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A Florida judge sentenced a man to 60 years in prison for this?



By Josie Duffy

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It's February, which means that many of you are just a few weeks away from local primaries. Whether your primary is next month or September, don't forget to research local and state judicial candidates, as well as those candidates vying to be your county or district's chief prosecutor. I'll be highlighting the primaries you should know about over the next few months, along with my usual DA misconduct coverage. Remember: If there's a prosecutor or judge you think I should have on my radar, you can email me at prosecutortips@gmail.com or fill out [this](#) anonymous Google form.

Last October, officers with the Broward Sheriff's Office [pulled a car over](#) because of its tinted windows. In the driver's seat was Herbert Smith, a lanky 23-year-old with heavily lidded eyes and high cheekbones. Smith handed one of the officers his license. The cops ran it and found out it was suspended. They then searched Smith, his passenger, and the car and found a magazine full of bullets. The two men were arrested.

None of this was good for Smith, who was on probation. He had completed a two-year prison sentence in 2014 "after racking up eight felonies and four misdemeanors for theft, trespassing, and burglary." After his

release he still had four years of probation to complete, during which he could not be in possession of a concealed weapon. Turns out the magazine the officers found was included in that category.

Circuit Court Judge Matthew Destry, who had sentenced Smith in 2012, decided the consequences of Smith's probation violation that next month. The prosecutor requested 13 years, but Brian Greenwald, Smith's lawyer, was hoping for a break. After all, according to Greenwald, Destry "could have been lenient and reinstated Smith's youth offender status and sentenced him to prison for the remainder of his probation."

Destry sentenced him to *60 years* in prison.

Everyone—including the prosecutor—was stunned.

Sixty years. Almost three of his lifetimes. More than half of a century. A 2075 release. Even the best case scenario, 48 years, was almost four times the prosecutor's recommended sentence. If he was lucky, he'd be released back into the world at age 71.

Like many judges, Matthew Destry started his career as a prosecutor, working as an assistant state attorney for eight years in west Florida. After opening his own practice in Fort Lauderdale and going solo for seven years, he then began working for the attorney general's office. Gov. Charlie Crist had previously been attorney general for the latter part of Destry's tenure, and once Crist became governor he appointed Destry to the bench. At the time, reports called the appointment "widely expected." After all, it was "Destry's seventh bid for a seat on the bench."

"I just stepped up to the plate with the best that I had," Destry said at the time.

But during his tenure, Destry has been the most terrifying kind of judge—unpredictable, harsh, and wildly employing his discretion. Take the story of Demetrius Vidale. From *New Times*:

Four years ago, when Vidale was 19, he hurled a rock at a bus in Broward County. His mother, Paula, turned him in and he was placed on probation as a youthful offender. Then, last year, Vidale was linked to a grand theft[...]Destry sentenced the 22-year-old to 20 years in prison.

"I am not afraid to say when my son is wrong. I was the one who turned him in and started this," Vidale's mother, Paula, tells *New Times*. "This mess is because of Destry. Your life can be ruined depending on what day you catch him on."

(Destry's sentence in Vidale's case was reversed and remanded last summer since he relied only on hearsay in his probation revocation and sentencing. Yet, as of now, there has not been a new hearing and Vidale remains in prison.)

Destry has a history of wild sentencing behavior. The story about Maxime Cherilus is similarly disturbing.

In 2012, Cherilus was 22, had only \$1.13 in his bank account, and rent was due. He had dropped out of college because he needed money, and at the time was working two jobs as a cashier and a valet so he could send money to his family back home in Haiti. Desperate, he agreed to a proposition offered by the brother of a friend: If Cherilus made a cocaine deal for him, he'd give Cherilus the money. Cherilus had no criminal record and says he had never had anything to do with drug dealing prior to that.

He gave an undercover cop a gram of cocaine and received \$50 in exchange. But turns out the brother was a confidential informant and the buyer was an undercover detective. From *New Times*:

[Cherilus] He spent the next two years staying out of trouble and awaiting adjudication. In 2014, Cherilus found himself in Judge Matthew Destry's courtroom. Destry sentenced him to ten years in prison — more than six times the prosecution's recommendation. Cherilus' family wailed in the courtroom. Cherilus was in shock.

The appeals court has had to reverse Destry's decisions and correct his behavior a number of times after his high stakes and unpredictable decisions.

In 2012 Kate Peacock was found in possession of Oxycodone and cocaine. She was offered a plea deal of one year in jail as long as she surrendered on the day of her sentencing hearing. But Peacock missed her sentencing hearing—she was in the hospital that day after attempting to commit suicide. According to the [decision](#) from the District Court of Appeal of Florida, Fourth District, defense counsel explained that:

[Peacock] "was hospitalized that day because of a suicide attempt." The court then asked whether appellant's wounds were self-inflicted. When defense counsel responded that they were, the court stated, "So it wasn't like someone else inflicted these wounds or prevented her from being here?" The prosecutor did not appear to take any position on the issue, remaining silent during the vast majority of the hearing.

Destry sentenced her to 10 years. The appellate court reversed.

What's interesting is that Destry has agreed to some remarkably lenient plea deals in his time. (To be clear, prosecutors offer these deals but they must be approved by a judge.)

Andre Bruce was a parks and recreation employee in Hallandale Beach, Florida, [when](#) he followed a middle school girl into a gym at the local park center and raped her. The victim told police that the defendant knew her age and where she went to school. He pled guilty and Destry sentenced him to two-and-a-half years in prison.

In another case, a man on a cruise ship vacation reportedly lured a 15-year-old girl into his room, where he and his brother took turns raping her. The man, Luiz Scavone, eventually pled guilty. He was [sentenced](#) to a year in jail.

There's also the case of Brian Symonette. From the *Sun Sentinel*:

Police were summoned to the Symonettes' home in Miramar on Aug. 24, 2013. The couple's son, 11 at the time, called 911 saying there was an accident. "I don't know what's happening," he said, according to the 911 recording. "It's an emergency ... Please come."

Symonette pled guilty to shooting and killing his wife. Destry sentenced him to 20 years.

And there's more. Take Calvin Melvin, who [lied](#) to investigators about where his child was multiple times before admitting he was dead and buried in the backyard. The cause of the child's death was never

determined, because the child, five months old when he died, had been missing for 18 months. Melvin pled no contest, avoiding trial, and got 10 years. From the *New Times*:

The Broward Public Defender's Office is familiar with Destry's ways. In fact, public defender Rafael Nones says it's not uncommon for him to tell his clients to take a prosecutor's plea deal — even if his client might be innocent — because it's not worth Destry's sentence.

“We try to insulate our clients from Destry and the wrath of a tyrannical judge,” Nones explains. “One or two years is better than decades being taken away.”

Destry's history of being especially harsh to those who don't take plea deals is essentially coercing people to avoid trial, a fundamentally cruel mutation of the systems values.

Nones says he recently represented a middle-aged man, a nonviolent offender, who was sentenced by Destry to ten years in prison for dealing \$40 of crack cocaine. He says it's especially jarring since the federal government has lately shown leniency toward drug crimes after the harsh life sentences doled out since the Nixon era's War on Drugs.

“My client was sentenced just a day after Herbert Smith was,” Nones says. “I told the prosecutor, 'You got what you wanted,' and she shook her head and said, 'That's not what I wanted.’”

Speaking of Smith, he won't be in jail for 60 years, after all. From the *New Times*:

[After he was sentenced,] Smith's family was shocked and circulated a petition calling for Destry's removal from the bench for oversentencing Broward's youth. More than 20,000 people signed it. Then in a last-ditch status hearing two weeks ago, Destry shocked everyone again: He let Smith go home with no prison time but a 15-year probation. Smith has already been released and gotten a job.

But no one is applauding Destry for his change of heart just yet.

“To go from 60 years in prison to being released that day — the takeaway is that justice is random in Broward County,” Howard Finkelstein of the Broward Public Defender's Office tells *New Times*. “Destry did the right thing but for the wrong reasons.”

Smith's close friend Ratonya Dumas started the petition against Destry. Even though Smith is back home, she is still speaking out against Destry. “This man needs to be exposed for the things that he is doing,” she says.

He has been hit with other criticisms in his time on the bench.

In one case, a jury member was an assistant state prosecutor in the same office as the prosecutor on the case. When the defense protested, Destry [responded](#):

"The thing about it is, I don't agree with you. I don't think that a person's occupation is a valid basis, if you will, for a cause challenge. I just don't see it that way. So, just because she is an assistant state attorney or for that matter an attorney doesn't mean that she can't be a good juror."

In other words, there's no violation of impartiality when someone on the jury *works as a prosecutor in the prosecutor's office*.

Destry has also been repeatedly accused of disrespecting the time of those in his courtroom and seems to have serious time management issues. From [Broward Beat](#):

Destry scheduled a hearing Tuesday on a high profile case at 8:30 a.m. He waltzed into the courtroom at 9:49 a.m.

He never sent word to his crowded courtroom that he would be delayed.[...]

“He runs a horrible courtroom. He has a time management problem. He has no understanding for other peoples’ time,” one attorney who has practiced in front of him says.

On Halloween 2014, Destry kept his court in session until 11 PM because "he believed cases needed to be heard." [Said](#) one attorney:

“He appears indifferent to anybody’s needs except his own,” said one lawyer. “His only concern is his own needs and he doesn’t care if you have pre-paid trips, if you planned Halloween with your kids, if you have appointments, or anything else going on. The only plans that count are his.”

And to top off the strange and inappropriate happenings in the Destry courtroom, a few years ago he actually had to be [asked](#) to refrain from tweeting during court proceedings.

There are a couple of lessons to learn from Destry.

1. He's not alone, so know who you're voting for.

There are a number of judges like Destry, who abuse discretion wildly with little oversight or public backlash. Knowing what's happening in your local courtrooms and demanding transparency is key to a functioning criminal justice system and a healthy democracy.

2. Getting rid of mandatory minimums won't solve mass incarceration.

The move to end mass incarceration focuses heavily on mandatory minimums, which are undoubtedly contributing to the astronomical prison population. But ending mandatory minimums isn't the fix. What happens in courtrooms matters even more: If you get rid of mandatory minimums, you still have judges and prosecutors like Destry doling out crazy prison sentences because they feel like it.

3. We must address the fact that so many state judges are former prosecutors.

We cannot continue to allow prosecutors to hog the bench. The tough-on-crime attitude that permeates those representing the state in criminal proceedings has no place on an impartial bench. That's how we end up with judges who sentence a kid to 60 years for a non-violent probation violation.

4. Race matters.

Smith and Cherilus’s lawyers say they don’t necessarily think Destry’s absurd sentences are rooted in racism. “I don't think Destry's sentences are racially motivated. I've had clients receive fair punishment,” [Cherilus’s lawyer] [said](#). “But I think he forgets each person's individuality and can pigeonhole an individual as a drug dealer.”

Sounds kinda racist to me. But regardless, even if Destry isn't, there's no doubt that the criminal justice system in Broward County disproportionately harms people of color. From *New Times*:

Dumas points to Smith's repeated traffic stops since returning from prison. Since January, Smith has been stopped by police at least six times for not wearing a seatbelt, speeding, not coming to a complete stop at a stop sign, and having tinted windows.

Greenwald isn't ready to make the sentencing about race but says Dumas does have a point. The Broward Public Defender's Office has found suspected instances of race-based policing in the past — like when Fort Lauderdale Police admittedly used a bike registration ordinance as a pretext to stop people in black neighborhoods. In August, public defenders found that cops also use tinted windows (Smith's reason for being pulled over) as a pretext to target black people. An investigator found that blacks are pulled over disproportionately — in Deerfield Beach for instance, the black population is 25 percent, yet black people comprise 55 percent of all tinted-window stops. If Smith had not been stopped for tinted windows, police wouldn't have found the bullets in the car.

This year, Destry's up for election for another six-year term. He is currently running unopposed, but that could change. In 2010 he won handily, after beating a respected career public defender.

In 2014 Destry, a man who makes well over \$150,000 a year, told Broward Beat:

[He had] considered leaving the bench when his term expires in 2016. He believed he could make three or four times as much in the private sector without the stress of having to make decisions about people's lives. He talked to his Dad. His Dad asked him why did he need more money? Then he remembered he was doing a public service. He decided to stay on the bench...for now.

Destry says hopes by the time he leaves his courtroom, "I would like people to say that Matt Destry was a good guy. That what I did here made a difference."

A good guy.

County public defender Finkelstein [believes](#) Destry's terrible and harsh sentencing "stems from Destry's personal beliefs: 'His power is unmitigated, and part of the problem is that he doesn't see the humanity of poor people.'"

Destry wants to make a difference. Is this the difference Broward County wants? If not, the primary is in August and the election is in November. Let's hope people are paying attention.

Ed. Note: Thank you to one of our DK community's very own, [Samer](#), for letting me know that as of Tuesday (the same day this article was posted), Herbert Smith's lawyer Brian Greenwald is running against Destry for his seat! Article [here](#). Let the games begin.