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AG Balderas Announces Twice-Convicted Child Rapist Sentenced to 30 Years in Prison

Solorzano absconded from Nevada where he was a registered sex offender

Gallup, NM - Attorney General Hector Balderas announced today that Barion Ernesto Solorzano was sentenced in the 11th District Judicial Court to 30 years in prison by Judge Louis E. DePauli for unfathomable sexual offenses against children. In August of 2016, Solorzano plead guilty to one count of criminal sexual contact of a minor in the second degree, two counts of criminal sexual contact of a minor in the third degree, one count of sexual exploitation of children by production, and one count of sexual exploitation of children by manufacture. The defendant also had a prior conviction for attempted lewdness with a minor in Clark County, Nevada.

“We are working together to protect children and families in all communities throughout New Mexico, which is my highest priority as attorney general,” said Attorney General Balderas. “I am thankful that a man who has committed horrific crimes against children in two states will go to prison for 30 years.”

In December of 2014, a six-year-old girl disclosed that her “Uncle Barion,” the defendant, had sexually molested her, including taking inappropriate photographs of her, and showing her videos of him sexually assaulting other children. After further investigation, it was revealed that Solorzano was a registered sex offender in the State of Nevada, and left Nevada without permission. He had since been residing in the State of New Mexico, where he had failed to disclose his sex offender status.

This case was prosecuted by Assistant Attorney General Tony Long.

See attached for a photo of Barion Solorzano and a copy of the sentencing memo which contains more information about the offenses in New Mexico and Nevada.

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DISTRICT COURT
MCKINLEY COUNTY NM
FILED

2017 FEB -8 AM 9: 52

**ELEVENTH JUDICIAL DISTRICT
COUNTY OF MCKINLEY
STATE OF NEW MEXICO**

STATE OF NEW MEXICO,

Plaintiff,

vs.

**No. D-1113-CR-2015-00042
Judge: Louis E. DePauli, Jr.**

**BARION ERNESTO SOLORZANO,
DOB: 12/11/1983
SSN: 571-77-3397**

Defendant.

STATE OF NEW MEXICO'S SENTENCING MEMORANDUM

COMES NOW, the State of New Mexico, through Assistant Attorney General Anthony W. Long, and hereby submits its sentencing memorandum for the sentencing of the defendant, Barion Ernesto Solorzano.

CONVICTIONS

The defendant was arrested on January 29, 2015. At the time of his arrest, he was initially charged with three (3) counts of Criminal Sexual Penetration of a Minor and one (1) count of Failure to Register as a Sex Offender. The defendant was charged in Magistrate Court on February 3, 2015, and waived his right to a preliminary hearing on February 18, 2015. The case was bound over to District Court on February 27, 2015. On July 10, 2015, an amended criminal information was filed charging the defendant with twelve (12) counts of Sexual

Exploitation of Children by Production (Child Under 13), twelve (12) counts of Sexual Exploitation of Children by Manufacture, and one (1) count of Sexual Exploitation of Children by Possession. A preliminary hearing was held on those additional charges on September 29, 2015 and the Court found probable cause and bound the charges over. On August 29, 2016, the defendant and the State of New Mexico entered into a plea agreement. The defendant pled guilty to one (1) count of Criminal Sexual Contact of a Minor (Child Under 13) in the second degree, two (2) counts of Criminal Sexual Contact of a Minor (Child Under 13) in the third degree, one (1) count of Sexual Exploitation of Children by Production (Child Under 13), and one (1) count of Sexual Exploitation of Children by Manufacture. The defendant admitted one (1) prior felony conviction for Attempt Lewdness with a Minor Under the Age of 14 (Category B Felony) out of Clark County, Nevada. Under the terms of the plea agreement, all counts will run consecutive for a total jurisdiction of forty-five (45) years. The parties agree that the sentences for all Criminal Sexual Contact of a Minor charges shall be served first. These offenses are Serious Violent Offenses as well as Sex Offenses Against a Child. The parties also agree that the defendant shall serve a minimum of fifteen (15) years incarceration with the possibility of up to thirty-five (35) years incarceration at initial sentencing. When the defendant is released from prison, he will be on supervised probation for a minimum of five (5) years and up to twenty (20) years. The defendant will also be placed on sex offender parole for a minimum of (5) years and up to the remainder of his life.

FACTUAL BACKGROUND

On or about December 23, 2014, K.T., a minor child, disclosed that her Uncle Barion had been touching her in her "private parts" and that when he did he would tell her that she has "a

nice pussy". K.T. had just turned six (6) years old a few months before the disclosure. A forensic interview of K.T. was scheduled and took place on January 16, 2015. In that interview, the six (6) year old disclosed that the defendant had touched his penis to her vagina, the defendant had penetrated her vagina with some device that shakes and is kept in his closet, the defendant had forced K.T. to touch her own vaginal area with her hands being guided by the defendant, the defendant had taken photographs of her vaginal area and "sends it to somebody who likes privates", and that the defendant had shown her videos of himself sexually assaulting other children.

Further investigation uncovered that the defendant was a registered sex offender out of the State of Nevada. That he had been residing in New Mexico, had not informed the State of New Mexico that he was a registered sex offender and living in the State, and had not asked for permission to leave the State of Nevada. Therefore he was considered an absconder and an extraditable warrant was issued for his arrest on January 26, 2015.

On January 29, 2015, a search warrant was executed at the residence where the defendant was living. A number of cell phones and one desktop computer were seized pursuant to the search warrant. An on-site preview of the defendant's cell phone uncovered child exploitation images on that cell phone. A full forensic examination of the defendant's computer revealed child exploitation images of K.T. as well as other images and videos of children's exposed genitals, sexual assaults, and physical abuse. The forensic analysis of the defendant's computer revealed the make and model of the cell phone that took the photographs of the sexual assault of K.T., the date and exact time of the assaults, as well as the date the images were copied to the defendant's computer.

SENTENCING

The defendant was charged by criminal information and pled guilty to one (1) count of Criminal Sexual Contact of a Minor in the second degree, pursuant to NMSA § 30-9-13(B)(1), two (2) counts of Criminal Sexual Contact of a Minor in the third degree, pursuant to NMSA § 30-9-13(C)(1), one (1) count of Sexual Exploitation of Children by Production (Child Under 13), pursuant to NMSA § 30-6A-3(C), and one (1) count of Sexual Exploitation of Children by Manufacture, pursuant to NMSA § 30-6A-3(D), and the Court is now permitted to sentence the defendant pursuant to NMSA § 30-1-11. The State of New Mexico respectfully requests the Court sentence the defendant in accordance with the Sentencing Authority granted to it under NMSA § 31-18-15. The Court has the authority to sentence the defendant to a basic period of imprisonment of three (3) to fifteen (15) years incarceration for each sex offense against a child in the second degree, zero (0) to six (6) years incarceration for each sex offense against a child in the third degree, and zero (0) to nine (9) years for each second degree felony. The State of New Mexico did not and is not seeking an alteration of the basic sentence under NMSA §31-18-15.1, therefore the State requests that the Court enter a sentence under the basic guidelines.

ARGUMENT

Factors Weighing Against Lenience

The Images and Videos of the Sexual Exploitation of Children

The forensic examination of the defendant's computer revealed two videos of child exploitation. One video is "+-33333333333" and begins with a toddler, presumed to be between

12-24 months old playing with a teenage female that is presumed to be between 12-14 years old based on her breasts and pubic development. The teenage female is wearing a mask similar to those used in mardi gras. One of the first things that the viewer notices is that there are two cameras in the room and both are visible in the video. The main camera is obviously being held by a person that is walking around the room and focusing on different angles. The second camera is fixed to the ceiling of the room and is focused directly on the bed.

The video is nine minutes and nine seconds (9:09) in length. It starts off with the teenager playing with the toddler. The teenager is using her legs to lift the toddler up into the air. At 1:41, the teenager removes the toddler's pink dress and diaper. At 2:10, the teenager gets completely naked. At 2:46, the teenager forces the toddler to touch her breasts and forces the toddler's mouth onto her right breasts. The toddler is crying so heavily that at one point the teenager grabs the toddler's dress and uses it to wipe the tears and mucus from the child's face. At 3:46, the teenager forces the toddler to rub the teenager's vagina. When the toddler pulls away, the teenager very forcefully pulls the toddler's head onto her vagina and forces the toddler's mouth to her vagina. At 4:30, the camera moves to behind the toddler and focuses on her vagina. The toddler's head can be seen as it is forced back and forth onto the teenager's vagina. At 4:45, the toddler is very forcefully thrown onto her back, the teenager spreads the toddler's legs and slaps the toddler's vagina. At 4:50, the teenager spreads the toddler's vagina open and the camera zooms in. At 5:00, the teenager inserts her finger into the toddler's vagina. Between 5:10 and 6:05, the teenager slaps the toddler's vagina and buttocks a total of twenty-five (25) times and begins to pinch the toddler's nipples. At 6:10, the teenager pulls the toddler up from her back, the teenager lays down on the bed and forces the toddler's hand onto the teenager's vagina. At 6:30, the toddler's hand that was being forced onto the teenager's vagina

is now forced into the toddler's mouth. At 7:35, while one of the toddler's fingers is being forced in and out of the teenager's vagina, the teenager forcibly slaps the toddler's face and kicks the toddler in the head. At 8:00, while the finger that was in the teenager's vagina is being forced into the toddler's mouth, the teenager hits the toddler in the head so hard that the toddler falls back onto the bed. At 8:45, the teenager wipes the tears and mucus away from the toddler's face again. The teenager opens her arms and the toddler begins to hug the teenager. It is extremely important to note that at this moment the toddler stops crying. The toddler has been crying since 1:41 and has remained crying for the entirety of the sexual and physical abuse. At 8:50, the teenager slaps the buttocks of the toddler and the toddler starts to cry again. At 9:02 the teenager waves and says goodbye to the camera and forces the toddler to do the same.

The State of New Mexico's point in this detailed description of this video is to point out to the Court that this was a video that the defendant likely downloaded from the internet. It documents the sexual abuse of two children. It is clear that the teenager has received instruction and the camera person is filming her being exploited also. But what is more alarming is the physical abuse of a toddler who cannot even express herself by words, only tears. This type of sexual exploitation that is coupled with physical abuse is extremely alarming. What the State is asking the Court to remember is that most individuals see that video and become nauseous. The video would likely haunt them for the remainder of their life. However, the defendant has a completely different reaction to this video. The defendant is sexually aroused by this video so much that he felt the need to preserve it and save it to his computer. This defendant is sexually aroused by the rape and torture of children. This defendant is a danger to society and warrants the maximum sentence under the plea and disposition.

The Defendant's Passing of a Sexually Transmitted Disease to a Six Year Old

On or about April 10, 2016, K.T. was examined by Rene Ornelas, M.D. at Para Los Ninos, a division of the University of New Mexico Children's Hospital. K.T. disclosed much of the same information that she disclosed in her forensic interview. Based on the disclosures, the defendant's methamphetamine use, and history of incarceration, Dr. Ornelas tested K.T. for a battery of sexually transmitted diseases. K.T. was diagnosed with having chlamydia in two locations on her body, her vagina and anus. A few weeks later, Chief Investigator Merle Bates with the McKinley County Sheriff's Office requested a search warrant for the defendant's blood to see if he would also test positive for chlamydia. Based on the probable cause that was set forth in the affidavit, the search warrant was signed and executed. The defendant also tested positive for chlamydia.

The Defendant's Prior Criminal Record for Sexual Crimes Against Children

On or about June 26, 2004, in Las Vegas, Nevada, a ten (10) year old child who shall be referred to as K.C. reported to her mother that the defendant had repeatedly sexually assaulted her. K.C. went with her cousin's boyfriend, Barion Solorzano, swimming at his sister's pool. After she had spent the day swimming, the defendant and K.C. were waiting for the bus. At this point, the defendant forced his hand down K.C.'s shorts and began to rub her vagina. During the assault, the defendant exposed his penis and began to masturbate. This assault stopped when the bus arrived to take them back to K.C.'s apartment complex.

Once the defendant and K.C. arrived at her apartment complex, the defendant forced K.C. to a dumpster behind the apartment complex where he digitally penetrated her vagina and anus. Again, the defendant exposed his penis and masturbated while he was raping the ten (10) year

old child. K.C. was eventually able to run away and tell her mother. The defendant ran away from the scene of the assault. The defendant was charged for the assaults by way of criminal information. On or about August 17, 2004, the defendant pled guilty to ATTEMPT LEWDNESS WITH A MINOR UNDER THE AGE OF 14 (Category B Felony – NRS 193.330, 201.230). This crime is similar to New Mexico's CRIMINAL SEXUAL CONTACT OF A MINOR. It is extremely important that this Court understand that the defendant is thirty-three (33) years old and in that very short life, he has already acquired two (2) separate convictions for sexually assaulting children. The State of New Mexico hopes this Court understands that a maximum incarceration sentence is the only way to protect future children from the defendant's sexually predatory actions.

The Sixty (60) day Diagnostic Evaluation

The diagnostic evaluation and report that was prepared by Ryan Deleware gives a very bleak outlook into the defendant's mental state, chances for rehabilitation upon release, and recidivism. The defendant's current DSM-5 diagnosis are as follows: Pedophilic Disorder, Child Sexual Abuse, Posttraumatic Stress Disorder, Schizoaffective Disorder, Severe Methamphetamine Use Disorder, Severe Alcohol Use Disorder, Features of Borderline Personality Disorder, and a Personal history of sexual abuse in childhood. To summarize these diagnoses, the defendant is sexually attracted to children, he rapes children, he hears voices in his head and hallucinates, he is an alcoholic, and a drug addict.

The State of New Mexico has seen what this defendant is capable of. He rapes a child, does a prison sentence, is released onto supervision, absconds from supervision, flees the jurisdiction, and rapes another child. The only prison sentence that can ensure the safety of the

community is the lengthiest. It is obvious that when the defendant is released from prison, he is going to rape another child. This Court is allowed to consider the safety of the public in its sentencing of the defendant and it is obvious that the defendant is a danger to the public, specifically children.

The Defendant's Conduct While on Supervision

On August 17, 2004, the defendant pled guilty to Attempted Lewdness with a Minor and was sentenced to incarceration. On November 23, 2004, he was sentenced to ten (10) years of incarceration. He was released from prison to lifetime supervision on December 21, 2010. He did not report to his probation officer in June 2012, July 2012, September 2012, and October 2012. The defendant was cited for Larceny on August 23, 2012. On August 29, 2012, the defendant tested positive for methamphetamine. On November 3, 2012, the defendant was arrested on a Failure to Appear bench warrant. On November 19, 2012, the defendant registered his address at Catholic Charities in Nevada. On or about December 11, 2012, the defendant was officially labeled an absconder. Clearly, the defendant did not comply with the Court's order of supervision. The defendant completely failed to comply and instead absconded to New Mexico where he reoffended by raping a six (6) year old little girl and memorializing the rape by taking pictures of it using his cell phone.

Notably, prison serves as a small, if even present, deterrent to this type of offender. Clearly, if the defendant can rape a child, serve an almost ten (10) year prison sentence, get out of prison and within a few years rape another child, incarceration serves no deterrent effect on this defendant. Therefore, the Court should sentence the defendant to the maximum incarceration in order to prevent more children from being raped by the defendant.

The Sheer Volume of Child Rape Narratives

The forensic analysis of the defendant's computer revealed over three thousand (3,000) narratives about child rape. These narratives are coded by various categories. Some of these categories include incest, dad and daughter, 6 year old girl, male + male + female child. Most of the narratives contain a summary at the beginning. Below is a sample of a few of those summaries:

- A 41 year old man meets an attractive and desirable young mother who seems insatiable and unorthodox when it comes to sex. But when she offers him her four year-old daughter, he begins to learn she is much more than she appeared and has more up her sleeve than she lets on. A story with a plot!
- This is the part where I say that this is all just made up and you shouldn't fuck a little baby slut. OK, there, I said it.
- Story_intro: 15 year old Johnnie is pleasantly shocked to discover his 9 year old cousin Katie wants to be his slave, and already knows a little something about sexual servitude, too. He's even more shocked to find out his mom wants in on the whole thing, also.
- story_intro: ...As the months passed quickly and Kayla grew up, Robert was there as she took her first steps, her first words and her first 'special' touches. At two years old Kayla began to touch herself in her diaper, always trying to take it off or cramming her hand down the front of it to get at her puffy little toddler slit...

It is clear from these stories that the readers and the writers view children as sexual objects. It is completely unfathomable that someone could even think about an infant in a sexual manner, much less refer to them as a "slut". The defendant had over three-thousand (3,000) of

these stories on his computer. It is abundantly clear from these narratives, the images and videos of child exploitation on his computer, and his repeated sexual assaults on children that he is a true child predator that thinks that these children are sexual objects and that it is acceptable to use them for his own sexual arousal.

The Defendant's Prior History of Counseling and Medication

When the defendant was released from prison in Nevada, he maintained his medication intake and started to attend sex offender specific counseling. In his interview with the diagnostic evaluator from the New Mexico Department of Corrections, the defendant admitted that he only attended about three (3) months of sex offender treatment. He also admitted that he stopped taking his medications when he "went on the run". The defendant's timeline of ceasing to attend sex offender treatment, ceasing to take his medications, and going "on the run" all correspond to the defendant being released from prison in Nevada, violating the terms of his supervision, absconding from supervision, fleeing to New Mexico, and sexually assaulting and memorializing the sexual assault of a six (6) year old girl.

Based on the defendant's past conduct of raping a child, serving a sentence, and absconding to again rape another child, the State concludes that the defendant must serve a maximum incarceration sentence in order for society, specifically children, to be protected. When left to his own devices, the defendant will decline employment, decline sex offender treatment, abscond from his supervision, and repeat his sexual predatory behavior on a new child.

The Defendant's History of Refusing to Obey Court Orders

Many of the State's prior assertions are all based at a basic level on the defendant's inability to follow a Court order. One of the factor's that Court's often consider when sentencing a defendant is the defendant's prior conduct under supervision. The defendant in this case appeared to do fine on supervision for approximately seventeen (17) months after his release from prison. After seventeen (17) months, the defendant failed urinalysis, committed new crimes, failed to report, absconds completely from supervision, rapes a six (6) year old girl, and records the rape on his cell phone. It is safe to say that the defendant's conduct under supervision is abysmal and the only way to ensure that the defendant does not sexually assault more children is to limit his access to children by making sure that he is only surrounded by adults in a prison facility. The defendant warrant's the maximum prison sentence under the plea and disposition.

Fines

Pursuant to NMSA § 31-18-15(E), in addition to a basic sentence of imprisonment for the defendant the Court may impose fines not to exceed twelve thousand five hundred dollars (\$12,500) for a sex offense against a child in the second degree, five thousand dollars (\$5,000) for a sex offense against a child in the third degree, and ten thousand dollars (\$10,000) for a second degree felony. In this case, the defendant has pled guilty to one (1) sex offense against a child in the second degree, two (2) sex offenses against a child in the third degree, and two (2) second degree felonies, therefore, the total fines the defendant should pay is forty two thousand five hundred dollars (\$42,500).

Fees

The State asks the Court to impose the standard fees which are enumerated in NMSA §31-20-6(E).

CONCLUSION AND RECOMMENDATION

The sentence imposed should reflect the seriousness of the offense, promote respect for the law, provide just punishment, adequate deterrence, and protect the public. In this case, the defendant is a repeat child rapist. From what the State of New Mexico knows, he has sexually assaulted at least two (2) children. In the defendant's first case out of Las Vegas, Nevada, the defendant repeatedly raped a child and was eventually sentenced to prison with lifetime supervision upon his release. When the defendant was finally released from prison, he refused to comply with the Court's orders regarding his conditions of supervision. The defendant absconded to New Mexico where he raped K.T., passed along chlamydia to her, and preserved the sexual assaults with a cell phone. Based on the aforementioned and the seriousness of the offenses, the State of New Mexico is requesting that pursuant to the plea agreement, the Court run all counts consecutive to each other for a total jurisdiction of forty-five (45) years. Pursuant to the plea agreement, the parties have agreed that the defendant will serve a minimum of fifteen (15) years imprisonment and up to thirty-five (35) years imprisonment at initial sentencing. Based on the agreement between the parties, the State of New Mexico request that the Court impose a sentence of forty five (45) years incarceration with ten (10) years suspended on the condition of intensive sex offender probation. The State further request the following sentencing structure:

1. **Criminal Sexual Contact of a Minor (Child Under 13) in the second degree**, a term of fifteen (15) years incarceration with no part of it suspended, this sentence shall be served first;
2. **Criminal Sexual Contact of a Minor (Child Under 13) in the third degree**, a term of six (6) years incarceration with no part of it suspended, this sentence shall be served second;
3. **Criminal Sexual Contact of a Minor (Child Under 13) in the third degree**, a term of six (6) years incarceration with no part of it suspended, this sentence shall be served third;
4. **Sexual Exploitation of Children by Production (Child Under 13)**, a term of nine (9) years incarceration with one (1) year suspended, this sentence shall be served fourth;
5. **Sexual Exploitation of Children by Manufacture**, a term of nine (9) years incarceration with nine (9) years suspended, this sentence shall be served last.

The defendant shall be subject to five to twenty (5-20) years on sex offender probation, NMSA § 31-20-5.2. The defendant shall be subject to five to life (5-life) years on parole, NMSA § 31-21-10.1(A)(2). The defendant shall also be required to register as a sex offender for the entirety of his life, NMSA § 29-11A-5(D)(3).

Respectfully Submitted,
HECTOR BALDERAS
Attorney General

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CERTIFICATION

This will certify that on the 8th day of February, 2017, a copy of the foregoing was mailed/emailed/faxed to counsel for defendant.


Anthony W. Long
Assistant Attorney General