

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA,

Plaintiff,

vs.

TODD MICHAEL HANNIGAN,

Defendant./

CASE NUMBER: 48-2009-CF-17393-A-O

DIVISION NUMBER: 19

VOLUME I of I

SENTENCING

BEFORE

THE HONORABLE TIM SHEA

ORIGINAL

In the Orange County Courthouse
Courtroom 6A
Orlando, Florida 32801
August 17, 2010
Jean Dexter, RPR, CRR

FILED IN OFFICE
CRIMINAL-APPEALS
2010 OCT -5 AM 11:17
JUDIA GARDNER
CLERK COUNTY COURT
ORANGE CO. FL.

A P P E A R A N C E S:

JESSICA TRAVIS

Assistant State Attorney
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Orlando, Florida 32801
On behalf of the State

ROBERT POWER

Assistant Public Defender
435 North Orange Avenue
Orlando, Florida 32801
On behalf of the Defendant

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I N D E X

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SENTENCING

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CERTIFICATE OF REPORTER

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P R O C E E D I N G S

THE COURT: We are here on which case?

MR. POWER: Todd Hannigan. This is set for sentencing today, Judge. There was a trial and a verdict of guilty.

THE COURT: Where is Ms. Travis?

MS. TRAVIS: Right here, Your Honor.

THE COURT: Where is Mr. Hannigan?

THE DEFENDANT: (Indicating).

THE COURT: Good morning, Mr. Hannigan.

Mr. Hannigan, raise your right hand, please.

TODD MICHAEL HANNIGAN

the defendant, was duly sworn.

THE COURT: Okay. It's my understanding you're going to be arguing for a downward departure; is that right?

MR. POWER: I'm going to be arguing initially to give you the authority to do so. If the Court finds there is no such authority or my argument is not convincing, there's no reason to go into mitigation.

THE COURT: Okay.

MR. POWER: So first thing is to --

THE COURT: Go ahead.

MR. POWER: The crux here is whether this Court has

1 authority to downward depart or exercise any type of
2 discretion when it comes to a minimum-mandatory
3 sentence. The scheme is under 893.135.

4 **THE COURT:** Well, the Court does have the authority
5 to downward depart if the defendant is sentenced under
6 an alternative sentencing scheme, but that's not the
7 case in this case.

8 **MR. POWER:** No youthful --

9 **THE COURT:** Hang on. We have a court reporter. No
10 youthful offender.

11 **MR. POWER:** No, sir.

12 **THE COURT:** No other alternative sentencing scheme.

13 **MR. POWER:** There is no substantial assistance.

14 **THE COURT:** No substantial assistance.

15 **MR. POWER:** The prosecutor has not exercised any
16 discretion to come off the minimum mandatory. Now, the
17 question is whether or not, given those parameters, this
18 Court can downward depart and nonetheless entertain such
19 argument.

20 First thing's first, under 893.135(3)(c) -- excuse
21 me -- it says, any person who knowingly sells,
22 purchases, manufactures, delivers, or brings into this
23 state or who is knowingly in actual or constructive
24 possession --

25 **THE COURT:** Slow down.

1 **MR. POWER:** -- of four-grams or more of any
2 morphine, opium, oxycodone, hydrocodone -- in this case
3 it's hydrocodone -- hydromorphone, or any salt,
4 derivative, isomer, or salt of an isomer thereof,
5 including heroin, as described therein. And it goes
6 further and further. And then it says, if it's 14 grams
7 or more, in this case -- in the jury trial, the
8 testimony was 22 grams -- 14 grams or more, but less
9 than 28 grams, such person shall be sentenced to a
10 mandatory-minimum term of imprisonment of 15 years.

11 As an aside, this is the only statutory scheme that
12 goes from three to 15 years. All of the other ones go
13 from three to seven to 15. For some reason, (c) is the
14 only one that handles it differently.

15 I would call to the Court's attention to
16 subsection --

17 **THE COURT:** The key word there being shall.

18 **MR. POWER:** Shall.

19 **THE COURT:** Right.

20 **MR. POWER:** Right. There is, however, further
21 language in the statute under (3) where the Court is
22 admonished that notwithstanding the provisions of
23 Subsection 948, which is your probationary statute, with
24 respect to any person who is found to have violated the
25 section, adjudication of guilt or imposition of sentence

1 shall not be suspended, deferred or withheld, nor shall
2 any person be eligible for parole prior to serving the
3 mandatory-minimum term of imprisonment prescribed by
4 this section.

5 What I'm suggesting to this Court is, based on (c),
6 the statutory scheme has now been modified.
7 Additionally, there are more parameters now that
8 restrict a judge's ability to do anything in this case.
9 But in as much they decided to become specific, what
10 they have not said is you cannot downward depart or
11 entertain litigation.

12 Let's say they can't defer, can't suspend and can't
13 withhold, we're not seeking any of those. We're not
14 seeking to suspend or defer sentence or withhold
15 adjudication of guilt, we're asking you to entertain
16 mitigation in a case whose facts, as you know, are very
17 different.

18 I have some case law I would like to cite to the
19 Court. I have already provided this case law to
20 Ms. Travis. Both of these cases are initially
21 indicating that a court cannot exercise its discretion;
22 however, they're distinguishable on the facts. One
23 entrapment defense is not brought up and the other
24 one -- these cases are *Kelley versus State*, found at 821
25 So.2d 1255. It is a 2002 decision out of the Fourth

1 DCA. In this case, the judge explained at sentencing on
2 a 15-year minimum mandatory, that without the
3 prosecutor's waiver, she had no discretion to go below
4 the statutory mandated sentence minimum of 15 years for
5 trafficking in an amount greater than 400 grams as
6 charged. That's on page 2. It's highlighted for the
7 Court.

8 More importantly, under one, the holding of the
9 Court, we agree with the trial court, that the 15-year
10 minimum sentence was mandatory unless the prosecutor
11 recommended otherwise. I would distinguish this case of
12 *Kelley* in that in this case the Court was trying to
13 determine whether or not this particular person was
14 eligible for this because of police misconduct. So we
15 have a variable here of police misconduct which may
16 have, had it been properly argued, that is the
17 entrapment defense, may have led to a different result.

18 And I have to cite this case law. It's against me,
19 but the short answer is, according to this court, that
20 the sentencing statutes in Florida do not permit the
21 judge to avoid the minimum-mandatory provisions for the
22 reasons suggested, which was this business of
23 entrapment.

24 I have an obligation to cite that case. I think
25 it's distinguishable. As you know, the facts here was a

1 person trying to commit suicide with Vicodin pills he
2 had stolen from his mother, and he was found in a park
3 drinking beer and popping these pills, getting up, I
4 guess valor, to complete the job when police rolled up
5 on him. He was arrested for possession of alcoholic
6 beverage in a state park. And then from there it
7 progressed to an arrest based on pills that were found
8 within his vicinity.

9 So my first argument to this Court is because the
10 statutory scheme does not specifically tell you as it
11 does in (c), that you cannot suspend, defer, withhold.
12 It does not specifically tell you that you cannot
13 mitigate or find mitigation. I'm asking this Court to
14 exercise its discretion where the statute has not
15 limited you, that is, to do a downward departure and
16 entertain mitigation.

17 The other argument I would make is more familiar
18 with the Court. The 15-year minimum-mandatory sentence
19 in this case is just a violation of the Eighth
20 Amendment. It is cruel and unusual for a person who is
21 in simple possession without peddling. The *Hill* case
22 talks about the distinction between peddling and just an
23 addict or possessor. As such, I would say the 15 years
24 is oppressive and cruel and unusual, and, therefore,
25 should not be imposed. And we should go and entertain

1 mitigation or otherwise go by the scoresheet.

2 I would entertain questions that you have, Judge,
3 but, in essence, those are my two arguments. One, that
4 you are not specifically deprived of your ability, and
5 the other one is the Eighth Amendment is cruel or
6 unusual. It's just too onerous, 15-year minimum
7 mandatory day for day, for a person who is simply
8 possessing without the cash value or any kind of
9 monetary peddling.

10 **MS. TRAVIS:** Your Honor, the defendant was tried
11 and a jury found the defendant guilty of trafficking in
12 14 grams or more of hydrocodone. Based upon the
13 statute, the wording of the statute is that the judge
14 shall sentence the defendant to 15 years and the minimum
15 mandatory.

16 Based upon the cases that the defense cited, *Hill*
17 *versus State*, which came out of the Second District
18 Court of Appeals in 1993, *Kelley versus State*, which
19 came out of the Fourth District Court of Appeals in
20 2002. And, Your Honor, I have another one which states
21 essentially the same thing of *Mond versus State* which
22 came out Second District Court Of Appeals in 1993.

23 **THE COURT:** Do you have a citation on that?

24 **MS. TRAVIS:** 627 So.2d 577.

25 **THE COURT:** Thank you.

1 **MS. TRAVIS:** Your Honor, in all three cases, the
2 defendant either pled no contest to the charge or was
3 found guilty by a trial of the charges, and all three of
4 the courts stated that the court has no discretion and
5 must sentence the defendant to the mandatory minimum.

6 In this case, Your Honor, that would be 15 years.
7 State requests that you sentence the defendant to that.

8 **MR. POWER:** My last argument, Judge, would be the
9 following:

10 **THE COURT:** Hang on one second. Is that it,
11 Ms. Travis?

12 **MS. TRAVIS:** That's all. Only that the Court does
13 not have any discretion to waive the minimum mandatory,
14 and that there can be no mitigation evidence to be
15 presented in order to allow the Court to mitigate from
16 that mandatory minimum.

17 **THE COURT:** Or that presentation of such evidence
18 be useless in light of the restraints placed by the
19 legislature.

20 **MR. POWER:** The last thing I would do is an analogy
21 between federal law and state law. Under state law, the
22 two matters in which a mandatory-minimum sentence can be
23 avoided, or three matters, are a sentence scheme under
24 the youthful offender statute, the prosecutor through a
25 negotiated plea bargain or through substantial

1 assistance. There is a fourth category under the
2 federal law, which is called the escape clause. This is
3 to allow people who generally fall between the cracks
4 cannot give substantial assistance because, although
5 they're intertwined in the trafficking scheme, they
6 don't have enough knowledge or it's repetitive, and,
7 therefore, if you qualify under the five criteria of the
8 federal statute, you are given what is called an escape
9 clause. This is what I'm trying to see if this Court
10 will entertain. There be an escape clause because of
11 the way the facts fall.

12 **THE COURT:** Well, I understand the argument you are
13 making in the federal arena. As you can tell from my
14 frayed robe, I make less money than a federal judge,
15 number one. Number two, I don't have a lifetime
16 appointment. There are differences.

17 In addition, while there are some marching orders I
18 must take from the United States Supreme Court, clearly
19 we all must take from the United States Supreme Court,
20 we're talking about the Florida Legislature here.

21 Now, Mr. Hannigan, I will tell you that, based on
22 the facts that have emerged in your case, that I do
23 believe that this is an inappropriate sentence for you.
24 I really believe that. But there are restraints placed
25 on my ability to stray from the statutory framework for

1 sentencing. Unfortunately, this is one of them. I
2 think Mr. Power has done a good job arguing. I think
3 that there does seem to be a leap of logic here in the
4 sentencing scheme. When you say if you process a
5 certain amount of drugs, that, therefore, you are
6 engaged in trafficking and there should be a harsher
7 sentence rather than taking into account the kinds of
8 facts and circumstances surrounding Mr. Hannigan's case.

9 Mr. Hannigan, if there should be some change in the
10 legislative framework that would result in early release
11 from sentence, no one would be more than happy than I.
12 I want you to understand that. Because I do think this
13 is an inappropriate sentencing under these
14 circumstances. The legislature has, in its infinite
15 wisdom, decided to transfer a significant amount, which
16 was once judicial discretion, to the prosecutorial arm
17 of this state. There's nothing I can do about that.
18 There's nothing I can do about that at all.

19 I understand the argument you're making, Mr. Power,
20 but it seems to me the arguments concerning the
21 statutory framework are better made to the legislature
22 than to this Court because under this set of
23 circumstances, this Court does nothing more than perform
24 an administrative function. I sign the papers. I'm on
25 autopilot. So I would suggest you take it up with the

1 legislature.

2 I know that you have made your record, and this is
3 something you may want to take up on appeal. I would
4 encourage you to do so. Nonetheless, under this set of
5 facts and circumstances, the Court has no alternative,
6 Mr. Hannigan, but to move forward and sentence you under
7 the minimum-mandatory sentence. That's what the Court
8 intends to do.

9 I'm going to move forward to impose that sentence
10 in a moment. I just wanted to let the doctor know that
11 he's free to go at this time.

12 **MR. POWER:** Thank you, Doctor.

13 **THE COURT:** It doesn't make sense for me to take
14 testimony from a doctor since there really isn't any
15 room to maneuver, so to speak. Thank you very much for
16 coming this morning, Doctor.

17 Okay. Mr. Hannigan, as I indicated, unfortunately,
18 I must move forward with this sentence.

19 State, do you have a scoresheet there?

20 **MS. TRAVIS:** Your Honor, I believe I gave you a
21 scoresheet.

22 **THE COURT:** I have a scoresheet.

23 **MR. POWER:** My scoresheet reads 82.05 months. I've
24 gone over that with my client.

25 **MS. TRAVIS:** If I can remind the Court --

1 **THE COURT:** Hang on. There was a 17 -- I had
2 indicated that --

3 **MS. TRAVIS:** Seventeen and a half.

4 **MR. POWER:** Seventeen and a half years.

5 **THE COURT:** Seventeen and a half years. I'm going
6 to do -- I have not yet sentenced him yet, correct?

7 **MS. TRAVIS:** No, you did sentence him, however, you
8 set aside that sentencing to the next day.

9 **THE COURT:** What I'm going to do, I'm going to
10 impose the 15-year minimum-mandatory sentence on
11 Mr. Hannigan. I had indicated at first 17 and a half
12 years, but it will be a 15-year minimum mandatory served
13 day for day.

14 In addition, you're required to pay \$668 in felony
15 court costs.

16 Was the substance tested?

17 **MS. TRAVIS:** Yes, Your Honor.

18 **THE COURT:** So that's another \$100 FDLE drug
19 charge. Those costs and fees are due and payable now.
20 If they are not paid by the time you are released from
21 incarceration, I'll give you 60 days to report to
22 collections court to work out a payment plan with them.

23 In addition, the jury found you guilty on both
24 charges, so the Court's going to adjudicate you guilty
25 on both charges.

1 **MS. TRAVIS:** Your Honor, there is also the cost of
2 investigation of \$58.20 that you ordered previously.

3 **THE COURT:** Fifty-eight dollars and 20 cents.
4 That's payable to the Orlando Police Department. That
5 will be added to your costs and fees, Mr. Hannigan.

6 Okay. Anything else, Ms. Travis?

7 **MS. TRAVIS:** No.

8 **THE COURT:** Anything else from you, Mr. Power?

9 **MR. POWER:** No, Your Honor.

10 **THE COURT:** Okay.

11 **THE CLERK:** Count 2 is a misdemeanor.

12 **THE COURT:** Count 2 is a misdemeanor. Court's
13 going to sentence Mr. Hannigan to 261 days in the Orange
14 County Jail with credit for 261 days time served.

15 Mr. Hannigan, did you want to say something, sir?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** You know, I apologize, I should have
18 asked you that, sir. Go ahead.

19 **THE DEFENDANT:** You know, I agree with you that
20 it's unfair punishment for the crime in this case. All
21 I wanted was some treatment, some help, and I don't feel
22 this is going to help me at all.

23 **THE COURT:** Based on the facts and circumstances
24 presented to this Court during trial, I agree that some
25 help would be appropriate; and as indicated, no one

1 would be happier than I if the laws change giving us
2 discretion. Unfortunately, that's not the circumstances
3 in this case.

4 **THE DEFENDANT:** If I can, can I file for an appeal?

5 **THE COURT:** Sure. Mr. Power is going to present me
6 with an affidavit of insolvency for purposes of appeal
7 and I'm going to sign that for you today.

8 **THE DEFENDANT:** Okay. Thank you.

9 **THE COURT:** Okay. Mr. Power is going to be right
10 over with the paperwork. Whatever you want to do with
11 fingerprinting, Oscar, is fine, but let Mr. Hannigan
12 sign that before you take him downstairs.

13 (The proceedings concluded.)
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C E R T I F I C A T E

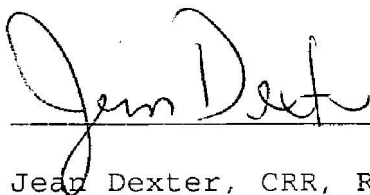
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STATE OF FLORIDA:

COUNTY OF ORANGE:

I, Jean Dexter, CRR, RPR, Official Court
Reporter of the Ninth Judicial Circuit of Florida,
do hereby certify, pursuant to Florida Rules of Judicial
Administration 2.535(h)(3), that I was authorized to and did
report in stenographic shorthand the foregoing proceedings,
and that thereafter my stenographic shorthand notes
were transcribed to typewritten form by the process
of computer-aided transcription, and that the
foregoing pages contain a true and correct
transcription of my shorthand notes taken therein.

WITNESS my hand this 5th day of October
2010, in the City of Orlando, County of Orange,
State of Florida.



Jean Dexter, CRR, RPR