

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

FELIX ALVAREZ,
Appellant,

CRIMINAL APPELLATE DIVISION: AC
CASE NO.: 2017-AP-000071-AXXX-MB
L.T. NO.: 2016-MM-010736-AXXX-WB

v.

STATE OF FLORIDA,
Appellee.

_____ /

Opinion filed: JUL 28 2017

Motion for Clarification
from the County Court in and for Palm Beach County,
Judge Sheree Cunningham

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PER CURIAM.

This cause comes before the Court on Appellant's Felix Alvarez's ("Appellant") Motion for Clarification, filed June 27, 2017, which the Court re-characterizes as a second Motion to Review Order Denying Post-Trial Release, pursuant to Florida Rule of Criminal Procedure 3.691(c) and Florida Rule of Appellate Procedure 9.140(h)(4).

On April 12, 2017, a jury found Appellant guilty of Count One: Unlawful Sexual Activities Involving Animals, and Count Two: Cruelty to Animals. The trial court sentenced Appellant on

Count One to twelve months' probation, ninety days' incarceration in the Palm Beach County Jail, and nine months' in-house arrest. On Count Two, the court sentenced him to twelve months' probation. The sentences of both counts are to be served consecutively. On April 27, 2017, Appellant filed a Motion for Post Trial Release and Appeal Bond in which he asked the trial court to release him on bond pending appellate review of his judgment and conviction. On May 11, 2017, the trial court held a bond hearing. At the conclusion of the hearing, the court denied the motion.

On May 31, 2017, Appellant filed a Motion to Review Order Denying Post-Trial Release and on June 5, 2017, the State filed a Response. On June 13, 2017, this Court issued an Opinion granting Appellant's Motion and remanded the matter to the trial court to enter a written order. On June 22, 2017, the trial court entered an order denying Appellant's motion for post-trial release. Currently pending before this Court is Appellant's Motion for Clarification, filed June 27, 2017.

Rule 3.691 governs post-trial release and directs the trial court to apply the principles stated in *Younghans v. State*, 90 So.2d 308 (Fla.1956).

Younghans essentially directs the court to consider (1) whether the appeal is taken for delay or in good faith on grounds not frivolous but fairly debatable; (2) the habits of the individual regarding respect for the law; (3) local attachments to the community by way of family ties, business or investment; (4) the severity of the sentence imposed, and circumstances relevant to the question of whether the defendant would remove himself from the jurisdiction of the court.

Wells v. Wainwright, 260 So. 2d 196, 197 (Fla. 1972). "Given that post-trial release is a discretionary matter, an appellate court's review is limited to discerning whether the trial court's exercise of discretion is arbitrary or capricious." *Baptiste v. State*, 134 So. 3d 1025, 1026 (Fla. 4th DCA 2012). The trial court found that Appellant's criminal history, in particular his conviction involving "sexual activity with a Child, a dog and now a horse," demonstrated a propensity for

violence and posed a risk of harm to the community. Based on these findings, this Court holds that the trial court did not abuse its discretion in denying Appellant's motion for post-trial release.

Appellant's Motion for Clarification, which the Court re-characterizes as a second Motion to Review Order Denying Post-Trial Release, is **DENIED**.

KASTRENAKES, BURTON, and WEISS, JJ. concur.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO.: 2017-AP-000071-AXXX-MB
L.T. NO.: 2016-MM-010736-AXXX-WB

FELIX ALVAREZ,
Petitioner,

Opinion/Decision filed: JUL 28 2017

v.

Motion for Clarification
from County Court in and for Palm Beach County,
Florida;
Judge Sheree Cunningham

STATE OF FLORIDA,

Motion filed: June 27, 2017

DATE OF PANEL: July 21, 2017

PANEL JUDGES: KASTRENAKES, BURTON, WEISS

GRANTED/DENIED/OTHER: MOTION FOR CLARIFICATION DENIED

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:)	DISSENTING:)	CONCURRING SPECIALLY:)
)	With Opinion)	With/Without Opinion)
<u>fs</u>)))
<u>July 27, 2017</u>)))
<u>Alm</u>)))
<u>7/28/17</u>)))
<u>Deed</u>)))
<u>7/28/17</u>)))