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IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-1828

VICTOR VILLANUEVA,

Petitioner,

-vs.-

THE STATE OF FLORIDA,

Respondent.

INITIAL BRIEF OF PETITIONER ON THE MERITS

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

CARLOS J. MARTINEZ
Office of the Public Defender
Eleventh Judicial Circuit of Florida
1320 N.W. 14th Street
Miami, Florida 33125
(305) 545-1958

JAMES MOODY
Assistant Public Defender
Florida Bar No. 88223
AppellateDefender@pdmiami.com
jmoody@pdmiami.com

Counsel for Petitioner

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INTRODUCTION

Petitioner, Victor Villanueva, was the appellant in the district court of appeal and the defendant in the circuit court. Respondent, the State of Florida, was the appellee in the district court of appeal, and the prosecution in the circuit court. In this brief, the symbol "R" will be used to designate the record on appeal, and the symbols "T," "T2," and "T3" will be used to designate the transcripts dated June 13, July 12, and July 21, 2011 respectively.

STATEMENT OF THE CASE AND FACTS

Victor Villanueva was originally charged by information with one count of misdemeanor battery upon his daughter, Y.V. in June of 2009 (R. 7-9). A month later the state amended the information and charged Mr. Villanueva with one count of lewd and lascivious molestation in violation of section 800.04(5)(C)(2), Florida Statutes (R.11-13). The state alleged that during a visit to his brother's pool, Mr. Villanueva briefly touched his daughter's breast over her clothing while walking to his car, briefly touched her breast again while helping her put on her seatbelt, and touched her buttocks as she jumped into the pool (T. 255-257). Mr. Villanueva maintained that he never inappropriately touched Y.V (T. 383-389). A jury acquitted Mr. Villanueva of the sexual molestation allegation, but convicted him of misdemeanor battery (T. 506). Nonetheless, the court sentenced Mr. Villanueva to undergo Mentally Disordered Sexual Offender treatment (T2. 7-8).

The following evidence was presented at Mr. Villanueva's trial: Victor Villanueva and Martha Mateo were married after a brief two month courtship (T. 317). Six months after they were married, Mr. Villanueva asked for a divorce (R. 304, 318). Five months after the divorce, Mateo gave birth to Mr. Villanueva's only child, Y.V. (T. 318, 385). From the time of the divorce, Mateo always felt that Mr. Villanueva was not financially providing for his daughter. She initiated

court proceedings against him for child support, although she had already remarried a man who financially supported her and Y.V. (T. 307, 318-319).

During her early childhood, Mr. Villanueva fought for visitation rights with Y.V. (T. 318-320, 336). According to Y.V., Mr. Villanueva was able to visit her about once a month (T. 262). However, according to Mateo, Mr. Villarreal only visited twice a year (T. 308). Mr. Villanueva eventually won partial custody of Y.V. when she was six, after which she would live with him on the weekends (T. 262).

When Y.V. was nine, Mr. Villanueva was involved in a construction accident that caused him to be bedridden for three to four months (T. 386-387). Following the accident Mr. Villanueva lost contact with Y.V. (T. 265). He did not have the opportunity to see her again until he ran into her three years later at a McDonalds with her mother (T. 269). Mateo smiled when she saw him and encouraged Y.V. to approach Villanueva (T. 269, 311-312). Mr. Villanueva said "hi" to Y.V. and then spoke with Mateo (T. 270-271). He explained that he had been looking for her, and that he wanted to reconnect with Y.V. (T. 329-330). They made a plan for Mr. Villanueva and Y.V. to spend time together (T. 330).

Mr. Villanueva called Mateo the very next day, and they arranged for him to come pick Y.V. up (T. 312-313). Mateo encouraged Y.V. to spend time with her father (T. 330-331). Mr. Villanueva came to get Y.V. at her house that afternoon

(T. 275). According to Y.V., as the two were walking away Mr. Villanueva touched her chin, told her that she was pretty, and touched her breast over her shirt for a few seconds (T. 275-277). Y.V. did not say or do anything, and they went to Mr. Villanueva's truck (T. 280-281). Y.V. claimed that when he was helping her put her seatbelt on, Mr. Villanueva called her pretty and touched her breast again for a few seconds over her clothing (T. 280-281).

Y.V. and Mr. Villanueva drove to her uncle's house where they went swimming in his pool with her aunt (T. 283). Y.V. claimed that after she jumped into the pool, Mr. Villanueva reached out and touched her buttocks (T. 282). This time, Y.V. said "hey, you touched me." Mr. Villanueva said he was sorry, and explained that he was reaching out for her when he saw her jump (T. 282-283). Y.V. said that she spoke up specifically because her aunt was in the pool with her (T. 284). But Y.V. did not testify that her aunt had any reaction (T. 282-285). Indeed, after the alleged public molestation, Y.V. stayed, took a shower with her aunt, ate dinner with the family, and then went home (T. 284-285). Although her mother was there when she got home, Y.V. did not mention the alleged molestation (T. 285).

The next morning, Y.V., told her mother what happened (T. 285). Although Y.V. testified that Mateo was upset, she did nothing after hearing the accusation (T. 285). According to Mateo, she did not do anything because she was scared that

as an illegal immigrant she would be deported if she involved the authorities (T. 315). But Mateo admitted that she had lodged formal complaints against Villanueva in the past, when she on multiple occasions instituted proceedings against him for child support (T. 318-319, 471).

Some six months later, Y.V. was involved in an incident at school in which a boy in her class made a lewd gesture toward another girl in the class (T. 346). Y.V. witnessed the gesture, and helped the girl report the incident to their teacher (T. 350-351). The same day Y.V. told her teacher that a "friend" had been molested by her father, and asked what would happen to a father who touched his daughter inappropriately (T. 287, 347). Her teacher told her the father could go to jail (T. 287). About a week later, that teacher pressed Y.V. about whether her father had molested her (T. 347-348). Y.V. then accused her father of touching her on the day they went to her uncle's pool (T. 347-348).

Y.V. admitted that she is generally scared of all Mexican men because of "their behavior toward women" and what she referred to as the "touching" and the "raping" by Mexican men she knew (T. 367, 372). Mr. Villanueva, who is Mexican, testified at trial and denied that he ever inappropriately touched Y.V. (T. 383-389).

After hearing the testimony and judging Y.V.'s credibility, the jury acquitted him of lewd and lascivious molestation, defined as an intentional touching of the

breasts or buttocks in a lewd or lascivious manner. The jury instead returned a conviction for misdemeanor battery (T. 506).

Although he was exonerated of the sexual misconduct, the court disregarded the jury's finding and sentenced Mr. Villanueva to undergo therapy as a Mentally Disordered Sexual Offender (T2. 7-8). Surprised, the defense asked if the court meant that Mr. Villanueva should receive a Mentally Disordered Sexual Offender *evaluation*, to determine if treatment was necessary (T2. 8-9). The court declared that it had already made that determination and that Mr. Villanueva was to undergo *therapy* as a Mentally Disordered Sexual Offender (T. 9). The defense strenuously objected (T2. 9).

The defense filed a motion to mitigate sentence, and brought the issue back before the court (T3. 3). The defense explained that in order to complete the Mentally Disordered Sexual Offender treatment, patients had to admit that they were indeed mentally disordered sexual offenders (T3. 3-4). They went on to argue that since Mr. Villanueva had maintained his innocence throughout his case, and was indeed acquitted of the sexual crime, he would not now admit that he was a sex offender (T. 4). Thus, by maintaining his innocence he was effectively "set up" for a subsequent probation violation (T3. 4-5). The defense requested that the court allow Mr. Villanueva to go to an evaluation rather than treatment to at least determine if further therapy was necessary (T3. 4-5).

The court denied the request, and although it acknowledged that Mr. Villanueva was in fact only convicted of misdemeanor battery, ruled that it was sending him to sex offender therapy anyway because "he needs to learn that he can't do that to children and family" (T3. 5). The court characterized the battery as a sexual offense in spite of the verdict, and declared that the jury "just didn't find it to the same degree that the charging people did" (T3. 5).

The defense persisted, again telling the court that Mr. Villanueva's probation order required "sex offender treatment" even though he was not found to be a sex offender (T3. 5). Seemingly confused about what the acronym "MDSO" stands for, the court replied "It shouldn't. It's MDSO therapy."

Mr. Villanueva appealed the imposition of Mentally Disordered Sexual Offender Therapy. *See Villanueva v. State*, 118 So. 3d 999 (Fla. 3d DCA 2013). Mr. Villanueva argued that under *Biller v. State*, 618 So. 2d 734 (Fla. 1993), the special condition of Mentally Disordered Sexual Offender treatment was illegally imposed because it was not reasonably related to rehabilitation given that Mr. Villanueva was not convicted of a sexual offense. *Id.*

The Third District Court of Appeal affirmed the sentence, holding that *Biller* implied that a sentencing judge could consider any facts in the record when imposing special condition of probation. *Id.* Moreover, the Third District held that despite the jury's finding, Mr. Villanueva's conduct was "sexual in nature." *Id.*

Therefore the condition of sexual offender therapy was reasonably related to rehabilitation under *Biller*. *Id.* Additionally, the court held that although section 948.30, Florida Statutes, "which establishes the conditions for 'sex offender probation,'" requires conviction of a specifically enumerated sexual offense as a predicate, that a sentencing judge could nonetheless impose *some* of the conditions of sex offender probation following conviction of a non-sexual offense. *Id.*

A jurisdictional brief was filed, based upon conflict with the Fifth District Court of Appeal's decision in *Arias v. State,* 65 So. 3d 104 (Fla. 5th DCA 2011). This Court accepted jurisdiction and this merits brief follows.

SUMMARY OF THE ARGUMENT

The trial court erred when it imposed upon Mr. Villanueva a special condition of probation that he undergo Mentally Disordered Sexual Offender treatment after he was acquitted of lewd and lascivious molestation. Because the jury convicted Mr. Villanueva of the lesser included offense of battery, rather than completely acquitting him, the jury's verdict specifically characterized Mr. Villanueva's actions as non-sexual. Because his actions were non-sexual and there was nothing else in the record to indicate that Mr. Villanueva committed sex offense, the imposition of sexual offender treatment was not reasonably related to rehabilitation. Moreover, imposition of the condition punished Mr. Villanueva for a charge of which he was acquitted. Ultimately, the trial court and the Third District Court of Appeal both disregarded the verdict and substituted their own evaluation of the facts for the findings of the jury, thereby denying Mr. Villanueva his right to a trial by jury.

ARGUMENT

I.

BECAUSE HE WAS ACQUITTED OF SEXUAL CONDUCT BY A JURY, THE TRIAL COURT COULD NOT ORDER MR. VILLANUEVA TO UNDERGO MENTALLY DISORDERED SEXUAL OFFENDER THERAPY.

Mr. Villanueva was acquitted of lewd and lascivious molestation by a jury (T. 506). Nonetheless, the trial judge imposed a special condition of probation upon Mr. Villanueva that he receive Mentally Disordered Sexual Offender treatment (T2. 7-8). The court based the special condition solely on the accusations made during the trial – accusations that the jury rejected (T. 506). In spite of the acquittal, the trial court determined for itself that Mr. Villanueva had committed a sexual offense and sentenced him to undergo Mentally Disordered Sexual Offender treatment (T2. 7-8). By doing so, the court disregarded the verdict and supplanted its will for that of the jury. Moreover, the court sentenced Mr. Villanueva based upon charges of which he was acquitted. Therefore, the court's imposition of Mentally Disordered Sexual Offender therapy violated Mr. Villanueva's constitutional rights to due process of law and a trial by jury under the fifth, sixth, and fourteenth amendments to the United States Constitution, and sections nine and twenty two of the Florida Constitution.

The Jury's Verdict

Because the jury acquitted Mr. Villanueva of lewd and lascivious molestation, *but also* convicted him of simple battery for the same actions, the jury effectively made a specific finding that Mr. Villanueva touched Y.V. in a *non sexual* way. In short, Mr. Villanueva was exonerated of all sexual conduct.

The elements of lewd and lascivious molestation are: the (1) intentional (2) touching (3) of the breasts, genitals, or buttocks (4) in a lewd or lascivious manner. § 800.04(5)(a), Fla. Stat (2013).[1] As the chart below demonstrates, given that the *only* allegations against Mr. Villanueva were that he touched Y.V.'s breasts and buttocks[2], the only *possible* way the jury could have returned a verdict of simple battery was to find that those touchings were *not* made in a lewd or lascivious manner:

ELEMENT	ACCUSATION OF L&L	VERDICT OF BATTERY
Intentional	Yes	Yes
Touching	Yes	Yes
Of Y.V.'s Breasts/Buttocks	Yes	Yes
Lewd or Lascivious Manner	Yes	**NO**

1 In addition victim must be between the ages of twelve and sixteen and the accused must be older than 18. 800.04(5)(a), Fla. Stat (2013). These elements, however, were not at issue at trial nor were they litigated or debated (T. 1-506).

2 This point was acknowledged by the Third District's holding in *Villanueva v. State*, 118 So. 3d 999 (Fla. 3d DCA 2013).

By returning a verdict of simple battery, the jury acknowledged that Mr. Villanueva touched Y.V.'s breast and buttocks, *and* found that those same touching were *not* made in a lewd or lascivious manner. In other words, by acknowledging that the touching of Y.V.'s breasts and buttocks occurred, yet acquitting Mr. Villanueva of lewd and lascivious molestation, the jury characterized the touchings as non-sexual.

Critical to this specific finding is the fact that the jury returned a conviction for the lesser included offense of battery. Absent this finding, it could not be said that the jury was making a specific characterization of the touching of Y.V.'s breasts and buttocks. Had the jury remained silent as to the touchings, their intent would have remained ambiguous. However, by directly addressing the touchings and finding that they constituted a simple battery rather than a molestation, the jury conclusively acquitted Mr. Villanueva of all sexual conduct. Moreover, as there was no evidence or allegations of any other touchings, the jury could not possibly have been basing its conviction on anything other than the touching of Y.V.'s breasts and buttocks. Thus, the jury was specifically characterizing the touching of Y.V.'s breasts and buttocks as non-sexual.

This Court employed the identical logic in *Brown v. State*, 959 So. 2d 218 (Fla. 2007). In *Brown* the defendant was accused of felony murder, the predicate of which was an armed robbery. *Id.* at 219. The jury acquitted Mr. Brown of

armed robbery, but convicted him of the lesser included offense of misdemeanor petit theft. *Id.* Although the jury determined that he was only guilty of a petit theft, the jury also convicted Brown of felony murder. *Id.* The trial court vacated Mr. Brown's felony murder conviction since he was not convicted of a predicate felony necessary to support the charge. *State v. Brown*, 924 So. 2d 86 (Fla. 3d DCA 2007). The Third District Court of Appeal reinstated Mr. Brown's conviction for felony murder holding that the verdict *could* have been based upon a finding that he committed an *attempted* armed robbery. *Id.* at 87. The court reasoned that the jury did not explicitly reject the theory that Mr. Brown *attempted* to commit armed robbery. *Id.* This Court reversed the Third District, holding that by returning a conviction for the lesser included offense of petit theft, the jury "effectively acquitted" Mr. Brown of *any form of robbery*. *Brown v. State,* 959 So. 2d 218, 221 (Fla. 2007). *See also Redondo v. State,* 403 So. 2d 954 (Fla. 1981) (conviction of lesser included offence as opposed to complete acquittal effectively acquitted defendant of alternative uncharged crimes); *cf. Pitts v. State,* 425 So. 2d 542 (Fla. 1983) (complete acquittal does not foreclose possibility that defendant committed an uncharged version of crime).

The identical logic applies to the case at bar. By convicting Mr. Villanueva of simple battery for touching Y.V.'s breasts and buttocks, the jury explicitly rejected the theory that he acted in a lewd and lascivious manner, and "effectively

acquitted" him of *any* sexual conduct. Because *no other touching occurred*, the verdict specifically characterizes the touching of Y.V.'s breasts and buttocks as non-sexual.

As such, both the trial court and the Third District erred when they determined that Mr. Villanueva's actions were "sexual in nature" (T3. 5); *Villanueva v. State*, 118 So. 3d 999 (Fla. 3d DCA 2013). Indeed, the Third District went as far as to explicitly declare that "the only inappropriate touching in the record – *the only non-consensual physical contacts that could support the battery conviction* – was sexual in nature" (emphasis added). *Id.* at 1003. Besides being legally incorrect under *Brown*, the Third District's holding does not logically comport with the lewd and lascivious molestation statute. In holding that the touching in this case was "sexual in nature" in spite of the jury's verdict that Mr. Villanueva did not act in a lewd or lascivious manner, the Third District effectively held that *any* touching of the breasts or buttocks is "sexual in nature." Such a holding is illogical, and contrary to the lewd and lascivious molestation statute which requires not just mere touching of the breasts of buttocks, but rather the intent to touch in a lewd and lascivious manner. § 800.04(5)(a), Fla. Stat. (2013). At best the Third District illegally became a fact finder, and impermissibly substituted the jury's finding with its own. At worst, their holding completely eliminated an essential element of lewd and lascivious molestation.

The Special Condition

Given that Mr. Villanueva was acquitted of any sexual conduct, the imposition of the special condition of Mentally Disordered Sexual Offender therapy was erroneous. The general rule is that a court may impose a special condition of probation that is reasonably related to the defendant's rehabilitation. *See Biller v. State,* 618 So. 2d 734 (Fla. 1993). While a court may look to items in the record, such as a presentence investigation report, to establish a reasonable relationship to a special condition, the condition cannot be based upon conduct for which the defendant was acquitted. *Biller v. State,* 618 So. 2d 734 (Fla. 1993) (relationship could arise out of presentence report); *G.F. v. State,* 927 So. 2d 62 (Fla. 5th DCA 2006) (relationship could *not* arise from acquitted conduct); *Carty v. State,* 79 So. 3d 239 (Fla. 1st DCA 2012) (same); *James v. State,* 696 So. 2d 1268 (Fla. 2d DCA 1997) (same). Because Mr. Villanueva was acquitted of the *only* allegedly sexual conduct present in record, the trial court had no valid basis to impose Mentally Disordered Sexual Offender therapy.

The majority of districts have followed this logic in holding that special conditions of probation cannot be based upon acquitted charges. The Fifth District had occasion to address nearly identical circumstances in *G.F. v. State*, 927 So. 2d 62 (Fla. 5th DCA 2006). In that case, G.F. was accused and convicted of battery. *Id.* at 62-63. Based upon two *prior* arrests for lewd and lascivious molestations,

G.F.'s predisposition report recommended sexual offender treatment. *Id.* The trial court followed the recommendation, and ordered G.F. to undergo treatment. *Id.* The Fifth District struck G.F.'s sex offender therapy, holding that because both prior allegations against G.F. had been dismissed, the condition was invalid. *Id.* at 64-65.

The Second District reached an identical conclusion in *James v. State,* 696 So. 2d 1268 (Fla. 2d DCA 1997). In that case, the defendant James began a sexual relationship with a 14-year-old girl. *Id.* at 1269. The two had a child together, and were married. *Id.* James was charged with committing a lewd and lascivious act in the presence of a child based upon his relationship with his wife, and was separately charged with aggravated child abuse based upon alleged physical abuse of his child. *Id.* James was convicted of committing a lewd act, but acquitted of child abuse. *Id.* As a condition of his probation, the trial court forbade him from contact with his child. *Id.* The trial court based the condition upon the *allegations* of child abuse in the case. *Id.* The Second District struck that provision of probation because, *despite the allegations*, the jury had acquitted James of child abuse. *Id.*

Most recently, the First District addressed the same issue in *Carty v. State,* 79 So. 3d 239 (Fla. 1st DCA 2012). In that case, the defendant was charged with battery, burglary with an assault, and resisting an officer without violence. *Id.* at

240. He was convicted only of resisting an officer without violence. *Id.* Nonetheless, the trial court imposed a special condition of probation that Carty attend a batterer's intervention program. *Id.* The First District struck that condition, holding that:

> The fact that Appellant was also charged with battery and burglary of a conveyance with assault does not justify the condition requiring Appellant to complete a batterer's intervention probation *because the jury acquitted Appellant of those charges.*

(emphasis added). *Id.* As in the case at bar, there was nothing else in the record in *Carty* to suggest that could support imposition of the special condition. *Id.*

Standing in opposition to the First, Second, and Fifth Districts, the Third District reached a contrary conclusion in *Villanueva v. State,* 118 So. 3d 999 (Fla. 3d DCA 2013). Exactly as in *James,* the trial court in this case imposed a condition of probation on Mr. Villanueva based solely upon the allegations made at trial (T3. 5). But unlike the *James* court, the Third District affirmed the imposition of Mentally Disordered Sexual Offender therapy although the condition was based upon acquitted conduct. *Villanueva v. State,* 118 So. 3d 999 (Fla. 3d DCA 2013).

Recognizing the clear holding of *G.F.,* the Third District attempted to distinguish its decision from that case. The Third District held that unlike the battery alleged in *G.F.* which was always "non-sexual" in nature, the touching

alleged in this case was "sexual" in spite of the verdict, thereby justifying the special condition. *Villanueva v. State*, 118 So. 3d 999 (Fla. 3d DCA 2013).

This distinction fails for two reasons. First, as discussed extensively, *supra*, Mr. Villanueva was *acquitted of any and all sexual conduct.* Thus, because Mr. Villanueva's conduct was found *not* "sexual in nature," no distinction from *G.F.*, *James*, or *Canty* exists. Despite the Third District's claim to the contrary, the holding in *Villanueva* does nothing other than impose a condition of probation based solely upon allegations of which the appellant was completely acquitted.

Second, the Third District's holding is flawed because it misinterpreted the holding of *G.F.* In *Villanueva*, the Third District attempted to distinguish its holding by stating that sex offender therapy was erroneously imposed in *G.F.* because the original charge in that case, unlike here, was not sexual in nature. *Villanueva v. State*, 118 So. 3d 999 (Fla. 3d DCA 2013). This however, is a complete misreading of *G.F.* Indeed, the special condition imposed by the trial court was based neither on his charges, nor his conviction, but rather on his *prior record. G.F. v. State*, 927 So. 2d 62, 63 (Fla. 5th DCA 2006). The Fifth District clearly held that the condition of sex offender therapy could not be based upon prior allegations that had been *dismissed. Id.* Thus, the distinction raised by the Third District was irrelevant. Whether G.F. was or was not originally charged with a sex offense was of no moment to the Fifth District. Rather, their holding turned

entirely on the fact that the court imposed a condition of probation based solely upon dismissed charges. The Third District declined to address this point. *Villanueva v. State*, 118 So. 3d 999 (Fla. 3d DCA 2013).

Petitioner asks this Court to approve of the well reasoned cases from the First, Second, and Fifth District Courts of Appeal, and reject the holding of the Third District. As explained in *Biller,* in order for a court to impose a special condition of probation, it must be reasonably related to rehabilitation. *Biller v. State,* 618 So. 2d 734 (Fla. 1993). A special condition cannot be reasonably related to rehabilitation when the condition was based solely on acquitted conduct.

To impose a condition of probation based solely upon allegations of which one is acquitted would be a miscarriage of justice. First and foremost, such a rule allows both the trial court and the district courts of appeal to substitute their will for that of the jury. Here, the trial judge said that he was sentencing Mr. Villanueva to Mentally Disordered Sexual Offender therapy – a program in which he is required to admit guilt – because "he needs to learn that he can't do that to children and family" (T3. 5). In making this statement, it is clear that the court completely disregarded the finding of the jury, and placed itself in the role of the fact finder. Regardless of what the jury found, *the court* believed Y.V., and so *the court* decided to sentence Mr. Villanueva as if he were a sex offender. What the court did was tantamount to directing a verdict of guilt, and effectively rendered

the trial a nullity. By sentencing him based upon its own evaluation of the accusations, the court effectively denied Mr. Villanueva his constitutional right to jury trial. Moreover, approval of the Third District's decision would create absurd results, giving trial judges unfettered ability to circumvent the jury's verdict whenever they disagreed with the outcome, and impose conditions of probation based upon their own evaluation of a case.

"It is fundamental that the due process clause prohibits a court from considering charges of which an accused has been acquitted in passing sentence." *Epprecht v. State*, 488 So. 2d 129 (Fla. 3d DCA 1986). That time honored axiom should apply with equal force to the imposition of special conditions of probation. While the basis for a special condition may arise from something other than a conviction, such as a predisposition report, it must not be based upon conduct specifically rejected by a jury. Neither the trial court nor the district court of appeal has the power to override the will of the jury; thus in the limited cases where the jury's verdict constitutes a specific finding, the trial court may not disregard that finding and impose conditions of probation based upon its own evaluation of the facts.

CONCLUSION

Based upon the foregoing facts, authorities and arguments, petitioner respectfully requests this Court to quash the decision of the Third District Court of Appeal, and strike the special of Mentally Disordered Sexual Offender treatment.

Respectfully submitted,

CARLOS J. MARTINEZ
Public Defender
Eleventh Judicial Circuit
of Florida
1320 N.W. 14th Street
Miami, Florida 33125

BY: /s/ James Moody

JAMES MOODY
Assistant Public Defender
Florida Bar No. 88223

CERTIFICATE OF FONT

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

/s/ James Moody
JAMES MOODY
Assistant Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was emailed to the Office of the Attorney General at CrimAppMIA@MyFloridaLegal.com on March 12, 2014. Undersigned counsel hereby designates, pursuant to Rule 2.516, the following e-mail addresses for the purpose of service of all documents required to be served pursuant to Rule 2.516 in this proceeding: AppellateDefender@pdmiami.com (primary E-Mail Address); jmoody@pdmiami.com (Secondary E-Mail Address).

/s/ James Moody
JAMES MOODY
Assistant Public Defender