

1 in any way totally foreign to you. You did agree to
2 something. I think you are smart enough, based on
3 what I have seen anyway, smart enough to have known
4 you could say, wait a minute, I didn't agree to that.

5 I'm not saying everything Judge Ware did was
6 right. He could have asked some more questions on
7 that, possibly. However, it also appears to me, based
8 on what Mr. Bulone is saying, at this point even if we
9 take those away, when we add in victim injury, 40
10 points times two, they were still looking at a life
11 situation, even if we take it out.

12 I would point out that even though the motion to
13 vacate the judgment and conviction sentence has been
14 filed in this original case, it seems to me that my
15 recollection of the rules is it must be done -- the
16 motion must be accompanied by a sworn affidavit and
17 that the motion has to be heard in front of the
18 original sentencing judge, neither of which were
19 complied with. Be that as it may, I think it's kind
20 of a moot point.

21 I'm going to deny the motion to vacate, not
22 because I don't feel it has merit but because I think
23 it doesn't matter, even if we take it out. When we
24 add in the 80 points from the penetration or slight
25 injury on the two victims, and we can score both

1 victims legally, that he still, you know, is 40 some
2 or 30 some odd points within the life -- this does not
3 carry a minimum mandatory?

4 MR. BULONE: No.

5 THE COURT: Mr. Leinster, anything else you'd
6 like to say before sentencing is imposed?

7 MR. LEINSTER: No, sir.

8 THE COURT: Mr. Herrick, anything you'd like to
9 say before sentencing is imposed?

10 THE DEFENDANT: That will do it.

11 THE COURT: I understand that you're maintaining
12 your innocence.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: That is in the PSI. You certainly
15 maintained your innocence during the trial and I
16 understand that.

17 THE DEFENDANT: One thing I'd like to ask Your
18 Honor is I'd like to ask your opinion of the evidence
19 that you heard in the case.

20 THE COURT: That would be inappropriate at this
21 point, Kevin. I heard it just like the jury did. I
22 might not have interpreted the facts the same way they
23 did, but in a jury trial situation that's not my job.
24 My job is to make sure that based on the evidence that
25 came in that you got a fair trial. I haven't been