

Sentencing Manipulation Miscalculation

by Sean Reilly

While working in the prison law library, the prisoner, Christopher Nelson, out of Santa Rosa County, Florida, approached me requesting assistance with a post conviction motion regarding a potential scoresheet error. Mr. Nelson received the bottom of the guidelines sentence of 45.3 months in the Florida Department of Corrections.

As it turns out, there was a Kidnapping charge on his scoresheet that he wasn't convicted of and other charges on his scoresheet that were not on his criminal record, which boosted up his total points to score him out to 45.3 months in prison. The prosecutors knew what they were doing when they offered him a bottom of the guidelines plea agreement. Prosecutors tend to intimidate criminal defendants with threats of prosecution and long prison terms that the ordinary person is inclined to accept such an appealing bottom of the guidelines plea offer, without taking a second glance at the criminal Scoresheet.

Most criminal defendants are fully reliant on their criminal defense lawyer that they are reluctant to second guess their attorney's work or competence. This, along with probation violations and other reasons, is why the prisons in the State of Florida are so crowded and the number of prisoners continues to escalate, which currently is estimated at an

astounding 102,000 prisoners as of this year, according to the Florida Department of Corrections website.

Once Mr. Nelson and I corrected the scoresheet error, using a Florida Rules of Criminal Procedure 3.850 Postconviction Motion, because the sentencing error was not on the face of the record, the circuit court held an evidentiary hearing within a couple of months, and Mr. Nelson was re-sentenced to a correct scoresheet, with the bottom of the guidelines at 32.6 months in the Department of Corrections. Mr. Nelson and his family were thrilled with the new sentence, especially, since he was coming home approximately 13 months earlier than previously expected.

Unfortunately, this problem is running rampant throughout the State of Florida, as Prosecutors are surreptitiously re-labeling charges or falsely classifying past charges on the defendant's scoresheet, which the prosecutor figures is innocuous enough to ignore or bypass. However, this minor detail is causing thousands of prisoners additional time behind bars, away from their family and friends.

Prosecutors are making it the criminal defendant and his or her attorney's job to investigate the sentencing scoresheet for inaccuracies in the offense level or for past criminal charges that one was not convicted of.

It is up to the accused to be very meticulous about every detail on the Sentencing Scoresheet. Prisoners must not put their lives in the hands of overzealous, rogue prosecutors or their indifferent defense attorneys.

Assistant prosecutors, straight out of law school, around the State of Florida are trained to be indifferent, scandalous and conniving. The prosecutors are looking to gain a political advantage over their colleagues. There is a long list of prosecutors that come to mind that are focused on prospering through "illegal tactics" and some may even "bend the rules" to secure any kind of conviction and punishment from a person accused of a crime.

Prosecutors practice of the law is so far from seeking justice that it appears in this day and age, one would have more fairness from an umpire or referee of a sporting event than from a slick shrewd, most of the time, well-dressed prosecutor sitting across from you in a courtroom. These prosecutors actually have thechutzpah to send a person to prison knowing that they cheated to gain a tactical advantage. However, if the error gets caught prior to sentencing or on a postconviction claim, the prosecutor will pretend that it was fortuitous, when in fact, they have manipulated the sentencing miscalculation.

All prisoners and their lawyers, and the lawyers' legal assistants, paralegals and investigators, must have the clairvoyance to properly digest or interpret the information on the scoresheet and in the discovery. Beware as you are up against a formidable opponent in this game of legal warfare; as the Florida Supreme Court ultimately concluded that a properly calculated scoresheet is important when deciding the sentence to impose.