

Commutation

ESTEBAN NUNEZ, AE-1200

On October 4, 2008, Esteban Nunez and Ryan Jett fought with Luis Dos Santos and several others near San Diego State University. During the fight, Jett stabbed Santos to death with a knife. Nunez did not kill Santos. Both Jett and Nunez entered a plea agreement and were convicted for voluntary manslaughter and sentenced to the maximum term in State prison. Santos's death is tragic, and I do not discount the gravity of the offense. But given Nunez's limited role in Santos's death, and considering that, unlike Jett, Nunez had no criminal record prior to this offense, I believe Nunez's sentence is excessive. Accordingly, I commute Nunez's sentence to the lower term for the crimes for which he was convicted: seven years in State prison.

According to the probation report, around the time of the offense, Nunez, Jett, Rafael Garcia, and Leshanor Thomas drank alcohol and went to a college fraternity party. They were not admitted to the party, and they left. They drank some more, and they talked about fighting someone. At some point, Jett saw Santos and Brandon Scheerer on the university campus. Jett yelled at them and threw up his hands. Led by Jett, they confronted Santos and Scheerer. Santos and Scheerer ran off in opposite directions. Santos met up with Keith Robertson, Evan Henderson, and another person named Jason. Santos was panicked, and he said that they were "about to be jumped by four or five guys." Santos, Robertson, Henderson, and Jason walked down a street to find Scheerer. At that time, Jett confronted Santos, and a fight broke out between the two groups. Both groups had been drinking throughout the evening. The fight occurred sometime after 2:00 a.m. and lasted between 30 and 45 seconds.

Not surprisingly, there are different versions of the fight. However, the following key facts are not in dispute: During the fight, Jett stabbed Santos once through the chest, severing his heart. Robertson and Henderson were also stabbed. According to Nunez's sentencing brief, Nunez admitted he stabbed Henderson in the stomach. Scheerer also joined the fight, and Thomas punched him in the eye.

Jett, Nunez, Garcia, and Thomas left the scene. Thomas drove the group to Sacramento. Once there, they went to the Sacramento River, burned their clothes, and threw their knives in the river.

Nunez was 19 years old at the time of the offense, and he had no previous criminal record. He subsequently pled guilty to voluntary manslaughter with the use of a knife. He also pled guilty to assaulting Henderson and Robertson with a deadly weapon, and he admitted that he inflicted great bodily injury on Henderson and Robertson. Nunez was sentenced to an aggregate term of 16 years in state prison. The court imposed the maximum 11-year sentence for voluntary manslaughter, plus one year for using a knife. The court also sentenced Nunez to one year for assaulting Henderson with a deadly weapon, plus one year for inflicting great bodily injury. Similarly, the court sentenced Nunez to one year for assaulting Robertson with a deadly weapon, plus one year for inflicting great bodily injury.

Having been once convicted of a felony, Nunez applied for a commutation of his sentence on the ground that his sentence is disproportionate in comparison to Jett's sentence.

Like Nunez, Jett also pled guilty to voluntary manslaughter with the use of a knife and two counts of assault with a deadly weapon, each enhanced for inflicting great bodily injury. And like Nunez, Jett was sentenced to 16 years in state prison. He too received the maximum 11-year term for voluntary manslaughter.

But at Jett's sentencing hearing, the court told Jett, "I believe a fair reading of the evidence, including logical inferences from the circumstantial evidence, is that you were the person that actually caused the death of Mr. Dos Santos by inflicting the knife wound to his chest area." The court also said that Jett "killed Luis Dos Santos. He severed his heart. He cut through the ribs." In addition, Jett was identified as occupying a position of leadership in the offense. "I believe," the court said, "that the best evidence is that you were the person who started the confrontation, if you will, and confronted Mr. Santos."

On the other hand, the court acknowledged at Nunez's sentencing hearing that Nunez, "pled to aiding and abetting" in the death of Santos. He was not the actual killer. But despite the evidence that Jett was a leader and instigator in the offense, and that he stabbed and killed Santos, the court sentenced Nunez to the same maximum prison sentence as Jett.

Moreover, Nunez and Jett had very different criminal backgrounds, and this fact deserved greater weight at Nunez's sentencing. This offense was Nunez's first, and he had no prior criminal record. In contrast, the court told Jett at his sentencing hearing, "Your convictions as an adult are numerous and in increasing seriousness." The court also noted that Jett was on probation at the time of the offense, and that he had been given chances on probation and to rehabilitate himself. But, the court indicated, his performance, "quite frankly, is a dismal failure." Considering Nunez's limited role in the killing and his clean prior criminal record, I believe his sentence is disproportionate in comparison to Jett's. The lower terms for voluntary manslaughter (three years) and assault with a deadly weapon (two years each) would be more appropriate in light of these differences.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, hereby commute Esteban Nunez's 16-year sentence to seven years in State prison.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 31st day of December, 2010.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:

DEBRA BOWEN
Secretary of State