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METRO NEWS

## Court Says Educator Wrongly Convicted for Sex With Teen

April 24, 2001 | STUART PFEIFER | TIMES STAFF WRITER

A state appeals court has overturned the conviction of a former Garden Grove high school vice principal who admitted having sex with a 17-year-old student who later bore him two children.

The 4th District Court of Appeal in Santa Ana ruled that a judge unfairly allowed jurors to consider evidence that Miguel Vivanco previously had sex with underage students.

Vivanco, the former assistant vice principal of Rancho Alamitos High School, admitted having sex with the student but said the liaison took place in Mexico, outside of California's legal jurisdiction.

Because the legal issue was not whether the pair had sex, but where the sex occurred, evidence about past trysts was both irrelevant and prejudicial, the appeals court ruled in a 2-1 opinion.

"To bring in other uncharged offenses had such an inflammatory effect on the jury," said Vivanco's appeals lawyer, Fay Arfa. "Rather than having him tried on the charge he was facing, he was tried on several different offenses."

The court also took issue with Deputy Dist. Atty. Matt Murphy's closing argument in which he said Vivanco used school "as his own private singles bar."

Vivanco, 45, who received a sentence of two years and eight months in 1999, already has been paroled. So prosecutors could be forced to make the unusual decision of whether to seek a retrial for a man who can do no more jail time.

Murphy declined to say whether prosecutors would seek a new trial. They still can ask the state Supreme Court to reinstate Vivanco's conviction.