

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, PINELLAS COUNTY

STATE OF FLORIDA,

Plaintiff,

Case No. 22-09348-CF

vs.

JUAN ARIEL MOLINA-SALLES,

Defendant.

PROCEEDINGS: Pretrial Hearing

DATE: April 11, 2024

BEFORE: The Honorable Pat E. Siracusa
Circuit Court Judge

PLACE: Pinellas County Justice Center
14250 49th Street North
Clearwater, Florida 33762

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P R O C E E D I N G S

THE COURT: Okay.

MS. HIDALGO-SALINAS: Your Honor, for the record, Stella Hidalgo-Salinas, certified court interpreter. I have been sworn this morning.

THE COURT: You've already been sworn in in another courtroom?

MS. HIDALGO-SALINAS: Yes, Your Honor.

THE COURT: Okay, great.

Good morning, Mr. Molina-Salles. We're here in case number 22-95 (*sic*), I'm sorry, -9348, and there's a motion to remove victim injury points from the scoresheet. So let's start with, State, you object to the motion to remove the victim injury points?

MS. CONSTANTINE: We do, Your Honor.

THE COURT: Fortunately, you've provided a comprehensive written motion laying out your reason. Is there any brief supplemental argument that you wish to add?

MS. DELIBERATO: Mostly in response to the State's authority and why that's not binding on the Court and why it doesn't sort of stand for the proposition that I believe they think that it stands for. So I wanted to sort of give that -- give the

1 Court the context there.

2 THE COURT: Okay.

3 MS. DELIBERATO: So --

4 THE COURT: Your motion, so I'll let you go
5 first.

6 MS. DELIBERATO: Thank you. So essentially,
7 Your Honor, the case is *Sims v. State*, which is a
8 Florida Supreme Court case that very clearly states
9 that the victim injury has to be related to the
10 leaving of the scene. So in this case, my
11 understanding, at least from my discussions with the
12 State, is that nobody is disputing that the deputy
13 was deceased upon impact and that Mr. Molina-Salles
14 leaving did not cause the victim injury.

15 My understanding is the State's position is
16 before *Sims* was decided in 2007, but after the
17 issue -- the statute at issue in *Sims* was not the
18 statute that's at issue now, but *Sims* was decided
19 after the statute changed. The legislature
20 unilaterally added a subsection that says if the
21 defendant's conduct caused the injury, then they can
22 add the victim injury points, basically --
23 essentially eliminating Subsection (a).

24 So Subsection (a) says the victim injury has to
25 be a direct result of the conduct charge, which is

1 here the leaving. They added to say that if the
2 defendant caused the injury, period, he can be
3 assessed victim impact points. Those two provisions
4 of the statute are of course in direct conflict with
5 one another now.

6 I did review the *Costello* case, which the State
7 has cited. It's an entirely different procedural
8 posture that was on a actual post-conviction motion
9 on an ineffective assistance of counsel claim and the
10 *Costello* Court remanded the case for an evidentiary
11 hearing because the defendant's motion was
12 insufficiently pled.

13 And so at that evidentiary hearing, the lawyer
14 testified that he believed that this new addition,
15 7(e), overruled *Sims* and that his advice to the
16 client that victim injury points could be assessed
17 was accurate. Therefore, he didn't provide
18 ineffective assistance because the victim injury
19 points were appropriate.

20 There was no finding by that trial court, which
21 is the Circuit Court in Lee County, regarding whether
22 that's accurate or not. The Court just sort of
23 assumed that it was accurate without making a finding
24 because the issue before the Court was ineffective
25 assistance of counsel, whether the client would

1 withdraw the plea or not.

2 And so that case now is back before the
3 Sixth DCA. Briefing is underway, not concluded. And
4 there is no decision to date that overrules the
5 Florida Supreme Court decision in *Sims v. State*. I
6 pulled the legislative history for the law change,
7 which again occurred before *Sims* was decided and it
8 was in relation to a DUI case, the Adam Arnold Act,
9 and they did add that subsection and all of the
10 discussion in the legislative history was
11 about -- well, it was about DUI cases, which is not
12 at issue here.

13 And the legislature does acknowledge that
14 there's contrary precedent and just sort of
15 does -- adds it anyway, which I'm pretty certain
16 they're not allowed to do. So there is no -- at this
17 point, for Your Honor, *Sims* is good law; it has not
18 been overruled. No court that I am aware of has
19 squarely addressed the posture that we are in now,
20 which is a pretrial posture where I am trying to
21 advise my client accurately on the potential range of
22 penalties.

23 And in this case it's a difference of 6 years at
24 the bottom of his guidelines because he has no prior
25 criminal record. And so where I started was asking

1 Your Honor to make a ruling on whether or not they
2 can add the victim injury points. If Your Honor
3 rules that they can, I will have separate motions to
4 file, which would include a bifurcation of the
5 causation issue and a separate jury finding because
6 it would enhance the punishment.

7 And *Sims* does address the *Apprendi* problem
8 without a jury finding victim injury. And so in that
9 case it's also -- we have to talk about sort of what
10 causation means because it's not just that
11 the -- that the State can prove that Mr.
12 Molina-Salles was driving and that he died in the
13 accident, because there could be any number of
14 factors where the deputy's conduct himself caused his
15 injuries. And I'm not saying that this is the case
16 in this; I'm giving an example.

17 THE COURT: Uh-huh.

18 MS. DELIBERATO: If somebody is driving and a
19 person runs in front of their car recklessly drunk,
20 whatever it -- whatever it might be, right -- and
21 dies --

22 THE COURT: Right.

23 MS. DELIBERATO: -- and the person leaves, they
24 are still charged with leaving the scene.
25 That's -- they're subject to penalties for that. But

1 you could make an argument and a jury would have to
2 find and I would have to make an argument that it was
3 actually the victim's actions that caused his
4 injuries because the person was driving not in a
5 reckless manner, doing their -- where they're
6 supposed to be.

7 It's the leaving that's the criminal conduct and
8 that's a separate element. So I'm just at a little
9 bit of a loss in how to advocate -- how to adequately
10 advise my client. I very strongly believe that *Sims*
11 controls, that Your Honor is bound by *Sims*, and so
12 I'm asking Your Honor to make that finding now.

13 In the event that Your Honor disagrees and has a
14 different interpretation, then I'll ask for a future
15 hearing date to sever causation from the crime
16 because it's overly prejudicial.

17 And then also we'll have separate arguments to
18 make regarding causation that would be above and
19 beyond just the fact that Mr. Molina-Salles was
20 driving and the officer died as a result of the
21 accident without any kind of consideration or jury
22 finding as far as what the officer himself was doing
23 that contributed to the accident.

24 That's basically the summary. I'm happy to
25 answer any questions from the Court and I -- as

1 I -- as I indicated, I put all of that in my motion.

2 THE COURT: Right.

3 State, response?

4 MS. CONSTANTINE: Yes, Your Honor. I -- I mean,
5 plainly, it's the State's position that there's been
6 a law change and strict construction of the statute
7 under 921.002(7)(e), it prevents victim injury points
8 if the Court finds that the offender caused the
9 victim injury. I do agree under a premi that it'd be
10 safe to do a jury finding. I don't have any issue
11 with that part of Ms. DeLiberato's analysis.

12 However, the *Sims* case that's been provided by
13 Defense -- that was the Supreme Court case that was
14 decided in 2008 -- was applying the law that existed
15 at the time that *Sims* took place, which was in 2004.

16 The Subsection (7)(e), which is the new
17 subsection that's been added by the legislature, was
18 not added until July of 2007, which means that
19 Florida Supreme Court case in *Sims* was applying the
20 applicable law that existed at that time. They did
21 not address (7)(e) because that part of the statute
22 didn't exist during that timeframe. I've provided
23 the Court with *Costello v. State*, which is a
24 Second DCA case, 330 So.3d 1052, and Your Honor --

25 MS. HIDALGO-SALINAS: I'm sorry, would you

1 please slow down just a little bit? I'm not
2 really --

3 THE COURT: You got to -- you just got to slow
4 down.

5 MS. CONSTANTINE: Okay. I apologize.

6 THE COURT: Especially numbers. Yeah.
7 Start -- start it back up --

8 MS. HIDALGO-SALINAS: *Costello* please.

9 MS. CONSTANTINE: Oh, *Costello* case. *Costello*
10 *v. State* 330 So.3d 1052, which I agree It's a
11 different posture, but the Second DCA in this case
12 clearly recognizes that there has in fact been a law
13 change and I would direct the Court and Counsel's
14 attention to footnote 1 on that case.

15 I've provided that to the Court. I have also
16 provided that to Mr. -- Ms. DeLiberato. Where the
17 Court and Second DCA even says that they are unable
18 to determine whether assessment of victim injury
19 points would have been appropriate pursuant to
20 Section 921.00217(e), Florida Statutes 2016, which
21 permits victim injury points if the Court finds the
22 offender caused the injury.

23 I -- I think that that's relevant because
24 obviously the Court is acknowledging that there has
25 in fact been a law change since the *Sims* case has

1 come out. Since the legislature changed the law in
2 2007, which permits victim injury points under that
3 921 Statute. And as far as them being in direct
4 conflict, I just want to address that briefly. In
5 looking at the statute itself, it does say,
6 notwithstanding paragraph A, which is what
7 Ms. DeLiberato says it's a direct conflict to, and it
8 specifically delineates the statute that
9 Mr. Molina-Salles is charged with, which is
10 Florida Statute 316.027.

11 And so, based on that, we would ask the Court to
12 leave the scoresheet as is. Let the jury make a
13 finding as to the victim injury points based on the
14 current status of the law and Florida Statute
15 921.0021(7)(e). And I've also provided the Court as
16 well with a -- a copy of a -- a -- the order that was
17 done by *Costello* as well.

18 And if the Court looks at I believe it's
19 Subsection (20), under findings of facts, you can see
20 that they're making the -- the exact same argument
21 that I'm making to the Court today: that *Sims* applied
22 the law that was in effect at the time of the crime
23 in that case. And whether the victim injury points
24 could be assessed in this particular case pursuant to
25 Section 921.0021(7)(e) was not addressed in the *Sims*

1 case because it wasn't the law at the time.

2 And I think that the current state of the law
3 allows us to have those injury points assessed if
4 he's found to have caused the injury to the victim.

5 THE COURT: Okay.

6 And any response, or --

7 MS. DELIBERATO: I -- I mean, no. Very briefly,
8 other than I don't believe that the legislature can
9 over -- there's still the same constitutional problem
10 that addressed -- that is in *Sims*. And there is
11 still no controlling case law that says that that is
12 appropriate. That adding those victim injury points
13 under these circumstances is appropriate.

14 *Sims* has not been overruled; there's no
15 indication that it has been. And the -- the footnote
16 actually in the *Costello* order, Footnote 6, basically
17 says that the testimony assumes victim injury points
18 should not have been included on the scoresheet to
19 increase the lowest permissible guideline sentence,
20 as argued by defendant's postconviction counsel,
21 erroneously believing that *Sims* controlled.

22 So there's a lot of dicta. There's a lot of
23 opining from the trial, you know, from a trial lawyer
24 saying oh yeah, no -- I -- now this changes *Sims*.
25 But, you know, just like I stand here and tell you

1 what the law is, that lawyer doesn't -- doesn't get
2 to say that either. I -- I think we need guidance
3 from the Florida Supreme Court and I don't know that
4 we'll get it.

5 The Sixth DCA opinion may be out prior to our
6 trial in November. I'm not certain that it will.
7 And I'm also not certain that it will squarely
8 address the issue because, of course, it's an
9 ineffective assistance of counsel claim and courts
10 have a tendency to only address the most narrow
11 issues that they can without opening extra can of
12 worms that they don't need to.

13 THE COURT: Yes.

14 MS. DELIBERATO: So I think that I am
15 asking -- we are asking Your Honor to -- to
16 essentially make a determination as to whether this
17 statute addition overrules *Sims*. And I will note,
18 just for the record, *Sims* did come out in 2008. So
19 the changes have been made and there is no footnote
20 or acknowledgement in *Sims* that says anything like
21 we're aware that the legislature has subsequently
22 amended, or anything like that.

23 And so -- and I've seen that many times, as
24 Your Honor has, from the Florida Supreme Court where
25 there's, you know, an intervening law change that's

1 not before them, but they sort of telegraph or at
2 least acknowledge that there's some tension there.
3 And that -- that hasn't happened.

4 THE COURT: We're assuming they were aware and
5 that they would have chosen to address it though.

6 MS. DELIBERATO: Sure. Maybe not. Maybe they
7 wouldn't have. But it's -- I certainly feel -- and
8 I've, I mean, I've searched, and I -- I know
9 Ms. Constantine has as well, and I don't believe
10 there's any -- there -- that this issue has been
11 squarely addressed by any other court.

12 THE COURT: So before I give you my answer I
13 want to understand is this affecting whether or not
14 you're going to be able to work out the case?

15 MS. CONSTANTINE: No.

16 MS. DELIBERATO: So -- yes. Because the State
17 has it --

18 THE COURT: Okay. Split -- split opinion. Let
19 me hear yes and then let me hear no. So, yes --

20 MS. DELIBERATO: So -- so I want to be careful
21 not to disclose attorney client conversations, but
22 let me speak as generally as I can.

23 THE COURT: Okay.

24 MS. DELIBERATO: There -- there's a minimum
25 mandatory in this case which is discretionary of

1 4 years. There's a maximum of 30.

2 THE COURT: Right.

3 MS. DELIBERATO: So I, as the attorney, am
4 talking with my client about the possible range of
5 penalties. We have discussed an offer of
6 approximately 10 years to resolve this, but his -- my
7 understanding from the State is that's not high
8 enough. And so they're higher -- their offer is much
9 higher -- much closer to 20 or 30. And so my client
10 is trying to make a determination as to whether it is
11 worth it to make a higher offer or to accept their
12 highest offer, but he needs to have an accurate
13 understanding of what his possible range of penalties
14 are. Because if -- if Your Honor denies my motion
15 and the jury does find causation, then Your Honor has
16 to sentence him to 10.3 years at a minimum, right?
17 Arguing any departure, of course.

18 THE COURT: Right.

19 MS. DELIBERATO: And so it's -- it's difficult
20 for me to have meaningful conversations with him to
21 say -- because -- because it's -- maybe that's the
22 best that you're, you know, the best that you're
23 going to get. He'd rather roll the dice. So -- it's
24 just the issue of he's 34 months without this and
25 he's 10.6 years with it. So it's a -- it's a huge

1 difference.

2 THE COURT: Right. But you're not going to
3 enter and open plea to the Court?

4 MS. DELIBERATO: We have discussed that and
5 asking this Court for a -- a cap. Because -- because
6 really the -- I mean, I'll be perfectly candid with
7 the Court, the issue in this case and the facts and
8 the circumstances and all of the extraneous things
9 that are happening, that's -- that's the issue that's
10 a barrier to resolving.

11 The -- the crime itself I've done -- people in
12 our office have done numerous -- as has Your
13 Honor -- LSA with death. There's not 20 and 30 year
14 numbers being thrown around in those cases. And I
15 deeply understand the loss of the victim in this case
16 and I'm not in any way minimizing that. And yet, I
17 also know that the extraneous circumstances of this
18 construction company and their hiring practice and
19 the immigration status of my client are playing an
20 impact here.

21 And so I'm doing my best to advise my client and
22 I was just hoping for some guidance. If the Court is
23 unable -- unwilling to do so, I'll file the next
24 motion. I just -- when we were here last time, I had
25 addressed this with Your Honor and Your Honor had

1 said that you'd, you know, reviewed those things
2 before and would be happy to do so. So that's why I
3 brought it before the Court.

4 THE COURT: Okay. All right.

5 And State, why no?

6 MS. CONSTANTINE: Why no what?

7 THE COURT: Well, I --

8 MS. CONSTANTINE: Oh --

9 THE COURT: -- I said is this -- is this going
10 to in any way facilitate or negatively impact working
11 the case out? She said yes and you said no. So I
12 said why yes? And she gave me her reason why yes.
13 What's your reason why no?

14 MS. CONSTANTINE: We wouldn't be agreeing
15 to -- it's not going to impact whether the Court
16 decides to impose the injury points, that we can seek
17 them or not seek them, is not going to change the
18 State's position on what the ultimate resolution is.

19 I mean, so that's why it doesn't really make a
20 difference for us. I understand it makes a
21 difference for Ms. DeLiberato. It would make a
22 difference for the State, obviously, if we went to
23 trial that would, you know, change the bottom to the
24 top.

25 But as far as resolution and working the case

1 out with the State it's not going to make a
2 difference. Even if the Court decides today that the
3 State can't seek injury points, it's still not going
4 to change our position as far as what an appropriate
5 resolution would be.

6 THE COURT: Okay. I know I've asked you before
7 and for some reason I can't remember what's the State
8 seeking in this case?

9 MS. CONSTANTINE: The State does not have an
10 offer. As far as providing guidance --

11 THE COURT: I remember you -- you said that the
12 last time.

13 MS. CONSTANTINE: -- I don't -- You know, I
14 don't -- because I -- I -- I always hesitate to
15 commit to something because I'm not the person that
16 gets to ultimately make the decision. And I would
17 say if a 20-year offer was made, that that would be
18 something that I would feel comfortable taking to
19 Mr. Bartlett and to the family and discussing that
20 with them. I don't know that the Defendant is -- is
21 in a position at this point to get there. I don't
22 think he has been in the past. But again, that would
23 be Mr. Bartlett's call, not my call.

24 THE COURT: Okay.

25 I appreciate you both providing me with a -- a

1 lot of information on this.

2 So my ruling is going to be, I believe the
3 current state of the law is that the State can put
4 the victory (*sic*) -- victim injury points on the
5 scoresheet. I agree that we will have a causation
6 subcategory on the jury -- verdict form if we go to a
7 jury trial and that would affect the scoresheet.

8 And even if they put the victim injury points on
9 the scoresheet, if you wind up pleading to the Court
10 and requesting a cap, I can still depart whether the
11 victim injury points are on there or not. And if I'm
12 departing, I'm departing. It doesn't matter to me
13 whether there are victim injury points on the
14 scoresheet or not. If I'm departing, I'm still
15 departing.

16 So -- and I also appreciate the
17 well-thought-out, well-written, motions and
18 responses. And if we wind up resolving this case and
19 you preserve this issue for appeal then if the Sixth
20 Circuit doesn't come up with a -- an answer, maybe
21 one day the Supreme Court will come up with an answer
22 and guide future courts definitively. So your motion
23 to remove victim injury points from the scoresheet is
24 denied.

25 We're on for trial when?

1 MS. DELIBERATO: November 21st I -- no, earlier
2 than that.

3 MS. CONSTANTINE: No. It's 18th of November,
4 Your Honor.

5 MS. DELIBERATO: -- 18th

6 THE COURT: Okay. So I'll see you all right
7 before Thanksgiving for a -- a jury trial.

8 MS. CONSTANTINE: Yes, Your Honor.

9 MS. DELIBERATO: Thank you, Your Honor.

10 THE COURT: All right. I was going to ask him
11 if he had any questions, but he doesn't look like he
12 does.

13 MS. DELIBERATO: He's okay.

14 THE COURT: All right.

15 MS. DELIBERATO: We're in good communication,
16 Your Honor.

17 THE COURT: All right. Good.

18 (Proceedings concluded.)
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CERTIFICATE OF COURT REPORTER

STATE OF FLORIDA

COUNTY OF PINELLAS

I, Robert Wehle, a digital court reporter for the Sixth Judicial Circuit, do hereby certify that I was authorized to and did transcribe the foregoing proceedings and that the transcript is a true and correct record of said proceedings.

DATED this 30th day of April, 2025.

/S Robert Wehle
Robert Wehle
Digital Court Reporter
Sixth Judicial Circuit