EXHIBIT "A"

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Fifteenth Judicial Circuit of Florida

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November 17, 2017

Brandon L. Hawkins #K89456
Tomoka Correctional Institution
3950 Tiger Bay Road
Daytona Beach, Florida 32124-1098

Re: Brandon Lamar Hawkins v. State of Florida
Case No. 4D15-4876; L.T. Case No. 562014CF001532A

Dear Mr. Hawkins:

This is in response to your letter of October 30. In Williams v. State, 186 S o.3d 989, 993. 2016), the Florida Supreme Court held that

> Generally, consecutive sentencing of mandatory minimum imprisonment terms for multiple firearm offenses is impermissible if the offenses arose from the same criminal episode and **a firearm was merely possessed but not discharged. . .** It follows, therefore, that a trial court must impose the mandatory minimum sentences concurrently under such circumstances.
>
> If, however, multiple firearm offenses are committed contemporaneously, during which time multiple victims are shot at, then consecutive sentencing is permissible but not mandatory.

In your case, the jury found you guilty of first degree murder, attempted second degree murder, and burglary, during each of which it said that you had a firearm which you discharged causing death or great bodily injury (Counts 1, 3, 5), and attempted second degree murder with a firearm that you discharged (Count 2). Since in none of these offenses was a firearm "possessed but not discharged," the trial court was free to impose consecutive mandatory minimum sentences.

In addition, Count 6 (shooting a deadly missile) did not involve any mandatory minimum term, so it was an unqualifying offense for which a consecutive sentence was required by Williams. Armstead v. State, 224 So.3d 925 (Fla. 1st DCA 2017).

Finally, because the aggravated assault charge was one of "multiple firearm offenses [] committed contemporaneously, during which time multiple victims are shot at," and not a part of a criminal episode where "a firearm was merely possessed but not discharged," the trial judge was not prohibited from imposing a consecutive mandatory minimum sentence on that count. *See* Martinez-Castaneda v. State, 225 So.3d 847 (Fla. 3d DCA 2016) (trial court had discretion to impose concurrent or consecutive mandatory minimum sentences for burglary and kidnapping with discharged firearm *and* robbery with firearm in defendant's possession (no discharge)).

As to your concern that the indictment did not allege a time or place, the Supreme Court has held that

> time is not a substantive part of a charging document and that our present discovery rules eliminate the need for the specificity required by prior case law.

Tingley v. State, 549 So.2d 649, 649 (Fla. 1989). Thus,

> there may be a variance between the dates proved at trial and those alleged in the indictment or information as long as: (1) the crime was committed before the return date of the indictment; (2) the crime was committed within the applicable statute of limitations; and (3) the defendant has been neither surprised nor hampered in preparing his defense.

Id. at 651.

Similarly, in order to sufficiently allege a burglary, it is sufficient if the statutory elements are stated. It is not necessary to allege specific facts. State v. Lindsey, 446 So.2d 1074 (Fla. 1984). *See also* State v. Waters, 436 So.2d 66 (Fla. 1983) (accusatory instruments charging burglary must allege the requisite intent but need not always specify the offense intended to have been committed). In fact, a reference to the relevant statute may itself cure any defect in the allegations of the information. Jones v. State, 415 so.2d 852 (Fla. 5th DCA 1982) ("If the information recites the appropriate statute alleged to be violated, and if the statute clearly includes the omitted words, it cannot be said that the imperfection of the information prejudiced the defendant in his defense").

The elements of burglary are the entry of a dwelling or structure with intent to commit an offense therein. Section 810.02, Fla. Stat. These elements were alleged in the indictment in your case. It was not necessary that the indictment also specify the address, especially since the owner's name was alleged. Had additional information been desired, a statement of particulars could have been requested.

In addition, any complaint about the sufficiency of an information must be made before the defendant enters his plea to the information or it is waived. Foss v. State, 24 So.3d 1275 (Fla. 5th DCA 2009); Logan v. State, 1 So.3d 1253 (Fla. 4th DCA 2009) (quoting R. Crim.P. 3.140(g)); *see also* Alderman v. State, 281 So.2d 231 (Fla. 1st DCA 1973). While an information or indictment which completely fails to allege a crime is *void ab initio*, one which is merely imperfect or imprecise may be voidable, but only if a timely objection is made. State v. Perez, 783 So.2d 1084 (Fla. 3d DCA 1998); Colson v. State, 717 So.2d 554 (Fla. 4th DCA 1998). The facts of your case do not establish a jurisdictional defect which can be raised at any time.

Finally, the Florida Supreme Court's conclusion that defense counsel's concession of guilt is the "functional equivalent of a guilty plea" and thus requires an affirmative, explicit acceptance of defense counsel's strategy by the defendant, Nixon v. Singletary, 758 So.2d 618, 624 (Fla.2000), was later reversed by the United States Supreme Court. Florida v. Nixon, 543 U.S. 175, 176–77 (2004). In fact, the United States Supreme Court held:

> The Florida Supreme Court erred in applying ... a presumption of deficient performance, as well as a presumption of prejudice; that latter presumption, we have instructed, is reserved for cases in which counsel fails meaningfully to oppose the prosecution's case. *United States v. Cronic*, 466 U.S. 648, 659, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984).

Id. at 178–79, 125 S.Ct. 551. The Court also determined that the Florida Supreme Court erred in holding that a defense attorney's concession of his client's guilt, made without the defendant's express consent, automatically qualifies as prejudicial ineffective assistance of counsel and requires a new trial under Cronic. I am afraid that the limited concession made by your trial counsel cannot provide a basis for an argument on direct appeal that your conviction must be reversed. *See* Perea v. State, 58 So.3d 284 (Fla. 4th DCA 2011).

So far, the State has not yet submitted its answer brief. I hope to receive it before the end of the year. as soon as the State's brief is filed, I will send you a copy.

Sincerely,

Tatjana Ostapoff

TATJANA OSTAPOFF
Assistant Public Defender

TO/