

# SEX CRIMES/CHILD ABUSE CASE LAW UPDATES FOR SEPTEMBER 2011

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Parker v. State, 2011 WL 4467635 (Fla.App. 2 Dist.):

Defendant was charged with Sexual Performance by a Child because he placed the images of real children on the bodies of adults engaged in sexual conduct. The court ruled that such images did not violate the statute because no children were engaged in sexual conduct. The court said that if the bodies had been those of minors, the images would have been chargeable.

The court provided a good comparison between the federal and state child pornography statutes and suggested the Florida legislature may want to consider expanding their child pornography laws in a similar manner.

Munroe v. State, 2011 WL 4105002 (Fla.App. 2 Dist.)

Defendant was required to register as a sex offender, and thus could be convicted for failing to register, based on underlying conviction for false imprisonment, since victim of underlying offense was a minor who was not defendant's child and evidence indicated a sexual component to the underlying offense.

Witchard v. State, 2011 WL 3903112 (Fla.App. 4 Dist.)

It would be an ex post facto violation to apply a law that increases the penalty for a violation of probation to a probationer who committed his or her crimes before the law became effective regardless of the date of the violation of probation.

Requirement that a trial court impose electronic monitoring on certain sex offenders who violated their probation only applied to probationers whose offenses occurred on or after September 1, 2005. (*Interpreting 948.063*)

Allen v. State, 2011 WL 3903163 (Fla.App. 4 Dist.)

Since the state could not prove the corpus delicti of the crime concerning sexual battery victim, the state had to prove by a preponderance of evidence that there was sufficient corroborating evidence that tended to establish the trustworthiness of the defendant's confession.

Statute making confessions in sexual abuse cases admissible without the need for the State to prove the existence of all the elements of the crime if the confession is

determined to be trustworthy eliminates the state's burden of establishing the corpus delicti of the crime as a predicate to admitting the defendant's confession into evidence.

Despite fact that the state was unable to establish the corpus delicti for the crime of sexual battery of a child, sufficient evidence established that defendant's confession was trustworthy, for purposes of admissibility of confession at trial on charge of sexual battery under statute making confessions in sexual abuse cases admissible without need for the State to prove existence of all elements of the crime; defendant gave statement in which he confessed to sexual relations with victims, defendant subsequently wrote letter of apology to victims, defendant's oral statement included several indicia of trustworthiness that would have been unknown to anyone other than the criminal, and victim corroborated defendant's confession.

Since the jury verdict form in sexual battery case did not distinguish the findings that substantiated the verdict between "penetration" and "union" with the victim's sexual organ, sentencing court erred in assessing sexual penetration points, and this error was reversible because, although the sentence imposed fell within the permitted range of a properly prepared scoresheet, appellate court could not conclude with certainty that defendant's sentence would have been the same if sentencing court had used a properly prepared scoresheet.