

Jay Howell & Associates

A PROFESSIONAL ASSOCIATION

Attorneys at Law

644 Cesery Boulevard, Suite 300

Jacksonville, Florida 32211

(904) 680-1234 • Fax (904) 680-1238

www.jayhowell.com

THE CRIME VICTIM AND PLEA BARGAINS

by Jay C. Howell

The language of our state constitutional amendment guarantees crime victims the right to be informed, present, and heard at the crucial stages of our criminal proceedings. Perhaps no event in our criminal justice system is as important to a crime victim as the **sentencing** of the defendant. Our Florida statutes addressing sentencing hearings echo the Florida constitutional right of the crime victim to be present and to speak to the sentencing judge.

In the past there has often been confusion concerning the victim's role at the sentencing hearing that has been preceded by some type of plea negotiation between the State Attorney handling the case and the attorney for the accused. A recent decision of our Florida appellate courts has shed some light on the importance of the uninhibited and unrestricted voice of crime victims during sentencing proceedings. *Lynn vs. The State*, 687 So.2d 39 (Fla. 5th DCA 1997), decided by our Fifth District Court of Appeal on January 17, 1997, provided a helpful analysis of the role of the crime victim. In *Lynn*, the defendant pled guilty to one count of battery on a law enforcement officer and one count of battery in exchange for the dismissal of an additional battery count and a recommendation by the State Attorney to the sentencing court that probation be imposed. When the judge learned that the pre-sentence investigation report (prepared by a probation officer) recommended incarceration, the judge recused himself and ordered the State to omit from the pre-sentence report any comments contrary to the State Attorney's recommendations in the case.

A new judge conducted the sentencing hearing in which a revised pre-sentence report was presented. In the revised report the probation officer noted that the guidelines called for a 12 to 20 month

Jay Howell & Associates

A PROFESSIONAL ASSOCIATION

Attorneys at Law

644 Cesery Boulevard, Suite 300

Jacksonville, Florida 32211

(904) 680-1234 • Fax (904) 680-1238

www.jayhowell.com

sentence, but that due to previous Florida cases, the probation officer was bound by the plea agreement of the State Attorney and was therefore recommending probation.

The victim in the case, a deputy sheriff, testified at the sentencing hearing that the defendant bit the deputy and told the officer he was HIV positive. The State Attorney informed the court that the officer was present because the State wanted to give the officer the opportunity to address the court because the officer was not pleased with the recommendation of the State for probation. The court then sentenced the defendant to a 20-month prison term. The defendant appealed contending that he was duped because the state entered the plea agreement recommending probation, but then a state officer (the probation officer) contradicted that recommendation.

The Fifth District Court of Appeal, in its opinion in *Lynn*, concluded that the sentencing judge was **not** bound by any agreement between the State and the defendant as to the sentence to be imposed, though the State Attorney's recommendation may have a **persuasive** effect. The appeals court stated that if the State Attorney enters into an agreement with a defendant, they should do so with the conviction that it is appropriate under the circumstances. However, once the state enters into a plea agreement, facts should **not be withheld** from the sentencing judge. **Victims and witnesses should not be discouraged from informing the court on their feelings on the sentence to be imposed.**

In order for the court to carry out its duties in sentencing, it should have all data before it that would impact the sentencing decision. Witnesses and victims should not be influenced by the prosecutor to refrain from expressing their feeling to the court. The appeals court concluded that the remedy in such a situation is simple. The defendant should be allowed to withdraw a plea if the state, including its agents

Jay Howell & Associates

A PROFESSIONAL ASSOCIATION

Attorneys at Law

644 Cesery Boulevard, Suite 300

Jacksonville, Florida 32211

(904) 680-1234 • Fax (904) 680-1238

www.jayhowell.com

such as probation officers, cannot carry out its obligations under the agreement when it comes time to present the terms of the agreement to the sentencing court.

This appellate decision is helpful to victims and victim advocates in establishing the procedures that should be employed if the crime victim or the probation officer recommends a sentence that is different than the recommendation of the prosecutor.