

IN THE CIRCUIT COURT IN AND FOR SANTA ROSA COUNTY, FLORIDA

STATE OF FLORIDA,

vs.
SHAWN THOMAS STULLER,

CASE NO: 14-CF-1104

Defendant

_____/

Proceedings held in the above-styled cause before the Honorable John Simon, Circuit Judge, on the 20th day of September, 2018, at the Santa Rosa County Courthouse, Caroline Street, Milton, Florida 32570

APPEARANCES:

FOR THE STATE: MATTHEW RICHARDSON, ESQUIRE
Assistant State Attorney
6495 Caroline Street
Milton, Florida 32570

FOR THE DEFENDANT: ROBERT D. MALOVE, ESQUIRE
200 S. Andrews Avenue
Suite 901
Fort Lauderdale, Florida 33301

TERESA EMMANUEL
CIRCUIT COURT REPORTER

UNOFFICIAL
DOCUMENT

SANTA ROSA COUNTY FL
CLERK OF COURT
2018 OCT 1 11 30 AM FILED

2018 OCT -1 PM 3:39

DONALD C. SPENCER
CLERK OF COURT &
COMPTROLLER

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RE CROSS
SHAWN STULLER	6	8		
CYNTHIA NASH-EARLY	10	15		

E X H I B I T S

DEFENSE EXHIBITS	MARKED	IN EVIDENCE
1		16
2 and 3		19
4		22

UNOFFICIAL DOCUMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. MALOVE: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. MALOVE: May it please the Court. Robert Malove on behalf of Shawn Stuller.

COURT SECURITY: Judge, you want him by his attorney?

THE COURT: Yeah, he can come over.

All right. What are we here for today?

MR. MALOVE: Judge, we're here for an evidentiary hearing regarding the defendant's motion for postconviction relief.

THE COURT: Okay. State ready to proceed?

MR. RICHARDSON: Yes, sir.

THE COURT: All right. Y'all can have a seat, if you wish.

Defense ready to proceed? You ready to proceed?

MR. MALOVE: Yes, sir. Judge, I would like to invoke the rule of sequestration.

THE COURT: Who do we have?

MR. MALOVE: I understand that Ms. Early -- Nash-Early is present.

THE COURT: Where is she?

THE WITNESS: Yes, Your Honor.

1 THE COURT: There she is, okay. Is she going
2 to be the first witness?

3 MR. MALOVE: I think that she's going to be
4 called by the State.

5 THE COURT: All right. Ma'am, if you'll step
6 outside. You know the rule. Don't discuss the
7 testimony among yourselves or with anyone else.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Go ahead, Mr. Malove.

10 MR. MALOVE: Thank you, Judge. I need to have
11 Mr. Stuller sworn so I can present some testimony.

12 THE COURT: Let's go ahead and have him come
13 around here, if you don't mind. He'll be close to the
14 court reporter and they can hear him.

15 Come around here, sir. You got to go behind
16 there. It's just a court security issue.

17 MR. RICHARDSON: If you don't mind, if I step
18 out just briefly. Ms. Early has my transcript.

19 THE COURT: That's fine. Hold on. I'm
20 waiting on staff attorney. There they are. They're up
21 there in the back hiding. All right. Go ahead,
22 Mr. Malove.

23 MR. MALOVE: Thank you, Judge.
24 Would you please state your name?

25 THE DEFENDANT: Shawn Thomas Stuller.

1 MR. MALOVE: Would you please spell your last
2 name for the record?

3 THE DEFENDANT: S-t-u-l-l-e-r.

4 MR. MALOVE: Mr. Stuller, I'd like to direct
5 your attention regarding this case that's before the
6 Court. Were you represented by Assistant Public
7 Defender Cynthia Nash-Early?

8 THE DEFENDANT: Yes.

9 MR. MALOVE: At some point in time before the
10 case was resolved, did Assistant Public Defender
11 Cynthia Nash-Early convey a plea offer to you of five
12 years in prison?

13 THE DEFENDANT: Yes.

14 MR. MALOVE: Now, did she explain to you that
15 the maximum sentence that you're facing if you chose
16 not to accept the five-year plea offer?

17 THE COURT: Hold on one second, sir. We don't
18 have Mr. Richardson here.

19 MR. MALOVE: I'm so sorry, Judge.

20 THE COURT: We'll get it organized here in a
21 minute.

22 MR. RICHARDSON: Sorry about that, Judge.

23 THE COURT: We already finished all the
24 testimony.

25 COURT REPORTER: Also, Judge, he has to be

1 sworn.

2 THE COURT: I didn't swear him in?

3 COURT REPORTER: You were getting to swear him
4 there and then he moved over here.

5 THE COURT: We're going to start all over
6 again.

7 Raise your right hand.

8 (Defendant sworn)

9 THE DEFENDANT: Yes, I do.

10 THE COURT: We got everybody here.

11 MR. MALOVE: May it please the Court, Your
12 Honor, Robert Malove appearing on behalf of Shawn
13 Stuller.

14 THE COURT: Go ahead, sir.

15 WHEREUPON, SHAWN STULLER,
16 having been first duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. MALOVE:

20 Q. Mr. Stuller, were you represented by Assistant
21 Public Defender Cynthia Nash-Early in case number
22 5714-CF-001104A-B?

23 A. Yes.

24 Q. At some point in time, did Assistant Public
25 Defender Nash-Early convey a plea offer of five years in

1 prison to you to resolve the case?

2 A. Yes.

3 Q. Did she explain to you that the maximum
4 sentence that you were facing, if you chose not to -- did
5 she explain to you the maximum sentence you were facing if
6 you chose not to accept the five-year plea offer?

7 A. Yes.

8 Q. At some point in time did she tell you that
9 the plea offer of five years was no longer available?

10 A. Yes.

11 Q. Now, after you found out that the plea offer
12 of five years was no longer available, did you at some point
13 become aware that you were now subject to an enhanced
14 habitual offender -- you were now subject to an enhanced
15 habitual offender sentencing?

16 A. Yes.

17 Q. And that you were now facing a maximum of life
18 in prison?

19 A. Yes.

20 Q. Had you known that you were subject to an
21 enhanced sentence of life in prison as a habitual offender
22 at the time the five-year plea offer was on the table, would
23 you have accepted the five-year plea?

24 A. Yes.

25 MR. MALOVE: I have no further questions,

1 Judge.

2 THE COURT: Thank you.

3 State.

4 CROSS-EXAMINATION

5 BY MR. RICHARDSON:

6 Q. At what point was the offer revoked; do you
7 remember?

8 A. Sir, I don't know the exact date, sir.

9 Q. Do you remember meeting with Ms. Early and
10 having her show you a piece of paper with a statute on it?

11 A. There was a lot of paper with statutes on
12 them. Are you referring to the five year plea offer?

13 Q. No. No, I am referring to a document Chapter
14 775; it's the HFO statute. She never gave you a copy of
15 that?

16 A. No.

17 Q. Never showed it to you?

18 A. No.

19 Q. And you say you would have accepted it, but
20 isn't it true that you were still considering your possible
21 defenses at that point?

22 A. I would have accepted a five-year plea offer
23 if I was facing life in prison.

24 Q. Okay. When did you become aware that you were
25 potentially facing a habitual status and life in prison?

1 A. I was represented by an attorney, Tony
2 Henderson, and he was given it in court, and he brought it
3 to me months after Ms. Nash was dismissed from my case.

4 MR. RICHARDSON: That's all the questions I
5 have.

6 THE COURT: Any redirect?

7 MR. MALOVE: No, sir.

8 THE COURT: Sir, you can stand down. Have a
9 seat next to your attorney, if you don't mind.

10 Any other witnesses?

11 MR. MALOVE: No, sir.

12 THE COURT: State?

13 MR. RICHARDSON: State calls Cynthia Early.

14 THE COURT: Ms. Early please.

15 Will you raise your right hand for me?

16 THE WITNESS: Yes, Your Honor.

17 (Witness sworn)

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Thank you. Just have a seat in
20 the chair, slide up and just speak out loud for us.

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Your witness.

23 WHEREUPON, CYNTHIA NASH-EARLY,
24 having been first duly sworn, was examined and testified as
25 follows:

DIRECT EXAMINATION

1
2 BY MR. RICHARDSON:

3 Q. Good afternoon. Would you please state your
4 name and spell your last name for the record?

5 A. It's Cynthia Nash-Early. That's N-a-s-h
6 hyphen E-a-r-l-y.

7 Q. And did you previously represent an individual
8 known to you as Shawn Stuller?

9 A. Yes, I did.

10 Q. Do you recall about when that was?

11 A. It was a couple of years ago. I think it was
12 2015 was when his case got resolved.

13 Q. Okay. Well, we're here today because of a
14 claim that he's saying you did not advise him that he could
15 potentially qualify for habitual felony offender sentencing.
16 Do you remember if you talked to Mr. Stuller about the
17 possibility of HFO treatment?

18 A. I do. I do recall doing that. I do recall
19 printing out the sheet. I do recall that he didn't believe
20 me because he had never been to prison before. I gave him a
21 copy of the sheet. The sheet I'm talking about is the print
22 up of the statute, the Florida Statute that goes over what a
23 habitual felony offender -- what it takes to qualify as a
24 habitual felony offender, and I went over it with him.

25 I highlighted the stuff I went over, and then

1 I gave him a copy, and I told him to review it because he
2 did not believe me because he had never gone to prison. And
3 I understand that it is, I guess, confusing, but I explained
4 that because he had these past felony offenses, that he
5 could be -- that he could qualify as a habitual felony
6 offender.

7 Q. So you printed the statute and took him a copy
8 and left him with a copy of it?

9 A. Yes, I did.

10 Q. What date did you print that; do you recall?

11 A. I have reviewed it, and it has on the bottom
12 when I printed it. I believe that was March 9th, I want to
13 say 2015, but I could look and see. I'm not sure.

14 Q. Now, prior to representing Mr. Stuller, had
15 you ever experienced another case with a similar situation
16 regarding a claim of lack of advisement on this HFO status?

17 A. I did.

18 Q. And how long before this case did that take
19 place?

20 MR. MALOVE: I object, Judge. It's
21 irrelevant.

22 THE COURT: What's the relevance?

23 MR. RICHARDSON: It goes to show what her
24 practice is, and based on her experience, and what she
25 does on her individual cases.

1 THE COURT: Overrule the objection. Go ahead.

2 A. It was probably about six months before, and I
3 had not been aware at that time that you had to go over it
4 before the State had mentioned anything about the habitual
5 felony offender. That's why with Mr. Stuller I made sure to
6 print up and put in my file where I had gone over it because
7 that was a big deal, and we thought it was going to come
8 back, and it was the same prosecutor Mr. Loren, and I asked
9 him, look, this is going to come back anyway, so I want to
10 just give him the same offer so we did.

11 But with Mr. Stuller, I had known because of
12 that, and just not long before six months or less it
13 happened, and I was, like, oh, okay, so that's why I made
14 sure that I went over it with him, but I don't think
15 Mr. Stuller believed me even though I -- that's why I gave
16 him the sheet to go over and look at it yourself and talk
17 to -- and he had already been talking about getting another
18 attorney. So I was, like, you know, go over it with your
19 other attorney. Go over it with whoever, because I was
20 concerned that he did not believe me.

21 Q. Okay, but based on that experience, it was
22 your practice to give clients that type of documentation
23 early on?

24 A. Yes, when I saw that their past criminal
25 history included the felony, I would go look at the statute

1 and look at the felonies, the past felonies that they had
2 and give -- you know, go over it with them.

3 I didn't always hand them the sheet. A lot of
4 times I just went over what -- Mr. Stuller was just, kind
5 of, seemed like he was not really going to believe me
6 because as soon as I said he probably wasn't going to get
7 probation based on his points, he didn't really seem like he
8 was going to believe anything.

9 He just wanted to get probation, and he scored
10 less than -- a little less than five years, I think, it was
11 and the State offered five years, and I tried to get him to
12 get the five years -- to take the five years because I truly
13 believed he would get more time.

14 Q. Okay, and at some point the offer was revoked,
15 that five-year offer, correct?

16 A. Yes, it was.

17 Q. Do you recall when that was?

18 A. It was right after we had the depositions of
19 the alleged victims. Mr. Loren, he never specifically said
20 what about their testimony made him revoke the offer, but he
21 said because of their testimony, he revoked the offer, and I
22 don't know if it was because they just testified so well, or
23 if it was just the emotions of it but --

24 MR. MALOVE: I'm going to object. It calls
25 for speculation.

1 THE COURT: To the extent it calls for
2 speculation, I sustain the objection.

3 Q. (By Mr. Richardson) Okay. Do you recall when
4 it was revoked? Do you recall when the depositions were?

5 A. I saw in my notes it was -- I believe it was
6 April 15th of 2015, but I wouldn't normally just remember.

7 Q. If I were to show you a copy of the Notice of
8 Taking Deposition, would that be able to refresh your
9 recollection?

10 A. Yes.

11 MR. RICHARDSON: May I approach the witness?

12 THE COURT: Yes.

13 Q. (By Mr. Richardson) This is a Notice of
14 Taking Deposition in the case. Take a minute to look at
15 that and look up when you had a chance to review it.

16 A. It says December 22nd, 2014.

17 Q. Okay. So around December 22nd, 2014, or
18 shortly thereafter the offer had been revoked, that
19 five-year offer?

20 A. I guess so. That's when we deposed the
21 Ostrandens, so it's whenever we deposed the Ostrandens. I'm
22 not sure if this got moved, because I thought it did because
23 I thought there was an issue with Mr. Stuller wanting to get
24 other representation, so I'm not sure, but that's the date
25 that this has.

1 Q. Okay, and, again, the piece of paper, the HFO
2 statute that you printed and took to him, that has the date
3 of --

4 A. Can I look at it and see?

5 Q. Yeah, yeah.

6 A. I'm not sure what year it was. This says
7 March 9th, 2015.

8 Q. Okay, and was Mr. Stuller incarcerated while
9 you were representing him?

10 A. Yes.

11 Q. So between that March 9th of 2015 and when the
12 offer had been revoked, would you have gone over the
13 five-year offer with him at the jail?

14 A. Yes.

15 Q. Okay, and would you have shown him that same
16 piece of paper with the potential HFO?

17 A. Yes.

18 Q. Okay. That's all I have.

19 THE COURT: Cross examination.

20 CROSS-EXAMINATION

21 BY MR. MALOVE:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. Do you recall being in court regarding this
25 matter on April 20th, 2015?

1 A. I remember being in court about this matter.
2 I don't remember any specific dates, but I have seen the
3 transcript and reviewed it.

4 Q. And with respect to the transcript, Judge
5 Miller had asked you if the five-year offer had been revoked
6 and you said, yes, it had been revoked after depositions.

7 A. Yes.

8 Q. Do you recall that?

9 A. (No audible response).

10 Q. And do you recall having a conversation with
11 Judge Miller at that time where you said to Judge Miller, I
12 did not know that he was going to be filed as a habitual
13 felony offender, so I went over the maximum of 30 years, not
14 life?

15 A. Yes.

16 MR. MALOVE: Judge, I'd like to have this
17 transcript marked and entered into evidence with your
18 permission?

19 THE COURT: Any objection?

20 MR. RICHARDSON: No, sir.

21 THE COURT: It will be so moved in as Defense
22 Exhibit 1.

23 (Defendant's Exhibit No. 1 admitted into
24 evidence)

25 MR. MALOVE: With your permission, may I

1 approach?

2 THE COURT: Yes, sir.

3 Q. (By Mr. Malove) Now, do you recall being in
4 court on October 5th, 2015 on this matter?

5 A. I don't remember specific dates, so I'm not
6 going to know what happened on October 5th, 2015.

7 Q. If I showed you a transcript of the court
8 proceedings, would that refresh your recollection?

9 A. It might. I can't say for sure if I'm going
10 to remember October two years ago or three years ago.

11 Q. If I show the transcript of the court
12 proceedings that you were present at, you don't know if that
13 would refresh your recollection?

14 A. I can try. I mean, I don't know if it's going
15 to remind me or not until I see it.

16 MR. MALOVE: With the Court's permission, may
17 I approach?

18 THE COURT: Yes.

19 MR. MALOVE: Should I have it marked first?

20 THE COURT: Yeah, you may want to do that so
21 we have a clear record. This will be Defense Exhibit 2
22 for identification at this point.

23 Q. (By Mr. Malove) I'm going to show you now
24 what's been marked as Defense Exhibit 2 for identification
25 purposes, and ask you if you can tell me what that is.

1 A. It's a transcript. I don't --

2 Q. From what date?

3 A. October 5th, 2015.

4 Q. Okay. Well, let me direct your attention to
5 page 16 of the transcript, and do you see there where
6 Mr. Loren says that the offer was revoked in December of
7 2014?

8 A. He says there hasn't been a deal on the table
9 since, like, December of last year.

10 Q. Correct. So at that time, you had not advised
11 Mr. Stuller that he faced life because the piece of paper
12 that we have referred to has been -- was printed out that
13 you say you gave to him was March 9th, 2015?

14 A. That's when the paper is, yes.

15 Q. So you wouldn't have advised him that he was
16 facing a life sentence until months after the offer was
17 revoked, according to the transcript and what ASA Loren had
18 told Judge Miller.

19 A. According to that.

20 MR. MALOVE: May I have this marked for
21 identification, Judge?

22 THE COURT: Yes. Defense Exhibit 3.

23 MR. MALOVE: This is the same document, Your
24 Honor, that was previously presented to the witness.

25 THE COURT: Thank you. Are you seeking

1 admission of that?

2 MR. MALOVE: Yes, Judge, I can move them all
3 in now. I was going to do it at the end of my
4 presentation, but the State has provided that to me
5 so --

6 THE COURT: Any objection to 1 through 3 being
7 admitted?

8 MR. RICHARDSON: No, sir.

9 THE COURT: They'll be admitted.

10 (Defendant's Exhibit No. 2 and 3 admitted into
11 evidence)

12 Q. (By Mr. Malove) The State presented the plea
13 offer of 60 months in October, correct?

14 A. I don't remember dates, sir.

15 Q. If I showed you --

16 A. I really don't.

17 Q. If I showed you a copy of the State's sentence
18 recommendation with the date on there of October 16th, 2014,
19 would that refresh your recollection?

20 A. Yes. I mean, I could read it. I'm not going
21 to remember what date they did, but I can read it.

22 MR. MALOVE: With the Court's permission, may
23 I approach the witness?

24 THE COURT: Yes, sir.

25 Q. (By Mr. Malove) I am going to show you now

1 what's been marked as Defense Exhibit 4 for identification
2 purposes and ask if you recognize what the document is?

3 A. It's a sentence recommendation.

4 Q. What's the recommendation of the sentence?

5 A. Sixty months.

6 Q. Okay, and what's the date of that offer?

7 A. I don't see a date on it.

8 Q. There you go.

9 A. October 16th, 2014.

10 Q. So October 16th, 2014, the State makes an
11 offer of five years. In December 2014, Mr. Loren said that
12 offer is revoked, and subsequently you then meet with
13 Mr. Stuller and let him know that he's got exposure to a
14 life sentence?

15 A. My notes said April of 2015 was when that was
16 taken off the table. I know in this he said there hasn't
17 been a deal since, like, December of last year, but my notes
18 said that it was April 25th, 2015.

19 Q. Okay, and you already testified that this
20 happened a long time ago?

21 A. It did happen a long time ago.

22 Q. Is there any reason for you to doubt that what
23 ASA Loren told Judge Miller was false?

24 A. I don't think it was false. I think he was --
25 it didn't sound like he was looking at his notes. He said

1 December -- like, December of last. As I recall, and I can
2 only say what I recall, I went over it with him before.

3 Q. You went over it with him before, but then you
4 printed out the statute in March.

5 A. I'm just saying, I am not sure when the --
6 when it was taken off the table. As I recall I went over it
7 before -- I tried to get him to take the 60 months, and even
8 after it was revoked, I tried to get Mr. Loren to give it
9 back, and Mr. Stuller said he wouldn't take it if it did get
10 back even at the sentencing. He said he wouldn't take the
11 60 months even if he did get it back so --

12 Q. The point is, is that you never told him?

13 A. I believe I did.

14 Q. Well, how come -- the statute -- the
15 transcripts says otherwise.

16 A. I believe I told him beforehand.

17 MR. MALOVE: With the Court's permission, may
18 I introduce this into evidence?

19 THE COURT: Okay. Thank you.

20 THE WITNESS: I don't think I'm supposed to
21 have this, though, am I?

22 THE COURT: No.

23 Sir?

24 MR. MALOVE: With the Court's permission, I'd
25 like to introduce that into evidence with the Court's

1 permission.

2 THE COURT: I don't think they have an
3 objection to 1 through 4.

4 Is that right, Mr. Richardson?

5 MR. RICHARDSON: No, sir.

6 THE COURT: They're admitted.

7 (Defendant's Exhibit No. 4 admitted into
8 evidence)

9 MR. MALOVE: I think I already introduced the
10 transcript from April 20th, Judge?

11 THE COURT: Yes, sir, you did.

12 MR. MALOVE: Then I have this one marked
13 twice. I'll give the clerk back this sticker. You
14 have the transcript from April 20th?

15 THE COURT: Yes, sir.

16 MR. MALOVE: Okay, and I've introduced the
17 transcript from the 5th of October with Mr. Loren?

18 THE COURT: Yes, sir.

19 MR. MALOVE: Judge, I don't have any more
20 questions, and I don't have any more evidence. Just
21 argument.

22 THE COURT: All right. Redirect?

23 MR. RICHARDSON: Yes, and, Judge, just
24 briefly, may Mr. Malove and I approach?

25 THE COURT: Yes, sir.

1 (At the bench:

2 MR. MALOVE: Judge, can we have Ms. Nash stand
3 down?

4 THE COURT: Is it going to be something with
5 her?

6 MR. RICHARDSON: No, it has nothing to do with
7 anything with her. It's just I left the depositions on
8 my desk. I don't think I need them, but when the
9 depositions were actually taken is going to be
10 important. My assistant is running them up. Can we
11 have a recess on this case or come back to it briefly
12 because I want to be able to get that date, and I think
13 at this point, it's going to make a difference.

14 THE COURT: How long will it take you to get
15 them here?

16 MR. RICHARDSON: She's bringing them from the
17 office now.

18 THE COURT: We'll just take a brief recess.
19 I'll take up some other cases and we'll --

20 MR. RICHARDSON: Sorry about that, Judge.

21 MR. MALOVE: Thank you, Judge.

22 (Bench conference concluded)

23 THE COURT: We'll take a brief recess.

24 Ms. Nash-Early, don't discuss your case. If
25 you will please simply just wait outside. I'm going to

1 take up some more cases until we get some information.

2 Thank you, ma'am.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Who do we have next?

5 (Proceedings held not related to this
6 Defendant)

7 THE COURT: Mr. Richardson, Mr. Malove, you
8 want to continue? Do we need Ms. Nash-Early back in?

9 MR. RICHARDSON: We don't, Judge. No more
10 testimony is needed. We agreed by stipulation to enter
11 the piece of paper that we referred to that
12 Ms. Nash-Early had printed out will be State's 1, and
13 we also do have a date of the depositions that we've
14 agreed to stipulate to put on the record and that's
15 January 6th of 2015.

16 THE COURT: January 6th, okay.

17 MR. RICHARDSON: Can I approach the clerk to
18 provide this?

19 THE COURT: Yes.

20 She can be released, Sherry.

21 All right. Any other witnesses, State?

22 MR. RICHARDSON: No, sir.

23 THE COURT: Any rebuttal?

24 MR. MALOVE: Judge, I do have a video-audio
25 transcript from the proceedings where Judge Miller said

1 that he rarely, if ever, rejects a plea if the parties
2 have agreed, so that's one of the -- one of the prongs
3 in *Alcorn* to show that the Court would have accepted
4 the plea at the time, so if I can have that marked and
5 introduced, but I also think that Mr. Richardson and I
6 have come to an agreement; is that correct, sir?

7 MR. RICHARDSON: Yes, sir.

8 MR. MALOVE: Mr. Richardson is a very
9 honorable man, Your Honor. He's agreed to have you
10 enter an order vacating the sentence and judgment of
11 the Court of 20 years, and to enter in its place, a
12 sentence of five years because Mr. Stuller was not
13 properly advised he faced a life sentence.

14 THE COURT: Is that true, Mr. Richardson?

15 MR. RICHARDSON: Yes, sir.

16 THE COURT: All right. We'll, let's see how
17 we do this.

18 MR. MALOVE: I'll prepare a nice order and get
19 it to your office tomorrow. Just, I have a flight.
20 You know that I came from Fort Lauderdale today?

21 THE COURT: The problem is, we'll need to
22 resentence him. I guess, we have to resentence him.
23 We can go ahead and do that today, and it will just be
24 five years state prison and credit for time served.

25 I'd impose the fines and costs and then give

1 him 90 days from release to set up a payment program,
2 make every payment thereafter, otherwise it's reduced
3 to a lien.

4 Would that be about what it needs to be?

5 MR. RICHARDSON: I think that's the best way
6 to do it. I don't have a blank plea agreement so
7 you'll have to walk him through the colloquy, but I
8 think we do need to do it today before they send him
9 back to state prison.

10 MR. MALOVE: I think I entered into evidence
11 an old plea offer.

12 THE COURT: You did. Yeah, you did, so I can
13 go through it that way, and that way we can get that
14 taken care of, you submit the offer -- I mean, the
15 order once you get back.

16 MR. MALOVE: Yes, sir.

17 THE COURT: Run it pass the State and that
18 will clarify everything.

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: And my staff attorney's up there
21 taking notes, too, so we'll have it all.

22 MR. MALOVE: Thank you, Judge.

23 THE COURT: Whitnae, can we do the order on
24 this?

25 STAFF ATTORNEY: Do you want me to do it?

1 THE COURT: Yes.

2 STAFF ATTORNEY: I can do it.

3 THE COURT: Yeah, we'll do the order. You
4 don't have to worry about it, sir. What it will do --
5 I guess, what we'll do is vacate the sentence and
6 resentence him. That's by stipulation of parties, his
7 sentence is vacated, and he is resentenced to the
8 original plea agreement.

9 MR. MALOVE: Thank you, Judge.

10 THE COURT: Sir, come around here please.

11 MR. RICHARDSON: Judge, I don't know if it
12 matters. He served a pretty substantial amount of
13 time, but the first there of the five is minimum
14 mandatory.

15 THE COURT: Minimum mandatory, and then
16 there's -- well, actually fines and costs, mandatory
17 fines, too, so I'm going to have to impose those
18 obviously.

19 MR. MALOVE: You want him up at the podium?

20 THE COURT: Yes, sir. Right here, yes, sir.

21 Mr. Stuller, if you'll -- well, I already
22 placed you under oath; is that correct?

23 THE DEFENDANT: Yes, you have, sir.

24 THE COURT: Apparently the parties have
25 reached an agreement whereby you can withdraw your

1 plea -- not your plea, I'm sorry -- withdraw the
2 sentencing that occurred. We'll vacate the sentencing
3 that occurred and then resentence you today to the plea
4 offer that was given back in 2015.

5 Do you understand that?

6 MR. MALOVE: '14. October 16th, 2014. I
7 highlighted that a couple of places on the document.

8 THE COURT: Do you understand that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Is that what you want to do today?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: So you understand that the 20
13 years will be vacated, and then I will sentence you to
14 60 months Department of Corrections with a three-year
15 minimum mandatory, and all the fines and costs that
16 were previously imposed, and you get credit for any
17 time you served thus far.

18 THE DEFENDANT: May I ask my attorney one
19 question?

20 THE COURT: Yes, sir.

21 (Defendant and counsel confer)

22 MR. MALOVE: Standard. You get all your gain
23 time.

24 THE COURT: But it is a three-year minimum
25 mandatory you serve day-for-day. Do you understand

1 that?

2 MR. MALOVE: He's done over four year already,
3 Judge.

4 THE COURT: Oh, okay. You want to do that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Let me re-swear you again.

7 (Defendant sworn)

8 THE DEFENDANT: Yes, by God.

9 THE COURT: All right. State your full name
10 for me.

11 THE DEFENDANT: Shawn Thomas Stuller.

12 THE COURT: Mr. Stuller, in 14-CF-1104, you're
13 charged with trafficking in oxycodone, a first degree
14 felony punishable by up to 30 years in state prison.
15 There's a three-year minimum mandatory and a \$50,000
16 fine that must be imposed.

17 You're charged with burglary of an occupied
18 dwelling, a second degree felony punishable by up to 15
19 years in the state prison. You're charged with grand
20 theft, a third degree felony punishable by up to five
21 years in state prison, and you're charged with criminal
22 mischief, a second degree misdemeanor punishable by up
23 to 60 days in the county jail.

24 Do you understand those charges?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: My understanding is you wish to
2 accept the offer that was extended to you back in --
3 this one does not have that.

4 MR. MALOVE: October 16th, 2014.

5 THE COURT: October 16th of 2014, which is the
6 five-year state prison term; is that correct?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Has anybody forced you or
9 pressured you to do that?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Have you done so freely and
12 voluntarily?

13 THE DEFENDANT: I have.

14 THE COURT: You have the following rights.
15 You have a right to plead not guilty; a right to be
16 represented by an attorney, and you have an attorney
17 representing you; the right to be present when
18 witnesses testify against you; the right to remain
19 silent and not to incriminated yourself; the right to a
20 trial by jury; the right to compel or make any
21 witnesses come to trial; the right to cross examine
22 witnesses who testify against you, and the right to
23 present any and all defenses that you may have.

24 You also have the right to appeal any matters
25 including the issue of guilt or innocence, but if you

1 enter a plea, you waive those rights as to this case
2 forever. Do you understand that?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right, sir. Any drugs or
5 alcohol in the last 24 hours that would affect your
6 ability to understand what's happening today?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Are you a US citizen?

9 THE DEFENDANT: I am, Your Honor.

10 THE COURT: How do you plead to those four
11 counts?

12 THE DEFENDANT: No contest, Your Honor.

13 THE COURT: I am going to accept his plea,
14 find it's freely, knowingly and voluntarily entered.
15 Do the State and the Defense stipulate to a factual
16 basis -- oh, I see it in here.

17 I find a factual basis given the recitation in
18 the sentence recommendation that was previously marked
19 as Defendant's Exhibit 4. The guidelines score sheet
20 was previously approved, I believe, by Judge Miller.
21 Indicates a total sentence point of 96.1, minimum 51
22 months state prison, max is 50 years. Of course,
23 there's a three-year minimum mandatory.

24 Any objection to that, Counsel?

25 MR. MALOVE: No, sir.

1 THE COURT: And, State, are you aware of any
2 DNA that may exonerate the defendant?

3 MR. RICHARDSON: No, sir.

4 THE COURT: As to Count 1, I'm going to
5 adjudicate him guilty, sentence him to 60 months state
6 prison. Three years of that will a minimum mandatory.
7 I'll impose a \$50,000 fine, \$928 in fines and costs as
8 broken down in the agreement.

9 Count 2, adjudicated guilty, 60 months state
10 prison to run concurrent.

11 Count 3, adjudicated guilty, 60 months state
12 prison to run concurrent.

13 Count 4, adjudicated guilty and time served.

14 I'll order \$200 in restitution to the victim
15 also. He'll get credit for any time he has served thus
16 far. Upon his release from prison, I'll give him 90
17 days to set up a payment program with the clerk and
18 make every payment thereafter; otherwise, it's reduced
19 to a lien.

20 This is the significance of that, when you get
21 out, you can come up here. If you live here, come to
22 the clerk's office and set up a payment program within
23 90 days. They'll work with you to get this paid. This
24 is a lot of money, but they'll work with you on a
25 monthly basis. Or you can call them on the phone, and

1 they'll set it up, and then you make every payment
2 thereafter.

3 Why it's important is this, if you do not set
4 up the payment program, and you -- or you miss a
5 payment, it will be reduced to a lien, your license
6 will be suspended, and it starts gaining interest and
7 collection costs. So this helps you because you won't
8 incur all those costs, and if your license is otherwise
9 legal, then you're good with that, so that's why I give
10 you that opportunity.

11 MR. MALOVE: Thank you, Judge, appreciate
12 that.

13 THE COURT: Is there anything else from the
14 State?

15 MR. RICHARDSON: Nothing.

16 THE COURT: Mr. Malove?

17 MR. MALOVE: No, sir.

18 THE COURT: All right. That's the judgment
19 and sentence of the Court. He has 30 days to appeal.
20 If he can't afford an attorney, I'll appoint one for
21 him. We'll do the order, and y'all will get it.

22 MR. MALOVE: May I be excused?

23 THE COURT: Yes, sir. Thank you.

24 MR. MALOVE: Thank you very much.

25 THE COURT: We're going to take about a

ten-minute break and, then we'll finish up the docket.

(Proceedings concluded)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNOFFICIAL
DOCUMENT

CERTIFICATE OF REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA
COUNTY OF SANTA ROSA

I, TERESA EMMANUEL, Official Court Reporter, do hereby certify that the foregoing, being pages numbered 1 through 35, inclusive, is a true and correct transcript of the proceedings held in the case of STATE OF FLORIDA vs. SHAWN THOMAS STULLER, Case No. 14-CF-1104, on the 20th day of September 2018, before the Honorable John Simon, Circuit Judge, at 6865 Caroline Street, Milton, Florida.

IN WITNESS WHEREOF, I have hereunto set my hand, this the 28th day of September 2018.



TERESA EMMANUEL
Official Circuit Court Reporter