

The Superior Court of Arizona in Maricopa County – Adult Probation Department
Chief Probation Officer Barbara A. Broderick

PRESENTENCE INVESTIGATION

State of Arizona v. David Ryan Drake, CR2006-131923-001-DT

FILED
2-23-2007 11420
MICHAEL K. JEANES, Clerk
DMOON
Deputy

Superior Court Criminal Division H

Sentencing Date: February 23, 2007

Sentencing Judge: Cathy M. Holt

Prosecutor: Jon Eliason, DCA

PSI Officer: Donald J. Kaliski

Defense Counsel: Kristen M. Curry, PVT

Present Offense:

On January 17, 2007, a jury found David Drake guilty of manslaughter, a dangerous offense.

The following information is summarized from Maricopa County Sheriff's Office Departmental Report #06-093133:

On June 6, 2006, the defendant and eighteen-year old David Scarano were engaged in a physical altercation. While on the telephone with a 9-1-1 operator, Mr. Drake was overheard saying to the victim, "Come after me you half-spic mother fucker," "I'm about to stab this guy in self-defense, alright, and he's attacking me right now," and "Come after, Dave, I'll fucking stab you. I have the right." Moments later, the defendant stabbed Mr. Scarano in the stomach. The victim died several hours later at the hospital.

Victim's Statements:

John Scarano remarked that on the night of the present offense, he had told his son that David Drake was going to kill him. His son just laughed. John Scarano felt this way because he could see the calm, angry look in the eyes of Mr. Drake. The defendant had joined a Nazi Organization and had been accusing his son of having stolen the defendant's weapons, including a twelve-gauge shotgun. The present offense was a "set-up." Mr. Drake did not just stab his son; he thrust the knife upwards into his son's abdomen area, severing the lower aorta. The defendant has shown no remorse. John Scarano would rather himself serve five years imprisonment than have to bear this life sentence of having his son murdered. He grieves everyday for his son, and can only hope the Judge sentences Mr. Drake to the maximum sentence of twenty-one years to protect the community so that nobody may have to again grieve for someone because of the defendant's actions. John Scarano reportedly forwarded a letter to the Court and this officer. At the present time, the letter has not been received. He may like to address the Judge at the time of sentencing, depending on how he feels.

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Statements of Interested Parties:

According to information provided by the County Attorney, the crime carries a presumptive sentence of 10.5 years; a minimum sentence of 7 years (years if trial court makes exceptional circumstances finding); and a maximum sentence of 21 years (years if trial court makes exceptional circumstances finding.) Probation is not available. Restitution of economic loss to the victim is required. The maximum fine that can be imposed is \$150,000.00 plus an eighty percent surcharge. The defendant shall also be sentenced to serve a term of community supervision equal to one-seventh of the prison term to be served consecutively to the actual period of imprisonment. If the defendant fails to abide by the conditions of community supervision, the defendant can be required to serve the remaining term of community supervision in prison. Special conditions regarding the sentence imposed by statute (if any) are: DNA testing.

Deputy County Attorney Jon Eliason forwarded a presentence recommendation, which is attached for the Court's consideration. Additionally, Mr. Eliason indicated one of the defendant's first telephone calls while in jail was to attempt to contact the National Socialist Movement Commander in prison and that the defendant also telephone his brother and directed him to erase the defendant's computer account of Nationalist Socialist Movement data. Also, Mr. Drake has been studying Nordic Runes, which are common to the white supremacy practices. Mr. Eliason played for this officer audiotape recordings of two of the defendant's telephone conversations, in which Mr. Drake indicated, in effect, the following: on June 11, 2006 – Fuck Dave, he is not my friend. He jumped at me; and on June 20, 2006 – I can live with what I've done. Dave has nothing going for him. He would have been dead in two years anyway. The victim's family should apologize to me. Dave was a complete loser, who would have overdosed or committed suicide. Don't feel sorry for him.

Kristen M. Curry, the defendant's legal counsel, was unavailable and, as of this writing, has not responded to a telephone message regarding comments or recommendation for sentencing.

Maricopa County Sheriff's Office Investigator A. Armendariz was unavailable and, as of this writing, has not responded to a voicemail message regarding comments or recommendation for sentencing.

Commentary:

The defendant's information is as he presented it in the presentence interviews.

Mr. Drake remarked that he killed his friend, but his legal counsel advised him not to talk about it. However, Mr. Drake added that Dave, who was into drugs, attacked him, and the defendant was defending himself. Mr. Drake was surprised why Ricky had kept calling him that night, wanting to hangout, as it was late, and the defendant did not have a ride. Mr. Drake did not want to hangout with Dave, but he was doing it for Ricky. Also, the defendant thought Dave

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might have changed. However, Dave had such a bad attitude, he was “probably coming down from meth.” Mr. Drake feels the minimum sentence is appropriate because he honestly thought it was self-defense, and there are no aggravating circumstances. He was on the phone with police, and Dave was only stabbed once. The defendant did everything he could; there was nothing he could have done (different).

The defendant experienced a good childhood, as there was no drinking or drugs. His family had very few arguments and enjoyed camping and rafting trips. He participated in special education classes while in the ninth grade because he did not complete his homework. Mr. Drake graduated from an alternative high school in December of 2005. He consumed approximately three or four shots of alcohol, ranging from once every three or four days to once every two weeks. Alcohol helped him with his insomnia. The defendant had used heroin for a five or six-month period, with his last use occurring eight months prior to the present offense. He had previously used marijuana, cocaine, methamphetamine, and mushrooms. Mr. Drake has not participated in a drug treatment program and does not feel as though he needs it. He indicated jail has helped him and that he is a different, stronger person, who is his own counselor. His stated his friend died and that he has learned to stay away from people who used drugs like him. The defendant’s employment experience consists of working for Target for three or four weeks before he lost his job due to civil traffic problems. When this officer asked him about his reported affiliation with the National Socialist Movement, Mr. Drake indicated his legal counsel advised him not to talk about it. However, he added, “If it was before, then it is not now.”

Although Mr. Drake professed his actions were of a self-defensive nature, a jury rejected his claim. The defendant told police that he “could not think of one good reason, not even a small one” why the victim wanted to fight him. Perhaps, it had something to do with Mr. Scarano reportedly having stolen Mr. Drake’s twelve-gauge shotgun in April of 2006. Perhaps, the defendant’s wearing the official uniform of essentially a White Supremacy group and calling the victim a disparaging ethnic slur was some cause of their fighting. Immediately prior to the present offense, the victim was reportedly upset enough to step on the defendant’s Swastika armband, and this may have enraged Mr. Drake. In the defendant’s 9-1-1 telephone call, his first recorded words are “I’m a White man. . . came at me with a fucking gun.” Although one wonders what relevance his first statement was, the latter statement appears purely fabricated. The investigating officer concluded the defendant, who had a chance to walk-away from the conflict, appeared not scared but upset. Also, immediately proceeding the present offense, the defendant’s racially disparaging remarks are telling. Significantly, Mr. Scarano did not have a weapon that threatened Mr. Drake.

This officer does not believe the defendant intended to kill the victim, but one wonders if the situation was not calculated to some degree. Perhaps, the defendant’s protest to police that “it is not like you have to beat-up someone” to join the Nationalist Socialist Movement, which does not promote violence, may be in the Shakespearian sense, “too much.” One also wonders why then is Mr. Drake carrying a weapon on his uniform in the first place. The Deputy County Attorney noted the organization is notorious for orchestrating situations of having to self-defend

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against minorities. Interestingly, the defendant told police that he had been in communication with the leadership of the organization, who praised him, and he relayed knowledge of "Skinhead" organizations, in which one earns red shoelaces for drawing blood from an enemy. After learning that the victim died, Mr. Drake appears to accurately express to police that he could not look at himself in the mirror anymore, now that he knows he's "a killer."

The present offense is the defendant's first documented felony conviction. Although he may have been under duress at the time of the present offense, his actions transcended the proportionality of self-defense and escalated the conflict to a level of deadly force. Mr. Drake is relatively young, but so was Mr. Scarano. In the final analysis, the following factors for a term greater than the presumptive appear to outweigh and outnumber the aforementioned: the defendant threatened to inflict, and inflicted, serious physical injury to the victim; Mr. Drake's criminal actions caused incalculable emotional harm to Mr. Scarano's family; the defendant appears not only unsympathetic to the victim and the victim's family but also disrespectful; Mr. Drake does not appear to display remorse or see any problem with his criminal behavior; his sentencing should serve as a deterrent to others who commit similar crimes; and there appear other factors which the Court may deem as significant, such as the defendant's involvement with the Nationalist Socialist Movement, the uniform of which he was wearing when he repeatedly taunted Mr. Scarano and stated, "Come at me, you half-Spic mother fucker."

Recommendation:


Prison, greater than presumptive. Community supervision imposed. Pay: Reimbursement (\$100.00 for Attorney Fees). Time payment Fee (\$20.00). Pay probation surcharge (\$5.00).

Reviewed by:

Judge: _____

Date: _____

Respectfully submitted by:


Donald J. Kaliski, Adult Probation Officer
Cell (602) 619-5425/Office (602) 506-6125/
February 20, 2007
<mailto:dkaliski@apd.maricopa.gov>
Sally Maurizi, Supervisor
Cell (602) 619-2321/Office (602) 506-3580

Pre-sentence Recommendations for APO

DEFENDANT: David Drake

CR NUMBER: 2006-131923-001 DT

RECOMMENDATIONS: _The jury convicted the defendant of Manslaughter, a class 2 dangerous felony.

The State recommends that:

The defendant is sentenced to the Department of Corrections for a total of 16 years.

REASON FOR RECOMMENDATION:

- (1) The defendant stipulated to an aggravating factor-- emotional, and financial harm to the victim's family. The Scarano family is a large family and their young son, brother, and friend has been taken from them by the defendant. They are still suffering and likely will suffer for the rest of their lives. 13-702(C)(9)
- (2) The victim's parents and family are asking the court to consider the impact of losing their 18 year-old son and sentence the defendant to 21 years in the Department of Corrections. 13-702(C)(9)
- (3) The victims believe that the defendant is dangerous and do not want anyone else injured or killed by the defendant. There is evidence that supports their concerns on the defendant's jail calls.
- (4) The offense was racially motivated. The defendant is an admitted Nazi, member of the National Socialist Movement. The defendant was wearing his NSM uniform at the time he killed the victim. The NSM does not like non-whites like the victim, and these viewpoints should not be discarded by the court. The evidence indicates that the victim stepped on the defendant's swastika prior to the fight beginning. Moments before stabbing the victim the defendant tells the victim he is a "white man" and then showed his hatred to the victim's race (victim is part Mexican) by calling the victim a "mother-fucking half breed spic!"
- (5) NSM is notorious for putting its members in situations where they 'defend themselves' against minorities.
- (6) Contrary to some proffered testimony, the two were more former friends than current friends. In the defendant's jail calls he makes it clear that he didn't like the victim.
- (7) Implicit to the jury finding of guilt and dangerous is an additional aggravating factors. The offense involved the infliction or threatened infliction of serious physical injury and he used dealy weapons and dangerous instruments. The defendant threatened serious physical injury when he tried to kick the victim in the face with his steel-toed boots. He also threatened serious physical injury when he told the victim he would stab him with his combat knife when he knew the victim was unarmed. 13-702(C)(1)(2) See also, State v. Bly, 127 Ariz. 370 (1980).
- (8) Any consideration of the defendant's age as a mitigating factor must be weighed against the fact that the victim was also 18 when his life was taken away from him.
- (9) Any consideration of the defendant's mental state at the time of the crime must be weighed against the fact that the defendant had voluntarily ingested a half bottle of whiskey, 2 shots, and 3

Budweiser's prior to killing the victim.

(10) Society will be well served when those who kill are not treated lightly. The jury rejected any claim of self-defense, and it is clear that this defendant was deceitful in every account he gave about what happened when he killed David Scarano. For the reasons listed above the State requests the defendant be sentenced to the recommended term.

PLEA STIPULATIONS: None, this case went to trial.

ATTORNEY: Jon Eliason

PHONE NUMBER: 506-2640

2-14-07

Judge Cathy Holt

RE: CR2006131923001 DT

RE: David Ryan Drake

Convicted of manslaughter -

Your honor, I am respectfully requesting that you give David R. Drake the maximum 21 year sentenced allowed by law. For the murder of my son, David M. Scarano on 6-6-06.

My family and I are totally devastated and at a constant loss. It has taken a very heavy toll on my health, on Sophia's health, and on my children. It has broken my home and family apart. I am heart broken, there isn't one day I don't think about David or cry for him. I get nightmares and I can't sleep. I get mixed emotions that's unknown. David and I were very close. I love him very much. There's not a day that goes by that I don't shed a tear. I cannot put into words what I'm going through. It's like a twilight zone. I feel empty. One nightmare I had I saw David, what I can remember I said, "David let me hug you...let me hug you," and it faded away.

Your honor, I feel I have a lifetime and also my family. My grieving never stops. I don't know where it ends. Everyday it seems to get worse. I feel I don't know where to turn to. I can't really put it into words what I'm going through. It's a terrible scene what I'm going through and my family. Something we have to live through for the rest of our lives,

the sorrow and grief.

David was not a violent or bad person. He was a good son. He had a heart of gold. He would help his family and friends when they were short of money or when I needed help with chores. He would give his friends a shirt off his back or food or help them. The night before he got killed he said he was going to join the army to fight in Iraq.

It definitely was not self defense. He had planned and set David up that night so he could kill him. Because of his white supremacist beliefs, he's a very dangerous person. If he is set free to soon, he may do this to somebody else. Society needs to be protected from this dangerous individual. No other family should have to go through what we are going through. The pain, tears, and sadness for the rest of our lives.

David Drake has not shown any remorse or ever said he was sorry for what he did to my son David.

The next morning after David died, it was a quiet day and no wind. My neighbor saw a weird whirlwind and she said that was David saying goodbye.

Your Honor, thank you for taking this matter into consideration.



John Scarano & Family
7080 E. Calle De Las Estrellas
Scottsdale, Arizona 8526
480-488-2694

Swi-2/23

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814 W. Roosevelt Street
Phoenix, Arizona 85007
Tel. (602)258-1000
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COPY

FEB 20 2007



MICHAEL K. JONES, CLERK
H. SNEEDON
DEPUTY CLERK

Kristen Curry #015017
Attorney for Defendant

IN THE SUPERIOR COURT

MARICOPA COUNTY, STATE OF ARIZONA

STATE OF ARIZONA,

Plaintiff,

vs.

DAVID RYAN DRAKE,

Defendant,

No. CR2006-131923-001DT

DEFENDANT'S SENTENCING
MEMORANDUM

(Assigned to the Honorable Cathy Holt)

Defendant, David Drake, by and through undersigned counsel, hereby submits the following Sentencing Memorandum for the court's consideration:

I. CASE INFORMATION

David Drake was convicted after a jury trial for one count of Manslaughter, a Class 2, dangerous felony, for an incident which occurred on June 6, 2006. At the time of sentencing, Mr. Drake will have been in custody for 263 days.

II. STATE'S POSITION

The State has maintained a position throughout these proceedings that the incident on the night of June 6, 2006, occurred because of "malice" towards the victim's part-hispanic heritage. The problem with this position is that it is contradicted by the witnesses that were present on the night of the incident and/or by certain undisputed physical evidence. Evidence that contradicts this theory is as follows:

- 1) Mr. Drake and the victim were friends and had been for several years.
- 2) Ricky Botti, Julie Sutton and Chase Alvidrez were all asked in pretrial

1 interviews if they felt the incident had anything to do with racial issues or
2 political issues involving the NSM and they said "no." Furthermore, none of
3 these witnesses ever expressed to police a belief that these issues were a factor.

4 3) The victim attacked Mr. Drake first and escalated any argument into a physical
5 confrontation.

6 4) Witnesses claim that Mr. Drake tried to come into the casita, was saying "I
7 don't want to fight" and moving away from the victim who was continuing to
8 punch him. Blood spatters all around the scene are consistent with the
9 witnesses version of events.

10 5) The knife wound was a single stab (not multiple stab wounds) and, according
11 to Julie Sutton, was tentative in nature. The depth of the wound, around 4
12 inches and without a hilt mark, is consistent with a stabbing where little force
13 was used.

14 6) The steel-toed boots that the State alleges are "deadly weapons" were not used
15 as evidenced by Dr. Fishione's testimony that no bruising or marks were on the
16 victim's body.

17 7) Mr. Drake was not motivated to kill the victim because he stepped on his
18 armband and did not tell police that he was angered by it. His exact words to
19 police in describing the events were as follows:

20 "I was grabbing my stuff you know that I sat there and it
21 fell on the ground. He just put his foot on it like this and
22 I'm all 'get off my stuff,' you just - he was like that.
23 And I was like - and I then just backed up and that's
when he started swinging at me again, right when I went
down to go pick it up and I looked up and he just started
swingin' at me again."

24 8) Ricky Botti, Julie Sutton and Chase Alvidrez describe the victim as wanting
25 to go outside with Mr. Drake and telling everyone 'not to come out.'

1 **3) Defendant's lack of criminal record**

2 This is Mr. Drake's first felony charge. He has no prior juvenile record.

3 **4) Defendant is remorseful**

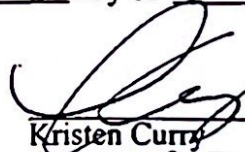
4 Despite Mr. Drake's position that he defended himself, he is extremely remorseful
5 about killing his friend. "Hindsight being 20/20," David constantly questions the events of
6 that evening and what he could have done differently. When he was told by the Detective
7 that the victim had died, Mr. Drake was crying and upset. He has expressed his remorse
8 numerous times to his family and undersigned counsel.

9 In addition to the above mitigating factors, Mr. Drake has substantial family support
10 and issues of ADHD and Asberger's Syndrome which should be considered. Letters
11 provided by Mr. Drake's parents, a doctor and nurse, outline Mr. Drake's history with these
12 issues as well as his family background. Additional family letters as well as letters from
13 friends and teachers are all attached hereto for the court's consideration.

14 **IV. SENTENCING RECOMMENDATION**

15 Based upon the foregoing information and the attachments to this Memorandum, the
16 mitigated term of 7 years is the appropriate sentence for Mr. Drake. It is respectfully
17 requested that the mitigated term be imposed.

18 RESPECTFULLY SUBMITTED this 20th day of February, 2007.

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21 Kristen Curry
22 Attorneys for Defendant
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1 Copy of the foregoing
2 delivered/mailed this 20th day
of February, 2007, to:

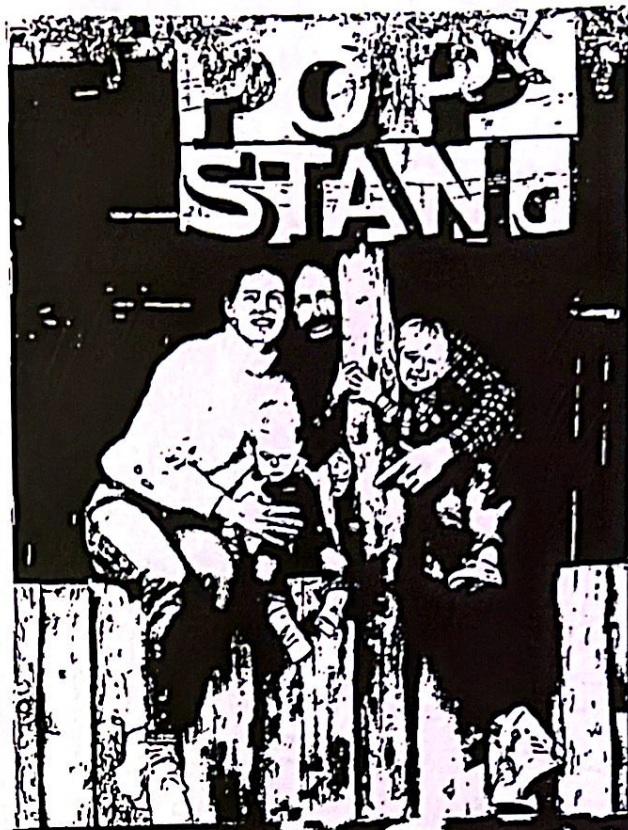
3 The Honorable Cathy Holt
4 Maricopa County Superior Court
5 201 W. Jefferson Street
6 Phoenix, AZ 85004

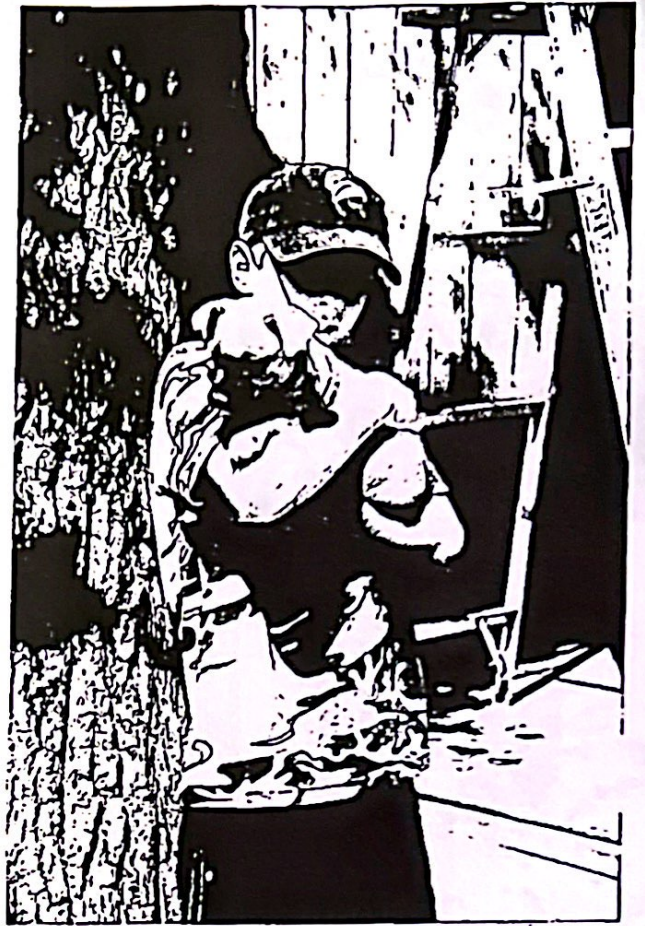
7 Jon Eliason
8 Maricopa County Attorney
9 301 W. Jefferson
10 Phoenix, AZ 85003

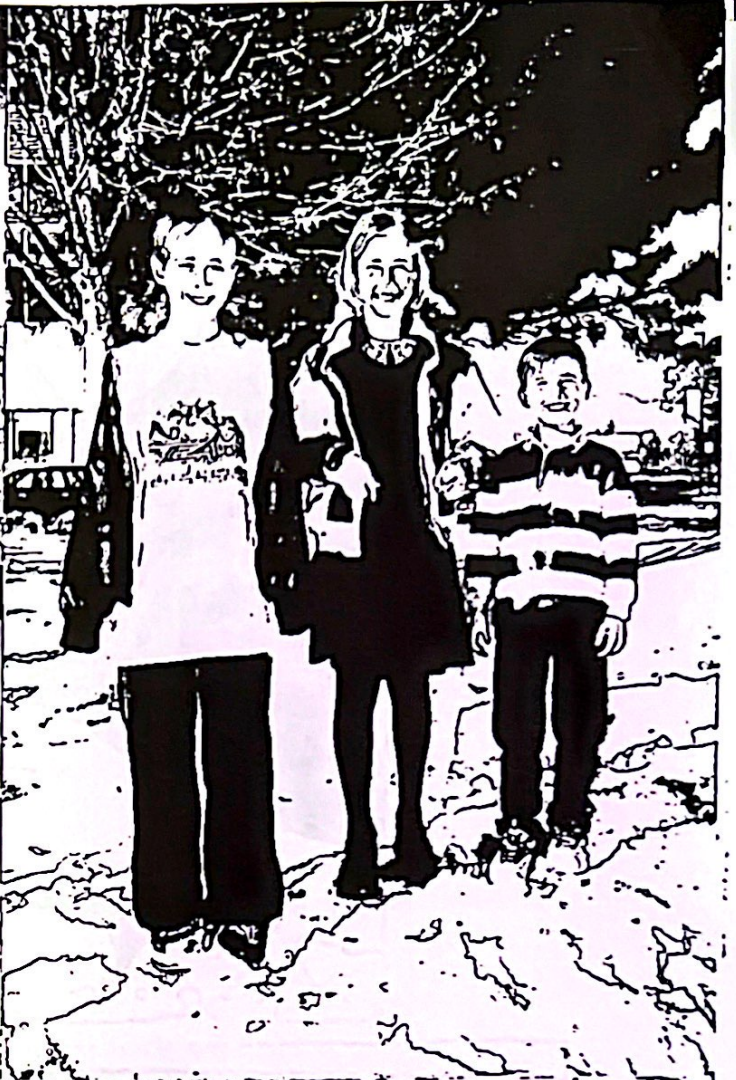
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Graduation!

Sharon Drake
4219 E. Montgomery Rd.
Cave Creek, Arizona 85331

February 10, 2007

Honorable Catherine M. Holt
Maricopa County Superior Court

Your Honor,

I am writing on behalf of my eldest son, David Drake, age 19. In January of 2007, he was convicted of manslaughter in the stabbing death of his friend, David Scarano.

It is my hope, as you contemplate his sentencing on February 23rd, that you consider the son of nineteen years that I have known and nurtured, rather than the defendant character that prosecutor Eliason portrayed during the trial, "David Ryan Drake vs. the State of Arizona".

My son entered this world, with the same burst of energy that he continues to exude, following an arduous three hour journey to the nearest hospital and a precipitous delivery with a nuchal cord around his neck. His early months of life were punctuated by regular hypoxic seizures and high fevers until he was six months of age. Though small in stature and slight of build, David regularly exhausted my husband and I with his endless curiosities, lack of fear and a deep desire to explore the world around him.

Following our marriage, my husband and I were employed as nurses by the Navajo Tribe and Indian Health Services for sixteen years. We were fortunate enough to live in a tight-knit community of friends who shared similar values, interests and experiences in northern Arizona. David's playground was an endless swath of remote and enchanting mesas, canyons and ubiquitous scrub and cedar. Summers were filled with community rafting trips, day hikes and the perpetual pot-luck gatherings of close friends. It was indeed a "village".

David entered the local public school with the same unfettered exuberance of his early years. At age six, due to an inability to focus and "stay-on-task", he was evaluated and diagnosed with ADHD. His ensuing years were fraught with a long continuum of counseling, medications and expanded diagnostic labels to include: oppositional defiant disorder, obsessive compulsive disorder, dysthymia, and, ultimately, a variant of high functioning autism known as Asperger's Syndrome. In essence, David did not have the usual social filters and rule's of interaction that most of his peers exhibited. This lack of social 'poise' often manifested itself as impulsive speech and caustic pestering behaviors with family and friends - all exacerbated by his poor ability to interpret and respond to

displayed human emotions. These often glaring deficits were juxtaposed to a deeply emotional, intelligent and passionate young man that strived to gain acceptance in his family, group of peers, and, ultimately his academic environment.

Following my acceptance to medical school, our family moved from the reservation to the city of Phoenix. Caught in a vicious cycle of misinterpreted behaviors, negative feedback and low self esteem, David began to discover solace in associating with similarly troubled adolescents several years after our move. These friendships included David Scarano and his brothers. My son often invited the Scarano brothers to the house, as did they of him. David enjoyed the described quirky interactions of the Scarano household and the fact that they were "part Italian like us". It is now evident that those friendships and interactions also included an introduction to drugs and alcohol in the early years. David (my son), also formed a fast friendship with the elder Scarano father to include the sharing of meals with his family and driving him to requested destinations around town.

In the months preceding the stabbing on June 6th, David had begun to mature and change dramatically. He verbalized a restless desire to 'move-on' and discard old friendships that were repetitive and unchanging, "Cave Creek is filled with 'tweakers' and people that have no future". He began to explore the possibility of joining the military after completing his high school degree at Career Success. The joining of the military also included a new and curious interest in the National Socialist Movement. Despite our long discussions and open objections, David was intrigued by the NSM promise of future training, discipline and shouldering a cause.

My husband and I were exuberant the day that our son tossed his tasseled cap in the air with his classmates of 2006 during the May graduation ceremony. Our love and pride were endless that day.

Fast forward to the wee hours of June 6th and the startling sound of an early morning phone call. Our lives, and the lives of the Scarano family have been changed forever. Where do we go from here?

We cannot change the ultimate decision of the jury to convict my son of manslaughter. However, I remain puzzled, in the face of so many witnesses describing a self defensive action without the 'authority' to say "self defense", why he was convicted.

I too was appalled that a life was lost on that early morning; there is no argument about that tragedy. Perhaps it was the tendrils of tape recorded sound bites and the near complete description of an NSM uniform woven in to the prosecutor's interpretation of what transpired on June 6th that swayed the jury. Certainly, the defendant that he portrayed was not the son that I am most familiar.

As you ponder the sentencing of my son, may I offer "the rest of the story" concerning several of the prosecutor's bites of information.

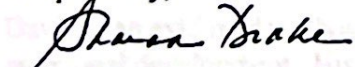
- The June 9th phone call from the jail: In response to his feelings during the stabbing, David says that he was “not scared”. Of note, David was standing among the other jail inmates while on the public phone to me. He had previously confided to a friend at home, that he had been “inspected”, i.e., “pants” by the inmates when he first arrived at the 4th Avenue Jail. To admit fright would be to admit public vulnerability.
- Regarding vulnerability: The prosecutor failed to mention that my son broke-down and cried when he was told that David Scarano had died. When I called the Sheriff's Office on the afternoon of the 7th, a female employee also noted that David had been placed on “fragile” status and was tearful and depressed.
- The NSM uniform: David had received the NSM uniform in the mail on the eve before the AM stabbing. I recall receiving the box at the house, but, did not know what it contained. Rick Botti later confirmed, in conversation with me, that they had encouraged David to wear the uniform to the party. The uniform was not part of a larger racial conspiracy as the prosecutor would like to portend.
- The 911 tape: the slurry of profanity directly preceding the stabbing was not only in-character with my son's unfiltered mouth, but, also characteristic of a frightened and threatened person. But, in context of David Scarano's later demise, the comments on the 911 tape may appear negatively impassioned to a juror.

In summary, your Honor, I respectfully request that you consider the least possible sentence for my son. Although he has struggled for years to define himself, I do not feel that the defining moment of June 6th should determine the course of his life. I also ask that the sentencing include an opportunity for my son to obtain counseling. The current penal system, including the jail counterpart, is woefully lacking.

Although my husband and I have shared many struggles with my son, we will continue to support and encourage him. We love him deeply and hope that he will survive this experience so that he may one day re-enter society as a successful and content young man.

Thank you for allowing me the opportunity to briefly share my son with you. Thank you for taking the time to render a conscientious decision.

Respectfully,



Sharon Drake

February 9, 2007

Honorable Cathy M. Holt
Maricopa County Superior Court

RE: Sentencing of David Drake

Your Honor,

I respectfully submit this letter on behalf of my son David Drake. It is offered in hope that you will better understand David, his perceptual variance, his compromised coping skills and extend leniency in your sentencing.

Thirty years of health care experience frequently bring reminders of the fragility of human physical and mental health, and how quickly these things can change. Life challenges are inevitable. We make our decisions based on choices we perceive, and hope to learn and grow from these encounters. This process is compromised, however, when imperfect perceptual filters and social skills exist.

David is diagnosed (age six) with Attention Deficit Disorder, Hyperactive-Impulsive Type (1994), Oppositional Defiant Disorder (1994), Dysthymia (melancholia from a malfunctioning thymus-1994) and Asperger's (high-functioning autism with perceptual and behavioral variance-2002). His psychosocial, educational and physical development have been monitored by Pediatric Psychiatrists (MD) through evaluations, counseling and prescribed chemical interventions, a Psychiatric Nurse Practitioner (PNP) through evaluations, testing and counseling, School Psychologists (PhD) through testing, evaluation and educational recommendations (504 plans), a clinic-based Psychologist (PhD) through testing, evaluation and counseling, and a Social Worker (MSW) with success in counseling individuals (and their families) suffering from ADHD. The professional interventions were sought by both parents once educational and behavioral issues first surfaced in school and at home. Frequent meetings with school educators, counselors and school psychologists became the necessary requirement to ensure educational learning and progress.

David is an avid reader whose verbal skills exceed his physical, psychosocial and emotional development. His hyperactive synapses heighten his awareness and senses. His recall of minute physical details and sounds are exceptional, though the accuracy of his perceptions are challenged. Sleepless nights additionally leave David sleep deprived. He found solitude in walking alone late at night in the park or the desert, failing to recognize the potential danger and returning with stories of javelina and coyotes. David is slow in responding to risk, physical threat or danger. His perception of fear is rare.

Despite his propensity for inappropriate language (foul) and occasional verbal threats ("I was just saying that"), David is not known to be physical or act out violently. He promotes an image of himself as unpredictable and crazy and uses this image as a deterrent to those he believes might otherwise harm him. His communication style is an unfiltered stream of thoughts.

Ironically enough, through his association with the Scarano brothers, David briefly experimented with street drugs. After testing positive for marijuana once, he was found negative on subsequent occasions. He stopped taking his prescribed medication in 2004, knowing he would not be considered for the armed services if using prescription drugs.

By 2005, David was showing maturity in his personal interests and setting more positive and realistic goals for his future and employment. Despite minimal interests in school, David completed his required coursework and celebrated his High School Graduation Ceremony just a couple of weeks before the events of that morning.

David celebrated his differences, but longed to join and be part of some special cause. With his interest peaked from the media attention on border security and stopping the flow of illegal immigrants, he was contacted in an internet chat room on the subject. He was soon in contact by cell phone from out of state. When the out of state calls were discovered and questioned on his monthly bill, he acknowledged the source as a NSM member, but failed to disclose that he had ordered or was being sent the uniform. The box arrived the afternoon before the conflict. Despite severe parental opposition and consequences (he would be kicked out of the house), David's curiosity and impulsivity prevailed. That night, as both parents slept, the box was opened. We later learned the box contained the uniform and propaganda papers from the NSM.

Since the morning of June 6, 2006, my thoughts have been consumed with grief for the Scarano family and out of fear for David's experiences in jail. The decisions made that morning were a defining moment in the lives of both young men. David's denial of fear that morning was not surprising given his perception variance. He held the knife. After being assaulted and numerous attempts to avoid the conflict, he ultimately defended himself with the knife. I can't condone the act, but I do understand it.

David was brought up in a loving and supportive environment, by a family that loves him dearly. It pains me how quickly and completely our lives have been changed, and I weep for his lost innocence. Please consider the lightest possible sentence.

Sincerely,

A handwritten signature in black ink, appearing to be "Anthony DeLuca", written in a cursive style.

Career Success School
6424 E. Cave Creek Rd.
Cave Creek, AZ 85331
(480) 575-0075 Ph
(480) 575-0061 Fax

January 22, 2007

Re: David Drake

Dear Judge Holt,

My name is Maureen P. Racz and I am the Principal of Career Success School - Cave Creek. I am the Principal of the school that David Drake graduated from in May, 2006.

I had the opportunity to get to know David when he attended our school from August 19, 2004 to December 21, 2005. David is a very bright student who scored at the college level in his reading and math tests that he took at our school. When David came to our school from the Phoenix Center for Education he was a young man who had a difficult time staying on task, did not work well in small groups and tended to gravitate towards negative attention.

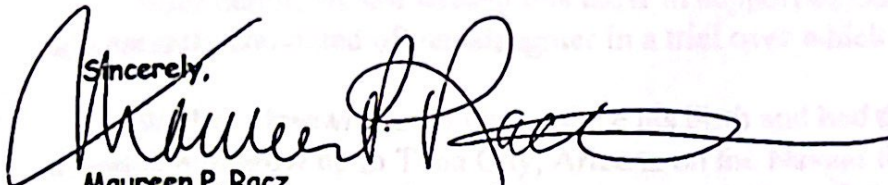
In a year and a half at our school David had matured to a teenager who was funny, bright and imaginative and just wanted to be accepted for the person he was. David did dress differently than other teenagers, wore his hair different but David just loved to be different. When he came into my office on several occasions he would talk about normal teenage interests - getting a job, dating, graduating high school and going to college to study Psychology.

When David graduated in May, 2006 my staff and I remarked how David had changed for the better during his stay at Career Success Schools. He introduced his girl friend to us and was very excited about the fact that he had gotten a job at Target. He talked about the fact that he was going to go to Paradise Valley Community College in August, 2006 to start taking courses and he planned to take some Psychology courses because his goal was to major in Psychology at one of our 4 year universities. In my view David is a wonderful young man who has shown the potential to be a responsible law abiding citizen.

I understand the event that caused David's incarceration and I realize that there are consequences to be paid for his actions but what I am asking for is

leniency with regards to his sentencing. David has shown to me that he is a good person who deserves a second chance. I have seen that good person, if only for a short time, but I would hope that you find it in your heart to give David the opportunity to enter back into society within a reasonable amount of time.

Thank you for your attention to this matter.

Sincerely,

Maureen P. Racz
Principal
Career Success School

January 28, 2007

Honorable Judge Holt,

Your honor, we are writing this letter in support of David Drake who was recently convicted of manslaughter in a trial over which you presided.

We have known David Drake since his birth and had the opportunity to watch him grow up in Tuba City, Arizona on the Navajo Reservation until he was in the 6th grade. Our children played with Dave daily as we lived across the street from the Drake family.

The family moved to Phoenix so that his mother could pursue further education but we remained in close touch and visited frequently. We also took several vacations with David and the Drake family. Therefore, we had ample time with David to observe his behavior through the last few years.

David was always a very energetic child with a highly inquisitive mind and enjoyed experiencing new activities. He was never violent but of course often argued with his brother and sister as occurs in all families including my own. He also made inappropriate comments to people outside his family on occasion.

As David grew up, he physically was relatively short and light compared to other kids his age. We believe this made him nervous about his ability to defend himself should the need arise. Perhaps, this fear prompted him to carry a weapon.

David has made some bad choices that unfortunately have now had severe and irreversible consequences to both himself, his family, and especially the family of the young man he killed. We do believe however, that this was an isolated occurrence and that he should spend a minimum amount of time in prison to pay for his actions. He is still very young and has had no prior problems with the law. His age and lack of prior legal record will hopefully count in his favor.

Kathryn E. Magee MD.
Joseph A. Magee MD

Honorable Judge Holt,

My name is Bernaine Cain, I am David Drake's Aunt. I am writing to you on behalf of him.

I wanted you to know that I truly believe that he did not, and would not mean to hurt anyone, ever.

The David we know (my family), is a kind loving, caring, trusting, funny individual.

My husband and I adopted a little girl from China. Her name is MiKayla. When we needed someone to care for her, and watch her, we trusted David to do so. He did. He would come over and play games with her, and read to her. MiKayla loves David, we all do.

David would never fight, not even play fight with his older cousins, Robert and Joshua, both of whom joined the Military. Robert was in the Army and Joshua is a copman in the Navy. I tell you that because David admired them, and talked about doing the same. Instead of being pulled into a fight with them, he would use humor to get them

laughing and joking around.

I understand that you heard some negative things about David in court. What was said and what is true are two different things.

I was adopted like my daughter, therefore my cultural background is very diverse. We have many different cultures in our family - Mexican, Indian, French, Chinese, Irish, Scottish, English and Italian.

David has never shown anything but respect and love for each one of us.

I ask you to take ^{this} ~~this~~ into consideration when deciding his sentence. I know that what happened that night was not good and that someone lost their life.

This is a tragedy, however, I also believe that David acted solely in self defense. Had he been a 13516 woman (or a 15016 woman) I don't think he would have been charged. Please don't make this a double tragedy, please give David a chance.

Thank you,

Sincerely,

Domine Cain

February 2, 2007

Honorable Judge Cathy M. Holt
Superior Court of Arizona
Maricopa County

Dear Judge Holt,

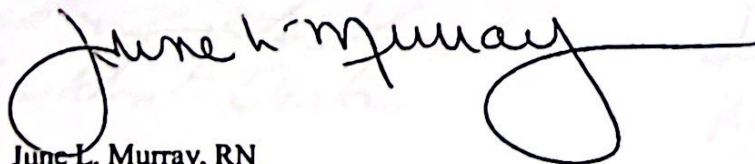
I am both a friend and a professional colleague of the parents of David Ryan Drake. I came to know the entire Drake family when, as a nurse, I moved to Tuba City, AZ and assumed a position with the Indian Health Service (IHS) more than fourteen years ago. Tuba City is a small community; IHS professional staff are assigned to government quarters where I had the privilege of being a neighbor to the Drake family. We shared many family experiences together including vacations, birthday parties, dinners, holidays and church activities. David's humor and mischief were always a joyous part of those events.

I am aware that David is soon to be sentenced following a jury verdict of guilty for manslaughter. I do not fail to recognize the serious nature of this charge nor am I attempting to minimize the impact that David's action has had on the family of the victim in this case. But I also recognize that this has been a terrible experience for both families and they will continue to suffer from the tragedies of this experience for many years to come.

David Drake has parents and siblings who love him and they will be negatively affected by his prolonged absence. Despite the circumstances surrounding this tragedy, they have demonstrated their continued love and support for their son. David will have a solid support group throughout his incarceration and they will be waiting for him when he is released, no matter when that may be. The continued support of friends and family will be important for David too, as he will have to deal with this for the rest of his life

The Judicial system is supposed to be about rehabilitation so I humbly ask, Your Honor, that you consider David's young age, the fact that he has no prior criminal record and his chance for rehabilitation as you determine this young man's fate. I fail to see how society would benefit by sending him to prison for a very long time. I hope that you will extend mercy and leniency to David Drake for his sake and for the sake of his family as you consider the length of his sentence.

Respectfully submitted,



June-L. Murray, RN

POB 3148\

Tuba City, AZ 86045

February 1, 2007

Honorable Judge Holt,

I am David Drake's grandfather. I have known him and been close to him all his life. In fact he and his mother lived with my wife and me weekdays the first year she was in Midwestern Med School in Glendale.

David is sensitive and caring. He has often volunteered to help me around my yard. We have had long conversations about life beside my pool. He has always been respectful of my wife and of me. He is young, and was trying to figure out a direction for his life. He is bright, but the ADHD did not help, making school more difficult for him. He is also somewhat shy, basically an introvert.

He always wanted to connect. If he saw something that interested him, he wanted me to see it too. He used to show me work he had done in school, like a model of Jamestown he made - great job - and then gave to me. Or if he was playing a computer game he would want me to come watch him. I believe he was doing the same thing with his older and bigger friends the night in question. They were all into military stuff - guns, helmets, etc.

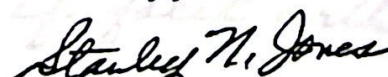
David is not an aggressor, nor in any way vicious. Quite the opposite. He went out for the wrestling team first year in high school here in Fountain Hills. He won his first match. But then he quit. Shocked, I asked him why. He said, "I don't want to fight." I anguish over the false impression of him created by the sudden jolting slam of his boots on the podium by the prosecutor. That is not David!

He has been writing poems in prison; not great poetry, but from his heart. He expresses despair for what he feels is not just. However, one of the poems is entitled "I'll Live On", and has these determined lines, among others:

"My life was alright 'til the events of that night.
I defended my life, now I'm serving hard time.
But I will not lose sight of my goals in life,
Though others never try and choose to live in strife."

I ask you, if you can see this David, please give him opportunity to live his life, lest two lives be forfeited in the tragedy of that night.

Sincerely yours,


Stanley N. Jones

January 26, 2007

To the Honorable Judge Holt,

It is with a heavy heart that I write this letter to you. I am the Grandmother of David Ryan Drake. He has been accused by the all male jury of manslaughter on January 17, 2007 in your court. My plea to you as a woman, mother and grandmother is that you would re-evaluate the evidence in this case.

The prosecutor presented a David I do not know. He did not present the caring and sensitive young man that I have cared and loved for nineteen years. His character was totally destroyed in front of the jury.

David and his mother lived with us for a year during the week while his mother attended medical school and before the rest of the family moved from the north. He was always respectful and caring.

A life was taken and that is tragic. The circumstances that led to this death must be heard. David Drake was being attacked. He called 911 in his fear and desperation and as a show of defense pulled the knife.

The question I ask is: What would I do?... What would you do? ... if faced with these circumstances?

My plea is self defense and that the very minimum of punishment be given to this young man.

Respectfully and Sincerely,
Louise A. Jones

February 13, 2007

The Honorable Judge
Maricopa County Superior Court
Phoenix, Arizona
RE: DRAKE, DAVID

Your Honor,

I am writing a letter to provide some insight and information re: David Drake who was recently convicted of manslaughter. I understand that David is awaiting sentencing for an act committed in June, 2006.

I live in Tuba City on the Navajo Reservation. My husband, two sons, and I have all known David and his parents for 16 years. My husband and I worked together with David's parents in the Indian Health Service in Tuba City. David's parents, Tony and Sharon, were nurses. My husband was a pediatrician and I was a speech pathologist. The Drakes lived down the street from us; our sons grew up with David. His family moved to Phoenix when he was in his early teens.

As he was growing up, David was a bright child who would easily talk to anyone, child or adult. He would often talk without monitoring his frequently verbose language. His small stature, attention deficit disorder and decreased self confidence often provoked some bravado and a need to "show off" in front of peers and adults. However, when confronted with his bluster, David would often then be able to express what he really was thinking with greater ease.

When David lived in Phoenix, we tended to see David approximately two times per year. When interacting with David, he would begin by presenting his facade of bravado. However, if one did not react to his statements, bragging or appearance, David was able to have a more serious and sensitive discussion. During his incarceration, David called me several times; our conversations would often last 30 minutes. I was disheartened to hear about his actions and poor judgement on the night of the fight with and death of his friend. Violence was an unusual scenario for David. David was able to express concern, sorrow, remorse and fear as well as a desire to change his "way of living."

I believe that David needs intensive mental health counseling. The violent death of another human being is devastating and an action that David will always have to live with along with the victim's family. I pray that David's sentencing will not only take his act into account but also his rehabilitation. Please contact me if you have any questions.

Sincerely,

Ann M. O'Connor

Ann M. O'Connor, P.O. Box 400 Tuba City, AZ 86045

To the Honorable Judge,

My name is James Drake. I am David Drake's Uncle and am writing this letter in reference to David's sentencing. I have known David his entire life, from his first visit to our home as an infant through our last visit at his parents' home in Phoenix last March.

I am well qualified to judge individual character through 29 years as an officer in the United States Air Force. I retired last year with the rank of Colonel after having the opportunity to command a large and diverse group of airmen numbering over 600 individuals and seven different operational units. In that time I was responsible for the training and behavior of multiple personalities from a myriad of backgrounds and operating several different air and land weapons systems.

I would like to address in particular the implications taken from David having worn the National Socialist Movement (NSM) uniform that he received in the mail on the day he ended up causing his friends death. First I want to state that I loath and despise everything the NSM movement represents throughout its infamous history in Germany through the current crop of wanabe's. I understand the desire of people wanting to belong to organizations that appear to be strong and sure of purpose. Unfortunately I am certain that David did not understand the full implications of the uniform he wore.

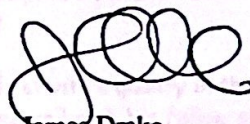
I am certain that he didn't understand the implication that he couldn't be friends with David because he was the "wrong" color. The simple fact that the two boys were friends, and the fact that my nephew was friendly to David's Father up until the confrontation demonstrates that he didn't fully embrace the beliefs of the NSM.

Another demonstration of David not understanding or embracing the implications of the uniform or the movement his dress represented is the fact that he treated my wife and five children (his cousins) with respect and love despite the fact they are Jews by heritage and blood and have relatives who bore the scars of the Nazi concentration camps during World War II. The last time David was over to our house was a couple years ago during Christmas. I remember in particular David having a short conversation with my wife. My wife is a very direct person and commented something to the effect that David would look so much better with his hair in a different style. David was never anything but courteous in explaining that he liked to look unique.

That incident reminded me of a time I visited with David when I was at their house while he was still in High School. On that trip David was kind enough to not object to me staying in his lower bunk at night. I remember one conversation about the fact that he always put on dress slacks and a nice shirt for school. They were black or dark blue and appeared to be thicker than a normal pair that I would imagine you'd wear in Phoenix. They were certainly not what I would think a teenage boy would choose to wear day to day. He volunteered that he took pride that he spent a lot of money on his pants and also in the fact that no one else in his school dressed as nice as he did.

I can't state the reasons David wore the uniform he did on the occasion of his arrest because I haven't had the opportunity to discuss it with him. From knowing him, he was concerned about normal teenage things of appearance and girls. But one thing that I am certain of is that his beliefs did not extend to hating Mexicans or Jews, and wouldn't have been a contributing factor to the most unfortunate events surrounding his friends death. My wife and I have worn the Air Force uniform for many decades in the service of our Country. My number one son, who is a year older than David, now proudly wears the Marine uniform on active duty. In fact, David had expressed an interest over a period of a couple years while in High School to join either the Army or Marines. While that as an option has been closed to him now, I would ask that you not take at face value the full meaning of the uniform that David did wear on that fateful day.

In closing, I would like to stress that I am certain that the ideas of race hatred for Jews in particular, and against those who are not white (even though Mexicans are Caucasian as well) were not a part of the equation that went into this tragic event. I am certain that this is not what was in David's heart that night. Thank you for your consideration and judgement in David's sentencing. I'm certain you will be fair.



James Drake
44-513 Kaneohe Bay Dr
Kaneohe, HI 96744

Career Success School

6424 E. Cave Creek Rd.

Cave Creek, AZ 85331

(480) 575-0075 Ph

(480) 575-0061 Fax

February 15, 2007

Re: David Drake

Dear Judge Holt,

This letter is in reference to my relationship with David Drake. I've known David for three years. He attended Career Success School and was in my English class for six (6) consecutive semesters. David was a very bright, attentive and participative student. His comportment in class was excellent and never once was he disciplined for poor behavior. His writing was exceptional, insightful, humorous and to the point.

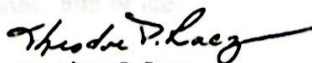
In terms of his class participation he had a very good retentive quality in that he remembered much of what was taught. He seemed to get along well with his fellow students and from what I observed his outstanding social skill was his wry sense of humor. He often commented humorously about characters in literature. He had an in depth insight particularly for the underdog in various stories and often volunteered how he would have acted in the role of the underdog.

Although David had a unique flair for the unusual he never forced his opinion or his thinking on others. All in all he was a good student and a fine young man.

One of his proudest days was when he realized he was going to graduate. He spoke to me quietly about his desire to continue on into college and spoke about possibly pursuing a degree in psychology or education. He was strong willed and confident and I assured him he would be successful as a teacher and encouraged him to pursue his dream.

I can honestly say that all of my contact and experience with David Drake has been one of mutual understanding, likeability and respect.

Sincerely,



Theodore P. Racz

English Instructor

Career Success Schools

My life has changed
I must live on.
I've gotta stay strong
And carry on.
It's been so long
Since I've felt alive
But I gotta try
In this game called life.

I killed a man
With a six inch blade.
Four inches in
Now he's in his grave.
Convicted of a crime
For taking his life,
I've been serving time
When I defended mine.

Six, six, six
Was the date that night,
At six-forty-four,
Three hours after the fight.
He was a friend
A friend of mine
But I still don't know
What drove him that time.

I tried to talk again and again,
But he wouldn't back down
For his mind was set,
He just wanted to fight.
I wish he never made a move
To go for my knife.
"Cause I knew right then
It was either him or me.

He continued to attack
So I stopped him in his track.
My life was all right
'Til the events of that night..

Cause I defended my life
I am serving hard time.
But I will not lose sight
Of my goals in life.
Though others never try
And choose to live in strife.

For we are all much like
The stars up high,
Some burn out
Some fall out of the sky.
While others will shine on
Shine on ever so bright.

Now I know every life
Must come to an end.
But before I die
I'm gonna live up mine.
Just like a poet once said:
"Lives of great men remind us
We can make our lives sublime,
And departing, leave behind us
Footprints in the sands of time."

Poem - song from David

Enclosed is the Criminal History information portion of the Pre-sentence Report. Dissemination is restricted to Criminal Justice Agencies **only**. Secondary dissemination to non-criminal Justice Agencies is **prohibited**.

LOCATION ONLY
See Discovery & Confidential Materials