

IN THE SUPREME COURT OF FLORIDA

MICHAEL LEVANDOSKI,)
)
 Petitioner,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
)
 _____)

CASE NO.: SC17-962

REPLY BRIEF OF APPELLANT

On Discretionary Review from the Fourth District Court of Appeal

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RECEIVED, 09/30/2017 07:08:30 AM, Clerk, Supreme Court

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STATEMENT OF THE CASE AND FACTS

Levandoski relies on his statement of the case and facts as presented in his initial brief.

SUMMARY OF THE ARGUMENT

Levandoski relies on the summary of the argument that he presented in his initial brief. Additionally, Levandoski argues that he never consented to or invited his illegal sentence.

ARGUMENT

POINT I

THIS COURT SHOULD FIND THAT ANY SEX OFFENDER CONDITION THE TRIAL COURT INTENDS TO IMPOSE AS A SPECIAL CONDITION OF PROBATION MUST BE ORALLY PRONOUNCED AT SENTENCING AND THEREFORE LEVANDOSKI'S SENTENCE IS ILLEGAL

Levandoski did not invite his illegal sentence. He offered to subject himself to an illegal sentence in exchange for a non-prison, downward departure sentence. The court rejected his offer, imposing a sentence that included 48 months of prison.

This is in contrast to the defendant's situation in *Senger v. State*, 200 So. 3d 137 (Fla. 5th DCA 2016). There, Senger plead to using a computer to solicit a person believed to be a parent for sex with a minor and traveling after using a computer to solicit a person believed to be a parent for sex with a minor. *Id.* at 141. The trial court adjudicated him guilty on both counts and imposed a downward departure sentence of two years of community control on each count, followed by three years of sex offender probation on count I and eight years of sex offender probation on count II, running concurrently. *Id.*

On appeal, Senger argued that the trial court should not have placed him on sexual offender probation. *Id.* at 145. The Fifth District found his argument meritless. *Id.* Although the court found that Senger was correct that he was not

convicted of one of the enumerated offenses under section 948.30, he had specifically agreed to the court imposing the special conditions of sex offender probation in his effort to convince the trial court to impose a downward departure sentence. *Id.* at 146. “*Having been successful in that endeavor*, and due to the nature of the conviction, we believe it entirely appropriate that the trial court imposed sex offender probation.” *Id.* (emphasis added).

The Fifth District relied on *Ackermann v. State*, 962 So. 2d 407 (Fla. 1st DCA 2007) as support for this conclusion. *Id.* *Ackermann* is a decision reversing a summary denial of a rule 3.800(a) motion where the defendant was not convicted of a chapter 893 offense yet received drug offender probation. *Ackermann*, 962 So. 2d at 408. The First District stated that “[a] defendant may not be sentenced to drug offender probation unless he has been convicted of an enumerated chapter 893 offense or he has specifically agreed to such probation in a plea agreement.” *Id.*

Here, Levandoski agreed to allow the court to impose sex offender probation *in exchange for* the court granting his motion for downward departure and *in exchange for* the court not imposing a prison sentence. The court chose not to accept Levandoski’s offer and he was not bound by that offer.

POINT II

ON REMAND, THE TRIAL COURT MUST STRIKE THE SPECIAL CONDITIONS OF PROBATION NOT ORALLY PRONOUNCED AND MAY NOT REIMPOSE THEM.

Levandoski relies on his argument for Point II as presented in his initial brief.

CONCLUSION

This Court should find that any special condition of sex offender probation the trial court intends to impose must be orally pronounced at sentencing and quash the Fourth District's opinion holding that oral pronouncement of "sex offender probation" is sufficient notice as to the specific conditions imposed. Upon remand, this Court should direct the trial court to strike every special condition of probation not orally pronounced at sentencing, and that double jeopardy prohibits imposing any additional special conditions of probation.

CERTIFICATE OF SERVICE

I certify that this brief has been electronically filed with the Court and a copy of it has been served to Allen Geesey, Assistant Attorney General, office of the Attorney General, Ninth Floor, 1515 North Flagler Drive, West Palm Beach, Florida 33401-3432, by email at CrimAppWPB@MyFloridaLegal.com this 30th day of September, 2017.

/s/ Joshua LeRoy
Joshua LeRoy

CERTIFICATE OF FONT

I certify the instant brief has been prepared with 14 point Times New Roman type, in compliance with a Florida Rule of Appellate Procedure 9.210(a)(2).

/s/ Joshua LeRoy
Joshua LeRoy