

FLORIDA LAW WEEKLY SEX CRIMES EDITION BY DENNIS NICEWANDER

Vol. 33, No. 21, May 23, 2008

Victory v. State, 33 Fla. L. Weekly D1321 (Fla. 5th DCA 2008):

Post-conviction movant was entitled to evidentiary hearing on his claim of ineffective assistance of counsel, based upon counsel's failure to seek in camera hearing on admissibility of evidence of prior consensual sexual activity between 8-year-old victim and victim's 6-year-old brother, where physical evidence indicated that victim's injuries had occurred some time before date on which she alleged penile penetration by defendant, evidence of prior consensual activity could have established that brother's digital penetration of victim, rather than any action by defendant, was source of victim's injuries, and record did not indicate whether defense counsel was aware of claim of digital penetration.

Discussion: The best part of this opinion is the dissent. The dissenting judge does his best to expose the defendant's claim for the sham that it is. Among his better quotes are, "I believe that Victory's allegations are absurd and ludicrous on their face and that confining the discussion to digital penetration in the majority opinion does not make them any less so." and "It is beyond belief that a pre-pubescent, six-year-old child could cause this type of injury as Victory alleges, especially injury that would produce scarring that far back into the victim's vagina. I find Victory's allegations-that the victim's six-year-old brother caused the victim's injury by engaging in consensual intercourse with her by inserting his penis and finger into her vagina-to be ridiculous and utterly devoid of any merit."

IN RE: STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES, 33 Fla. L. Weekly S333 (Fla. 2008):

Twenty-two proposed jury instructions for failure to register as a sexual offender/predator are included.