

>> THE NEXT CASE IS JOHNSON
VERSUS STATE OF FLORIDA.

>> THIS CASE.

>> SORRY.

NEXT CASE, IS LEVANDOSKI.
NOW YOU'RE UP.

WE WANTED TO HEAR IT AGAIN.

>> GOOD MORNING.

JOSHUA LEROY ON BEHALF OF

MR. MICHAEL LEVANDOSKI.

MR. LEVANDOSKI IS BEING

SUBJECTED TO PROBATIONARY
CONDITIONS IN SECTION 9.380.

THOSE CONDITIONS MUST BE STRUCK
FROM HIS PROBATION ORDER BECAUSE
THOSE CONDITIONS WERE NOT ORALLY
PRONOUNCED AT SENTENCING.

>> LET ME WALK YOU THROUGH
INITIALLY WHAT HAPPENED HERE.
MY UNDERSTANDING FROM THE RECORD
THAT YOUR CLIENT PLED NOLO
STRAIGHT UP IN COURT, AM I
CORRECT?

WAS NOT NEGOTIATED PLEA?

>> THAT'S CORRECT.

>> AND PLED NOLO, AND REQUESTED,
REQUESTED THAT HE BE SENTENCED
OR PLACED ON SEX OFFENDER
PROBATION WITH HOUSE ARREST.
IN OTHER WORDS, HE DIDN'T WANT
TO GO TO PRISON.

THE TRIAL JUDGE DENIED THAT,
ACCEPTED HIS NOLO PLEA AND
DENIED HIS REQUEST, SENTENCED
HIM TO PRISON FOLLOWED BY, WHAT
WE'RE GOING TO TALK ABOUT HERE
TODAY, OKAY?

THE STATE HAS ARGUED THAT, THAT
IN ITSELF PLACES YOUR CLIENT ON
NOTICE AS TO WHAT SEX OFFENDER
PROBATION IS.

HE REQUESTED IT.

HE WANTED IT.

HOW IS IN VIOLATION OF DUE
PROCESS THAT HE WAS NOT ON
NOTICE THAT A JUDGE WAS PLACING
HIM ON SEX OFFENDER PROBATION
HERE?

>> WE'RE TAKING A FEW
ASSUMPTIONS AND THE STATE TAKES

THOSE ASSUMPTIONS.

A, COUNSEL ASKED FOR SEX
OFFENDER PROBATION.

THERE IS THE ASSUMPTION THAT HE
THEN TOLD THE CLIENT

MR. LEVANDOSKI WHAT WAS--

>> HAS TO ASK THE CLIENT FIRST.

>> PRESUMABLY.

THE BIGGER QUESTION IS WHAT IS
SEX OFFENDER PROBATION.

I THINK THAT IS THE ISSUE THAT
NEEDS TO BE BEFORE THIS COURT,
THAT THE COURT NEEDS TO CLARIFY.
THE TERM SEX OFFENDER PROBATION
IS DEFINED IN 94.001, SUBSECTION
13.

IT HAS A SPECIFIC DEFINITION.

THAT IS INTENSIVE PROBATION.

IT IS NOT REFERENCE 948.30.

THERE IS NO CROSS REFERENCE
THERE.

IN FACT 948.30 IS NOT CALLED SEX
OFFENDER PROBATION.

IT IS ENTITLED ADDITIONAL TERMS.

>> AM I WRONG IN RECOLLECTING
THAT THE TRIAL COURT MADE SOME
SPECIFIC REFERENCE TO CERTAIN
ELEMENTS THAT ARE WITHIN THE
STATUTE THAT YOU LAST REFERRED
TO?

>> I WILL NOTE THAT NO PERSON,
THE COURT, THE STATE, NOR
DEFENSE COUNSEL AT THE PLEA
COLLOQUY OR THE SENTENCING
HEARING REFERENCED 948.30, THAT
STATUTE.

>> DID YOU HEAR MY QUESTION?

>> YES.

>> COULD YOU ANSWER MY QUESTION?

>> YES, SIR.

IN REGARDS TO, HE DID ANNOUNCE,
THE SENTENCING COURT DID
ANNOUNCE THREE SPECIAL
CONDITIONS OF PROBATION.

THOSE THREE SPECIAL CONDITIONS
WERE A PROHIBITION ACCESSING THE
INTERNET AND OWNING A COMPUTER.

A HE PROHIBITION ON--

>> ARE THOSE IN THE STATUTE YOU
JUST REFERRED TO?

>> ARE THOSE THREE SPECIFIC
CONDITIONS?
SOME OF THOSE CONDITIONS ARE.
ONE OF THE THIRD, SPECIAL
CONDITION WAS THE--
>> HERE IS MY QUESTION.
GIVEN THOSE SPECIFIC REFERENCES,
WHY WOULD ANYBODY BE LEFT IN
DOUBT ABOUT WHAT WAS BEING
REFERRED TO AS SEX OFFENDER
PROBATION?
I MEAN THAT'S THE SECTION.
THAT'S THE SECTION WHERE THOSE
SPECIFIC THINGS ARE LAID OUT,
AND JUST IS CURIOUS TO ME WHY
ANYBODY WOULD, AS A PRACTICAL
MATTER BE IN DOUBT?
>> THAT TERM, SEX OFFENDER
PROBATION, IF MR. LEVANDOSKI OR
ANY OTHER PERSON, PROBATIONER
TRY TO LOOK UP THE TERMS OF HIS
PROBATION IN SEX OFFENDER
PROBATION, HE WOULD NOT BE
REFERENCED TO 948.3.
HE IS REFERENCED TO 948.01.
I WILL SAY THIS, IN VILLANOVA, A
CASE BEFORE THIS COURT, OPINION
LAST YEAR, THAT TERM USED IN
THAT CIRCUIT FOR SEX OFFENDER
PROBATION WAS MENTALLY
DISORDERED SEXUAL OFFENDER
PROBATION.
THESE ARE TERMS THAT ARE BEING
GENERATED WITHIN THE CIRCUITS
APPARENTLY TO REFER TO 948.30
BUT THERE IS NO REFERENCING
BETWEEN THE TWO.
THERE IS NO INDICATION THAT THEY
AUTOMATICALLY REFER BACK.
>> LET ME ASK YOU THIS.
IT SEEMS LIKE, IF WE, WE WOULD
UNDERSTAND THAT THE REFERENCE AT
THE ORAL SENTENCING WAS
AMBIGUOUS.
WE UNDERSTAND THAT.
THAT SEEMS TO BE WHAT YOU'RE
SAYING.
THE SEX OFFENDER PROBATION
REFERENCE IS AN AMBIGUOUS
REFERENCE.

SO WE CAN'T KNOW WHAT THAT IS.
MAYBE WE DISAGREE.
MAYBE WE AGREE WITH THAT BUT IF
IT IS AMBIGUOUS, LET ME ASK YOU
THIS, WHAT CASES DO WE HAVE THAT
SAY AMBIGUOUS SENTENCE MAY NOT
BE ORALLY PRONOUNCED SENTENCE,
MAY NOT BE CLARIFIED IN THE
WRITTEN ORDER?

>> WHY ARE WE ASSUMING THAT IS
AMBIGUOUS IF SEX OFFENDER--

>> BEG YOUR PARDON?

>> IF SECTION OFFENDER PROBATION
IS DEFINED BY 948.001, SECTION
13--

>> WITH ARE YOU ASKING ME A
QUESTION?

>> THE ISSUE IS--

>> I ASKED YOU A QUESTION, WOULD
YOU ATTEMPT TO ANSWER IT?

>> I DON'T BELIEVE THAT THE TERM
SEX OFFENDER PROBATION IS
AMBIGUOUS.

I BELIEVE--

>> I'M ASKING YOU TO ASSUME THAT
IT IS AMBIGUOUS.

AND THEN ANSWER THE QUESTION I
ASKED, WHICH, AND I UNDERSTAND
YOU'RE DISPUTING THAT IS IT IS
AMBIGUOUS.

I GUESS, YOUR POSITION IT MEANS
NOTHING BECAUSE, IT EITHER
REFERS TO THAT STATUTE, IT'S
AMBIGUOUS OR IT MEANS NOTHING.
SO, BUT ASSUME IT'S AMBIGUOUS,
IT IS AMBIGUOUS, TELL ME THIS,
WHAT CASES DO WE HAVE THAT SAY A
AN ORALLY-PRONOUNCED SENTENCE
THAT IS AMBIGUOUS MAY NOT BE
CLARIFIED IN THE WRITTEN
SENTENCING ORDER?

>> NONE CITED IN THE BRIEF.

THE ISSUE IN THE BRIEF WAS
ORALLY-PRONOUNCED SENTENCES
CONTROL.

ORALLY-PRONOUNCED SENTENCES
WHICH IS WHAT WE HAVE HERE,
ORALLY-PRONOUNCED CONDITIONS
CONTROL.

READING 948.30 WHICH IS WHAT THE

STATE SAYS MEANS SEX OFFENDER
PROBATION.

AND THIS IS THE ISSUE THAT THE
RECORD SHOWS IN THIS CASE.
IS, 948.30 HAS FIVE SUBSECTIONS.
THE FIRST SUBSECTION
SPECIFICALLY SAYS, IF IT IS ONE
OF THE FIVE ENUMERATED CRIMES
THAT IT APPLIES.

SUBSECTION 2 SAYS THE SAME
THING.

SUBSECTION 3 SAYS THE SAME
THING.

SUBSECTION 5 SAYS THE SAME
THING.

SUBSECTION 4 HAS AN EXCEPTION IT
DOESN'T APPLY IF THE VICTIM IS
UNDER 18.

IF A PERSON WITH THESE CHARGES,
MR. LEVANDOSKI, WERE TO READ
THREW THAT STATUTE AND TRY TO
DETERMINE DOES SECTION 1, 2, 3,
4, OR 5 APPLY TO HIM, HE WOULD
HAVE TO FIGURE THAT OUT.

THE NERO COURT IN THE FIFTH
DISTRICT DEALT WITH THAT
RECENTLY.

THEY SPECIFICALLY SAID IT WOULD
REQUIRE ADDITIONAL RESEARCH, IT
WOULD REQUIRE ADDITIONAL
FINDINGS AS TO WHAT ACTUALLY
APPLIES AND I HIGHLIGHT IN THIS
CASE AT THE MOTION HEARING ON
DECEMBER 15TH, 2015 IN THE
RECORD, AND IT IS PAGE 25 OF THE
RECORD, THE COURT ASKED
PROBATION, WHAT CONDITIONS IS HE
BEING SUBJECTED TO?

AND THE COURT SPECIFICALLY SAID
THAT IF IT'S NOT, BUT SINCE HE
WASN'T CONVICTED OF THAT,
MEANING ONE OF THOSE CRIMES,
THAT'S JUST A SUPERFLUOUS PAGE
IN THE PROBATION ORDER.

>> LET ME JUST, I WILL HAVE--
IF, ISN'T IT THE CASE LAW IF THE
TRIAL JUDGE HAS SAID, I AM
HEREBY ALSO PLACING YOU TO SEX
OFFENDER PROBATION AND ALL
CONDITIONS OF SEX OFFENDER

PROBATION, THAT WOULD HAVE BEEN ENOUGH?

WE WOULDN'T BE HERE TODAY.

>> I WOULD SAY THAT WOULD BE BETTER YOU ABOUT I DON'T SAY THAT WOULD BE ENOUGH.

>> HE WOULD ACTUALLY HAVE TO STATE EACH AND EVERY SINGLE ONE OF THE CONDITIONS THAT ARE AVAILABLE UNDER SEX OFFENDER PROBATION, THAT PLEA COLLOQUY WOULD PROBABLY TAKE A LONG TIME.

>> ACCORDING TO LAWSON, THE COURT STRESSED WE NEED SPECIFICITY IN ORDER TO SATISFY DUE PROCESS.

--

>> HERE IS WHAT THE JUDGE SAID, AND I'M QUOTING FROM THE FOURTH DCA OPINION.

HE SAYS, AND I'M QUOTING, WE'LL MAKE IT A SPECIAL CONDITION OF HIS PROBATION THAT HE IS PROHIBITED FROM, AND THEN HE PARAPHRASED IN, THIS IS PART OF THE SEX OFFENDER PROBATION ANYWAY, BUT JUST TO MAKE THE RECORD CLEAR, SHOULD THERE BE ANY CHANGE IN THE LAW AS TO THE TIME OF THIS HIS RELEASE, HE IS PROHIBITED FROM ACCESSING THE INTERNET, PROCESSING A COMPUTER, OR ANY ELECTRONIC DEVICE THAT CAN ACCESS THE INTERNET.

HE IS PROHIBITED FROM HAVING EMAIL ADDRESS OR OTHER SIMILAR TYPE OF ADDRESS, THAT ALLOWS HIM TO PARTICIPATE IN CONVERSATION WITH ANYONE, AND GOES ON AND ON. THAT IS ONE OF THE SEX OFFENDER CONDITIONS.

BUT IN SAYING, THIS IS PART OF THE SEX OFFENDER PROBATION ANYWAY, ISN'T THE JUDGE IN FACT SAYING I AM PLACING YOU ON SEX OFFENDER PROBATION BUT I WANT TO HIGHLIGHT FOR YOU THESE THINGS VERY IMPORTANT TO ME, THIS INTERNET THINGS AND THOSE THINGS?

>> BUT THE COURT DIDN'T
REFERENCE 948.30.
>> HE HAS TO SAY THE NUMBER,
948.30?
>> IT IS ASSUMPTION THAT 948.30
IS THE SEX OFFENDER PROBATION.
AS I SAID IN THE VILLANUEVA,
THAT WAS SEX OFFENDER PROBATION
OR SECTION OFFENDER TREATMENT.
WE HAVE A TERM NOT REFERENCED TO
STATUTE.
IT DOESN'T REFER TO A
SUBSECTION, AND IF WE GO TO A
STATUTE--
>> LET ME ASK YOU THIS.
HAVE YOU RAISED A SUBSTANTIVE
CHALLENGE TO ANY OF THESE
CONDITIONS, SPECIAL CONDITIONS
OF PROBATION?
IN OTHER WORDS, THAT THEY'RE NOT
REASONABLY RELATED TO THE CRIME
AND OFFENSE TO WHICH YOUR CLIENT
PLED?
>> WE HAVE NOT RAISED A BILLARS
CHALLENGE TO THE CONDITIONS.
>> OKAY.
>> WE'RE FOLLOWING THE SNOW
OPINION, WHICH THESE CONDITIONS
WERE NOT ORALLY PRONOUNCED
BECAUSE ESSENTIALLY WHAT WE'RE
SAYING HERE, PRECEDENT FROM THIS
COURT IS THAT--
>> THAT IS, THAT IS A DUE
PROCESS CHALLENGE, CORRECT?
THAT IS PROCEDURAL DUE PROCESS
CHALLENGE?
>> WHAT WE'RE CHALLENGING IS DUE
PROCESS, CORRECT.
BECAUSE LAWSON, I'M SORRY, THE
CASE JUSTICE REQUIRES THOSE
CONDITIONS BE ORALLY PRONOUNCED
AT SENTENCING--
>> THE REASON FOR THAT WAS TO
ALLOW AN OBJECTION, CORRECT?
TO BE ORALLY PRONOUNCED.
YOU DON'T HAVE OPPORTUNITY TO
OBJECT.
IF YOU DON'T PRESERVE AN ISSUE
FOR APPEAL, THAN YOU CAN NEVER
RAISE IT, YOU WAIVE IT.

SO THE DUE PROCESS AT ONE POINT
REQUIRED AN ORAL PRONOUNCEMENT
IN ORDER TO ALLOW A
CONTEMPORANEOUS OBJECTION, IS
THAT CORRECT.

>> TO ALLOW DEFENSE COUNSEL TO
RAISE OBJECTIONS TO INDIVIDUAL
CONDITIONS.

>> WHEN THE RULES WERE CHANGED
TO ALLOW A 3800-B MOTION TO
OBJECT TO RAISE SUBSTANTIVE
OBJECTIONS ONCE YOUR CLIENT WAS
HANDED THE WRITTEN LIST OF
CONDITIONS IN A PROBATION ORDER,
WHY DOESN'T THAT ALLEVIATE ANY
DUE PROCESS CONCERN?

THERE IS NOW A PROCEDURE IN
PLACE THAT ALLOWS FOR ANY
SUBSTANTIVE OBJECTION TO BE
RAISED, EVEN THOUGH THERE WAS NO
CONTEMPORANEOUS OBJECTION?
WHY DOESN'T THAT COMPLETELY
ALLEVIATE ANY DUE PROCESS
CONCERNS?

>> THAT IS WHAT THIS CASE IS,
THAT WE RAISED ISSUES WITH THE
CONDITIONS SET IN HIS PROBATION,
WHICH I NOTE IN THIS PARTICULAR
CASE, THE STATE ATTORNEY PRIOR
TO HIS RELEASE FROM PRISON FILED
A MOTION SEEKING CLARIFICATION
AS TO WHAT CONDITIONS OF HIS
PROBATION SHOULD APPLY BECAUSE
THE COURT DIDN'T REFERENCE
948.30.

SO WE FILED THE MOTION TO STRIKE
THOSE CONDITIONS TO REMOVE THOSE
NON-PRONOUNCED CONDITIONS.

>> WHAT I'M SAYING IS LITTLE
DIFFERENT.

BEFORE 3800-B WAS ENACTED, I
THINK THAT IS THE RIGHT NUMBER,
YOU, YOU HAD TO MAKE A
CONTEMPORANEOUS SUBSTANTIVE
OBJECTION TO A, TO A CONDITION
OF PROBATION IN ORDER TO RAISE
THE ISSUE ON APPEAL, AND YOU
COULDN'T DO THAT IF YOU DIDN'T
KNOW WHAT THE CONDITIONS WERE
DURING THE HEARING, RIGHT?

SO THERE WAS A DUE PROCESS
PROBLEM IF CONDITIONS WERE NOT
ORALLY PRONOUNCED, THE HEARING'S
OVER, AND THEN YOU GET A WRITTEN
LIST.

SO NOW YOU KNOW WHAT THEY ARE
BUT IT IS TOO RATE TO RAISE AN
OBJECTS.

THAT WAS A DUE PROCESS ISSUE,
RIGHT?

>> THAT'S, IF, IF I UNDERSTAND
THE QUESTION CORRECTLY, THAT WAS
THE PROCESS THAT WAS ENACTED IN
THIS CASE OR FOLLOWED IN THIS
CASE BECAUSE OF THE MOTION WAS
FILED SAYING THESE CONDITIONS--

>> WHEN WAS THE MOTION FILED?

>> THE MOTION WAS FILED IN JULY
OF 2015.

A HEARING WAS NOT ABLE TO BE
HEARD UNTIL DECEMBER.

>> THE SENTENCING HEARING WHEN
YOUR CLIENT WAS HAND AD
PROBATION ORDER THAT LISTED
INDIVIDUALLY ALL OF THESE
CONDITIONS, WAS THERE ANY
WRITTEN CHALLENGE, WAS THERE A
MOTION FILED THEN, CHALLENGING
ANY CONDITION?

>> THERE WAS NOT.

>> BUT THERE WAS OPPORTUNITY TO
DO THAT RIGHT, UNDER THE RULES?

>> THE ORDER WAS SIGNED IN
NOVEMBER OF 2010.

>> RIGHT.

>> PRESUMABLY BY THAT POINT
MR. LEVANDOSKI WAS IN PRISON.
PRESUMABLY MR. LEVANDOSKI WAS
ALREADY SENT TO PRISON.

I BELIEVE THE SENTENCING HEAR
WAS IN OCTOBER.

I DON'T BELIEVE THERE IS ANY
RECORD EVIDENCE THAT HE SIGNED
AND RELEASED THAT COPY OF THAT
ORDER UNTIL RELEASED FROM PRISON
IN 2014.

PRIOR TO HIM BEING RELEASED THE
STATE FILED THE MOTION,
PRESUMABLY AT DOC REQUEST, FILED
A MOTION WHAT CONDITIONS OF

PROBATION IS HE SUPPOSED TO BE ON BECAUSE HIS--

>> ARE YOU SAYING HE WASN'T CONTEMPORANEOUS WITH THE SENTENCING?

THERE WAS NO PROBATION ORDERED ENTERED?

>> I'M SAYING THE PROBATION ORDER IN THIS CASE IS SIGNED ON NOVEMBER 1st OF 2010.

THE SENTENCING HEARING WAS HELD OCTOBER 15th OF 2010.

IT WAS FILED WITH THE COURT ON NOVEMBER 2nd OF--

>> BASED ON SOMETHING ASKED EARLIER.

WHEN A JUDGE IS PRONOUNCING A SENTENCE ORALLY, IS THERE A REQUIREMENT IN THE EVENT THAT THERE'S A CONDITION OF PROBATION IN THE SENTENCE THAT MAY BE ILLEGAL, IS THERE A REQUIREMENT THAT A DEFENDANT OBJECT TO IT CONTEMPORANEOUSLY AT THE SENTENCING HEARING BEFORE IT CAN BE PRESERVED?

>> I BELIEVE THAT IS WHAT JUSTICE LAWSON WAS ASKING, WOULDN'T THE 3800 BE ABLE YOU TO CORRECT A SENTENCING ERROR AFTER THE FACT.

>> BUT WOULD HAVE YOU TO MAKE THE OBJECTION ORALLY DURING THE SENTENCING?

>> THIS CASE THERE WERE NO OBJECTIONS.

IN THIS CASE IT WAS THE REQUEST FOR SEX OFFENDER--

>> OBVIOUSLY IF YOU'RE NOT TOLD WHAT THE CONDITION IS AT SENTENCING YOU CAN'T OBJECT TO IT, THAT'S MY POINT.

IS THERE A REQUIREMENT? DOES DEFENDANT WAIVE ANYTHING BECAUSE HE DID NOT OBJECT CONTEMPORANEOUSLY AT TIME OF SENTENCING WHEN IT WAS PRONOUNCED ORALLY?

>> THAT ISSUE WASN'T BRIEFED AND I DON'T BELIEVE COUNSEL'S

FAILURE TO WAIVE OR TO OBJECT TO AN ILLEGAL CONDITION OF PROBATION WOULD PROHIBIT THAT PROBATIONER FROM LATER ARGUING UNDER THE 3800.

HOWEVER THAT ISSUE WAS NOT BRIEFED.

>> WELL, BUT, WHEN YOU SAY ILLEGAL, YOU HAVEN'T ARGUED IT IS SUBSTANTIVELY ILLEGAL. YOU'RE ARGUING THAT IT WASN'T PROPERLY ANNOUNCED ORALLY. AND, BUT THE ARGUMENT IS, THAT, IF I UNDERSTAND IT, THAT WHEN HE, WHEN THE JUDGE SAYS SEXUAL OFFENDER PROBATION, NOBODY COULD KNOW WHAT THAT MEANS, WELL, WHY WOULDN'T, IN ADDITION TO 3800-B WHICH IS THERE AFTER THE FACT, AFTER THE WRITTEN ORDER IS FILED, WHY COULDN'T THAT ACTUALLY AT THE SENTENCE WHERE IT IS ORALLY PRONOUNCED, IF IT IS NOT CLEAR WHAT IS MEANT WHY COULDN'T AN OBJECTION BE RAISED AT THAT POINT AND WHY SHOULDN'T AN OBJECTION BE RAISED AT THAT POINT WITH THE TRIAL COURT TO GIVE THE TRIAL COURT THE OPPORTUNITY TO CLARIFY WHAT THE TRIAL COURT MEANT BY UTTERING THOSE WORDS?

>> IN THIS PARTICULAR CASE IT DID NOT HAPPEN.

>> WHY SHOULDN'T WE REQUIRE THAT HAPPEN, OR AT LEAST IT BE RAISED IN THE 3800-B?

>> BETTER PRACTICE IF THAT HAD HAPPENED IN THIS CASE AND FOR FUTURE CASES, PERHAPS BUT--

>> WHAT YOU END UP WITH, BECAUSE THAT HASN'T HAPPENED YOU SAY YOU HAVE A GOTCHA, RIGHT?

WE GOTCHA, TRIAL JUDGE.

YOU SAID SOMETHING AMBIGUOUS OR WHATEVER, SOMETHING THAT WE DIDN'T UNDERSTAND, OR NOBODY COULD UNDERSTAND, AND BECAUSE OF THAT, WE GOTCHA AND YOU CAN'T IMPOSE THOSE CONDITIONS, WHICH

THE TRIAL JUDGE BELIEVED WERE NECESSARY FOR, TO PROPERLY HANDLE THE DISPOSITION IN THIS CASE, ISN'T THAT CORRECT?

>> THAT WOULD FOLLOW CASE LAW ALSO WE REQUIRE THE CASE, THE COURTS TO BE SPECIFIC AS TO EXACTLY WHAT THEY WANT, WHEN THEY'RE SENTENCING SOMEBODY. IF THEY DON'T IMPOSE A CONDITION, THE JUDGE IN THIS CASE, IF YOU DON'T IMPOSE A CONDITION YOU MEANT TO YOU CAN'T COME BACK.

>> I ASKED YOU IF THERE WERE CASES THAT DEAL WITH THIS CIRCUMSTANCE WHERE THERE WAS PRONOUNCEMENT THAT IS AMBIGUOUS, AND YOU SAID NOTHING HAS BEEN CITED.

I SUGGEST AT MOST WHAT WE HAVE HERE IS AMBIGUITY AND, I CONCEDE THAT FOR THE TRIAL COURT JUST TO COME ALONG LATER AND ADD THINGS, THAT WEREN'T PRONOUNCED, I THINK, TO CHANGE A SENTENCE LATER, THAT RAISES DOUBLE JEOPARDY CONCERNS, OKAY?

I UNDERSTAND THAT. BUT I THINK WHAT WE'VE GOT HERE IS DIFFERENT. THAT YOU HAVE A DIFFERENT PERSPECTIVE.

>> HOWEVER THE RECORD EVIDENCE ACTUALLY SUPPORTS THAT THE TRIAL COURT, THIS IS THE VERY SAME JUDGE WHO HEARD THIS MOTION HEARING FOUR YEARS LATER HEARD AND ASKED PROBATION AT THAT HEARING, WHAT CONDITIONS OF PROBATION IS HE SUBJECT TO?

>> FOUR YEARS LATER?

>> OR FIVE YEARS LATER.

>> HOW COULD HE POSSIBLY REMEMBER?

>> TO INDICATE HE WAS SURPRISED BY THAT IS THE RECORD EVIDENCE TO SHOW THAT HE SAID THAT IS JUST SUPERFLUOUS CONDITIONS BECAUSE HE HASN'T BEEN CONVICTED

OF ONE OF THOSE CRIMES.
THE TRIAL COURT THOUGHT, OR THE
TRIAL COURT SEEMINGLY BELIEVED
THAT IF A CONDITION DOESN'T
APPLY TO A PERSON, IF A
CONDITION IS NOT ENUMERATED,
DOESN'T FIT INTO THE DEFINITIONS
OF ONE, TWO, THREE, AND FIVE,
WHICH HAS THE LIST OF ENUMERATED
OFFENSES, THEN IT WOULD NOT
APPLY.

HE SAID, YOU ACTUALLY WENT
THROUGH EACH CONDITION AND SAID,
PROBATION VERIFIED THAT IT WOULD
BE APPLIED TO HIM.

>> HE SEEMED TO HAVE A DIFFERENT
UNDERSTANDING OF THE SENTENCING.

>> IT WOULD APPEAR THAT THE
ISSUE IS--

>> THERE IS NO SUGGESTION AT THE
SENTENCING THAT THESE WERE
MANDATORY CONDITIONS.

>> I WOULD RESPECTFULLY
DISAGREE, ACTUALLY, BECAUSE THE
COURT DOES SAY THEY'RE MANDATORY
UNDER THE JESSICA LUNSFORD ACT.
THESE CONDITIONS ARE MANDATORY
UNDER THE JESSICA LUNSFORD ACT.
THE JESSICA LUNSFORD ACT IS NOT
948.0.

HE USED THAT THAT THESE ARE
MANDATORY CONDITIONS UNDER
JESSICA LUNSFORD AND I'M
IMPOSING THAT.

HIS RESPONSE, FOUR YEARS LATER
AT THE MOTION HEARING INDICATE
THAT HE DIDN'T KNOW WHAT THE
CONDITIONS WERE.

MY TIME EXPIRED.

>> THAT IS AN ISSUE THAT IS, IF
IT'S PROPERLY PRESERVED
COGNIZABLE ON APPEAL, CORRECT?
IF A TRIAL JUDGE IMPOSES ANY
ASPECT OF A SENTENCE BECAUSE HE
OR SHE THINKS IT IS MANDATORY
WHEN HE OR SHE ACTUALLY HAS
DISCRETION, THEN YOU CAN GET A
RESENTENCING HEARING AT WHICH A
PROPERLY-INFORMED TRIAL COURT
IMPOSE AS SENTENCE, CORRECT?

>> I WOULD AGREE WITH THAT.

>> OKAY.

>> I WOULD AGREE WITH THAT.
HOWEVER ON THIS DIRECT APPEAL,
THERE WAS ANDERS BRIEF FILED AND
THESE ISSUES WERE NOT ADDRESSED.

>> OKAY.

>> THANK YOU.

SINCE WE USED UP ALL YOUR TIME,
I WILL GIVE YOU A FEW MINUTES
FOR REBUTTAL.

>> THANK YOU.

>> OF COURSE.

>> IF IT PLEASE THE COURT, ALLEN
GEESEY, WEST PALM BEACH ON
BEHALF OF THE STATE OF FLORIDA.
APPELLANT IS COMPLAINING THAT
THERE IS A VIOLATION OF DUE
PROCESS AND DUE PROCESS IS
NOTICE AND OPPORTUNITY TO BE
HEARD OR OBJECT AND THIS
DEFENDANT, IF EVER A DEFENDANT
HAD NOTICE, THIS DEFENDANT HAD
NOTICE.

LOOKING AT THE SPECIFIC FACTS OF
THIS CASE, THE DEFENDANT ASKED
TO BE PLACED ON SEX OFFENDER
PROBATION.

HE WAS PLACED ON SEX OFFEND
PROBATION.

AND NOW HE IS APPEALING BECAUSE
HE WAS PLACED ON SEX OFFENDER
PROBATION.

>> WHEN WAS THE PROBATION ORDER
PROVIDED?

>> I, I WOULD HAVE TO LOOK.
I HEARD DEFENSE COUNSEL, I WITH
HAVE TO LOOK IN THE RECORD TO
SEE WHAT THE DATE IS THAT THE
WRITTEN ORDER WAS--

>> NOVEMBER 1, 2010 I THINK.

>> YEAH.

THE, ORIGINAL SENTENCING DID
TAKE PLACE IN OCTOBER AND THE
WRITTEN ORDER APPARENTLY WASN'T
FILED UNTIL SOMETIME LATER.
OCTOBER 5th, 10, WHEN THE
SENTENCING TOOK PLACE, AN IN HIS
MOTION TO STRIKE THE CONDITIONS
OF SEX OFFENDER PROBATION WAS

FILED FIVE YEARS LATER.
SO THIS DEFENDANT WAS ON NOTICE.
HE FILED PLEADINGS STATING HE
WAS ON SEX OFFENDER PROBATION.

>> IS THAT, AS I RECALL THE
CONTEXT, HE WAS ASKING TO BE
RELIEVED OF SOME OF THE
CONDITIONS OF PROBATION AND IT
WAS IN THAT CONTEXT THAT HE
CHALLENGED THAT IT WASN'T WHEN
HE INITIALLY WAS PUT ON
PROBATION AFTER RELEASE FROM
PRISON, IS THAT CORRECT?

>> CORRECT.

IN SNOW HE RAISED THEM IN DIRECT
APPEAL.

IN LEVANDOSKI HE DID NOT OBJECT
TO THE SPECIAL CONDITIONS UNTIL
FIVE YEARS LATER.

WHAT HE TITLED A MOTION TO
STRIKE THAT THE FOURTH DISTRICT
TREATED AS A 3800.

YOU KNOW, BUT THIS DEFENDANT WAS
ON NOTICE.

HE UNDERSTOOD WHAT SEX OFFENDER
PROBATION WAS FOR, WHAT THE
CONDITIONS WERE.

THAT'S WHY HE CAME IN AND ASKED
TO STRIKE OR MODIFY IT, SO THAT
HE COULD HAVE CONTACT WITH
CHILDREN.

AND SO THAT HE COULD TRAVEL OUT
OF THE COUNTY.

THAT IS WHAT WE CAME TO THE
COURT WITH IN 2015.

TO TRAVEL OUT OF THE COUNTY FOR
BUSINESS AND STAY OVERNIGHT.

SO HE WAS AWARE OF CURFEW
CONDITIONS.

HE WAS AWARE OF NO CONTACT WITH
MINORS.

HE HAD NOTICE.

IT IS UNDENIABLE THAT HE HAD
NOTICE.

AND HE IS ALSO GOT CONSTRUCTIVE
NOTICE FROM THE STATUTE, 948.30,
THAT GAVE HIM CONSTRUCTIVE
NOTICE.

DUE PROCESS AS THE FOURTH
DISTRICT HELD WAS COMPLIED WITH

IN THIS CASE AND TO REQUIRE THE TRIAL JUDGE TO READ THROUGH ALL OF THE STATUTES JUST TO REITERATE WHAT HE, WHAT THE DEFENDANT'S ALREADY ON CONSTRUCTIVE NOTICE OF, IS PUTTING FORM OVER SUBSTANCE.

>> WELL, BUT IF YOU FOLLOW THAT TO ITS LOGICAL CONCLUSION YOU COULD SAY CONSTRUCTIVE NOTICE OF WHAT'S IN THE STATUTES, AND I DON'T THINK OUR CASE LAW SUPPORTS THAT IN THIS CONTEXT, AM I RIGHT OR WRONG, SNOW SAYS WHAT IT SAYS.

>> I DON'T KNOW THAT, THERE IS THE HARD CASE FROM-- HART CASE FROM THIS COURT IN '96, THE GENERAL CONDITIONS OF PROBATION, THAT THE DEFENDANT WAS ON NOTICE OF THE GENERAL CONDITIONS BECAUSE HE IS GIVEN CONSTRUCTIVE NOTICE THROUGH THE STATUTES.

I, YES, THERE IS ALSO CASE LAW, THAT NOT ONLY IS THE DEFENDANT ON CONSTRUCTIVE NOTICE OF WHAT'S IN THE STATUTE, BUT DEFENDANT IS ON CONSTRUCTIVE NOTICE OF WHAT'S IN THE FLORIDA RULES OF CRIMINAL PROCEDURE.

SO, YES, THIS DEFENDANT WAS ON CONSTRUCTIVE NOTICE OF SEX OFFENDER PROBATION CONDITIONS.

>> WHAT IS THE RULE OF LAW WITH REGARD TO REQUIRING THAT THOSE CONDITIONS BE EXPRESSED BEFORE THE WRITTEN ORDER AT THE TIME OF THE HEARING ITSELF?

>> THE STANDARD CONDITIONS OF PROBATION DON'T HAVE TO BE--

>> I UNDERSTAND.

>> NOT TALKING ABOUT SEX OFFENDER.

>> I UNDERSTAND.

>> TALKING ABOUT STANDARD CONDITIONS DON'T HAVE TO BE ENUNCIATED BECAUSE THEY'RE SET FORTH IN STATUTE.

AND THAT--

>> ARE WE NOT TALKING ABOUT

SPECIAL CONDITIONS HERE?

>> WE ARE TALKING ABOUT SPECIAL CONDITIONS.

>> OKAY,

>> AND THE JUDGE REFERENCED THOSE SPECIAL CONDITIONS WHEN HE SAID THE DEFENDANT'S BEING PLACED ON SEX OFFENDER PROBATION.

AND AGAIN ALL THE SEX OFFENDER PROBATION CONDITIONS UNDER THE LUNSFORD ACT ARE SET FORTH IN 948.30.

>> BUT I THOUGHT YOUR ADVERSARY SUGGESTED THAT THE TRIAL JUDGE ENUNCIATED THAT THE JESSICA LUNSFORD CONDITIONS ARE NOT INVOLVED IN THIS CASE.

>> ARE NOT MANDATORY.

>> IS THAT, IS THAT A CORRECT STATEMENT?

>> THAT THIS IS NOT MANDATORY UNDER, IF YOU READ THE FOURTH DCA'S OPINION, THIS IS NOT A SITUATION OF WHERE THEY THOUGHT IT WAS MANDATORY.

THERE IS NO INDICATION THAT THE TRIAL COURT THOUGHT IT WAS MANDATORY.

>> THE CHARGES THAT THE DEFENDANT PLED TO DID NOT REQUIRE--

>> THEY'RE NOT ENUMERATED.

>> SO I--

>> THEY'RE NOT ENUMERATED BUT THE TRIAL COURT WAS QUITE CLEAR HE WAS IMPOSING SEX OFFENDER PROBATION AND EVERYBODY IN THAT COURTROOM KNEW WHAT HE WAS TALKING ABOUT.

>> I JUST WANT TO GET A GRIP ON THIS.

IF THE JUDGE HAD SENTENCED HIM, IF THE JUDGE HAD SAID, OKAY, I'M PUTTING YOU ON REGULAR CONDITIONS OF PROBATION, THAT HE DOESN'T HAVE TO SPECIFY, I'M ALSO GOING TO PUT YOU ON SEX OFFENDER PROBATION PURSUANT TO SECTION 943 WHATEVER, IF HE JUST

SAID THAT, HE WOULD HAVE BEEN IN COMPLIANCE, THERE WOULD BE NO QUESTION ABOUT IT?

>> I THINK HE IS IN COMPLIANCE NOW.

I DON'T THINK THERE IS ANY QUESTION NOW BECAUSE HE SAID SEX OFFENDER PROBATION.

>> RIGHT.

SO ALL HE HAS TO SAY I'M PUTTING YOU ON SEX OFFENDER PROBATION AND PURSUANT TO SECTION WHATEVER, AND HE DOESN'T HAVE TO ENUMERATE, HE DOESN'T HAVE TO GO DOWN AS TO EACH CONDITION?

>> NO.

>> RIGHT.

>> THAT'S CORRECT.

SO LET ME, LET'S SAY HE DECIDES TO PUT THEM ON REGULAR PROBATION.

BUT THE JUDGE WANTS A COUPLE OF THOSE CONDITIONS THAT ARE IN THE SEX OFFENDER STATUTE.

NOT ALL OF THEM.

JUST A COUPLE.

THE INTERNET AND THAT KIND OF THING.

THEY WOULD BE SPECIAL CONDITIONS, IF HE DID IT THAT WAY, THEY WOULD BE SPECIAL CONDITIONS OF PROBATION THAT HE WOULD HAVE TO ENUMERATE AT SENTENCING, CORRECT?

>> YES.

AND ALL OF THE SEX OFFENDER CONDITIONS ARE SPECIAL CONDITIONS IN THIS CASE.

THE QUESTION COMES DOWN TO, DOES THE JUDGE HAVE TO READ THE STATUTE TO THE DEFENDANT?

AND OUR POSITION, AND WHAT THE FOURTH DCA HELD IS THAT NO, THE JUDGE DOESN'T HAVE TO READ THE STATUTE.

IT'S, THE DEFENDANT'S ON CONSTRUCTIVE NOTICE WHEN THE JUDGE SAYS SEX OFFENDER PROBATION.

IT'S IN THE STATUTES AND THE

JUDGE DOESN'T HAVE TO INDIVIDUALLY ANNOUNCE ALL OF THOSE.

YOU KNOW, THIS ISN'T, THIS IS SOMETHING THAT IS SET FORTH IN THE STATUTE.

HE IS ON CONSTRUCTIVE KNOWLEDGE, CONSTRUCTIVE NOTICE OF, AND HAS AN OPPORTUNITY TO OBJECT, AND DUE PROCESS WAS COMPLIED WITH. YOU KNOW, IT'S, SEX OFFENDER WAS A SPECIAL CONDITION.

IT IS A SUBSET OF STATUTES THAT THE JUDGE ORALLY PRONOUNCED. THERE IS A, AS THE FOURTH HELD THERE IS NO VARIANCE BETWEEN THE ORAL PRONOUNCEMENT AND THE WRITTEN ORDER IN THIS CASE. UNLESS YOU'RE GOING TO MAKE EVERY JUDGE JUST GO THROUGH EVERY SINGLE PARAGRAPH IN THE STATUTES.

WHICH ISN'T REQUIRED FOR DUE PROCESS.

UNLESS THERE IS ANY OTHER QUESTIONS?

THANK YOU.

>> THANK YOU.

TWO MINUTES?

>> THANK YOU, JUDGE.

IN RESPONSE, 948.30 IS NOT TITLED SEX OFFENDER PROBATION.

IT IS ENTITLED ADDITIONAL CONDITIONS OF PROBATION OR COMMUNITY CONTROL FOR CERTAIN SEX OFFENSES.

IT IS NOT ENTITLED SEX OFFENDER PROBATION.

CONSTRUCTIVE KNOWLEDGE THAT IS THE ACTUAL TERMS AND CONDITIONS OF PROBATION IS AN ASSUMPTION.

>> BUT THE TERM, SEX OFFENDER PROBATION, IF IT DOESN'T MEAN WHAT'S IN THAT STATUTE, WHAT COULD IT MEAN?

>> IT COULD BE WHAT IS IN SUBSECTION 948.001, SUBSECTION 13 WHICH IS MORE INTENSIVE FORM OF PROBATION MEANT TO TREAT THE OFFENDER.

>> THAT DOESN'T ACTUALLY OUTLINE SPECIFIC TERMS OF PROBATION. IT IS A, IT'S A GENERAL REFERENCE.

THE SPECIFIC TERMS ARE IN THE STATUTE WE HAVE BEEN REFERRING TO IN WHICH, WAS REFERRED TO AT THE HEARING.

SO I'M, I'M JUST MYSTIFIED BY THE NOTION THAT SOMEBODY THERE LISTENED TO EVERYTHING THAT WENT ON, WOULD NOT HAVE UNDERSTOOD EXACTLY WHAT WAS TALKED ABOUT, THAT WAS IN THAT STATUTE.

>> EXCEPT I WOULD SAY 948.30 WAS NOT REFERENCED AT THE SENTENCING--

>> WE CAN UNDERSTAND, WE CAN UNDERSTAND, THAT SOMETHING IS BEING REFERRED WITHOUT HAVING THE NUMBER ATTACHED TO IT BROUGHT TO OUR ATTENTION.

>> THE QUESTION IS, BUT THE ISSUE IS, DOES THE PROBATIONER, DOES THE DEFENDANT, US DID THE PERSON HAVE NOTICE?

WHEN HE IS SITTING THERE TRYING TO LOOK UP SEX OFFENDER PROBATION, I'VE BEEN SENTENCED TO SEX OFFENDER PROBATION, I OPEN THE STATUTE BOOK OR SEND IT TO THE LAW LIBRARY--

>> HAS HIS COUNSEL THERE.

>> IN THIS PARTICULAR CASE IT'S A QUESTION OF NOTICE FOR MR. LEVANDOSKI.

IF A PERSON WERE TO OPEN UP THAT BOOK, THEY WOULDN'T BE ABLE TO FIND THAT DEFINITION OR THOSE CONDITIONS.

AS THE STATE JUST CONCEDED SPECIAL OFFENDER PROBATIONS ARE SPECIAL CONDITIONS OF PROBATION. THAT, ACCORDING TO ALL THE CASE LAW CITED IN THE BRIEF WOULD HAVE TO BE ORALLY PRONOUNCED. WE'RE LOOKING, THE STATE IS LOOKING TO CARVE OUT A EXCEPTION FOR SEX OFFENDER PROBATION, DIFFERENT FROM ALL OTHER

PROBATIONER, ALL OTHER PROBATION
CONDITIONS.

THEY DON'T HAVE TO BE ORALLY
PRONOUNCED.

THERE WOULD BE NO HARM MAKING A
SENTENCING JUDGE SPEND A FEW
EXTRA MINUTES TO MAKE SURE THEY
GET IT RIGHT.

THAT IS WHAT THE JUSTICE CASE
SAYS.

THAT IS WHAT THE LAWSON CASE
SAYS.

THERE IS NO REASON THAT
SENTENCING JUDGE CAN'T SPEND
THAT TIME TO MAKE SURE IT'S DONE
CORRECTLY.

>> BUT I THOUGHT YOU SAID THAT
IF THEY JUST MENTIONED THE
STATUTE, THAT WOULD BE
SUFFICIENT?

>> I SAID IT WOULD BE BETTER.

>> I UNDERSTAND.

BUT WOULD THAT BE SUFFICIENT?

>> THE ISSUE THAT COULD RESULT
FROM THAT IS THAT IF YOU
ACTUALLY READ 9 48.30.

EACH SECTION OF 948.30 HAS
LANGUAGE THAT IT ONLY APPLIES TO
SELECT CRIMES AND SELECT
OFFENSES.

>> AGAIN, COULD YOU PLEASE, I'M
JUST TRYING TO UNDERSTAND, WOULD
IT OR WOULD IT NOT BE A VALID,
VALID CONDITION OF PROBATION IF
THE JUDGE UTILIZED THE STATUTE
NUMBER?

>> I WOULD SAY THAT IT WOULD BE,
THAT MY RESPONSE TO THAT IS THAT
IT WOULD BE, AND I HATE TO
REPEAT MYSELF, IT WOULD BE
BETTER BUT I CAN'T COMMIT THAT
IT WOULD BE SUFFICIENT BECAUSE
OF SOME OF THE LANGUAGE IN THE
STATUTE THAT ALSO REQUIRES
CERTAIN OFFENSES OR CERTAIN
CONDITIONS ONLY APPLY IF THERE
IS VICK TESTIMONY LESS THAN 18
YEARS OF AGE.

>> SO YOUR ANSWER IS NO?

NO I WOULD SAY MY ANSWER WOULD

BE NO.

>> OKAY.

>> WOULD I ASK THE COURT TO DO
IS I ASK THE COURT TO QUASH THE
LEVANDOSKI AND APPROVE THE
HOLDING OF SNOW.

>> THANK YOU.

THANK YOU FOR YOUR ARGUMENTS.
THE COURT IS IN RECESS.