

# Pick-Ax Murderer's Lawyer Asks for Lenient Sentence

June 28 sentencing hearing was canceled, as judge calls for short conference to determine next steps

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Nicholas Ortiz's lawyer is asking for a new trial and a lenient sentence for his client.

Santa Fe-based Attorney Dan Marlowe filed the sentencing memorandum on June 27, two days before Ortiz was set to be sentenced in Santa Fe District Court.

The sentencing hearing was canceled and District Judge Francis Mathew called in the defense and prosecution for a short conference, June 28, on what to do next.

Prosecutor Jason Lidyard said Francis asked the prosecution to respond to Marlowe's memorandum and for both sides to brief him on what it means that Ortiz is a serious youthful offender.

"He gave three weeks for the state to give background and history on how we brought this case into district court," Lidyard said.

He said the sentencing has been delayed so the other issues can be worked out.

"He postponed the sentencing with some time allotted to briefing on those two issues," Lidyard said.

In Marlowe's sentencing memorandum, he wrote that Ortiz is technically a serious youthful offender because he killed his victims when he was 16.

Dixie, Lloyd and Steven Ortiz were killed in their El Rancho home on June 19, 2011.

A Santa Fe jury found Nicholas Ortiz guilty, Dec. 9, 2016, of three counts of first-degree murder, following a nine-day trial. Another jury, in June 2016, deadlocked on all of the charges against him and Francis declared a mistrial.

Marlowe also asked Francis to *sua sponte*, or on his own volition, grant Ortiz a new trial.

Much of Marlowe's six-page memorandum focused on his theory that Jose Roybal was the one who killed the family of three and that the jury could have found Nicholas Ortiz guilty

because they thought he was an accessory to the murders.

"Jose, the confessed planer (sic) and participant has never seen the inside of a jail," Marlowe wrote. "He has confessed to killing the Ortiz family to his first cousin and witness Alysa Roybal."

Jose Roybal testified at both trials that he went with Nicholas Ortiz to the house but, while his friend went into the house, he fled in the opposite direction. He was given a form of immunity for his testimony where what he said in court, could not later be used against him.

His other cousin, Ashley Roybal, also testified against Nicholas Ortiz, although her story and her cousin's story varied in most details. She pleaded guilty to a variety of charges unrelated to the killings and received a 20-year sentence.

## Serious youthful offender

According to the state's Children's Code, anyone between the ages of 15 and 18, who commits first-degree murder, is considered a serious youthful offender and, with a few exceptions, is treated like an adult throughout court proceedings.

Alison Pauk said youthful offenders, that is, children who have committed anything other than first-degree murder, have a right to an amenability hearing. Serious youthful offenders, however, do not.

Pauk is a member of the New Mexico Criminal Defense Lawyers Association and practices in juvenile criminal law.

In amenability hearings, a judge decides if the child is amenable to treatment. If so, the maximum sentence is incarceration until 21.

However, the state Supreme Court decided, in a 2012 decision, that serious youthful offenders do not have the right to an amenability hearing.

"They don't have that automatic right (to the hearing), but it can be requested," Pauk said.

Although Ortiz may not be eligible for an amenability hearing, Marlowe asked Francis to give his client a sentence of life with parole after 10 years, on the three murder charges.

Normally, the sentence would be life with parole after 30 years, but because Ortiz is a serious youthful offender, the judge does not have to sentence him to the minimums for an adult.

No new hearings have yet been set in the case.