant that "when you plead guilty you waive your right of appeal." *Id.*

Here, the court made an equivalent statement which characterized the appeal waiver as part of the guilty plea. The trial court conflated the rights of trial and of appeal when it stated that "*by pleading guilty*, you are also giving up any right you may have to appeal this case." P. 9. (emphasis added). This conveyed the impression that Mr. Rodriguez's waiver of his trial rights "by pleading guilty" automatically included a waiver of the right to appeal, when it does not. A defendant cannot waive their right of appeal by pleading guilty.

Although the trial court stated that the right of appeal is "separate and distinct," the court then further obscured this fact by

switching back and forth between its explanation of the consequences of the guilty plea and the waiver of the right of appeal. P. 9. The court has a duty to “describe the nature of the right being waived without lumping that right into the panoply of trial rights automatically forfeited upon pleading guilty.” *Lopez*, 6 N.Y.3d at 257. The court thereby undermined its statement that the right of appeal was separate and distinct by making it appear to Mr. Rodriguez as though he was giving up that right in the singular action of pleading guilty. Prior to explaining the appeal waiver, the court began by stating that by pleading guilty, Mr. Rodriguez was giving up his trial rights. P. 8. The court then stated “by pleading guilty,” Mr. Rodriguez was giving up his right to appeal. P. 8-9. But then the court returned to the guilty plea, and asked Mr. Rodriguez whether he understood that he would be admitting the underlying facts of the charges, P. 9-10 – a necessary element of the guilty plea. By “lumping [the] right [of appeal] into the panoply of trial rights automatically forfeited upon pleading guilty,” *Lopez*, 6 N.Y.3d at 257, this further gave the impression that a waiver of appeal was merely another element of the guilty plea.

The court's perfunctory statement that the right of appeal was separate and distinct was overridden by the conflicting impressions given by the court's manner of conducting the allocution and the court's phrasing that Mr. Rodriguez waived the right to appeal "by pleading guilty." *See People v. Smith*, 56 A.D.3d 1336, 1336 (4th Dep't 2017) (relying on *Lopez*, waiver of appeal invalid where the court stated that waiver was a "condition" of the guilty plea, which "was immediately preceded by a colloquy concerning the rights automatically forfeited by a guilty plea"). As a result, this Court "cannot be certain that the defendant comprehended the nature of the waiver of appellate rights." *Lopez*, 6 N.Y.3d at 256. The appeal waiver is therefore invalid. *Id.*

The court also failed to explain that some claims survive a waiver of appeal. "Because only a few reviewable issues survive a valid appeal waiver, it is all the more important for trial courts to ensure that defendants understand what they are surrendering when they waive the right to appeal," and to ensure that such understanding "is evident on the face of the record." *Lopez*, 6 N.Y.3d at 256. The claims that survive a waiver include, among other things, challenges to the legality of the sentence, a constitutional speedy trial claim, or challenges to

competency to stand trial. *Id.* at 255. The use of language that misleads the defendant into believing that all rights of appeal are waived, when in fact some rights survive, renders an appeal waiver invalid. *People v. Santiago*, 119 A.D.3d 484, 485-86 (1st Dep’t 2014) (waiver rendered invalid where language in written waiver indicated that all appellate review would be foreclosed).

Here, the judge said that the waiver would mean “that this case will not be heard by any higher Court.” P. 9. The court also said that Mr. Rodriguez would be “giving up any right [he] may have to appeal this case.” P. 9. This language renders the appeal waiver invalid because the court’s characterization of the waiver of appeal was absolute, misleading Mr. Rodriguez into believing that it foreclosed any possibility of appeal. *Santiago*, 119 A.D.3d at 485-86.

Lastly, although Mr. Rodriguez signed a written waiver, it is well settled that “a written waiver signed by [the] defendant [is] no substitute for an on-the-record explanation of the nature of the right to appeal.” *People v. Ramos*, 122 A.D.3d 462, 464 (1st Dep’t 2014) (waiver invalid where defendant signed written waiver but court failed to adequately explain the rights the defendant would be waiving or that

the right to appeal was separate and distinct from the rights automatically forfeited upon a plea of guilty). Since a written waiver cannot cure the court's errors in conflating the guilty plea with the appeal waiver, and its mischaracterization of the nature of the waiver, the appeal waiver remains invalid and unenforceable. *Id.*

CONCLUSION

For the foregoing reasons, this Court should reduce Mr. Rodriguez's sentence to a term of incarceration closer to the minimum term of three and one-half years.

Dated: New York, New York
 June 12, 2018

Christina Swarns, Esq.
Attorney for Defendant-Appellant

Eunice C. Lee, Esq.
Supervising Attorney

by: _____
David Billingsley, Esq.
Staff Attorney
dbillingsley@appellatedefender.org

Office of the Appellate Defender
11 Park Place, Suite 1601
New York, New York 10007
212.402.4100

ADDENDA

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

The People of the State of New York,
Respondent,

— against —

Hugo Rodriguez,
Defendant-Appellant.

Ind. No. 821-2015

Statement Pursuant to Rule 5531

1. The indictment number in the court below was 821-2015.
2. The full names of the original parties were “The People of the State of New York” against “Hugo Rodriguez” and “Joshua Monsanto.”
3. This action was commenced in Supreme Court, New York County.
4. This action was commenced by the filing of an indictment.
5. This is an appeal from a judgment rendered on August 5, 2016, by Supreme Court, New York County. Hugo Rodriguez was convicted after a guilty plea of one count of attempted assault in the first degree, N.Y. Penal Law § 110 & 120.10(1), and one count of criminal possession of a weapon in the second degree, N.Y. Penal Law § 265.03(1)(b). Mr. Rodriguez received six and one half years’ imprisonment and five years’ post-release supervision on both charges, to run concurrently. Justice Robert Stolz presided over the plea and sentencing.
6. Mr. Rodriguez 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,
Respondent,

— against —

Hugo Rodriguez,
Defendant-Appellant.

Ind. No. 821-2015

Printing Specification Statement

1. The following statement is made in accordance with First Department Rule 600.10.
2. Mr. Rodriguez'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 3,251, as calculated by the processing system and is 19 pages.