

IN THE CIRCUIT COURT IN AND FOR PASCO COUNTY, FLORIDA
CASE NO. CRC89-11425CFANO-B

STATE OF FLORIDA,

Plaintiff,

vs.

KEVIN RICHARD HERRICK,

Defendant.

APPEAL
JAN 10 1991
CLERK OF CIRCUIT COURT

BEFORE: THE HONORABLE BRANDT C. DOWNEY III
Circuit Judge

REPORTED BY: CARLA JESSAL, NOTARY PUBLIC
State of Florida at Large
Deputy Official Court Reporter
Sixth Judicial Circuit

PLACE: In Chambers
Criminal Courts Complex
Clearwater, FL 34620

DATE: JANUARY 4, 1991

TIME: Commencing at 9:00 A.M.

SENTENCING

Pages (1 - 26)

ROBERT A. DEMPSTER & ASSOCIATES
Pinellas County Courthouse
Room 3, 315 Court Street
Clearwater, Florida 34616
(813) 462-4858

COPY

A P P E A R A N C E S

FOR THE PLAINTIFF: JOSEPH BULONE, ESQUIRE
WILLIAM LOUGHERY, ESQUIRE
ASSISTANT STATE ATTORNEYS
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FOR THE DEFENDANT: ED LEINSTER, ESQUIRE
219 North Brown Street
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* * * * *

P R O C E E D I N G S

THE COURT: What do you have?

MR. LEINSTER: Herrick.

MR. LOUGHERY: That's set for the afternoon.

Joe's handling that.

THE COURT: Morning or afternoon?

MR. LEINSTER: I was told 8:30 this morning.

THE CLERK: It's set for 1:30.

MR. LEINSTER: I have a minor problem with that because we had it scheduled for 8:30 and I've got depositions on an out-of-state witness that is flying in at 2:00 in Osceola County on a rape case.

THE COURT: I've got it set for 1:30. We'll take it up this morning. All right?

MR. LOUGHERY: We have to get someone to relieve Joe because no one else will be able to handle sentencing and the motion to vacate and all the other stuff on it.

THE COURT: Get someone else. You may leave and make a call.

* * * * *

THE COURT: Do we have Mr. Herrick?

THE BAILIFF: Yes, sir.

THE COURT: Is there anybody else that wants to come here?

1 MR. LEINSTER: The family thought it was 1:30,
2 too, but I can proffer what they would say.

3 THE COURT: I'll allow that. By the way, I just
4 received another letter from Mr. Herrick indicating he
5 was still attempting to try to have set aside some old
6 judgments and such that would, if set aside, take him
7 out of the life --

8 MR. LEINSTER: That's what we're doing here
9 today.

10 THE COURT: I thought we were doing the
11 sentencing today.

12 MR. LEINSTER: We are. He will get life or
13 something substantially close to it.

14 THE COURT: All right. We're not talking about
15 the old judgments just this case; is that right?

16 MR. LEINSTER: We are talking about old judgments

17 THE COURT: Let's go off the record.

18 (THEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

19 THE COURT: Back on the record. We're here on
20 case number 89-11425CFANO, State vs. Kevin Herrick.
21 It's set for a sentencing today and also a Motion To
22 Vacate Judgment and Conviction of Sentence.

23 Mr. Leinster, it's your motion. Go ahead.

24 MR. LEINSTER: The way I read the score sheet
25 going down to prior record, there are three second

1 degree felonies and three third degree felonies. Of
2 those, one of the second degrees and one of the third
3 degrees was a result of a plea that was entered in
4 front of Judge Ware on September 27th, 1985. At that
5 time Mr. Herrick was on probation for some other
6 offenses, which have also been counted, but I'm
7 primarily directing my attention to the substantive
8 case that he was being tried for at that time, that
9 involved the burglary to his parents residence and the
10 taking of a gun.

11 So there was a burglary of a dwelling which, I'm
12 assuming, through plea negotiations was reduced to a
13 second degree felony and a grand theft of the gun
14 itself. Now, if those two are subtracted, if one of
15 the second degree felonies is subtracted and one of
16 the third degree felonies is subtracted, i.e. the two
17 that I'm talking about, you would be subtracting 110
18 points which would place him at 582 points which is
19 the exact end of the recommended range of thirty as
20 opposed to life.

21 My legal position is that in going to the
22 transcript of the proceedings that took place at that
23 time, this was a plea of accommodation that, by
24 itself, is not particularly odious, but there is a
25 statement in here by the public defender on page

1 eight.

2 I think the Court should be aware that when Kevin
3 Herrick was initially arrested his parents called and
4 said the only reason they pressed a portion of the
5 charge is they wanted him to get help. They called
6 numerous times with that same statement of concern
7 that they thought he needed intervention, he needed
8 counseling, he needed help and, thereafter, they
9 brought the police into it.

10 Then further on after the judge has agreed not to
11 go outside of the guidelines, but to limit the
12 sentence to a youthful offender sentence of
13 two-and-a-half years. Then Mr. Herrick is brought in
14 and at that point in time the State indicated that on
15 the 20th of June 1985 he entered the dwelling on
16 Northeast Coachman Road, the property of his father,
17 without his father's permission and took a firearm.

18 No one addressed Mr. Herrick at all as to the
19 statement of facts as to whether they were true or
20 not. The public defender stipulated the State could
21 prove a prima facie case without agreeing to the facts
22 in total. What she said was, "We stipulate as to the
23 violations which were the probation violations on the
24 new charges. We stipulate the State could prove a
25 prima facie case without agreeing to the facts in

1 total." I don't know what that equivocation means.

2 The Court does not address Mr. Herrick at all at
3 that point but says he finds that the plea is freely,
4 voluntarily entered. There is no mention of maximum
5 sentences involved or the consequences, and so on, and
6 he was then sentenced to two-and-a-half years as a
7 youthful offender.

8 Mr. Herrick, Sr. advised me recently that Kevin
9 had their permission to go in the place and that, in
10 fact, the only reason that this ever reached the stage
11 that it did is because he had been showing sort of a
12 pattern of misbehavior that they wanted to address and
13 it seemed this was the most convenient way for him to
14 address it in, which would have been a good idea at
15 the time, but the way this thing scores out, that
16 would be a rather bad decision.

17 So in terms of the factual basis for the burglary
18 and possibly the grand theft, the only thing that was
19 elicited in the record is simply the bare statement of
20 the State without any agreement from Mr. Herrick, an
21 equivocal statement by the public defender that they
22 agreed to an extent but not totally. And then to add
23 further confusion to it, what the judge says is, "I
24 will adjudicate you guilty as charged and find you're
25 in violation of the terms and conditions of your

1 probation and sentence you to two-and-a-half years in
2 the Department of Corrections as a youthful offender.
3 The sentence is to run concurrent."

4 I'm assuming that the judge is saying I'll
5 adjudicate you guilty of the substantive offense and
6 also find you in violation of the terms and conditions
7 of your violation charges, but that's not what it
8 says, and the sentence has to be a definite statement
9 of the terms involved. "I will adjudicate you guilty
10 as charged and find you are in violation of the terms
11 and conditions of your probation. The way I read that
12 is he found him in violation of probation, guilty as
13 charged, but never sentenced him whatsoever or found
14 him guilty of the underlying offenses.

15 I would cite Williams v. State, 546 So.2d 56,
16 June 1989. Defendant was entitled to evidentiary
17 hearing on the issue of whether his guilty plea was
18 voluntarily made with the understanding of the maximum
19 possible penalties where the transcript of the plea
20 proceedings revealed the word maximum was never
21 mentioned. During the defendant's colloquy it was
22 never in this particular case.

23 I would cite to you 14 FLW 976, April 1989,
24 which, of course, is hardbound by now. J. C. vs.
25 State. In accepting a guilty plea the trial court

1 must determine that the plea is freely and
2 intelligently entered with a full understanding of the
3 rights being waived. There is no mention whatsoever
4 in this transcript of any rights that the Defendant is
5 giving up, the rights to a trial by jury, the right to
6 confront witnesses, subpoena witnesses, remain silent,
7 none of that.

8 THE COURT: Was there a written plea form
9 entered?

10 MR. LEINSTER: That I don't know.

11 THE COURT: Joe, do you know that?

12 MR. BULONE: I certainly would assume so. I
13 don't know.

14 MR. LEINSTER: I will also cite -- it's going to
15 be tough to cite. Mounds v. State of Florida
16 (phonetic), a Fourth District opinion filed June 29th
17 of 1988. In any event -- let's see. It is error to
18 without conducting a colloquy with the Defendant to
19 determine if there is a factual basis for the plea and
20 whether the plea is voluntarily entered with the
21 understanding of it's consequences. It said, We
22 reverse and remand because the defendant's guilty plea
23 was accepted in violation of rule 3.172 Florida Rules
24 of Criminal Procedure.

25 The record does not demonstrate at the time the

1 trial court accepted guilty plea the Court conducted a
2 full colloquy with the Defendant to determine whether
3 there was a factual basis for the plea. Rule 3.172
4 requires the trial court to determine whether the
5 guilty plea is freely and voluntarily entered and
6 whether the Defendant understands the consequences of
7 his plea. The operative language there, however,
8 being there was no colloquy with the Defendant to
9 determine a factual basis.

10 Citing 13 FLW 2712, Williams v. State. a Fourth
11 District opinion. Where the defendant during the plea
12 colloquy with the trial court raised the possibility
13 of a defense in the course of his response to the
14 trial court's questions, potential prejudice is
15 apparent and further inquiry by the trial court into a
16 factual basis by the court is necessary.

17 What happened here is the Court was conducting
18 its colloquy with the Defendant, not simply asking for
19 a stipulation on the record by counsel. He was
20 charged with willfully and knowingly resisting an
21 officer in the performance of his duty and he pled
22 guilty to that. And the Court said, Also you resisted
23 arrest with violence. You unlawfully, willfully,
24 knowingly by offering or doing violence to him by
25 fighting with a duly qualified law enforcement officer

1 -- blah, blah, blah. The defendant said I didn't
2 fight. So he sort of -- he didn't say he didn't do
3 it because he was charged with opposing, obstructing,
4 offering or doing violence by fighting and he said I
5 didn't fight. The Court said, That's what you're
6 admitting to by pleading guilty; do you understand
7 that? He answered, Yes, sir, I do.

8 That was reversed on the same basis that is
9 tantamount to what happened in this plea where the
10 public defender, not even the Defendant, says we agree
11 that they can establish a prima facie case, but we
12 don't agree with the facts. I don't know what that
13 kind of equivocation means.

14 Those are the cases that I have for the Court's
15 benefit. I would ask Mr. Herrick be sworn.

16 THE COURT: Do you want the State to respond
17 first?

18 MR. LEINSTER: That's fine.

19 MR. BULONE: I have not been provided with that
20 transcript at all, if I could just take a look at it.
21 If you want to take the defendants statement now,
22 that's fine.

23 THE COURT: Mr. Herrick, raise your right hand.
24
25

1 THEREUPON,

2 KEVIN HERRICK

3 Was called as a witness and after having been first duly
4 sworn on oath, was examined and testified as follows:

5 THE COURT: Proceed, Mr. Leinster.

6 DIRECT EXAMINATION

7 BY MR. LEINSTER:

8 Q. At the time that you entered this plea, what was
9 the motive for doing so?

10 A. The lawyer told me it was the best thing I could
11 do, I suppose.

12 Q. Had your parents told you you could not come into
13 their residence?

14 A. No, they never told me I couldn't.

15 Q. Have you discussed with your parents at all those
16 events since that time?

17 A. Yeah.

18 Q. And would you have had their permission to go in
19 their residence at that time?

20 A. Yes.

21 Q. Your parents were apparently attempting to put
22 you in line; is that your understanding?

23 A. Yes, sir.

24 Q. And you also had access to a firearm when you
25 went in their residence?

1 A. Yes.

2 Q. Would you have had their permission to do that as
3 well?

4 A. I believe so. I was never told that I couldn't
5 use the guns.

6 MR. LEINSTER: That's all I have.

7 CROSS-EXAMINATION

8 BY MR. BULONE:

9 Q. You stated that your lawyer told you that it was
10 in your best interest to change your plea; is that true?

11 A. She said I should plead guilty.

12 Q. So you discussed the case with her?

13 A. Not really. I had seen her one time in the
14 months that I had been there.

15 Q. So you discussed the case with her, though,
16 didn't you?

17 A. No. To an extent, yes, but not into detail.

18 Q. You discussed all of your options as far as going
19 to trial and that sort of thing?

20 A. No.

21 Q. She told you that you could go to trial, right,
22 and you knew that right?

23 A. She said that I should plead guilty. That going
24 to trial was never discussed between us.

25 Q. But you knew you had the option to go to trial,

1 didn't you?

2 A. I suppose that would be my right, I guess.

3 Q. So you knew that, right?

4 A. (No verbal response).

5 Q. And you changed your plea at that time because
6 you thought it was in your best interest as your lawyer
7 did?

8 A. Under the advice of her I did, yes.

9 Q. So you weren't forced into changing your plea,
10 right, you just did it because you thought it was in your
11 best interest?

12 A. Probably because I was scared.

13 Q. You were scared of the consequences if you didn't
14 plead guilty, right?

15 A. Yep.

16 Q. Because you might get a deal that was worse then
17 the two-and-a-half years?

18 A. I wasn't aware of what kind of time I was facing.

19 Q. So you changed your plea because you thought it
20 would be in your best interest?

21 A. According to my lawyer, yes.

22 Q. And it was voluntary, nobody forced you or
23 anything like that?

24 A. No.

25 MR. BULONE: Nothing else.

1 MR. LEINSTER: No further questions.

2 THE COURT: Further witness testimony?

3 MR. LEINSTER: No, just the part --

4 THE COURT: With regard to what the parents say?

5 MR. LEINSTER: Yes.

6 THE COURT: Joe, do you want a few more minutes
7 to look through the transcript?

8 MR. BULONE: if I could.

9 THE COURT: We'll stand at ease to give
10 Mr. Bulone an opportunity to look at the transcript.

11 I would feel comfortable in taking a look at the
12 court file because there might be some documentation
13 in there. I have a copy of the judgment and sentence
14 that you presented me to show the priors, but I would
15 feel more comfortable in taking a look at the court
16 file and, hopefully, we can get someone over to
17 storage to get it. Hopefully.

18 Please take Mr. Herrick back to the holding cell
19 and we'll get back with you, Kevin, as soon as we can.
20 We'll continue the sentencing and the other motion to
21 vacate until such time as we get the Court file.

22 * * * * *

23 THE COURT: We're reconvening on Mr. Herrick's
24 situation. I understand the old court file from 1985
25 has been retrieved from across the street. Have you

1 had a chance to review it Mr. Bulone?

2 MR. BULONE: Yes, Judge.

3 THE COURT: Okay. Joe, go ahead.

4 MR. BULONE: I do not see a plea form in the
5 file.

6 THE COURT: The only thing I saw in the file was
7 the fact that the judge signed the plea form and the
8 judge indicated, which may or may not have been the
9 procedure back then, but Judge Ware signed a form
10 entitled "Change of Plea" wherein he indicated that
11 the former plea of not guilty was withdrawn and
12 entered a plea of guilty to burg residence and grand
13 theft as charged. The Court having inquired as to if
14 there are any inducements or promises to influence him
15 to enter the plea replied that there were not and
16 this plea is voluntarily and freely made, that he is
17 guilty as charged.

18 In looking at the transcript, what happened
19 before and what happened afterwards, it would appear
20 that, unless the public defender was doing a good job
21 of acting, she had spent some time talking to
22 Mr. Herrick about this. She had some concerns with
23 regards to his family situation and his emotional
24 problem. I know that, Kevin, I heard what you had to
25 say with how much time she spent with you, but it does

1 appear that she spent some amount of time with you to
2 get to know you on this situation and to explain to
3 the Court, you know, at least enough to get him to
4 sentence you within the guidelines and as a youthful
5 offender. Do you have anything you want to say on
6 that?

7 MR. BULONE: I have reviewed that transcript now
8 and there was a great deal of discussion about the
9 case with Mr. Herrick being there, the facts of the
10 case and the facts of his other cases, as well as
11 there was definitely a factual basis as to this
12 particular case. It was never said in there that the
13 defendant was not guilty or possibly not guilty of the
14 offense. The only thing that was cited in there was
15 that his parents wanted to prosecute to give him some
16 sort of help. That does not mean that they wanted to
17 prosecute him when he was not guilty and give him some
18 sort of help.

19 There is no indication by Mr. Herrick or anyone
20 else that he was not guilty of that or the crimes that
21 were alleged, but that was the reason that his parents
22 wanted to prosecute and there is a long discussion on
23 what he did with the guns after he did steal them from
24 his father. So it was a rather lengthy discussion in
25 the presence of Mr. Herrick as far as what the facts

1 of this particular case and all of the subsequent
2 actions.

3 THE COURT: It does appear that there is some
4 discussion on page 12 of the sentencing between the
5 Court and Mr. Herrick. He asked him his name and
6 asked if he was entering his change of plea freely and
7 voluntarily. State indicated they were relying on the
8 arrest affidavit and the VOP, and on the new charge
9 that he did enter the dwelling and take the weapons
10 and the public defender stipulated as to the violation
11 and stipulated to a prima facie case in the presence
12 of Mr. Herrick.

13 It appears if Mr. Herrick didn't agree to that,
14 he knew what he was going to be sentenced to because
15 in his presence his the public defender on page 12
16 indicated he'd be sentenced to two-and-a-half years
17 Department of Corrections on all of the cases running
18 concurrent with each other and there were new cases in
19 the violation statement Mr. Herrick entered. I see no
20 reason for setting aside --

21 MR. LEINSTER: One other point, Mr. Herrick never
22 pled to the substantive charges. If you look at page
23 12, he was sworn in and the Court said you're charged
24 with violation of probation. How do you plead?
25 Guilty. Is that plea entered freely, voluntarily?

1 What says the State as to the violation and probation?
2 They would rely on the warrant and affidavit and as to
3 the new charge. The State would show the following --
4 the Court says stipulate to the statement of facts?
5 PD stipulated to the violation and, as I say, "on the
6 new charges we stipulate the State could prove a prima
7 facie without agreeing to the facts in total," but he
8 never pled guilty to the substantive charge. He was
9 asked if he pled guilty to violation of probation.

10 THE COURT: Let's go off the record.

11 (THEREUPON, A DISCUSSION WAS HELD OFF THE RECORD.)

12 THE COURT: Back on the record.

13 MR. BULONE: One thing for the record I did want
14 to mention, even if we discount the grand theft and
15 the burglary he's still going to score life and the
16 reason is under the rules victim injury will be scored
17 for each victim injured during a criminal episode or
18 transaction. There were two victims in this case and
19 I had originally omitted that there are two victims.
20 One of them, of course, is the victim who was raped
21 and the other one was the victim who was stabbed. So
22 if you add both of those in, even if you take out the
23 burglary and the grand theft, he is still going to
24 have the 620 points and he will still score life.

25 I'm not conceding at all that the burglary and

1 grand theft ought to be dismissed or vacated.

2 MR. LEINSTER: If you read the transcript, he
3 never pled guilty.

4 MR. BULONE: I think it's obvious that he did
5 because they were talking about that one case the
6 whole time. The State made a factual basis about that
7 whole case and Jocelyn Leete did agree there was a
8 factual basis. She would not agree to each specific
9 fact, but she did agree there was a factual basis.
10 It's obvious he did plead guilty.

11 THE COURT: Based on the fact that Mr. Herrick
12 while, obviously, admittedly, scared at the time of
13 the sentencing because he was looking at prison, it
14 appears to me from looking at the Pre-Sentence
15 Investigation that's been prepared on this that this
16 is not the first time Mr. Herrick had been in trouble.
17 He's been in juvenile court a number of times and on
18 April the 15th of 1985 he was in criminal court again
19 on a criminal mischief charge, two different case
20 numbers, and was adjudicated guilty and was placed on
21 probation.

22 So it's not like this was the first time, Kevin,
23 that you have been in court. It's the first time you
24 were looking at prison and I'm sure that scared you,
25 but it's not like the formality of the situation was

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

1 asked to rule on whether you got a fair trial yet,
2 that comes after the sentencing, if your attorney
3 files a motion for a new trial and that isn't filed
4 until after the sentence is imposed. After he -- if
5 in fact one is filed and he states reasons as to why
6 he feels you should get a new trial, I'll review it at
7 that point and then my opinions might come into play.

8 I'm not trying to dodge the issue because I don't
9 do that, but at this point it doesn't matter in my
10 mind whether or not -- for purposes of sentencing at
11 this time -- I feel that the jury made the right
12 decision. The jury did make a decision and that is
13 what I have to live by as of today. You need the
14 distinction there.

15 I will -- I have already previously adjudicated
16 Mr. Herrick guilty pursuant to the jury verdict. I
17 will hereby sentence him to a term of incarceration of
18 life imprisonment. He certainly will receive credit
19 for any time served. Because there is a sex offense
20 here involved, good and gain will be modified
21 accordingly, but I'll leave that up to the Department
22 of Corrections to work out. As far as any release
23 time is concerned that, again, would be up to the
24 Department of Corrections and I don't need to discuss
25 that at this time.

1 Joe, do you want to file this score sheet?

2 MR. BULONE: Yes.

3 THE COURT: I think you need to put a total down
4 there because I didn't total it.

5 THE CLERK: Fifteen on count three?

6 THE COURT: Yeah.

7 THE CLERK: Concurrent?

8 THE COURT: Yeah.

9 THE CLERK: No parole issue or anything?

10 THE COURT: No. No minimum mandatory. I will
11 find Mr. Herrick indigent for purposes of costs. You
12 have thirty days from today in which to appeal this
13 sentence should you feel any mistakes were made from
14 the beginning of your arrest through today. If you
15 choose to appeal and cannot afford an attorney, then
16 an attorney will be appointed to represent you. Do
17 you understand, sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. I know that your parents were
20 present throughout the trial and, obviously, wanted to
21 have an opportunity to see you. From my understanding
22 you will probably still be next door for a while and
23 your parents will be able to visit you pursuant to
24 jail policy over there. At this point this hearing is
25 at an end. I order that the PSI be put in the Court

1 file. Does Cindy seal that?

2 THE CLERK: Yes, she needs to do that.

3 (THEREUPON, THE HEARING WAS CONCLUDED.)

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CERTIFICATE OF REPORTER

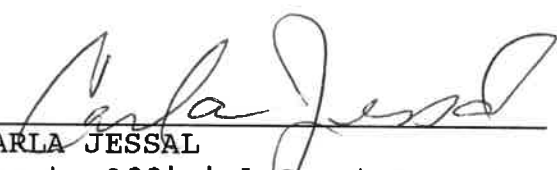
STATE OF FLORIDA)

COUNTY OF PINELLAS)

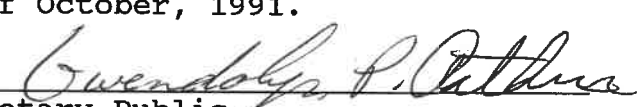
I, CARLA JESSAL, Deputy Official in and for the
Sixth Judicial Circuit, Notary Public, State of Florida at
Large:

DO HEREBY CERTIFY that the foregoing proceedings
were had at the time and place set forth in the caption
thereof; that I was authorized to and did stenographically
report the said proceedings; and that the foregoing pages,
1 through 26, inclusive, is a true and correct
transcription of my said stenographic report.

IN WITNESS WHEREOF I have hereunto affixed my
official signature this 23rd day of December, 1991, at
Clearwater, Pinellas County, Florida.


CARLA JESSAL
Deputy Official Court Reporter

Sworn to and subscribed before the
undersigned officer this 18th day
of October, 1991.


Notary Public
State of Florida at Large.

My Commission Expires: 4-10-94

FILED

JAN 4 1991

2

KARLETON D. BLANCHARD
SHERIFF
CLAY COUNTY, FLORIDA

Defendant Kevin Richard Derrick
Case Number 89-114250-fano-B

SENTENCE

(As to Count one)

The Defendant, being personally before this Court, accompanied by his attorney, Ed. Lester, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown.

(Check either provision
if applicable)

- ☒ and the Court having on 10/3/90 deferred imposition of sentence until this date. (Date)
- ☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that:

- ☐ The Defendant pay a fine of \$ 100's as the 5% surcharge required by F. S. 960.25.
- ☒ The Defendant is hereby committed to the custody of the Department of Corrections
- ☐ The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida
(Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

- ☐ For a term of Natural life
- ☒ For a term of Life
- ☐ For an indeterminate period of 6 months to _____ years.

If "split" sentence
complete either of
these two paragraphs

- ☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- ☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to their terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

Firearm — 3 year
mandatory minimum

Drug Trafficking —
mandatory minimum

Retention of
Jurisdiction

Habitual Offender

Jail Credit

- ☐ It is further ordered that the 3 year minimum provisions of FS.775.087 (2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm
- ☐ It is further ordered that the _____ year minimum provisions of F. S.893.135 (1) () () are hereby imposed for the sentence specified in this count.
- ☐ The Court pursuant to F. S. 947.16 (3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
- ☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F. S. 775.084 (4) (a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- ☒ It is further ordered that the Defendant shall be allowed a total of 539 days credit for such

Defendant Kevin Richard Henrich
 Case Number 89-11425 Cano - P

SENTENCE

(As to Count Two)

The Defendant, being personally before this Court, accompanied by his attorney, Ed. Linsten, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown.

☒ and the Court having on 10/30/90 deferred imposition of sentence until this date.
 (Check either provision if applicable) (Date)

☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that

- ☐ The Defendant pay a fine of \$ _____, inc as the 5% surcharge required by F. S. 960.25.
- ☒ The Defendant is hereby committed to the custody of the Department of Corrections
- ☐ The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida
 (Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

- ☐ For a term of Natural life
- ☒ For a term of Life
- ☐ For an indeterminate period of 6 months to _____ years.

If "split" sentence complete either of these two paragraphs

- ☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- ☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

Firearm — 3 year mandatory minimum

Drug Trafficking mandatory minimum

Retention of Jurisdiction

Habitual Offender

Jail Credit

- ☐ It is further ordered that the 3 year minimum provisions of FS.775.087 (2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm
- ☐ It is further ordered that the _____ year minimum provisions of F. S.893.135 (1) () () are hereby imposed for the sentence specified in this count.
- ☐ The Court pursuant to F. S. 947.16 (3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
- ☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F. S. 775.084 (4) (a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.

☒ It is further ordered that the Defendant shall be allowed _____ 539

Defendant Kevin Richard Henrich
 Case Number 89-11425 Cano-B

SENTENCE

(As to Count Three)

The Defendant, being personally before this Court, accompanied by his attorney, Ed Leinster, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why he should not be sentenced as provided by law, and no cause being shown.

☒ and the Court having on 10/3/90 deferred imposition of sentence until this date. (Date)

(Check either provision if applicable)

☐ and the Court having placed the Defendant on probation and having subsequently revoked the Defendant's probation by separate order entered herein.

IT IS THE SENTENCE OF THE LAW that:

- ☐ The Defendant pay a fine of \$ inf as the 5% surcharge required by F. S. 960.25.
- ☒ The Defendant is hereby committed to the custody of the Department of Corrections
- ☐ The Defendant is hereby committed to the custody of the Sheriff* of _____ County, Florida
 (Name of local corrections authority to be inserted at printing, if other than Sheriff)

To be imprisoned (check one; unmarked sections are inapplicable)

- ☐ For a term of Natural life
- ☒ For a term of 15 yrs
- ☐ For an indeterminate period of 6 months to _____ years.

If "split" sentence complete either of these two paragraphs

- ☐ Followed by a period of _____ on probation under the supervision of the Department of Corrections according to the terms and conditions of probation set forth in a separate order entered herein.
- ☐ However, after serving a period of _____ imprisonment in _____ the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections according to their terms and conditions of probation set forth in a separate order entered herein.

SPECIAL PROVISIONS

Firearm — 3 year mandatory minimum

Drug Trafficking mandatory minimum

Retention of Jurisdiction

Habitual Offender

Jail Credit

- ☐ It is further ordered that the 3 year minimum provisions of FS.775.087 (2) are hereby imposed for the sentence specified in this count, as the Defendant possessed a firearm
- ☐ It is further ordered that the _____ year minimum provisions of F. S.893.135 (1) () () are hereby imposed for the sentence specified in this count.
- ☐ The Court pursuant to F. S. 947.16 (3) retains jurisdiction over the defendant for review of any Parole Commission release order for the period of _____. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
- ☐ The Defendant is adjudged a habitual offender and has been sentenced to an extended term in this sentence in accordance with the provisions of F. S. 775.084 (4) (a). The requisite findings by the court are set forth in a separate order or stated on the record in open court.
- ☒ It is further ordered that the Defendant shall be allowed a total of 539 days credit for such time as he has been incarcerated prior to imposition of this sentence. Such credit reflects the

Defendant Kevin Richard Heirich
 Case Number 89-114250fano-B

Consecutive/Concurrent
 (As to other convictions)

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run ☐ consecutive to ☒ concurrent with (check one) the following:

☒ Any active sentence being served.

☐ Specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Pinellas County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of this Judgment and Sentence.

The Defendant in Open Court was advised of his right to appeal from this Sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court and the Defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

In imposing the above sentence, the Court further ^{orders} recommends Restitution not applicable in this case.

DONE AND ORDERED in Open Court at Pinellas County, Florida, this 4 day of January A.D., 19 91.


 JUDGE

FILED

1

☐ PROBATION VIOLATOR
(Check if Applicable)

OCT 3 1990

KARLEEN F. De BLAKER
CLERK CIRCUIT COURT
Karin Bennett Deputy Clerk

STATE OF FLORIDA

IN THE CIRCUIT COURT,
SIXTH JUDICIAL CIRCUIT,
IN AND FOR PINELLAS COUNTY, FLORIDA
DIVISION: FELONY

CASE NUMBER CRC 89-11425 CFANO-8

-vs-

Kevin Richard Herrick
Defendant 362912

JUDGMENT

The Defendant, Kevin Richard Herrick, being personally before this

Court represented by Ed Leinster, his attorney of record, and having:

(Check Applicable
Provision)

- ☒ Been tried and found guilty of the following crime(s)
☐ Entered a plea of guilty to the following crime(s)
☐ Entered a plea of nolo contendere to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME	CASE NUMBER
<u>I</u>	<u>Burglary - PBL</u>	<u>810.02</u>	<u>1st</u>	<u>89-11425</u>
<u>II</u>	<u>Sexual Battery</u>	<u>794.011(3)</u>	<u>Life</u>	<u>89-11425</u>
<u>III</u>	<u>Aggravated Battery</u>	<u>784.045</u>	<u>2nd</u>	<u>89-11425</u>

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

The Defendant is hereby ordered to pay the sum of twenty dollars (\$20.00) pursuant to F.S. 960.20 (Crimes Compensation Trust Fund). The Defendant is further ordered to pay the sum of three dollars (\$3.00) as a court cost pursuant to F. S. 943.25(4).

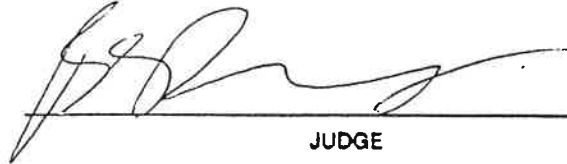
Imposition of Sentence
Stayed and Withheld
(Check if Applicable)

☐ The Court hereby stays and withholds the imposition of sentence as to count(s) _____
and places the Defendant on probation for a period of _____
under the supervision of the Department of Corrections (conditions of probation set forth in
separate order.)











Sentence Deferred
Until Later Date
(Check if Applicable)

☒ The Court hereby defers imposition of sentence until 11-2-90
(Date)

The Defendant in Open Court was advised of his right to appeal from this Judgement by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The Defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.


JUDGE

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
6. L. Thumb	7. L. Index	8. L. Middle	9. L. Ring	10. L. Little
				

Fingerprints taken by:

P.A. Baxley Bailiff 3237
(Name and Title)

DONE AND ORDERED IN Open Court at PINELLAS County, Florida, this 3rd day of October A.D., 19 90. I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, Kevin Herrick and that they were placed thereon by said Defendant in my presence in Open Court this day.



ated 1-25-90

Full
Text

NAPR +
W.P.A.T. +
Text

INHEREDY CERTIFICATE
has been furnished by [illegible] to the Office of the State
Attorney, 5100 144 St. [illegible], St. Petersburg 34520, on January

IN THE COUNTY COURT OF THE SIXTH
JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA

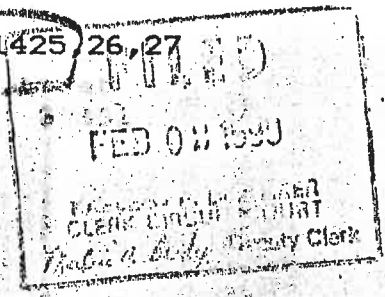
STATE OF FLORIDA,

CASE NO.: CRC89-11425-26,27

Plaintiff,

vs.

KEVIN RICHARD HERRICK,
362912
Defendant.



NOTICE OF APPEARANCE OF COUNSEL, REQUEST FOR A
COPY OF CHARGE, WAIVER OF PERSONAL APPEARANCE AT
ARRAIGNMENT AND WRITTEN PLEA

ED LEINSTER, Attorney at Law, hereby enters his Notice of
Appearance as counsel for the Defendant KEVIN RICHARD HERRICK.

Pursuant to Rule 3.140(m), Fla.R.Crim.P., the Clerk of this
Court is hereby requested to furnish a copy of the information,
citation, notice to appear and/or arrest affidavit with
endorsements thereon by mail to the undersigned legal counsel.

Pursuant to Rule 3.170(a), Fla. R. Crim.P., the defendant,
through the undersigned attorney, hereby enters this written plea
of not guilty to the charges contained in the aforementioned
charging document and waives personal appearance before the Court
for arraignment proceedings, subject to this Court's authorizing
defense counsel to file timely motions otherwise due at the time
of arraignment within ten (10) days after receipt of a copy of the
requested charging document filed in this cause.

2-5-90 to
for J
[illegible]

I HEREBY CERTIFY that a true and correct copy of the foregoing
has been furnished by hand/mail delivery to the Office of the State
Attorney, 5100 144 N. Avenue, Clearwater, Florida 34620, on January
31, 1990.

✓ _____
ED LEINSTER
Attorney for Defendant
219 North Brown Street
Orlando, Florida 32801
(407) 422-3937

CIRCUIT/COUNTY COURT, PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION

FILED CASE NO. CRC89-11425CFANO-B

STATE OF FLORIDA
vs.

OCT 03 1990

KEVIN RICHARD HERRICK

KARLEEN F. De BLAKER
CLERK CIRCUIT COURT
Karin Smith Deputy Clerk

COUNT I

BURGLARY

We, the Jury, find as follows, as to Count I of the charge:

(check only one as to this count)

- ☒ A. The defendant is guilty of Burglary of a Structure while armed with a deadly weapon, as charged.
- ☐ B. The defendant is guilty of Burglary of a Structure with an assault or a battery, a lesser included offense.
- ☐ C. The defendant is guilty of Burglary of a Structure which was a dwelling without an assault or battery, a lesser included offense.
- ☐ D. The defendant is guilty of Burglary of a Structure with a human being in the structure but with no assault or battery and was not armed, a lesser included offense.
- ☐ E. The defendant is guilty of Burglary with no aggravating circumstances, a lesser included offense.
- ☐ F. The defendant is not guilty.

SO SAY WE ALL.

[Signature]
FOREPERSON OF JURY

10-3-90

DATE

CIRCUIT/COUNTY COURT, PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION

FILED

CASE NO. CRC89-11425CFANO-B

STATE OF FLORIDA
vs.

OCT 03 1990

KEVIN RICHARD HERRICK

KARLEEN E. DOBLAKER

COUNT II

CLERK CIRCUIT COURT

Karen Smith Deputy Clerk

SEXUAL BATTERY

We, the Jury, find as follows as to Count II of the charge:

(check only one as to this count)

- ☒ A. The defendant is guilty of Sexual Battery involving a deadly weapon, as charged.
- ☐ B. The defendant is guilty of Sexual Battery involving special circumstances, a lesser included offense.
- ☐ C. The defendant is guilty of Attempted Sexual Battery, a lesser included offense.
- ☐ D. The defendant is guilty of Aggravated Assault, a lesser included offense.
- ☐ E. The defendant is guilty of Simple Battery, a lesser included offense.
- ☐ F. The defendant is not guilty.

SO SAY WE ALL.

[Signature]
FOR PERSON OF JURY

10-3-90

DATE

CIRCUIT/COUNTY COURT, PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION

FILED

CASE NO. CRC89-11425CFANO-B

STATE OF FLORIDA
vs.

OCT 03 1990

KEVIN RICHARD HERRICK

COUNT III

KARLEEN F. De BLAKER
CLERK CIRCUIT COURT
Karin Smith Deputy Clerk

AGGRAVATED BATTERY

We, the Jury, find as follows as to Count III of the charge:

(check only one as to this count)



A. The defendant is guilty of Aggravated Battery, as charged.



B. The defendant is guilty of Simple Battery, a lesser included offense.



C. The defendant is not guilty.

SO SAY WE ALL.

[Signature]
FOREPERSON OF JURY

10-3-90

DATE

DMTN

IN THE CIRCUIT COURT FOR THE
SIXTH JUDICIAL CIRCUIT, IN AND
FOR PINELLAS COUNTY, FLORIDA.

CASE NO: CRC89-11425, 26, 27 CFANO-B

STATE OF FLORIDA,

Plaintiff,

vs

KEVIN HERRICK

Defendant. 362912

FILED
CRIMINAL COURT RECORDS
90 OCT 25 PM 1:14
KARLEEN E. DEBLAKER
CLERK OF CIRCUIT COURT

MOTION FOR NEW TRIAL

COMES NOW, the Defendant KEVIN HERRICK, by and through below signed counsel hereby moves this Court for a new trial and as grounds therefore would show:

1. That the verdict is contrary to the weight of the evidence in this case.

2. That the conduct of law enforcement in this case renders the prosecution fatally defective as a denial of due process.

WHEREFORE the Defendant, KEVIN HERRICK, respectfully requests that this Honorable Court grant unto him a new trial in this matter for the reasons set forth above.

Ed Leinster

ED LEINSTER, Esquire
1302 E. Robinson Street
Orlando, Florida 32801
(407) 422-3937
Attorney for Defendant