

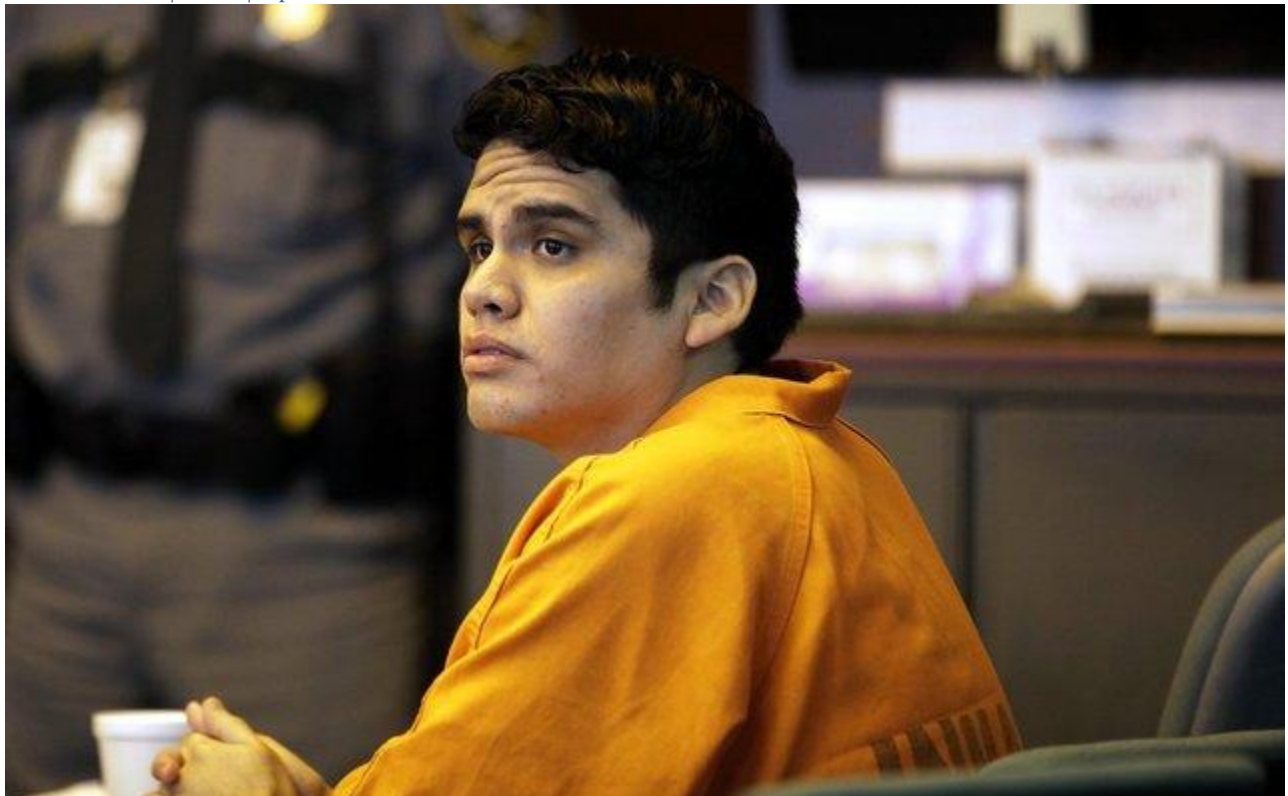
# Judges question if child porn convict's life sentence cruel and unusual

Jacob Carpenter

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GREG KAHN

NAPLES, Fla. - In his quest to get out of prison before dying, Daniel Guevara Vilca might have found a couple of sympathetic ears.

Two state appeals court judges in Tampa questioned Wednesday whether Vilca, 29, of East Naples, received a cruel and unusual punishment when he was sentenced to life in prison nearly three years ago for possessing 454 computer files of child pornography. Even though Vilca never touched a child or distributed the files, the structure of Florida's child pornography laws mandated the life sentence following a jury's guilty verdict.

While it will likely be months before the three-judge 2nd District Court of Appeals panel rules on the case, and reading too much into appeals judges' questions can be a fool's errand, the tone of two judges who spoke Wednesday encouraged one of Vilca's lawyer, Marc Seitles.

"You can't ever read a court, but we were optimistic based on the questions they were asking," Seitles said.

Vilca was arrested in January 2010 after Collier County sheriff's detectives traced child pornography downloads to his computer. They found hundreds of explicit images and videos depicting sexual abuse of children in several folders on the laptop.

Under Florida law, prosecutors can charge Vilca for each image or video. As a result, Vilca went to trial on 454 felony counts of child pornography possession. [A jury convicted him in October 2011.](#)

Florida's sentencing scoresheet requires a minimum prison sentence of roughly three months for each count, totaling 152 years in prison for Vilca.

But few criminal charges in Florida result in hundreds of counts against a defendant, a fact highlighted during questioning Wednesday by Judge Chris Altenbernd.

"If a kid goes into the 7-Eleven and steals eight packs of Oreos, we don't charge him with eight counts of theft. We charge him with one," Altenbernd said.

Supporters of Florida's laws say the lengthy sentences help stop the spread of child porn, with each charge representing one victim. Downloaders, they say, enable the market for child exploitation, resulting in thousands of children being sexually abused every year.

"This wasn't accidental," Assistant Attorney General Diana Bock argued Wednesday. "This was a developing pattern of behavior that could escalate."

The structure of Florida's child pornography possession laws differs from federal law, resulting in a major disconnect in potential punishments, the Daily News has found. Suspects with child

pornography arrested by federal agents typically are charged with a single count, which often results in prison sentences of about 10 years. For suspects with large child porn stashes, federal guidelines call for no more than a few additional years behind bars.

In Vilca's case, had he been convicted and sentenced in federal court, he likely would have received between 10 and 15 years in prison.

Vilca's lawyers have argued his sentence is disproportionate to other crimes. Murderers, rapists and those who physically abuse children sometimes receive lesser sentences than Vilca.

"He never harmed a child, he never exploited a child, he never committed violence," said Ashley Litwin, who argued the case Wednesday.

Judge Stevan Northcutt honed in on the difference between Florida's laws for child pornography possession, which allow for hundreds of charges, and possession with intent to promote, which often results in just a single charge.

"It concerns me that possession with intent to promote gets the person less (punishment) than simple possession," Northcutt said.

The third judge on the panel, Marva Crenshaw, didn't question the lawyers. The panel also heard arguments raised by the defense, which alleged an illegal search and seizure and a procedural error at trial.

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