

# APPENDIX

A

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

RUSSELL A. STODDARD,

Appellant,

v.

Case No. 5D19-1097

STATE OF FLORIDA,

Appellee.

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Decision filed October 15, 2019

3.800 Appeal from the Circuit  
Court for Volusia County,  
Matthew M. Foxman, Judge.

Russell A. Stoddard, Lake Butler, pro se.

Ashley Moody, Attorney General,  
Tallahassee, and Robin A. Compton,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

AFFIRMED.

EVANDER, C.J., GROSSHANS and SASSO, JJ., concur.

# APPENDIX

B

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

CASE NO.: 1996-035275 CFAES

STATE OF FLORIDA,

v.

RUSSELL ALLEN STODDARD,  
Defendant.

**ORDER DENYING MOTION TO CORRECT ILLEGAL SENTENCE**

THIS MATTER came before the Court upon Defendant's *pro se* motion to correct illegal sentence, filed on January 14, 2019, pursuant to Florida Rules of Criminal Procedure 3.800(a) and 3.850. The Court having reviewed the motion and the court file, and being otherwise fully apprised of the premises, finds as follows:

Defendant alleges that, because he should be sentenced under the 1994 sentencing guidelines pursuant to *Heggs*,<sup>1</sup> and the sentencing court failed to make written findings to justify an upward departure sentence of forty (40) years' imprisonment, his sentence is illegal. Defendant raised this claim previously, which was denied by this Court and affirmed upon appeal. *See Stoddard v. State*, 783 So. 2d 272 (Fla. 5th DCA 2001); *see also* Appendix A. The res judicata, collateral estoppel, and law of the case doctrines therefore preclude Defendant from raising this argument again. *See Isom v. State*, 800 So. 2d 292, 293-94 (Fla. 3d DCA 2001) (holding that res judicata barred a postconviction claim that was previously litigated on the merits); *McManus v. State*, 177 So. 3d 1046 (Fla. 1st DCA 2015) (holding that collateral estoppel may bar a successive postconviction motion where the specific issue has already been decided on the merits); *White v. State*, 651 So. 2d 726 (Fla. 5th DCA 1995) (holding that the law

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<sup>1</sup> *See Heggs v. State*, 759 So. 2d 620 (Fla. 2000).

of the case doctrine precluded the defendant from raising the issue again). Moreover, because Defendant entered a negotiated guilty plea, this claim is without merit. *See Legere v. State*, 862 So. 2d 824 (Fla. 5th DCA 2003).

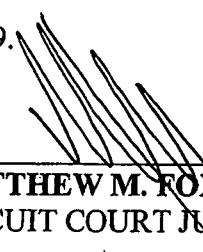
Defendant appears to differentiate this claim from his prior postconviction motion by alleging that the sentencing court never accepted his plea. Based on Defendant's motion, he entered his plea and received his sentence well over two (2) decades ago. Defendant's attached docket indicates he previously challenged the legality of his sentence. This Court therefore finds that this plea form does not qualify as newly discovered evidence. To the extent that Defendant alleges trial court error, this claim is not cognizable. *See Steward v. State*, 931 So. 2d 133, 134 (Fla. 2d DCA 2006) (citing *Isaac v. State*, 767 So. 2d 1280 (Fla. 5th DCA 2000)).

Defendant requests the appointment of postconviction counsel. Because this Court denies Defendant's postconviction claim, this request is moot.

Accordingly, it is **ORDERED AND ADJUDGED** that the motion is **DENIED**.

Defendant has **thirty (30) days** from the rendering of this order to file a notice of appeal.

**DONE AND ORDERED** in Chambers, in Volusia County, Daytona Beach, Florida, this  
25 day of March 2019.

  
**MATTHEW M. FOXMAN**  
CIRCUIT COURT JUDGE

cc: Russell A. Stoddard, Defendant, D.C. # V03964, Reception and Medical Center (R.M.C.), Main Unit, Post Office Box 628, Lake Butler, Florida 32054-0628  
The Office of the State Attorney, Post-Conviction Division, [calhounr@sao7.org](mailto:calhounr@sao7.org);  
[eservicevolusia@sao7.org](mailto:eservicevolusia@sao7.org)

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**APPENDIX "A"**

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**HONORABLE MATTHEW M. FOXMAN**  
**CIRCUIT COURT JUDGE**

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
VOLUSIA COUNTY, FLORIDA

CASE Nos.: 96-35275-CFAES;  
96-35758-CFAES

00335797

STATE OF FLORIDA,

v.

RUSSELL ALLEN STODDARD,

Defendant.

ORDER DENYING MOTION TO CORRECT ILLEGAL SENTENCE

THIS MATTER came on to be heard before the Court upon Defendant's pro se Motion to Correct Illegal Sentence, pursuant to Florida Rule of Criminal Procedure 3.800(a), and the Court having considered the motion, the court file, and being otherwise fully advised in the premises, finds as follows:

On July 2, 1997, Defendant pled guilty to (I) Second Degree Murder, in Case No. 97-35278; and (II) Escape, in Case No. 96-35758. See Written Plea, *attached hereto* as Appendix A. On the same date, he was sentenced, pursuant to the plea bargain, to (I) 40 years incarceration; and (II) 282 days time served. See Judgments & Sentences, *attached hereto* as Appendix B. He did not seek a direct appeal. On December 26, 2000, Defendant filed the instant motion claiming he is entitled to relief pursuant to Heggs v. State, 759 So. 2d 620 (Fla. 2000).

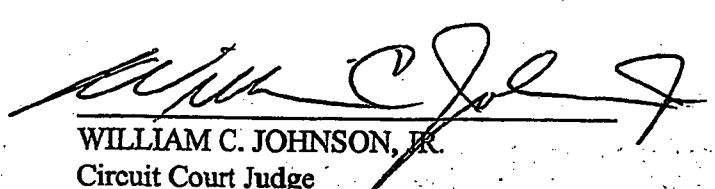
However, when a negotiated plea agreement is not conditioned upon the imposition of a sentence within a specific guideline range, improper scoring of Defendant's scoresheet will not render the plea illegal unless the sentence exceeds the statutory maximum. Dunenay v. Moore, 762 So. 2d 1007, 1008 (Fla. 3d DCA 2000); see also Skidmore v. State, 688 So. 2d 914 (Fla. 3d DCA 1997); Russell v. State, 656 So. 2d 203 (Fla. 5th DCA 1995) (scoresheet error harmless when based on plea bargain); Gentile v. State, 673 So. 2d 76 (Fla. 5th DCA 1996) (if negotiated plea is not conditioned upon a specific guideline range, any error will be harmless); Boerstler v.

State, 622 So. 2d 184 (Fla. 1st DCA 1993) (sentence imposed in accordance with valid plea agreement will not be rendered illegal due to scoresheet error). In the instant case, the record indicates that Defendant voluntarily entered into a plea agreement that was not conditioned upon the sentencing guidelines. See Appendix A. Furthermore, Defendant's sentence is well within the statutory maximum. See § 782.04(2), Fla. Stat. (1997). As a result, even though the 1995 guidelines have been declared unconstitutional, Defendant's sentence is not illegal. Dunenas, 762 So. 2d at 1008; see also Carmona v. State, 763 So. 2d 566 (Fla. 3d DCA 2000) (held that Heggs did not apply because the defendant agreed to a specific term of imprisonment in a voluntary plea) (citing Ivy v. State, 754 So. 2d 776 (4th DCA 2000)); Hill v. State, 730 So. 2d 322 (Fla. 1st DCA 1999); Poe v. State, 689 So. 2d 333 (Fla. 5th DCA 1997); Zaelter v. State, 616 So. 2d 461 (Fla. 3d DCA 1993)); Young v. State, 766 So. 2d 1258 (Fla. 5th DCA 2000) (approvingly cites Dunenas); Bonilla v. State, 766 So. 2d 1192, 1993 (Fla. 5th DCA 2000) (same).

Accordingly, it is

**ORDERED AND ADJUDGED** that Defendant's pro se Motion to Correct Illegal Sentence is hereby **DENIED**.

DONE AND ORDERED in Chambers, in Volusia County, Daytona Beach, Florida, this  
day of January, 2001.

  
WILLIAM C. JOHNSON, JR.  
Circuit Court Judge

cc: Russell A. Stoddard, Defendant, D.C. #V03964, Tomoka Correctional Institution,  
3950 Tiger Bay Road, Daytona Beach, FL 32114

Rosemary L. Calhoun, Assistant State Attorney

APPENDIX

C

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL  
CIRCUIT IN AND FOR VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA,

RECEPTION AND MEDICAL CENTER  
DATE: 1-10-94  
INMATE INITIALS: RAS

V

CASE NO.: 96-35275-CFAES

RUSSELL A. STODDARD,  
Defendant

**MOTION FOR POSTCONVICTION RELIEF TO CORRECT  
AN ILLEGAL SENTENCE PURSUANT TO FLA. R. CRIM. P. 3.850  
(A) (1) OR IN THE ALTERNATIVE, A MOTION TO CORRECT  
ILLEGAL SENTENCE UNDER FLA. R. CRIM. P. 3.800(A)**

The Defendant, Russell A. Stoddard, *pro se*, files this motion for postconviction relief to correct an illegal sentence that violates the laws of the State of Florida under Fla. R. Crim. P. 3.850 (a) (1) or in the alternative a motion to correct an illegal sentence Fla. R. Crim. P. 3.800 (a). In support of this motion,

Mr. Stoddard states:

**Background and facts relied upon by Mr. Stoddard for relief**

The State charged Mr. Stoddard with First Degree Premeditated Murder. Subsequently, the State reduced the charge to Second-Degree Murder. Mr. Stoddard entered a guilty plea to the reduced charge. While the parties presented a written plea agreement to the Court, the Court never accepted the plea, either orally

or by signing the plea agreement on the space provided. (See Exhibit "A") The Court adjudicated Mr. Stoddard guilty of the offense of Second-Degree Murder and sentenced him to a 40-year prison term (480 months).

The Florida Supreme Court in *Heggs v. State* held that the legislative enactment of the 1995 sentencing guidelines violated Florida's constitutional prohibition against enactment of a law that encompasses more than one subject matter.<sup>1</sup> In *Trapp v. State*, the Florida Supreme Court held that the window for relief under *Heggs* was limited to those criminal Defendants who committed their offenses between October 1, 1995, and May 24, 1997.<sup>2</sup>

The date of Mr. Stoddard's alleged offense occurred was September 15, 1996. Thus, the date of Mr. Stoddard's offense fell within the *Heggs* window—meaning that the applicable sentencing guidelines to Mr. Stoddard's sentence was the 1994 sentencing guidelines, not the 1995 guidelines.

Under the 1994 sentencing guidelines, Mr. Stoddard's maximum prison sentence was 275 months or twenty-four years and eleven months. However, the Court imposed an upward departure sentence of a forty-year prison term on Mr. Stoddard.

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<sup>1</sup> *Heggs v State*, 759 So. 2d 620, 627 (Fla. 2000))

<sup>2</sup> *Trapp v. State*, 760 So. 2d 924, 928 (Fla. 2000)

The Court:

1. Did not file a signed written statement of any kind, delineating the reasons for the upward departure sentence, either in a separate document;
2. Did not file a signed written transcript of the Court's reasons for the upward departure sentence that the Court articulated at the time the sentence was imposed; and

In addition, the Court did not accept or sign the plea agreement between the State and Mr. Stoddard in the space provided.

### Argument

**First Claim:** The Court did not file a signed written statement delineating the reasons for Mr. Stoddard's upward departure sentence, or file a signed written transcript of the Court's reasons for the upward departure sentence the Court articulated when it imposed the sentence. Because of this failure by the Court, Mr. Stoddard's enhanced sentence in excess of the recommended permitted sentence under the 1994 sentencing guidelines violated Florida law.

#### Argument in support of the First Claim:

Fla. R. Crim. P. 3.702 implemented the 1994 sentencing guidelines. Fla. R. Crim. P. 3.702 (d) (18) states:

*Departure from the recommended guidelines sentence provided by the total sentence points should be avoided unless there are circumstances or factors that reasonably justify aggravating or mitigating the sentence. A state prison sentence that deviates from the recommended prison sentence by more than 25 percent, a state prison sentence where the total sentence points are equal to or less than 40, or a sentence other than state prison where*

the total sentence points are greater than 52 must be accompanied by a written statement delineating the reasons for departure. Circumstances or factors that can be considered include, but are not limited to, those listed in subsections 921.0016(3) and (4). Reasons for departing from the recommended guidelines sentence shall not include circumstances or factors relating to prior arrests without conviction or charged offenses for which convictions have not been obtained.

The court must follow certain procedural requirements if the court imposes a departure sentence. These requirements are set forth in Fla. R. Crim. P. 3.702 (d) (18) (A) which reads:

*If a sentencing judge imposes a sentence that departs from the recommended guidelines sentence, the reasons for departure shall be orally articulated at the time sentence is imposed. Any departure sentence must be accompanied by a written statement, signed by the sentencing judge, delineating the reasons for departure. The written statement shall be filed in the court file within 15 days of the date of sentencing. A written transcription of orally stated reasons for departure articulated at the time sentence was imposed is sufficient if it is signed by the sentencing judge and filed in the court file within 15 days of the date of sentencing. The sentencing judge may also list the written reasons for departure in the space provided on the guidelines scoresheet and shall sign the scoresheet.<sup>3</sup>*

In Mr. Stoddard's case, the Court did not:

1. File a signed written statement of any kind, delineating the reasons for the upward departure sentence; or

<sup>3</sup>

See also §921.0016 (1) (c) Florida Statutes (1996)

2. Did not file a signed written transcript of the Court's reasons for the upward departure sentence that the Court articulated at the time the sentence was imposed; and

Mr. Stoddard's sentence exceeded the permitted sentencing range under the 1994 sentencing guidelines. Thus, Mr. Stoddard's upward departure sentence exceeded the statutory limitation on his sentence unless the Court found one or more aggravating factors exist that justify an upward departure sentence.

Assuming *arguento* that one or more factors exists that justify an upward departure sentence for Mr. Stoddard, then the Court was required to orally articulated those aggravating factors at the time it imposed sentence on Mr. Stoddard. In addition, Fla. R. Crim. P. 3.702 (d) (18) (A) required that the Court within 15-days of sentencing:

1. File a written statement, signed by the Court delineating the reasons for Mr. Stoddard's upward departure sentence; or
2. File a signed written transcript of the reasons the Court articulated during the sentencing hearing for Mr. Stoddard's upward departure sentence; or

The Court failed to orally articulated at the time it imposed sentence why it imposed an upward departure sentence on Mr. Stoddard. Nor did the Court comply with any of the requirements of Fla. R. Crim. P. 3.702 (d) (18) (A) listed above.

Florida appellate courts consistently have strictly construed the requirement that written reasons signed by the sentencing judge that support a departure sentence be timely filed. If the Court fails to comply with Fla. R. Crim. P. 3.702 (d) (18) (A), then an upward departure sentence is illegal<sup>4</sup>.

**This motion is appropriate under Fla. R. Crim. P. 3.850 (b) (\*) and Fla. R. Crim. P. 3.800 (a) because Mr. Stoddard's sentence exceeds the statutory maximum prison sentence the Court could impose.**

**A prison sentence does not have to exceed the statutory maximum to be illegal.**

In *State v. Mancino*, the Florida Supreme Court stated:

*[a] sentence that patently fails to comport with statutory or constitutional limitations is by definition 'illegal'*<sup>5</sup>.

In *Plott v State*, the Florida Supreme Court held that a party may use a Fla. R. Crim. P. 3.800 (a) motion to challenge any sentence that exceeds a statutory or

<sup>4</sup> *State v. Colbert*, 660 So. 2d 701 (Fla. 1995); *Ree v. State*, 565 So. 2d 1329 (Fla. 1990); *State v. Pease*, 669 So. 2d 314 (Fla. 1<sup>st</sup> DCA 1996) (on motion for clarification); *Hooks v. State*, 656 So. 2d 624 (Fla. 1<sup>st</sup> 1995); *Wilcox v. State*, 664 So. 2d 55 (Fla. 5<sup>th</sup> DCA 1995); *Cauble v. State*, 779 So. 2d 276 (Fla. 2<sup>nd</sup> DCA 1997) (Reversal of upward departure sentence because the written transcript of the trial court's oral statement of its reasons for departure did not contain the court's signature)); *Wilcox v. State*, 664 So. 2d 55, 56 (Fla. 5<sup>th</sup> DCA 1995) (Rule 3.702(d)(18) "require(s) some form of writing, and the judge's signature, and a timely filing.")); and *Carridine v State*, 721 So 2d 818 (Fla. 4<sup>th</sup> DCA 1998)

<sup>5</sup> *State v. Mancino*, 714 So. 2d 429, 433 (Fla. 1998).

constitutional limitation on a sentence, even if the sentence does not exceed the statutory maximum.<sup>6</sup>

Mr. Stoddard contends that his prison sentence is illegal because a statutory condition precedent required to enhance his sentence was not satisfied—the court failed to timely file written reasons why Mr. Stoddard was eligible to receive an enhanced sentence.

*Plott* is a good example of the application of Mr. Stoddard's argument. A jury convicted Plott of four counts of armed sexual battery. The trial court imposed four life sentences pursuant to the 1995 sentencing guidelines. The Second District Court of Appeal affirmed Plott's conviction and sentence on direct appeal.<sup>7</sup> Subsequently, Plott argued in a new postconviction motion that *Heggs* required that he be resentenced using the 1994 sentencing guidelines. The trial court agreed and granted the motion.

In May 2005, using the 1994 sentencing guidelines, the Court resentenced Plott. At Plott's resentencing, the trial court re-imposed the four life sentences as upward departure sentences based on aggravating factors. The trial court did not empanel a jury to find if any aggravating factors existed to justify an upward departure sentence. Instead, the trial court itself found the existence of aggravating factors that justified Plott receiving an upward departure sentence.

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<sup>6</sup> *Plott v. State*, 148 So. 3d 90,

<sup>7</sup> *Plott v. State*, 731 So. 2d 1285 (Fla. 2<sup>nd</sup> DCA 1999) (table)

In September 2010, Plott filed a *pro se* Fla. R. Crim. P. 3.800 (a) motion to correct an illegal sentence. Plott argued in his Fla. R. Crim. P. 3.800 (a) motion that under the United States Supreme Court decision in *New Jersey v. Apprendi*<sup>8</sup> and *Blakely v. Washington*,<sup>9</sup> a jury, not the court, must find the existence of aggravating factors that justified his upward departure sentence. Because a condition precedent to imposing an upward departure sentence was not satisfied—that a jury find the existence of aggravating factors that justified the trial court imposing an upward departure sentence—Plott argued that his sentence was illegal.

The postconviction court denied Plott's Fla. R. Crim. P. 3.800 (a) motion. The Second District Court of Appeal affirmed the lower court's denial, holding that Plott could not bring *Apprendi/Blakely* claims in a Fla. R. Crim. P. 3.800 (a) motion because the *Apprendi/Blakely* sentencing error was procedural in nature and could have been preserved and raised in direct appeal.<sup>10</sup>

The Florida Supreme Court granted discretionary review of the decision of the Second District Court of Appeal.

In *Plott*, the Florida Supreme Court held that a defendant may use a Fla. R. Crim. P. 3.800(a) motion to challenge any sentence that exceeds a statutory or

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<sup>8</sup> *New Jersey v. Apprendi*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)

<sup>9</sup> *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L. Ed. 2d 403 (2004)

<sup>10</sup> *Plott v State*, 86 So. 3d 516 (Fla. 2<sup>nd</sup> DCA 2012)

constitutional sentence limitation and the sentencing error appears on the face of the record. This is true regardless if the sentence resulted from a sentencing procedural error, provided the sentence actually imposed exceeded a statutory or constitutional sentence limitation, even if the sentence actually imposed did not exceed the statutory maximum penalty.<sup>11</sup>

Because the *Apprendi/Blakley* procedural sentencing error (1) appeared on the face of the record; and (2) resulted in a sentence that exceeded the statutory limit, even though the sentence did not exceed the statutory maximum, the Florida Supreme Court held that Plott was able to use a Fla. R. Crim. P. 3.800 (a) motion to challenge his sentence.

In this motion, Mr. Stoddard, like Plott, is arguing that a procedural error in the form of the Court's failure to satisfy a condition precedent to imposing an upward departure sentence rendered his sentence illegal.

The unsatisfied condition precedent and procedural error in *Plott* was the trial court's failure to empanel a jury to determine the existence of any aggravating factors that justified an upward departure sentence.

The unsatisfied condition precedent in Mr. Stoddard's case was the Court's failure to timely file signed written findings of the aggravating factors that justified the Court imposing an upward departure sentence on Mr. Stoddard.

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<sup>11</sup> *Plott v. State*, 148 So. 3d 90,

Like the sentence in *Plott*, Mr. Stoddard's sentence exceeded the statutory limit imposed under the 1994 sentencing guidelines, even though it did not exceed the statutory maximum prison sentence.

Furthermore, like *Plott*, the error appears on the face of the record—specifically from plea agreement the Court refused to accept (See Exhibit "A"), and the Court's docket sheet (See Exhibit "B").

Because of the similarity between the facts an argument in *Plott* and this case, the Florida Supreme Court's decision in *Plott* allows Mr. Stoddard to utilize a Fla. R. Crim. P. 3.800 (a) to challenge his sentence. Mr. Stoddard is also authorized to raise the issue that his sentence exceeded the maximum authorized by law in a Fla. R. Crim. P. 3.850 motion under Fla. R. Crim. P. 3,850 (a) (4).

Thus, the Court should treat this motion as either a motion to correct a sentence that exceeds the maximum provided by law under Fla. R. Crim. P. 3.850 (a) (4) or under a Fla. R. Crim. P. 3.800 (a).

### **Timeliness of this motion**

The State may argue that this motion is not timely. Such an argument is without merit.

Fla. R. Crim. P. 3.850 (b) reads:

*A motion to vacate a sentence that exceeds the limits provided by law may be filed at any time.*

Fla. R. Crim. P. 3.800 (a) (1) states

*A court may at any time correct an illegal sentence imposed by it ..., when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief...*

While *Plott* and *Mancino* both involved a Fla. R. Crim. P. 3.800 (a) motion, there is no reason why the holdings in these two cases are not equally applicable to a Fla. R. Crim. P. 3.850 motion alleging that a sentence exceeds the limits provided by law as authorized by Fla. R. Crim. P. 3.850 (a) (4).

Because this motion argues that Mr. Stoddard's sentence exceeds the maximum provided by law, is timely under both Fla. R. Crim. P. 3.850 (b) and 3.800 (a) (1).

### **Remedy**

In *Pope v State*, the Florida Supreme Court held that the appropriate remedy when the trial court fails to file written reasons for a departure sentence as required by the 1994 guidelines is for the trial court to vacate the original sentence and impose a sentence that comports with the 1994 sentencing guidelines.<sup>12</sup> Thus, under *Pope*, this Court should vacate Mr. Stoddard's sentence and impose a sentence that comports with the 1994 sentencing guidelines.

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<sup>12</sup> *Pope V State*, 561 So. 2d 554, 556 (Fla. 1990) (Holding that when a court vacates a departure sentence because there were no written reasons, the resentencing court must resentence the defendant with no departure from the guidelines)

## **Request for appointment of counsel**

Mr. Stoddard requests the Court to appoint him counsel if the Court should grant an evidentiary hearing on one or more of his claims set forth in this Motion.

Rule 3.850 (f) (7) provides the following criteria for the Court to use in determining if the Court should appoint counsel to represent Mr. Stoddard:<sup>13</sup>

1. The adversary nature of the proceeding;
2. The complexity of the proceeding;
3. The complexity of the claims presented;
4. The defendant's apparent level of intelligence and education;
5. The need for an evidentiary hearing; and
6. The need for substantial legal research.

An examination of the above criteria demonstrates the need for the Court to appoint counsel to represent Mr. Stoddard in any evidentiary hearing.

First, an evidentiary hearing is by its very nature and adversarial and complex proceeding. Such a hearing requires knowledge of the rules of procedure, rules of evidence, rules of decorum and local customs.

Second, the claims presented herein are complex, involving issues of what constitutes a sentence that violates Florida law, the effect of the Florida Supreme Court's decision in *Plott*, and what is required before a Court may enhance a

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<sup>13</sup> Fla. R. Crim. P. 3.850 (f) (7)

sentence under the 1994 sentencing guidelines. All of these claims require substantial legal research.

Third, Mr. Stoddard has only a limited education. Mr. Stoddard has no legal training including how to conduct legal research, court procedures, or the rules of evidence. Mr. Stoddard prepared this motion with the assistance of inmate law clerks certified by the Florida Department of Corrections.

Because each of the factors set forth in Rule 3.850 (f) (7) support Mr. Stoddard's request, this Court should appoint counsel to represent him in any evidentiary hearing the Court may order on this Motion.

### **Conclusion**

Mr. Stoddard's sentence exceeds the maximum provided for under Florida law because the Court did not timely file a statement of the written reasons, including the aggravating factors; it found that justified the imposition of an enhanced sentence. The Court should grant Mr. Stoddard an evidentiary hearing and appoint counsel to represent him at such a hearing. Afterwards, the Court should vacate Mr. Stoddard's sentence and impose a sentence that comports with the 1994 sentencing guidelines.

In the alternative, the Court should treat this motion as a Fla. R. Crim. P. 3.800 (a) motion, vacate Mr. Stoddard's sentence, and impose a sentence that comports with the 1994 sentencing guidelines.

Respectfully submitted,

Russell A. Stoddard

Russell A. Stoddard, *pro se*

DC #V03964

Defendant

Reception and Medical Center - Main Unit

P.O. Box 628

Lake Butler, FL 33054-0628

### Oath

Under the penalties of perjury and administrative sanctions from the Department of Corrections, including forfeiture of gain time if this motion is found to be frivolous or made in bad faith, I certify that I have read the Motion, or have had the Motion read to me; that I understand the contents of the motion; that the facts stated in it are true and correct; that the Motion is filed in good faith; that the Motion has potential merit; and that I have a reasonable belief that the Motion is timely filed; that this Motion does not duplicate previous motions that have been disposed of by the Court. I further certify that I understand English and have read the foregoing Motion or had the Motion read to me.

Russell A. Stoddard

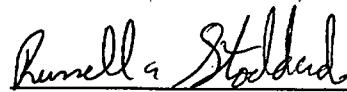
Russell A. Stoddard, *pro se*

DC #V03964

Defendant

### **Certificate of mailing**

I certify that I placed this document in the hands of the appropriate prison official for mailing to the Volusia County Clerk of Court, P.O. Box 6043, Deland, FL 32721-6043 and to the State Attorney, 101 North Alabama, Avenue, Suite B304, Deland, FL 32724 this 10<sup>th</sup> day of January 2019.



Russell A. Stoddard, *pro se*  
DC #V03964  
Defendant

# **EXHIBIT "A "**

## CERTIFICATE OF PROSECUTOR

I confirm that the <sup>AGREEMENTS</sup> recommendations set forth in this plea agreement have been made.



EDWIN L. DAVIS

Assistant State Attorney

## ORDER ACCEPTING PLEA

The foregoing was received and accepted in open court. The defendant who appears to be alert and intelligent having first been duly sworn has signed the foregoing in my presence or has acknowledged his/her above signature hereto in my presence. Such plea(s) is are found to be freely, voluntarily, knowingly and intelligently made with knowledge of its meaning and possible consequences, and the same is hereby accepted.

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Circuit Court Judge  
Seventh Judicial Circuit  
State of Florida, In and For  
Volusia County, Florida

# **EXHIBIT “B”**

## Case Information

Case Number: 1996  
035275 CFAESCase Style: STATE OF FLORIDA V. RUSSELL  
ALLEN STODDARDDiv: 42 - MATTHEW M FOXMAN Status:  
CLOSED

Case Type: FELONY

Category: FELONY

SPN: 335798

Security:  
PUBLIC

Date	Doc. #	Docket Type	Description	View
10/08/2018	349	MANDATE AFFIRMING	SD18-1480	
05/08/2018	348	RECORD FORWARDED TO 5TH DCA	SD18-1480 ~ 3.800 Summary; Clerk's pages 1-78	
05/08/2018	347	CERT COPY OF NOTICE OF APPEAL FWD TO 5TH DCA	3.800 Summary	
05/08/2018	346	ACKNOWLEDGMENT FROM FIFTH DCA	SD18-1480 ~ 3.800 Summary	
05/07/2018	345	NOTICE OF APPEAL	Pro Se ~ 3.800(a) Summary	
04/17/2018	344	CLERK'S CERTIFICATE OF MAILING		
04/17/2018	343	ORDER DENYING	MOTION TO CORRECT ILLEGAL SENTENCE	
04/16/2018	342	MOTION	(PRO SE) TO HEAR AND RULE - EMAILED TO DIV. 42	
04/13/2018	341	RECEIVED CORRESPONDENCE	W/LETTER ADDRESSING JUDGE ATTACHED - EMAILED TO DIV. 42	
04/12/2018	340	RECEIVED CORRESPONDENCE	SENT TO DIV 42 EMAIL	
02/02/2018	339	MOTION FOR MODIFICATION/REDUCTION/CORRECT.SENT	(PRO SE) EMAILED TO DIV. 42	
02/02/2018	338	RCVD CORRESPONDENCE FROM DEF		
01/30/2018	337	ORDER DISMISSING	MOTION TO CORRECT ILLEGAL SENTENCE	
01/26/2018	336	NOTICE	(PRO SE) OF VOLUNTARY DISMISSAL - EMAILED TO DIV. 42	
10/17/2017	334	CORRESPONDENCE SENT TO	DEFENDANT	
10/09/2017	335	RECEIVED CORRESPONDENCE	FROM DEFENDANT'S MOTHER	
08/15/2017	333	CORRESPONDENCE SENT TO	DEFENDANT	
08/14/2017	332	RCV'D CORRESPONDENCE FROM DEF		
05/04/2017	331	MOTION FOR MODIFICATION/REDUCTION/CORRECT.SENT	COPY	
05/03/2017	330	MOTION FOR MODIFICATION/REDUCTION/CORRECT.SENT		
03/22/2016	328	CORRESPONDENCE SENT TO	DEF.	
03/21/2016	329	RCV'D CORRESPONDENCE FROM DEF		
03/21/2016	327	RCV'D CORRESPONDENCE FROM DEF		
01/19/2016	325	COURT VERIFICATION FORM - LEGITIMATE		
01/15/2016	324	JUDGMENT & SENTENCE UPDATED/AMENDED	Instrument: 2016011156 Book: 7208 Page: 2938 View: <a href="#">2016011156</a>	
01/12/2016	318	ORDER	ON MOTION TO ALLOW CORRECT JAIL CREDIT AND DIRECTING CLERK TO AMEND JUDGMENT AND SENTENCE FORMS	
12/28/2015	317	STATES RESPONSE	TO DEF'S PRO SE MOTION TO ALLOW CORRECT JAIL CREDIT	
11/25/2015	316	ORDER	FOR STATE TO RESPOND	
01/07/2015	326	NOTICE	OF INQUIRY (PRO SE) (FWD TO JUDGE)	
06/30/2014	313	MOTION	TO CORRECT JAIL CREDIT. PRO SE	
12/01/2006	312	FILE RECEIVED	FILE RECEIVED:RMC (VOLS.1&2)	

11/30/2006	311	FILE SENT TO RECORD CENTER	FILE SENT TO RECORD CENTER:VOLS I & II
11/17/2006	310	FILE SENT TO	FILE SENT TO: SHARON'S DESK(VOL.I & II)
11/15/2006	309	FILE SENT TO	FILE SENT TO: FELONY DB (VOLS.1&2) **RECV'D 11/16/06***
10/29/2001	308	FILE RETURNED TO DELAND FELONY	FILE RETURNED TO DELAND FELONY: REC'D.DELAND,103001
10/26/2001	307	FILE SENT TO	FILE SENT TO: JUDGE JOHNSON *RETURNED 102901
10/25/2001	306	FILE RETURNED TO D.B. FELONY	FILE RETURNED TO D.B. FELONY: **RECD VOL.1 & 2 10/26/01**
10/22/2001	305	TEXT	OF INDIGENCY BY PETITIONER/APPELLANT
10/22/2001	304	MOTION	MOTION: FOR LEAVE TO PROCEED IN FORMA PAUPERIS/AFFIDAVIT
10/22/2001	303	TEXT	AFFIDAVIT OF INDIGENCY
10/22/2001	302	MOTION	MOTION: TO BE DECLARED AS INDIGENT
10/22/2001	301	RCV'D CORRESPONDENCE FROM DEF	RECEIVED CORRESPONDENCE FROM DEFENDANT: TO:JUDGE JOHNSON
08/31/2001	300	CORRESPONDENCE SENT TO	CORRESPONDENCE SENT TO: DEFT RE:COPIES
08/29/2001	299	RCV'D CORRESPONDENCE FROM DEF	RECEIVED CORRESPONDENCE FROM DEFENDANT: REQ COPIES
07/26/2001	298	FILE RETURNED TO DELAND FELONY	FILE RETURNED TO DELAND FELONY: RECV'D 07/27/01
05/07/2001	297	TEXT	LETTER TO DEF.RE:COPIES
04/20/2001	296	RCV'D CORRESPONDENCE FROM DEF	RECEIVED CORRESPONDENCE FROM DEFENDANT: REQUEST F/DOCUMENTS
04/03/2001	295	MANDATE AFFIRMING	MANDATE AFFIRMING: COPY TO P&P
02/14/2001	294	ACKNOWLEDGMENT FROM FIFTH DCA	ACKNOWLEDGMENT FROM FIFTH DCA: 5D01- 412 (3.800 SUMMARY)
02/13/2001	293	FILE RETURNED TO D.B. FELONY	FILE RETURNED TO D.B. FELONY: FR: APPEALS*REC'VD 2/14/01*
02/13/2001	292	BILL SENT FOR FILING FEE TO	BILL SENT FOR FILING FEE TO: VOLUSIA COUNTY
02/13/2001	291	CERT. COPY ORDER INSOLV.	CERTIFIED COPY OF ORDER OF INSOLVENCY: 5TH DCA
02/09/2001	290	INSOLVENCY ORDER FOR PURPOSE OF APPEAL	INSOLVENCY ORDER FOR PURPOSE OF APPEAL:
02/08/2001	289	FILE SENT TO	FILE SENT TO: JUDGE JOHNSON W/AFF. INDIGENCY/PROP ORDER
02/08/2001	288	RECORD FORWARDED TO 5TH DCA	RECORD FORWARDED TO 5TH DCA: 3.800 SUMMARY
02/07/2001	287	FILE SENT TO	FILE SENT TO: APPEALS - ATTN K BLEVINS REC'D.
02/02/2001	285	AFFIDAVIT OF INSOLVENCY FOR PURPOSES OF APPEAL	AFFIDAVIT OF INSOLVENCY FOR PURPOSES OF APPEAL: (PRO SE)
02/02/2001	286	NOTICE OF APPEAL	NOTICE OF APPEAL: (PRO SE) 3.800 SUMMARY
01/23/2001	284	FILE RETURNED TO DELAND FELONY	FILE RETURNED TO DELAND FELONY:
01/23/2001	283	CASE CLOSED	CASE CLOSED:
01/23/2001	282	ORDER DENYING	ORDER DENYING: MOTN.TO CORRECT ILLEGAL SENTENCE
01/09/2001	281	FILE SENT TO	FILE SENT TO: VOL 1 & 2 TO LAW CLERK **RETD 1/23/01**
01/08/2001	280	FILE SENT TO	FILE SENT TO: D.B. FELONY - ATTN B GRIFFIN*REC'VD 1/9/01*
12/28/2000	279	FILE RETURNED TO DELAND FELONY	FILE RETURNED TO DELAND FELONY: VOL 1- 2 *RECV'D 12/29/00*
12/26/2000	278	FILE SENT TO	FILE SENT TO: D.B. FELONY - ATTN B GRIFFIN*REC'VD 12/27/00*

12/26/2000	277	MOTION FOR MODIFICATION/REDUCTION/CORRECT SENT	MOTION FOR MIT./REDUCTION SENTENCE: 12/26/00(PRO SE)
12/07/2000	276	FILE RETURNED TO DELAND FELONY	FILE RETURNED TO DELAND FELONY: **REC'D 12/8/00
12/06/2000	275	FILE SENT TO	FILE SENT TO: D.B. FELONY - ATTN R JOHNSON *RECV'D 12/7/00*
11/28/2000	274	RCVD CORRESPONDENCE FROM DEF	RECEIVED CORRESPONDENCE FROM DEFENDANT: REQUEST LETTER
11/17/2000	272	FILE RETURNED TO DELAND FELONY	FILE RETURNED TO DELAND FELONY: *RET'D 11/20/00
11/07/2000	271	FILE SENT TO	FILE SENT TO: D.B. FELONY - ATTN B GRIFFIN VOL.1&2*RECD 11/8
11/01/2000	273	RCVD CORRESPONDENCE FROM DEF	RECEIVED CORRESPONDENCE FROM DEFENDANT: REQUEST LETTER
08/21/2000	270	FILE SENT TO	FILE SENT TO: DELAND FELONY
12/17/1997	269	RES. COUNTY OF VOLUSIA	RES. COUNTY OF VOLUSIA: TO MOTN FOR PMT OF CASE-RELATED EXP.
12/17/1997	268	ORDER GRANTING PAYMENT	ORDER GRANTING PAYMENT: COMMUNITY BEHAVIOR SERVICES \$880.00
12/08/1997	267	MOTION	MOTION: FOR PAYMENT OF CASE RELATED EXPENSES
10/22/1997	266	ORDER GRANTING PAYMENT	ORDER GRANTING PAYMENT: \$1,104.05 RBT.WALKER-SOUTHERN INV.
10/20/1997	265	RES. COUNTY OF VOLUSIA	RES. COUNTY OF VOLUSIA:
09/24/1997	264	MOTION	MOTION: FOR PAYMENT OF CASE RELATED EXPENSE
09/15/1997	263	STIPULATION	STIPULATION: (JOINT) FOR PAYMENT ATTY.FEES
09/15/1997	262	ORDER GRANTING	ORDER GRANTING: BY JUDGE JOHNSON
09/15/1997	261	ORDER GRANTING ATTORNEY FEES	ORDER GRANTING ATTORNEY FEES: \$13,531.49 DAVID MORGAN,ESQ.
08/27/1997	260	RCVD CORRESPONDENCE FROM DEF	RECEIVED CORRESPONDENCE FROM DEFENDANT: REQUESTING COPIES
08/14/1997	259	TEXT	VERIFIED MOTION FOR ATTY FEES/COSTS
08/12/1997	258	MOTION	MOTION: FOR PAYMENT OF CASE-RELATED EXPENSE
07/02/1997	323	WRITTEN PLEA FORM FILED	
07/02/1997	322	RESTITUTION ORDER	
07/02/1997	321	UNIFORM COMMITMENT TO CUSTODY TO DOC	
07/02/1997	320	SCORE SHEET	
07/02/1997	319	JUDGMENT & SENTENCE FILED	
07/02/1997	257	TEXT	REARREST CHRG 1 UPDATED:F/MURDER (FOXMAN)
07/02/1997	256	GUILTY PLEA ENTERED	GUILTY PLEA ENTERED: SECOND DEGREE MURDER
07/02/1997	255	SENTENCED (ADJ.GUILTY)	SENTENCED (ADJ.GUILTY): SECOND DEGREE MURDER
07/02/1997	254	COURT IMPOSED SENTENCE ON	COURT IMPOSED SENTENCE ON: 07/02/97
07/02/1997	253	COURT SENTENCE TO BEGIN ON	COURT SENTENCE TO BEGIN ON: 07/02/97
07/02/1997	252	SENTENCED TO SERVE TIME IN	SENTENCED TO SERVE TIME IN: STATE PRISON FACILITY
07/02/1997	251	SENTENCE IS	SENTENCE IS: CONCURRENT
07/02/1997	250	CREDIT FOR TIME SERVED IS	CREDIT FOR TIME SERVED IS: 0282 DAYS
07/02/1997	249	CONFINEMENT LGTH	CONFINEMENT LGTH: 40 YRS
07/02/1997	248	CASE CLOSED	CASE CLOSED:
07/02/1997	247	COURT ACTION FORM FILED	NUMBER OF COURT ACTION FORMS USED: 01

06/24/1997	246	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: JOHN ROBBINS
06/24/1997	245	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: TRACY CUPP
06/23/1997	244	NOTICE	NOTICE: OF FILING DEPOSITIONS
06/23/1997	243	DEPOSITION OF	DEPOSITION OF: 04/15/97 @2:45PM (SGT.B.PARKER)
06/23/1997	242	NOTICE OF HEARING	NOTICE OF HEARING: 070297 @9:00AM (JDG.JOHNSON)AMENDED
06/19/1997	241	TEXT	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR ORDER DIRECTING
06/19/1997	240	TEXT	RELEASE OF CONFIDENTIAL MATERIAL
06/16/1997	236	MOTION	MOTION: FOR ORDER DIRECTING RELEASE OF CONFIDENTIAL MATTER
06/16/1997	239	NOTICE OF HEARING	NOTICE OF HEARING: 07/01/97 (JOHNSON @10:00)
06/16/1997	238	MOTION	MOTION: COMPEL DISCLOSURE/MOTN TAKE DEPO
06/16/1997	237	TEXT	SUPPL DISCOVERY LIST
06/13/1997	235	ORDER	ORDER: FOR PRE-TRIAL CONF:08-12-97 @ 1:30P
06/12/1997	232	TRIAL SET	TRIAL SET: 08/18/97, PT. 07/31 JOHNSON/2
06/10/1997	231	FILE SENT TO	FILE SENT TO: JDG JOHNSON
06/10/1997	230	NOTICE	NOTICE: OF FILING DEPO
06/10/1997	229	DEPOSITION OF	DEPOSITION OF: MARY LYNN ANDREW
06/10/1997	234	MOTION	MOTION: FOR ORDER DIRECTING RELEASE OF
06/10/1997	233	TEXT	CONFIDENTIAL MATERIAL
06/05/1997	227	RETURNED SUBPOENA	RETURNED SUBPOENA 01
06/03/1997	228	RETURNED SUBPOENA	RETURNED SUBPOENA 01
05/28/1997	225	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 6/11/97 @ 3P W/J.ROBBINS
05/28/1997	224	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 6/11/97 @ 1:30P W/T.CUP
05/28/1997	223	NOTICE OF HEARING	NOTICE OF HEARING: 6/30/97 @ 9A W/JUDGE GRAZIANO
05/28/1997	222	NOTICE	NOTICE: OF FILING DEPOSITIONS
05/28/1997	221	DEPOSITION OF	DEPOSITION OF: 5/21/97 @ 9A W/J.ROBBINS
05/28/1997	220	DEPOSITION OF	DEPOSITION OF: 5/21/97 @ 9:30 W/R.O'RORK
05/28/1997	219	DEPOSITION OF	DEPOSITION OF: 5/21/97 @ 10A W/T.CUP
05/28/1997	226	TEXT	SUPPLEMENTAL DISCOVERY LIST
05/23/1997	218	ORDER	ORDER: DEF MOTN FOR PAYMENT OF CASE-REL. EXPENSE IS GRANTED
05/22/1997	217	TEXT	DEF MOTN FOR PARTICULARS -DENIED (GRAZIANO)
05/22/1997	216	COURT ACTION FORM FILED	NUMBER OF COURT ACTION FORMS USED: 01
05/20/1997	215	TEXT	RESPONSE OF CO. OF VOLUSIA TO
05/20/1997	214	TEXT	MOTN FOR PMT OF CASE-RELATED EXPENSE
05/20/1997	213	TEXT	EXPENSE
05/16/1997	206	NOTICE OF FILING DEPOSITION	NOTICE OF FILING DEPOSITION:
05/16/1997	205	DEPOSITION OF	DEPOSITION OF: TELEPHONIC 2/19/97 10:17 AGT.WINSETT
05/16/1997	204	DEPOSITION OF	DEPOSITION OF: TELEPHONIC 2/19/97 10:39 AGT.ROSE
05/16/1997	203	DEPOSITION OF	DEPOSITION OF: TELEPHONIC 2/19/97 9:28 AGT. PETERS
05/16/1997	202	DEPOSITION OF	

DEPOSITION OF: TELEPHONIC 2/19/97 9:38  
AGT.GIGICOS

05/16/1997	212	ORDER GRANTING CONTINUANCE	ORDER GRANTING CONTINUANCE:
05/16/1997	211	CONT. BY DEF.	CONT. BY DEF.: 8/11/97, PT 7/8 (GRAZIANO G/1)
05/16/1997	210	ORDER	ORDER: GRANTED AS TO ALLOW UNRESTRICTED CONSIDERATION OF
05/16/1997	209	TEXT	MITIGATING EVIDENCE BUT DENIED AS TO DECLARING SECTION
05/16/1997	208	TEXT	921.141 FLORIDA STATUTES UNCONSTITUTIONAL (JDG.GRAZIANO)
05/14/1997	201	NOTICE	NOTICE: FILING DEPOSITIONS
05/14/1997	200	DEPOSITION OF	DEPOSITION OF: GREGORY SMITH
05/14/1997	199	DEPOSITION OF	DEPOSITION OF: NILS EWANIK
05/14/1997	198	DEPOSITION OF	DEPOSITION OF: RANDY DOYLE
05/14/1997	207	SUPPLEMENTAL WITNESS LIST	SUPPLEMENTAL WITNESS LIST:
05/13/1997	196	TEXT	MOTN FOR PMT OF CASE-RELATED EXPENSE
05/13/1997	195	MOTION FOR CONTINUANCE	MOTION FOR CONTINUANCE:
05/13/1997	197	TEXT	DEFENSE DISCOVERY DISCLOSURE
05/08/1997	194	NOTICE OF FILING DEPOSITION	NOTICE OF FILING DEPOSITION:
05/08/1997	193	DEPOSITION OF	DEPOSITION OF: 4/15/97 @ 2:00 RICKY LEE LEWIS
05/08/1997	192	DEPOSITION OF	DEPOSITION OF: 4/3/97 @ 10:10 SGT. MARTIN WHITE
05/08/1997	191	NOTICE OF HEARING	NOTICE OF HEARING: 5/23/97 @ 3:30
05/08/1997	190	NOTICE OF FILING DEPOSITION	NOTICE OF FILING DEPOSITION:
05/06/1997	189	TRIAL SET	TRIAL SET: WEEK OF 6/9/97 (GRAZIANO @ 8:30AM)
05/06/1997	188	COURT ACTION FORM FILED	NUMBER OF COURT ACTION FORMS USED: 01
05/01/1997	187	RETURNED SUBPOENA	RETURNED SUBPOENA 01
04/30/1997	186	ORDER	ORDER: DEF MOTN LIMINE/STRIKE (DENIED)
04/30/1997	185	ORDER	ORDER: DEF MOTN DISCLOSE GRAND JURY (DENIED)
04/30/1997	184	ORDER	ORDER: DEF MOTN DECLARE (DENIED)
04/29/1997	167	NOTICE	NOTICE: OF FILING DEPO
04/29/1997	166	DEPOSITION OF	DEPOSITION OF: RONALD REEVES, M.D.
04/29/1997	174	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 05/21/97 @ 1:30
04/29/1997	173	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 05/21/97 @ 9:00 SEE NOTICE
04/29/1997	172	NOTICE OF HEARING	NOTICE OF HEARING: 05/22/97 @ 3:00
04/28/1997	165	ORDER	ORDER: PRODUCE CREDIT HISTORY ON R.PEEPLES PER JDG GRAZIANO
04/25/1997	163	DEPOSITION OF	DEPOSITION OF: 04/07/97 @ 9:00 OFF. L. TIMMER
04/25/1997	162	DEPOSITION OF	DEPOSITION OF: 04/07/97 @ 9:40 OFF. M. GRIFFIN
04/25/1997	161	DEPOSITION OF	DEPOSITION OF: 04/07/97 @ 10:35 DET. G. KOCH
04/25/1997	160	DEPOSITION OF	DEPOSITION OF: 04/07/97 @ 11:05 SGT. T. MICHAELS
04/25/1997	164	NOTICE	NOTICE: OF FILING DEPO'S
04/24/1997	171	ORDER GRANTING	ORDER GRANTING: PAYMENT TO PEDIATRICS OF BERBERTON (25.00)
04/24/1997	170	ORDER GRANTING	ORDER GRANTING: PAYMENT TO MED-COR HLTH INFO SOLU.(38.23)
04/24/1997	169	ORDER GRANTING	ORDER GRANTING: PAYMENT TO SAO FISCAL DIVI/DISCOVERY (10.00)

04/24/1997	168	ORDER GRANTING	ORDER GRANTING: PAYMENT TO SAO FISCAL DIVI/DISCOVERY (10.00)
04/22/1997	157	SUPPLEMENTAL WITNESS LIST	SUPPLEMENTAL WITNESS LIST:
04/21/1997	156	DEPOSITION OF	DEPOSITION OF: MICHAEL SHON MCGUIRE
04/21/1997	155	NOTICE	NOTICE: OF FILING DEPOSITIONS
04/21/1997	159	MOTION TO SUPPRESS	MOTION TO SUPPRESS:
04/21/1997	158	TEXT	APPENDIX TO MOTN TO SUPPRESS
04/18/1997	154	TEXT	RESPONSE OF COUNTY OF VOLUSIA TO
04/18/1997	153	TEXT	MOTION FOR APPOINT. OF CONFIDENTIAL
04/18/1997	152	TEXT	DEFENSE MENTAL HEALTH EXPERT
04/18/1997	183	MOTION	MOTION: APPT.CONFID.DEF MENTAL HEALTH EXPERT
04/18/1997	182	ORDER TO TRANSPORT	ORDER TO TRANSPORT: 4/28/97 @ 10AM COMM.BEHAV.SERVICES
04/18/1997	181	ORDER DENYING	ORDER DENYING: DEF MOTION TO DECLARE UNCONSTIT AS
04/18/1997	180	TEXT	APPLIED (GRAZIANO)
04/18/1997	179	ORDER DENYING	ORDER DENYING: DEF MOTION TO DECLARE UNCONSTIT.
04/18/1997	178	TEXT	FACIALLY & AS APPLIED (GRAZIANO)
04/18/1997	177	ORDER DENYING	ORDER DENYING: DEF MOTION TO DECLARE UNCONSTIT
04/18/1997	176	TEXT	FACIALLY AS APPLIED(GRAZIANO)
04/18/1997	175	ORDER DENYING	ORDER DENYING: DEF MOTION TO DECLARE UNCONSTIT
04/17/1997	151	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 04-24-97 @ 1:30
04/17/1997	150	RES. COUNTY OF VOLUSIA	RES. COUNTY OF VOLUSIA: TO MOTN FOR PMT.CASE-RELATED EXPENSE
04/17/1997	149	RES. COUNTY OF VOLUSIA	RES. COUNTY OF VOLUSIA: TO MOTN FOR PMT.CASE-RELATED EXPENSE
04/17/1997	148	RES. COUNTY OF VOLUSIA	RES. COUNTY OF VOLUSIA: TO MOTN FOR PMT.CASE-RELATED EXPENSE
04/17/1997	147	RES. COUNTY OF VOLUSIA	RES. COUNTY OF VOLUSIA: TO MOTN FOR PMT.CASE-RELATED EXPENSE
04/16/1997	146	MOTION	MOTION: TO DECLARE SECTION 921.121 FLORIDA
04/16/1997	145	TEXT	STATUTES UNCONSTITUTIONAL
04/16/1997	144	MOTION	MOTION: TO DECLARE SECTION 921.141, FLORIDA
04/16/1997	143	TEXT	STATUTES UNCONSTITUTIONAL BECAUSE
04/16/1997	142	TEXT	IT PRECLUDES CONSIDERATION OF
04/16/1997	141	TEXT	MITIGATION BY IMPOSING IMPROPER
04/16/1997	140	TEXT	BURDENS OF PROOF OR PERSUASION
04/16/1997	139	MOTION	MOTION: TO DECLARE SECTOIN 921.141 FLORIDA
04/16/1997	138	TEXT	STATUTES UNCONS. OR ALLOW UNRESTRICT
04/16/1997	137	TEXT	CONSIDERATION OF MITIGATING EVIDENCE
04/16/1997	136	MOTION	MOTION: TO DECLARE SECTIONS 921.141 AND/OR
04/16/1997	135	TEXT	921.141(5)(B) FLORIDA STATUTES AND/
04/16/1997	134	TEXT	OR THE STANDARD (5)(B) INSTRUCTION
04/16/1997	133	TEXT	UNCONSTITUTIONAL FACIALLY AND AS APPL
04/16/1997	132	MOTION	MOTION: TO DECLARE SECTIONS 921.141 AND/OR
04/16/1997	131	TEXT	SECTION 921.141(5)(F) STANDARD

04/16/1997	130	TEXT	INSTRUCTION UNCONSTITUTIONAL AS APPL.
04/16/1997	129	MOTION	MOTION: TO DECLARE SECTIONS 921.141 AND/OR
04/16/1997	128	TEXT	SECTION 921.141(5)(H), FLORIDA
04/16/1997	127	TEXT	STATUTES AND/OR STANDARD INSTRUCTION
04/16/1997	126	TEXT	UNCONSTITUTIONAL FACIALLY& AS APPLIED
04/16/1997	125	MOTION	MOTION: TO DISCLOSE GRAND JURY INFORMATION
04/16/1997	124	MOTION	MOTION: IN LIMINE AND TO STRIKE PORTIONS OF
04/16/1997	123	TEXT	"FLORIDA STANDARD JURY INSTRUCTIONS IN CRIMINAL CASES" RE: CALDWELL V.
04/16/1997	122	TEXT	MISSISSIPPI
04/16/1997	121	TEXT	MOTION: FOR STATEMENT OF PARTICULARS AND
04/16/1997	120	MOTION	FOR ADDITIONAL DISCOVERY REGARDING PENALTY PHASE
04/16/1997	119	TEXT	MOTION: FOR STATEMENT OF PARTICULARS AS TO
04/16/1997	118	TEXT	STATUTORY AGGRAVATING FACTORS RE: DEATH PENALTY
04/16/1997	117	MOTION	DEFENDANT'S MEMORANDUM OF LAW RE: HEINOU, ATROCIOUS OR CRUEL AGGRAVATOR
04/16/1997	116	TEXT	DEFENDANT'S MEMORANDUM OF LAW THE
04/16/1997	115	TEXT	FELONY MURDER AGGRAVATING CIRCUMSTANC
04/16/1997	114	TEXT	DEFENDANT'S MEMORANDUM OF LAW RE: PECUNIARY GAIN AGGRAVATOR
04/16/1997	113	TEXT	MEMORANDUM OF LAW RE: STANDARD PROOF
04/16/1997	112	TEXT	OF MITIGATING CIRCUMSTANCES
04/16/1997	111	TEXT	MEMORANDUM OF LAW RE: PREVENT ARREST
04/16/1997	110	TEXT	OR EFFECT ESCAPE AGGRAVATOR
04/16/1997	109	TEXT	MEMORANDUM IN SUPPORT OF DEFENDANT'S
04/16/1997	108	TEXT	MOTION TO DECLARE SECTION 921.121, FLORIDA STATUTES UNCONSTITUTIONAL
04/16/1997	107	TEXT	MOTION: FOR APPOINTMENT OF A CONFIDENTIAL
04/16/1997	106	TEXT	DEFENSE MENTAL HEALTH EXPERT
04/16/1997	105	TEXT	MOTION: FOR TRANSPORT ORDER
04/16/1997	104	TEXT	DEFENDANT'S MEMORANDUM OF LAW RE: PRIOR VIOLENT FELONY AGGRAVATOR
04/16/1997	103	TEXT	CONT. BY DEF.: 6/9/97, PT 5/6 (GRAZIANO G/1)
04/16/1997	102	TEXT	NUMBER OF COURT ACTION FORMS USED: 01
04/16/1997	101	MOTION	MOTION: FOR PAYMENT OF CASE RELATED EXPENSE (\$38.23)
04/16/1997	100	TEXT	MOTION: FOR PAYMENT OF CASE-RELATED EXPENSE (\$30.00)
04/16/1997	99	MOTION	MOTION: FOR PAYMENT OF CASE-RELATED EXPENSE
04/16/1997	98	TEXT	DEMAND NOTICE OF PTL/TRL REC BY DEF IN COURT: 060997
04/16/1997	97	TEXT	DEMAND NOTICE OF PTL/TRL REC BY ATTY
04/09/1997	96	CONT. BY DEF.	
04/09/1997	95	COURT ACTION FORM FILED	
04/09/1997	94	MOTION	
04/09/1997	93	MOTION	
04/09/1997	92	MOTION	
04/08/1997	91	DEMAND NOTICE OF PTL/TRL REC BY DEF	
04/08/1997	90	DEMAND NOTICE OF PTL/TRL REC BY ATTY	

			DEMAND NOTICE OF PTL/TRL REC BY ATTY IN COURT: 060997
04/07/1997	86	WAIVED PRESENCE AT PRE-TRIAL	WAIVED PRESENCE AT PRE-TRIAL:
04/07/1997	85	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: (AMENDED) 4/07/97 @ 9:00 SEE NO
04/07/1997	89	ORDER	ORDER: APPOINT EXECUTIVE SOUTHERN INVESTIG.
04/07/1997	88	ORDER TO TRANSPORT	ORDER TO TRANSPORT: & HOUSE SEPARATELY
04/07/1997	87	TEXT	SUPPLEMENTAL DISCOVERY LIST
04/01/1997	84	TEXT	RESPONSE OF COUNTY TO MOTION FOR APPT
04/01/1997	83	TEXT	OF PRIVATE INVESTIGATOR
03/25/1997	82	MOTION	MOTION: TO COMPEL DISCOVERY (AMENDED)
03/25/1997	81	MOTION	MOTION: FOR APPT. OF PRIVATE INVESTIGATOR
03/17/1997	80	TEXT	SUPPLEMENTAL DISCOVERY LIST
03/13/1997	79	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 04/15/97 @ 2:00 (SEE NOTICE)
03/13/1997	78	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 04/27/97 @ 9:00 (SEE NOTICE)
03/13/1997	77	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 04/03/97 @ 9:00 (SEE NOTICE)
03/13/1997	76	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 04/10/97 @ 1:00 DR. R. REEVES M
03/11/1997	75	MOTION TO DISMISS	MOTION TO DISMISS:
03/11/1997	74	MOTION FOR DISCLOSURE OF EVIDENCE	MOTION FOR DISCLOSURE OF EVIDENCE:
03/11/1997	73	MOTION FOR STATEMENT OF PART	MOTION FOR STATEMENT OF PART:
03/11/1997	72	MOTION TO SUPPRESS	MOTION TO SUPPRESS: CONFESSIONS AND ADMISSIONS
03/11/1997	71	NOTICE OF INTENT TO PARTICIPATE IN DISCOVERY	NOTICE OF INTENT TO PARTICIPATE IN DISCOVERY:
03/06/1997	70	MOTION	MOTION: FOR DISCOVERY
03/04/1997	69	DEMAND NOTICE OF PTL/TRL REC BY DEF	DEMAND NOTICE OF PTL/TRL REC BY DEF IN COURT: 051297
03/04/1997	68	DEMAND NOTICE OF PTL/TRL REC BY ATTY	DEMAND NOTICE OF PTL/TRL REC BY ATTY IN COURT: 051297
03/04/1997	67	CONT. BY DEF.	CONT. BY DEF.: 5/12/97, PT 4/8 (GRAZIANO G/1)
03/04/1997	66	COURT ACTION FORM FILED	NUMBER OF COURT ACTION FORMS USED: 01
02/26/1997	65	ATTORNEY APPOINTED (CONFLICT)	ATTORNEY APPOINTED (CONFLICT): DAVID MORGAN
02/20/1997	64	TEXT	PUBLIC DEFENDER ALLOWED TO W/DRAW
02/20/1997	63	ATTORNEY APPOINTED (CONFLICT)	ATTORNEY APPOINTED (CONFLICT): BY COURT
02/20/1997	62	COURT ACTION FORM FILED	NUMBER OF COURT ACTION FORMS USED: 01
02/18/1997	61	RETURNED SUBPOENA	RETURNED SUBPOENA 01
02/12/1997	60	NOTICE OF TRIAL	NOTICE OF TRIAL - 041497
02/04/1997	59	DEMAND NOTICE OF PTL/TRL REC BY DEF	DEMAND NOTICE OF PTL/TRL REC BY DEF IN COURT: 041497
02/04/1997	58	DEMAND NOTICE OF PTL/TRL REC BY ATTY	DEMAND NOTICE OF PTL/TRL REC BY ATTY IN COURT: 041497
02/04/1997	57	CONT. BY DEF.	CONT. BY DEF.: 4/14/97, PT 3/4 (GRAZIANO G/1)
02/04/1997	56	COURT ACTION FORM FILED	NUMBER OF COURT ACTION FORMS USED: 01
01/28/1997	55	TEXT	SUPPLEMENTAL DISCOVERY/WITNESS LIST
01/14/1997	54	NOTICE OF TRIAL	NOTICE OF TRIAL - 031097
01/07/1997	53	DEMAND NOTICE OF PTL/TRL REC BY DEF	

			DEMAND NOTICE OF PTL/TRL REC BY DEF IN COURT: 031097
01/07/1997	52	DEMAND NOTICE OF PTL/TRL REC BY ATTY	DEMAND NOTICE OF PTL/TRL REC BY ATTY IN COURT: 031097
01/07/1997	51	CONT. BY DEF.	CONT. BY DEF.: 3/10/97, PT 2/4 (GRAZIANO G/1)
01/07/1997	50	COURT ACTION FORM FILED	NUMBER OF COURT ACTION FORMS USED: 01
12/23/1996	49	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 02/18/97 @8:30AM (SEE SUBPOENA)
12/23/1996	48	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 02/19/97 @2:30PM (SEE SUBPOENA)
12/23/1996	47	NOTICE OF TAKING DEPOSITION	NOTICE OF TAKING DEPOSITION: 02/19/97 @9:00AM (SEE SUBPOENA)
12/17/1996	46	NOTICE OF TRIAL	NOTICE OF TRIAL - 021097
12/11/1996	44	NOTICE	NOTICE: OF INTENT TO SEEK DEATH PENALTY
12/10/1996	38	DEMAND NOTICE OF PTL/TRL REC BY DEF	DEMAND NOTICE OF PTL/TRL REC BY DEF IN COURT: 021097
12/10/1996	37	DEMAND NOTICE OF PTL/TRL REC BY ATTY	DEMAND NOTICE OF PTL/TRL REC BY ATTY IN COURT: 021097
12/10/1996	39	SUPPLEMENTAL WITNESS LIST	SUPPLEMENTAL WITNESS LIST:
12/10/1996	43	MOTION FOR CONTINUANCE	MOTION FOR CONTINUANCE:
12/10/1996	42	ORDER GRANTING CONTINUANCE	ORDER GRANTING CONTINUANCE:
12/10/1996	41	CONT. BY DEF.	CONT. BY DEF.: 2/10/97, PT 1/7 (GRAZIANO G/1)
12/10/1996	40	COURT ACTION FORM FILED	NUMBER OF COURT ACTION FORMS USED: 01
12/10/1996	45	ORDER	ORDER: FOR DISCOVERY (JDG GRAZIANO)
11/26/1996	36	STATES DISCOVERY/DEM.RECPR.:DISC/DEM.NOT.ALIBI	STATES DISCOVERY/DEM.RECPR.:DISC/DEM.NOT.ALIBI
11/26/1996	35	MOTION	MOTION: FOR DISCOVERY
11/15/1996	34	NOTICE OF INTENT TO PARTICIPATE IN DISCOVERY	NOTICE OF INTENT TO PARTICIPATE IN DISCOVERY:
11/07/1996	33	DEMAND NOTICE OF PTL/TRL REC BY DEF	DEMAND NOTICE OF PTL/TRL REC BY DEF IN COURT: 011397
11/07/1996	32	PUBLIC DEF. APP.-PLEA NOT GUILTY	PUBLIC DEF. APP.-PLEA NOT GUILTY:
11/07/1996	31	TRIAL SET	TRIAL SET: 1/13/97, PT 12/10 (GRAZIANO G/1)
11/07/1996	30	COURT ACTION FORM FILED	NUMBER OF COURT ACTION FORMS USED: 01
10/22/1996	29	NOTICE OF ARRAIGNMENT	NOTICE OF ARRAIGNMENT - 110796
10/16/1996	28	BOND SET AT	BOND SET AT: 0000000.00 (NO BOND ALLOW @1ST APP)
10/15/1996	23	TEXT	REARREST CHRG 02 ADDED :F/1ST DEGREE MURDER (GJI)(SMIT)
10/15/1996	26	INDICTMENT	INDICTMENT: FIRST DEGREE MURDER
10/15/1996	25	ARR. SET FOR	ARR. SET FOR: 11/7/96 (GRAZIANO @ 1:00)
10/10/1996	22	NOTICE	NOTICE: OF INVOCATION OF RIGHT TO COUNSEL AND RIGHT TO REMAIN SILENT
10/10/1996	21	TEXT	
10/08/1996	20	NOTICE OF ARRAIGNMENT	NOTICE OF ARRAIGNMENT - 102396
10/04/1996	19	NOTICE	NOTICE: OF REQ. FOR ASSESSMENT OF EXTR.COSTS
09/27/1996	15	MOTION	MOTION: FOR PRODUCTION OF RECORDS
09/27/1996	14	ORDER	ORDER: TO PRODUCE CREDIT HISTORY
09/25/1996	18	BOND SET AT	BOND SET AT: 0000000.00 (NONE ALLOWED @ 1ST APP.)
09/25/1996	16	ARR. SET FOR	ARR. SET FOR: 10/23/96 @ 1:00 W/JDG HUTCHESON
09/24/1996	13	TEXT	REARREST CHRG 01 ADDED :F/MURDER (FOXMAN)

09/24/1996	12	TEXT	RE-ARREST BOOKING # CHANGED FROM CLERK TO WS387839
09/18/1996	5	TEXT	NO ARREST:F/MURDER
09/18/1996	4	ADDR LEGACY DATA CODE	DAYTONA BEACH FL 32115
09/18/1996	3	ADDR LEGACY DATA CODE	SA761 ADR: 251 N.RIDGEWOOD AVENUE
09/18/1996	2	ADDR LEGACY DATA CODE	BARBERTON OH 44203
09/18/1996	1	ADDR LEGACY DATA CODE	MAIL ADR: 302 S. VAN BUREN
09/18/1996	10	BOND SET AT	BOND SET AT: 0000000.00 PER JDG.FOXMAN
09/18/1996	9	COMPLAINT	COMPLAINT: MURDER
09/18/1996	8	DATE OF OFFENSE	DATE OF OFFENSE: 09/15/96
09/18/1996	7	PLACE OF OFFENSE	PLACE OF OFFENSE: DAYTONA BEACH
09/18/1996	6	NON ARREST - NOT ON A DOCKET	NON ARREST - NOT ON A DOCKET:

# APPENDIX

D

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA, FIFTH DISTRICT

RUSSELL A. STODDARD  
Appellant,

RECEPTION AND MEDICAL CENTER  
DATE: 4-24-19  
INMATE INITIALS: RAS

v

CASE NO.: 5D19-1097  
L.T. NO.: 1996-35275-CAFES

STATE OF FLORIDA,  
Appellee:

**MOTION TO SUPPLEMENT THE RECORD ON APPEAL**

The Appellant, Russell A. Stoddard, *pro se*, moves the Court pursuant to Fla. R. App. P. 9.140 (f) (2) (B) to supplement the record on appeal. In support of this motion, the Mr. Stoddard states:

1. Mr. Stoddard is appearing *pro se* in this appeal.
2. Mr. Stoddard is appealing the Lower Court's summary denial of his Fla. R. Crim. P. 3.850 motion.
3. In the instant Fla. R. Crim. P. 3.850 motion Mr. Stoddard argued that the Lower Court:
  - a. Did not file a signed written statement of any kind that set forth the reasons an upward departure sentence; and

- b. Did not file a signed written transcript of the Lower Court's reasons for the upward departure sentence that the Court articulated at the time the Lower Court imposed Mr. Stoddard's sentence.
- 4. The Lower Court denied Mr. Stoddard's Fla. R. Crim. P. 3.850 motion because it was successive to Mr. Stoddard's prior Fla. R. Crim. P. 3.800 (a) motion filed on December 26, 2000. The Lower Court found that the instant Fla. R. Crim. P. 3.850 motion raised the same issue(s) that Mr. Stoddard had previously raised in his December 26, 2000 Fla. R. Crim. P. 3.800 (a) motion.
- 5. Mr. Stoddard intends to argue that his December 26, 2000 Fla. R. Crim. P. 3.800 (a) did not raise the same issues raised in the instant Fla. R. Crim. P. 3.850 motion.
- 6. The Lower Court's Order denying the instant Fla. R. Crim. P. 3.850 motion did not include a copy of Mr. Stoddard's December 26, 2000 Fla. R. Crim. P. 3.800 (a) motion.
- 7. The record on appeal filed by the Clerk of the Lower Court in this case did not include Mr. Stoddard's December 26, 2000 Fla. R. Crim. P. 3.800 (a) motion.
- 8. The Appellant believes that record on appeal should include Mr. Stoddard's December 26, 2000 Fla. R. Crim. P. 3.800 (a) motion because Mr. Stoddard

will need to refer to his December 26, 2000 Fla. R. Crim. P. 3.800 (a) motion in his brief.

9. The Court will also need Mr. Stoddard's December 26, 2000 Fla. R. Crim. P. 3.800 (a) motion to review address the issue of whether the instant Fla. R. Crim. P. 3.850 motion raised the same issue(s) contained in the December 26, 2000 Fla. R. Crim. P. 3.800 (a) motion.

10. The record on appeal did not include a copy of Mr. Stoddard's plea agreement filed in this case on July 2, 1997.

11. The sentencing scoresheet filed in this case on July 2, 1997 is necessary to be included in the record on appeal because it will show that the Lower Court did not sign the page listing the reasons for an upward departure sentence.

12. Because the Lower Court has determine that Mr. Stoddard is indigent for the purposes of this appeal, the costs of preparing the transcript need to supplement the record is to be paid by the State.

13. As an inmate in the Florida Department of Corrections, the Appellant is unable to contact opposing counsel to determine if counsel will oppose this motion.

14. Mr. Stoddard is not filing this motion for any improper purpose, including undue delay.

Wherefore, Mr. Stoddard requests permission to have the Clerk of the Lower Court supplement the record on appeal by including:

1. Mr. Stoddard's December 26, 2000 Fla. R. Crim. P. 3.800 (a) motion; and
2. The sentencing scoresheet in this case filed on July 2, 1997.

Respectfully submitted.

*Russell A. Stoddard*

Russell A. Stoddard, *pro se*  
DC #V03964 Appellant  
Reception and Medical Center - Main Unit  
P.O. Box 628  
Lake Butler, FL 32954-0628

**Certificate of mailing**

I certify that I placed this document in the hands of the appropriate prison official for mailing via First Class U.S. Mail, postage prepaid, to the Clerk of Court of the Fifth District Court of Appeal, 300 South Beach Street, Daytona Beach, FL 32114 and a copy for mailing to Ashley Moody, Attorney General, Criminal Appeals Division, 444 Seabreeze Boulevard, Suite 500, Daytona Beach, FL 32118 this 24<sup>th</sup> day of April 2019.

*Russell A. Stoddard*

Russell A. Stoddard, *pro se*  
DC #V03964  
Appellant

### **Certificate of font compliance**

I HEREBY CERTIFY that the font used in this brief was Times New Roman at 14-point and complies with the font requirements of rule 9.100 (1) & 9.210 (a) (2) of the Florida Rules of Appellate Procedure.

Russell A. Stoddard  
Russell A. Stoddard, *pro se*  
DC #V03964  
Appellant

# APPENDIX

E

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

RUSSELL A. STODDARD,

Appellant,

CASE NO. 5D19-1097

STATE OF FLORIDA,

Appellee.

DATE: April 30, 2019

**BY ORDER OF THE COURT:**

Inasmuch as this is an appeal from a post-conviction summary denial of a 3.850 motion, under Florida Rule of Appellate Procedure 9.141(b)(2)(A), the clerk of the lower tribunal automatically transmits to this court as the record, the motion, response, reply, order on the motion, motion for rehearing, response, reply, order on the motion for rehearing, and attachments to any of the foregoing. This Court received the complete record on appeal on April 16, 2019, and thus no further supplementation is required; therefore,

ORDERED that Appellant's Motion to Supplement the Record on Appeal, filed April 29, 2019, is denied.

I hereby certify that the foregoing is  
(a true copy of) the original Court order.

*Joanne P. Simmons*  
JOANNE P. SIMMONS, CLERK



cc:

Office of Attorney General    Russell Allen Stoddard

APPENDIX

LEGAL MAIL ONLY

7

IN THE Seventh JUDICIAL CIRCUIT COURT  
OF THE STATE OF FLORIDA IN AND FOR  
VOLUSIA COUNTY

Russell A. Stoddard  
Petitioner

00335798

Case no.: CRC-96-35225-CFAES  
CRC-96-35758-CFAES

State of Florida

Respondent

MOTION TO CORRECT ILLEGAL SENTENCE

Comes now the Defendant, Russell A. Stoddard, by and through the undersigned, and files this Motion to Correct Illegal Sentence pursuant to Florida Rule of Criminal Procedure 3.800(a) seeking the entry of an order to resentence the Defendant in accord with the Dicta of the Florida Supreme Court ruling in Heggs v State, 25 Fla. L. Weekly S137 (February 17, 2000), and as good grounds therefore says:

The Defendant, Russell A. Stoddard, was charged by information with

(1) Count second degree Murder § 782.04 (2) Fla. Stat.  
and (1)-Count Escape § 944.40 Fla. STAT.

"Accordingly, we hold Chapter 95-184, Laws of Florida, void in its entirety..." reverse the sentences imposed in this case, and remand this cause for resentencing in accordance with the valid laws in effect on October 24 and November 2, 1995, the dates on which Heggs committed his respective offenses. Russell A. Stoddard clearly committed his offenses after that date.

The Second District Court of Appeal determined that the window period for challenging Chapter 95-184 on single subject grounds closed on May 24, 1997, the date on which Chapter 97-97, Laws of Florida, reenacted the provisions contained in Chapter 95-184 as part of the Legislature's biennial adoption of the Florida Statutes. See Heggs, 718 So.2d at 264 n.1, (relying on State v Johnson, 616 So.2d 1,2 (Fla.1993)). The Florida Supreme Court has agreed with the Second District Court of Appeal, stating that the "window" period for challenges to the 1995 sentencing guidelines under the dicta of Heggs Opened on October 1, 1995, and closed on May 24, 1997. See: Trapp v State, 25 Fla.L.Weekly S429d (June 1, 2000).

### DEFENDANT'S FAILURE TO RAISE HIS SINGLE SUBJECT

### RULE CHALLENGE IN THE TRIAL COURT

Even though Russell A. Stoddard did not assert a single subject rule challenge against Chapter 95-184 in the Trial Court, this issue is reviewable on a Rule 3.800(a) Motion to Correct Illegal Sentence premised upon the fact that the error is fundamental in nature. See: Mancino v State, 714 So.2d 429 (Fla.1998).

DEC 26 AM 9:48  
CLERK OF THE CIRCUIT COURT  
CCIS  
FILED  
3

FILED

This sentence of 275 months is less than the sentence that he received under the unconstitutional 1995 guidelines. The unconstitutionality of the 1995 guidelines has resulted in the Defendant receiving a longer sentence than provided under the valid Laws of Florida, and is therefore illegal under the Florida Constitution.

**UNSWORN DECLARATION UNDER PENALTY OF PERJURY  
PURSUANT TO TITLE 28 U.S.C. §1746  
AND FLORIDA STATUTE §92.525 (1989)**

I, Russell A. Stoddard, DO HEREBY DECLARE under  
penalty of perjury that the information contained herein or attached hereto is true and correct.  
EXECUTED ON THIS 21 day of December, 2000

Russell Allen Stoddard  
Russell A. Stoddard  
# V03964

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been furnished to the  
Office of the State Attorney, John Tanner and one copy.  
To Diane M. [REDACTED] X

Florida by U.S. Mail on this 21 day of December, 2000.



T. Grunk  
Commission # CC 048576  
Expiry June 25, 2004  
Boiled Eggs  
Atlantic Egg Co., Inc.

Russell A. Stoddard  
Russell A. Stoddard # V03964  
TAMOKA Correctional Inst.  
3950 Tiger bay Road  
Daytona beach, Florida  
32124-1098

248

V. Legal Status Violation = 4 Points

V.

VI. Release Program Violation = 6 Points X Number of Violations (Max 18 Pts) =

VI.

VII. Firearms or Destructive Device = 18 Points

VII.

VIII. Semi-Automatic Weapon or Machine Gun = 23 Points

VIII.

IX. Enhancements (only one multiplier may be used)

Subtotal Sentence Points

248

## Law Enforcement Protection

 1.5 Multiplier  2.0 Multiplier

## Drug Trafficking

 1.5 Multiplier

Enhanced Subtotal Sentence Points IX

TOTAL SENTENCE POINTS

248

## SENTENCE COMPUTATION

- If total sentence points are less than, or equal to 40, the sentencing court may not impose a state prison sentence. The sentencing court may increase total sentence points that are less than or equal to 40 by up to 15 percent and may impose a state prison sentence if the increased total exceeds 40 points.

$$\text{Total Sentence Points} \times 1.15 = \text{Increased Sentence Points}$$

- If total sentence points are greater than 40 and less than or equal to 52 the decision to incarcerate in a state prison is left to the discretion of the court. If total sentence points are greater than 52 the sentence must be a state prison sentence.
- A state prison sentence is calculated by deducting 28 from total or increased sentence points.

$$\text{Total Or Increased Sentence Pts.} - 28 = \text{State Prison Months}$$

- The sentencing court may increase or decrease state prison months by up to 25 percent except where the total sentence points were less than or equal to 40 but have been increased by up to 15 percent to exceed 40 points. Any state prison sentence must exceed 12 months.

$$\text{State Prison Months} \times 1.25 = \text{Minimum State Prison Months}$$

$$\text{State Prison Months} \times 1.35 = \text{Maximum State Prison Months}$$

## TOTAL SENTENCE IMPOSED

State Prison  
 County Jail  
 Community Control  
 Probation

Years	Months	Days
40		

- Please designate the particular type of sentence where an enhanced or mandatory sentence imposed.

Habitual Felony Offender  
 Habitual Violent Felony Offender  
 Mandatory pursuant to:

Guidelines Aggravated Departure  
 Guidelines Mitigated Departure  
 5.893.13

# APPENDIX

G

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

RUSSELL A. STODDARD,

Appellant,

v.

CASE NO. 5D19-1097

STATE OF FLORIDA,

Appellee.

---

DATE: November 26, 2019

**BY ORDER OF THE COURT:**

ORDERED that Appellant's Motion for Rehearing, for Written Opinion, and for Rehearing En Banc, filed November 1, 2019, is denied.

*I hereby certify that the foregoing is  
(a true copy of) the original Court order.*

*Joanne P. Simmons*  
JOANNE P. SIMMONS, CLERK



Panel: Judges Evander, Grosshans, and Sasso (acting on panel-directed motion(s))  
En Banc Court (acting on en banc motion)

cc:

Office of Attorney General    Robin A. Compton

Russell Allen Stoddard