

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT IN
AND FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NOS.: 1996 CF 1260

vs.

COSTA T. VATHIS,

Defendant.

ORDER GRANTING MOTION TO CORRECT
ILLEGAL SENTENCE

THIS CAUSE came before the Court upon Defendant's Motion to Correct Illegal Sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a) on November 14, 2008. This Court issued an *Order to Show Cause* on September 11, 2009. The State filed its response on October 26, 2009. This Court set the matter for hearing specifically directing the parties to "provide legal citation and portions of the record which support their respective arguments." Having conducted the hearing on April 30, 2010, this Court took the matter under advisement and directed the parties to submit additional legal citation and argument on or before May 28, 2010. On May 28, 2010, Defendant submitted supplemental legal citation and argument. The State filed nothing choosing to stand on its original two-page response. The Court having considered the motion, argument of counsel, the court record, and being otherwise fully advised, hereby finds as follows:

Defendant was convicted of capital sexual battery, Count I, and lewd and lascivious battery, Count II. On July 10, 1997, Defendant was sentenced to twenty-five years minimum mandatory on the capital sexual battery, Count I, and three years on the lewd and lascivious battery, Count II, with the sentences to run concurrent. The sentencing judge was clearly

laboring under the misapprehension that the twenty-five year minimum mandatory sentence was the required sentence. A copy of the July 10, 1997, sentencing hearing transcript is attached hereto as Exhibit "A." The State did not appeal. On July 18, 1997, just eight (8) days later, the sentencing judge resentenced Defendant. A copy of the July 18, 1997, "resentencing hearing" transcript is attached as Exhibit "B." At the resentencing hearing, the sentencing court recognized that "it was brought to the Court's attention that the sentence imposed by this Court on July the 10th, a twenty-five year sentence, which was a minimum mandatory sentence on Count I, was an illegal sentence. It was erroneously entered by the Court. It should have been a twenty-five minimum mandatory sentence, but the sentence imposed should have been a period of life imprisonment." The sentencing court then set aside the twenty-five minimum mandatory year sentence and resentenced Defendant by increasing his sentence to life on the capital sexual battery, Count I.

Defendant moves to set aside the life sentence on the capital sexual battery, Count I, arguing that the increased sentence imposed on July 18, 1997, violates double jeopardy principles.

In Gardner v. State, 30 So. 3d 629, 632 (Fla. 2d DCA 2010), the Second District recently held that "[a]bsent a proper appeal, double jeopardy considerations bar increasing even an illegal sentence." While this Court finds the vacation of Defendant's life sentence unpalatable and concurs with Judge Altenbernd's Gardner dissent wherein he opines that we "could and should have a procedural mechanism by which trial judges are allowed to correct misstatements and confusions in sentences and to impose mandated sentencing conditions overlooked at oral pronouncement," this Court is obliged to follow Gardner. Pardo v. State, 596 So. 2d 665, 666

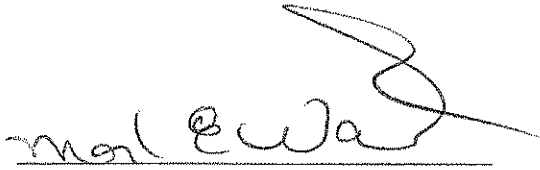
(Fla. 1992) (recognizing that trial courts are required to follow the holdings of district courts).

This Court will not resort to some legal artifice to reach a different result. To do so would smack of the worst kind of judicial activism.

ORDERED AND ADJUDGED that Defendant's Motion to Correct Illegal Sentence is hereby **GRANTED**. Defendant's life sentence on Count I is hereby vacated and Defendant's original twenty-five year minimum mandatory sentence is hereby reimposed. The Clerk is directed to prepare an Amended Judgment reflecting same.

The parties shall have thirty days from the rendition of this order in which to file an appeal.

DONE AND ORDERED on this 2^d day of June, 2010, in Tallahassee, Leon County, Florida.


MARK E. WALKER
CIRCUIT JUDGE

Copies to:

Florida Department of Corrections

Jon Fuchs, Assistant State Attorney

Michael Ufferman, Counsel for Defendant
Michael Ufferman Law Firm, P.A.
2022-1 Raymond Diehl Road
Tallahassee, Florida 32308

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA

STATE OF FLORIDA,

VS.

CASE NO. 96-1269-1AF

COSTA VATHIS,
Defendant.

STATE LARGE
CLERK'S OFFICE
LEON COUNTY, FLORIDA

97 OCT 23 AM 10:29

FILED

PROCEEDING:

SENTENCING

BEFORE:

Honorable L. Ralph Smith, Jr.
Circuit Judge

DATE:

July 10, 1997

LOCATION:

Leon County Courthouse
Tallahassee, Florida

REPORTED BY:

EUGENIA B. LAWRENCE, RPR
Official Court Reporter

EUGENIA B. LAWRENCE, RPR
Official Court Reporter
Leon County Courthouse
Tallahassee, Florida
(850) 922-3897

Ex. A

COPY

A P P E A R A N C E S

ON BEHALF OF THE STATE OF FLORIDA:

ROBIN FREEMAN, ESQUIRE
Assistant State Attorney
Leon County Courthouse
Tallahassee, Florida

ON BEHALF OF THE DEFENDANT:

JOHN W. GRAY, ESQUIRE
Attorney at Law
906 Thomasville Road
Tallahassee, Florida

1 PROCEEDINGS

2 THE COURT: Costa Vathis.

3 Mr. Gray, is this ready for sentencing
4 today?5 MR. GRAY: Yes, sir. I believe there were
6 motions that were filed that we need to have a
7 ruling for the record if you haven't entered a
8 written order on.

9 THE COURT: I'm sorry?

10 MR. GRAY: There was a motion for new trial
11 and renewed motion for judgment of acquittal that
12 was filed that I had provided some materials to
13 your office on. I don't know if you already
14 entered a ruling on the record on those or not.15 THE COURT: I thought that those had earlier
16 been denied in open court.

17 MR. GRAY: No, sir.

18 THE COURT: The Court does deny both of
19 those motions. And if you need a written order of
20 denial, you can prepare one.21 MR. GRAY: I just need one for the record,
22 Judge. They hadn't been ruled on.

23 THE COURT: All right.

24 MR. GRAY: In that case, there's no other
25 matters --

1 THE COURT: One was a motion for new trial.

2 MR. GRAY: Yes, sir.

3 THE COURT: And that motion I know is
4 denied. And you had another renewed motion for
5 JOA?

6 MR. GRAY: Did a written renewed motion,
7 yes, sir.

8 THE COURT: That motion is denied.

9 Is there any just cause why sentence cannot
10 be imposed at this time?

11 MR. GRAY: No, sir.

12 THE COURT: Any comments defense wishes to
13 make? Have you reviewed the scoresheet?

14 THE DEFENDANT: Your Honor --

15 MR. GRAY: Mr. Vathis would like to say
16 something. I have reviewed the materials from the
17 Department of Corrections.

18 MS. FREEMAN: Judge, the scoresheet is
19 incorrect.

20 THE COURT: It's incorrect?

21 MS. FREEMAN: Yes, sir. A capital sexual
22 battery does not fall under guidelines so it would
23 not be scored, since it's a twenty-five year
24 minimum mandatory. The only thing that would be
25 on the scoresheet would be the Count II, lewd and

1 lascivious act upon a child.

2 Capital offenses are not scored in the
3 scoresheets. They are, however, a valid reason
4 for an upward departure, I believe.

5 THE COURT: What you are saying, Ms.
6 Freeman, is that --

7 MS. FREEMAN: The scoresheet prepared by the
8 Department of Corrections, Judge, scores the
9 sexual battery on a child under twelve years of
10 age as a life felony. That is not a life felony.
11 It is a capital felony under the law. It would
12 not be scored on the scoresheet since it requires
13 the twenty-five year minimum mandatory.

14 THE COURT: Okay. But, you have a
15 scoresheet on the other one?

16 MS. FREEMAN: Yes, sir, that's what I handed
17 you is a scoresheet on the other charge. That's
18 what is required by law, that we prepare a
19 scoresheet on the counts other than the capital
20 counts.

21 THE COURT: Mr. Gray, do you have any
22 disagreement with her statement of the law?

23 MR. GRAY: No, sir.

24 THE COURT: There is no discretion of the
25 Court?

1 MR. GRAY: No.

2 THE COURT: Any need for any further
3 argument?

4 MR. GRAY: No, sir.

5 THE COURT: There being no discretion, the
6 Court adjudicates Mr. Vathis guilty of the
7 offenses.

8 As to sexual battery on a child under twelve
9 years of age, the defendant will be committed to
10 the custody of the Department of Corrections for
11 twenty-five years, which is a minimum mandatory
12 term.

13 The sentence on the lewd and lascivious act
14 charge is a concurrent three-year term of
15 incarceration.

16 MS. FREEMAN: Judge, under the law the
17 victim is entitled to speak at sentencing. I
18 believe that Ms. Starnes would like to address the
19 Court. I know there's no discretion with the
20 Court, but she is entitled to that.

21 THE COURT: There's no need to say anything.
22 The Court has no discretion. Whatever she says
23 won't increase or reduce.

24 Do you want to say something?

25 MS. FREEMAN: No, sir. We are fine.

1 THE COURT: There will be \$258 in court
2 costs and -- were you privately-retained, Mr.
3 Gray?

4 MR. GRAY: Yes, sir.

5 THE COURT: You have a right to appeal. If
6 you desire to do so, you need to file a notice of
7 appeal within thirty days. If you cannot afford a
8 lawyer, the Court will appoint one for you at
9 public expense.

10 Is there -- how much credit does he have for
11 time served?

12 THE CLERK: Thirty-five days.

13 THE COURT: He will be given credit for
14 thirty-five days time served.

15 That will be all.

16 (HEARING ADJOURNED)

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CERTIFICATE OF REPORTER

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STATE OF FLORIDA)
COUNTY OF LEON)

I, EUGENIA B. LAWRENCE, Official Court Reporter,
certify that I reported the foregoing proceedings at the
time and place and in the cause indicated in the caption;
that my shorthand notes were thereafter reduced to
typewriting under my supervision; and the foregoing pages,
numbered 3 through 7, are a true and correct record of the
aforesaid proceedings.

I further certify that I am neither related to nor
employed by any party to this proceeding, or their counsel,
and that I am not financially or otherwise interested in the
outcome of this cause.

DATED this 15th day of October, 1997.

Eugenia B. Lawrence
EUGENIA B. LAWRENCE, RPR

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO: 96-1260

STATE OF FLORIDA

vs.

COSTA T. VATHIS,
Defendant.

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DAVE J. LANG
CLERK OF THE COURT
LEON COUNTY, FLORIDA

97 SEP 24 AM 10:56

FILED

PROCEEDINGS:

RESENTENCING HEARING

DATE:

July 18, 1997

LOCATION:

Leon County Courthouse
Tallahassee, Florida

THE COURT:

L. RALPH SMITH
CIRCUIT JUDGE

FOR THE STATE:

ROBIN FREEMAN, Esquire
State Attorney's Office
Leon County Courthouse
Tallahassee, Florida

FOR THE DEFENDANT:

JOHN W. GRAY, Esquire
906 Thomasville Road
Tallahassee, Florida

REPORTED BY:

JUDY W. HUSSEY, RPR
OFFICIAL COURT REPORTER
LEON COUNTY COURTHOUSE
ROOM 341
TALLAHASSEE, FL 32303

EX. B

COPY

P R O C E E D I N G S

1
2 THE COURT: All right. The defendant, Costa
3 Vathis, is present before the Court with counsel. Mr.
4 Gray, it was brought to the Court's attention that the
5 sentence imposed by this Court on July the 10th, a
6 twenty-five-year sentence, which was a minimum mandatory
7 sentence on Count 1, was an illegal sentence.

8 It was erroneously entered by the Court. It should
9 have been a twenty-five-year minimum mandatory sentence,
10 but the sentence imposed should have been a period of
11 life imprisonment. Have you had an opportunity to
12 research that issue?

13 MR. GRAY: Yes, sir; Judge. I believe that's
14 accurate.

15 THE COURT: All right. I believe that is the state
16 of the law. The Court will therefore set aside the
17 sentence that was previously entered on Count 1 and
18 commit the defendant to the custody of the Department of
19 Corrections for life, with a minimum mandatory sentence
20 on Count 1. And he will be given credit for all of the
21 time that he has served in the county jail prior to
22 today. How much credit would that be, Madam Clerk?

23 CLERK: That will be 43 days.

24 THE COURT: And then the sentence on Count 2 will
25 remain as it was.

1 MR. GRAY: Okay. Judge, I'm not sure that that was
2 -- perhaps I didn't see it on the computer for one
3 thing. And the second thing was is that Mr. Vathis did
4 want to briefly address the Court this morning with
5 leave of court.

6 THE COURT: Okay. The other one should have been a
7 three-year minimum mandatory with 35 days. We can go
8 ahead and do them both today so they will run concurrent
9 and make it the 45 days.

10 MR. GRAY: I think it should be three years
11 concurrent, Judge, but I don't believe it should be a
12 minimum mandatory on that.

13 THE COURT: No, no. It won't be a minimum
14 mandatory, but he will get the same number of days.

15 MR. GRAY: Yes, sir.

16 THE COURT: Okay. Mr. Vathis?

17 THE DEFENDANT: Your Honor, this is an unjust
18 conviction and sentencing because I am -- because it
19 came out in court that I was not at the scene of the
20 alleged crime at the time the act was to have been
21 committed. Three witnesses testified to that. And that
22 is more than reasonable doubt. How can this Court allow
23 this to happen to an innocent man?

24 THE COURT: All right. The jury is the one that
25 makes those determinations, not the Court. The jury

STATE FLORIDA)

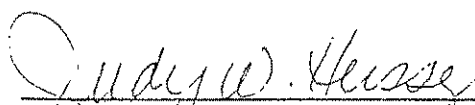
COUNTY OF LEON.)

CERTIFICATE OF REPORTER

I, JUDY W. HUSSEY, Official Court Reporter, do hereby certify that the foregoing proceedings were reported by me at the time and place and in the cause indicated in the caption; that my stenographic notes were thereafter reduced to typewriting; and the foregoing pages, numbered 1 through 6, are a true and correct record of the aforesaid proceedings.

I FURTHER CERTIFY that I am neither related to nor employed by any party to this proceeding, or their counsel, and that I am not financially or otherwise interested in the outcome of this cause.

DATED this 25th day of September, 1997.



JUDY W. HUSSEY, R.P.R.
OFFICIAL COURT REPORTER
Leon County Courthouse
Tallahassee, Florida 32301
(904) 487-3062