

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
THIRD DISTRICT  
JULY TERM A.D., 2004

JORGE RAYMOND VERA

Appellant,

vs.

THE STATE OF FLORIDA

Appellee.

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\*\* CASE NO. 3D04-864

\*\*

\*\* LOWER  
TRIBUNAL NO. 96-17899

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Opinion filed October 20, 2004.

An Appeal from the Circuit Court for Miami-Dade County,  
David C. Miller, Judge.

Bennett H. Brummer, Public Defender and Howard K. Blumberg,  
Assistant Public Defender, for appellant.

Charles J. Crist, Jr., Attorney General and Paulette R.  
Taylor, Assistant Attorney General, for appellee.

Before SCHWARTZ, C.J., and LEVY and SHEPHERD, JJ.

**CONFESSION OF ERROR**

PER CURIAM.

The defendant below was sentenced upon a revocation of  
probation on the basis of a guidelines score sheet which  
included forty victim injury points for sexual penetration. As

the state candidly, commendably, and correctly concedes, however, those points were erroneously added because the underlying crimes, including burglary with an assault "by choking the victim," were not sexual offenses for which victim injury points could properly be assessed. Fla.R.Crim.P. 3.702(d)(5). See *Brown v. State*, 700 So. 2d 447 (Fla. 3d DCA 1997), quashed on other grounds, 719 So. 2d 882 (Fla. 1998); *Geary v. State*, 675 So. 2d 625 (Fla. 2d DCA 1996), review denied, 680 So. 2d 422 (Fla. 1996); *Jackson v. State*, 680 So. 2d 1102 (Fla. 5th DCA 1996).

Accordingly, the appellant's sentence is vacated and the cause remanded for resentencing upon an appropriate guidelines score sheet.