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### CREATIVE SENTENCING

*By Jay C. Howell*

Criminal Court Judge Ted Poe of Houston, Texas has gained national notoriety for the unusual sentences he imposes on convicted felons. Judge Poe sentenced the individual who stole the Lone Ranger's guns (and his luggage) at Houston International Airport to a period of time cleaning the horse stables at the Houston Police Department's mounted patrol division. When an elderly victim of an auto theft was without transportation because the convicted thief had wrecked her car, Judge Poe ordered that the thief turn over the keys to his own vehicle to the victim. The Houston Judge has also ordered convicted thieves to walk the pavement bearing billboard signs proclaiming their guilt. He also pioneered the concept of bringing every probationer before him, in his courtroom, every couple of months. The defendant would report to the Judge on his progress. Poe reports that it has had a significant positive impact in reducing the inclination of any of his probationers to re-offend.

Jacksonville Judge Lance Day has employed a similar courtroom review of his active probationers right here on the First Coast.

Why is it that such creative sentencing is not regularly employed by Florida criminal judges? The answer may be that the courts are afraid of being reversed on appeal. While such a reversal simply means that the court must restrict or modify its sentence, it has nonetheless been a deterrent to certain forms of special conditions included in probation sentences.

One such special condition recently found itself the subject of a Florida appeals court decision. The defendant had been charged with the crime of leaving the scene of an accident resulting in death. He pleaded guilty without any particular plea agreement and was sentenced to 15 years in prison. The last

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years of his sentence were suspended with the defendant being placed on probation under various specified conditions. The defendant appealed two of those conditions.

The Judge, as a condition of his probation, ordered that the defendant must view an autopsy of a person who lost their life as a result of an alcohol related event. The defendant argued to the appeals court that such a requirement was unlawful because it constituted punishment rather than rehabilitation. He argued that since he was not charged with the crime of DUI manslaughter, but only leaving the scene of an accident with death, viewing an autopsy had no connection to the particular crime he had committed.

The defendant also argued on appeal that requiring him to view an autopsy was an intrusion into the privacy interest of the family of the person whose autopsy he observed.

The appellate court ruled that the evidence demonstrated that the defendant fled the scene of the accident because he had been drinking alcohol before driving. He also had alcohol in his vehicle at the time of the accident. The special condition regarding the autopsy was reasonably related to rehabilitation and did not constitute cruel and unusual punishment. The court further ruled that the family of a victim of an alcohol related death has a legal interest in the decedent's body and, therefore, the trial judge should consider these privacy interests upon the re-sentencing of the defendant.

Also of some interest was the defendant's challenge of another probation condition that the defendant's driver's license should be suspended for life or the maximum allowable by law. The appellate court ruled that the Department of Highway Safety and Motor Vehicles had the authority to revoke the defendant's driver's license, but that the trial court in this criminal case lacked the legal authority to suspend his license.

The case is *Blake v. The State of Florida*, and can be found at 814 So.2d 1163 (Fla. 1<sup>st</sup> DCA 2002).