

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

VICTOR H. CONCHA,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D16-2046

[August 16, 2017]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Robert E. Belanger, Judge; L.T. Case No. 562015CF002703A.

Vincent James Benincasa of the Benincasa Law Firm, P.A., Vero Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Allen R. Geesey, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Victor Concha appeals his sentence for ten counts of possession of child pornography. Concha argues that the trial judge committed fundamental error when he implied that he would not, as a general policy, consider Concha's mental health needs as a basis for downward departure. We reverse and remand for resentencing before a different judge, because the trial judge's comments in this case are substantively indistinguishable from those we found to constitute fundamental error in *Fraser v. State*, 201 So. 3d 847 (Fla. 4th DCA 2016).

Reversed and Remanded.

TAYLOR, DAMOORGIAN and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.