

IN THE CIRCUIT COURT, OF THE
7TH JUDICIAL CIRCUIT IN AND
FOR FLAGLER COUNTY, FLORIDA

CASE NO.: **2015 CF 000387**
JUDGE: **HUDSON**

STATE OF FLORIDA

Plaintiff,
vs.

KIMBERLE WEEKS,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO MITIGATE

This matter came before the court on October 19, 2020 for hearing on the Defendant's Motion to Mitigate. Having heard argument of counsel and subsequently reviewed Fla. Stat. §934.03 and verified the lack of case law interpreting the same, the Court finds as follows:

1. The Defendant argues that, because she has no criminal history and the offenses for which she was found guilty were a first offense, each offense should have been deemed a second degree misdemeanor rather than the third degree felonies to which she was sentenced. §934.03(4)(b) does provide that if the offense was not for any tortious or illegal purpose and the wire communication was the radio portion of a cellular telephone communication, then the offense should be considered a second degree misdemeanor.
2. No evidence was presented that the communications for which Defendant was found guilty were radio portions of a cellular telephone communication.
3. Even if Defendant could have presented such evidence, it would only apply to Count II. Counts I, III and XII were made on or to a landline; the court finds no support to apply the suggested exception to those counts. Furthermore, Count XI was for

disclosure of an unlawful interception of a wire communication and such disclosure does not qualify for the suggested exception.

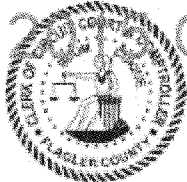
4. Finally, at least as to Count II, the court would find that the evidence presented at trial¹, established that the communication was intercepted for a tortious purpose and, as such, would be an additional basis for disqualification of the exception.

Therefore, it is

ORDERED AND ADJUDGED that the Motion to Mitigate is hereby DENIED and the Defendant's sentence will remain as imposed.

DONE AND ORDERED in chambers at Deland, Volusia County, Florida for filing in Bunnell, Flagler County, Florida

11/5/2020 4:47 PM 2015 CF
Margaret W. Hudson
000387



e-Signed 11/5/2020 4:47 PM 2015 CF 000387

CIRCUIT JUDGE
MARGARET W. HUDSON

Copies furnished:
Jason Lewis, Esq.
Kevin Kulik, Esq.

¹ This evidence was presented at trial as similar fact evidence since this count was not prosecuted at trial and the Defendant entered a plea to this count.