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1/19/2021 for mailing
E.F. PW

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1/23/2021 for mailing
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Docket Number:

El-Asad J. Alsaedi,
Petitioner

State of Florida,
Respondent.

Appendix

Appendix "A" — Appellate Court Opinion

Appendix "B" — Order denying motion to correct illegal Sentence

Appendix "C" — Order denying motion for rehearing to correct
illegal Sentence

Appendix "D" — Amended motion to correct illegal Sentence

Appendix "E" — Motion for rehearing to correct illegal Sentence

Appendix "F" — Notice of Appeal

Appendix "G" — Initial brief for appeal

Appendix "H" — Example of Petitioner's corrected CPL scoresheet

Appendix "I" — Sentencing guidelines

Appendix "A"

(Appellate Court Opinion)

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

EL-ASAD ALSAEDI,)
)
Appellant,)
)
v.) Case No. 2D20-223
)
STATE OF FLORIDA,)
)
Appellee.)
)

Opinion filed July 1, 2020.

Appeal pursuant to Fla. R. App. P.
9.141(b)(2) from the Circuit Court
for Sarasota County; Charles E. Williams,
Judge.

El-Asad Alsaedi, pro se.

PER CURIAM.

Affirmed. See Moore v. State, 882 So. 2d 977 (Fla. 2004); Carpenter v. State, 884 So. 2d 385 (Fla. 2d DCA 2004); Lane v. State, 981 So. 2d 596 (Fla. 1st DCA 2008); Williams v. State, 907 So. 2d 1224 (Fla. 5th DCA 2005).

NORTHCUTT, KELLY, and VILLANTI, JJ., Concur.

DISTRICT COURT OF APPEAL
SECOND DISTRICT
P.O. BOX 327
LAKELAND, FL 33802

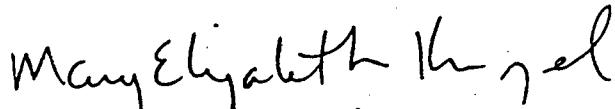
Dear Appellant:

The attached sheet is a copy of a decision on your appeal in this court.

I am not permitted to explain the reason or reasons the court came to its decision in a case. I can tell you that decisions are reached in an appeal after review by this court of the record from the trial court, the briefs submitted, if applicable (briefs are not required in summary rule 3.850 or 3.800 appeals), as well as oral argument, if any.

The attached decision means that after reviewing your appeal, this court has determined that there was not reversible error in the action taken by the lower tribunal in your case, and the judgment, order, or sentence you appealed is upheld and stands unchanged (affirmed).

Sincerely,



Mary Elizabeth Kuenzel
Clerk

MEK: sg

Attachment

Appendix "B"

(Order denying motion to correct illegal sentence)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO. 2012-CF-7 NC

ELASAD JAMIE ALSAEDI,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

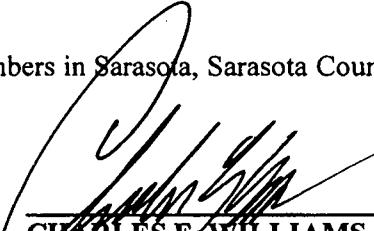
THIS MATTER is before the Court on Defendant's *pro se* Motion to Correct Illegal Sentence filed November 1, 2019, pursuant to Fla. R. Crim. P. 3.800(a), and the amended motion filed November 12, 2019. A jury convicted Defendant of armed burglary with assault or battery, robbery with a firearm, armed kidnapping, two counts of false imprisonment, and two counts of aggravated assault with a deadly weapon. These crimes occurred on or about January 1, 2012. The Court sentenced Defendant to 40 years in prison with a minimum mandatory of 10 years. The judgment and sentence were affirmed on appeal.

Defendant now claims his sentence is illegal because it deviates from the guidelines' recommended sentencing range by more than 25% and was not accompanied by written reasons for departure. Defendant's reliance on the rules pertaining to the sentencing guidelines is misplaced because the Criminal Punishment Code (CPC) governs all non-capital felonies committed on or after October 1, 1998. § 921.002, Fla. Stat. (2012); *see also* § 921.0024(2), Fla. Stat. ("[t]he permissible range for sentencing [under the CPC] shall be the lowest permissible sentence up to and including the statutory maximum"); *Moore v. State*, 882 So. 2d 977, 985 (Fla. 2004) ("a single sentencing range is not established under the CPC as occurred under the prior guidelines"). Defendant's sentence is not a departure under his CPC scoresheet. Further,

Defendant's claim that the Court erroneously imposed an upward departure sentence without written reasons is not cognizable under rule 3.800(a). *See Jackson v. State*, 29 So. 3d 1152, 1154 (Fla. 2d DCA 2010).

It is, therefore, **ORDERED AND ADJUDGED** that Defendant's Motion to Correct Illegal Sentence is **DENIED**. Defendant has thirty (30) days from the rendition of this order to file an appeal.

DONE AND ORDERED in Chambers in Sarasota, Sarasota County, Florida, this 15 day of November 2019.



CHARLES E. WILLIAMS
Circuit Judge

Attachments:

1. Second Amended Information
2. Judgment and Sentence
3. Scoresheet

CERTIFICATE OF SERVICE

I hereby certify that on this 15 day of November 2019, copies of the foregoing Order were furnished by U.S. Mail/hand delivery and/or electronic mail to: Elasad J. Alsaedi, DC #D24134, Graceville Correctional Facility, 5168 Ezell Rd., Graceville, FL 32440; and Office of the State Attorney, saorounds@sao12.org, 2071 Ringling Blvd., Suite 400, Sarasota, FL 34237.

By: 
Judicial Assistant

ATTACHMENT 1

IN THE CIRCUIT COURT IN AND FOR SARASOTA COUNTY, FLORIDA
IN THE YEAR OF OUR LORD TWO THOUSAND TWELVE

STATE OF FLORIDA,

CLERKS NO. 2012CF000007NC

vs.

ELASAD JAMIE ALSAEDI,

FILED IN CIRCUIT COURT THIS 10 DAY 12
KARIN M. HICKMAN, CLERK OF COURT
BY: M. Hickman DEPUTY CLERK

SECOND AMENDED INFORMATION FOR:

- 1) ARMED BURGLARY WITH A FIREARM AND/OR ASSAULT AND/OR BATTERY 810.02(1) and (2)(a) and (2)(b); 775.087(1) and (2)(a) (FPBL) (Carol S. Schwartz, [REDACTED])
- 2) ROBBERY (FIREARM OR DEADLY WEAPON) 812.13(1) and (2)(a); 775.087(1) and (2)(a) [REDACTED]
- 3) ARMED KIDNAPPING (COMMIT FELONY AND MINOR UNDER 13 YEARS OF AGE) 787.01(1)(a)2; 775.087(1) and (2)(a) (L F) [REDACTED]
- 4) FALSE IMPRISONMENT 787.02(1)(a) [REDACTED] (3 F)
- 5) FALSE IMPRISONMENT 787.02(1)(a) [REDACTED] (3 F)
- 6) AGGRAVATED ASSAULT WITH A FIREARM 784.021(1)(a); 775.087(1) and (2)(a) (3 F) [REDACTED]
- 7) AGGRAVATED ASSAULT WITH A FIREARM 784.021(1)(a); 775.087(1) and (2)(a) (3 F) [REDACTED]

In the Name and by Authority of the State of Florida:

EARL MORELAND, State Attorney of the Twelfth Judicial Circuit of the State of Florida, by and through his undersigned Assistant State Attorney, prosecuting for the State of Florida in the Circuit Court in and for the County of Sarasota, Florida, under oath information makes that

ELASAD JAMIE ALSAEDI, SSI [REDACTED]
ADDRESS: 8207 COLLIER PARK PLACE, Tampa, FL 33637
RACE: W SEX: M DOB: 10/19/1985
HGT: 510 WGT: 200

Case: 2012 CF 000007 NC



COLOR EYES/HAIR: BROWN/BLACK

COUNT 1: [REDACTED] on or about January 1, 2012 in the County and State aforesaid, did unlawfully enter or remain in a certain structure or dwelling, the property of CAROL S SCHWARTZ, with the intent to commit an offense therein and, while in the course of committing the offense, in the aforesaid structure or dwelling, the said ELASAD JAMIE ALSAEDI was armed or armed himself with a dangerous weapon, to wit: HANDGUN AND/OR SHOTGUN while carrying and actually possessing a firearm, to-wit: HANDGUN AND/OR SHOTGUN, AND/OR while in the aforesaid structure or dwelling the said ELASAD JAMIE ALSAEDI did make an assault or battery upon [REDACTED] AND/OR [REDACTED] contrary to sections 810.02(1) and (2) (a) and (2) (b); and 775.087(1) and (2) (a), Florida statutes in such case made, and provided and against the peace and dignity of the State of Florida. (GOC: P, STATUS: A)

COUNT 2: [REDACTED] on or about January 1, 2012, in the County and State aforesaid did then and there unlawfully, by force, violence, assault or putting in fear, take away from the person or custody of D.P.M. certain property to-wit: TABLET AND/OR COMPUTERS AND/OR SAFE, with intent to permanently or temporarily deprive [REDACTED] of said property, and in the course of said robbery, ELASAD JAMIE ALSAEDI carried a firearm to-wit: HANDGUN AND/OR SHOTGUN while actually possessing said firearm, contrary to Section 812.13(1) and (2) (a); and 775.087(1) and (2) (a), Florida Statutes, in such case made, and provided and against the peace and dignity of the State of Florida. (GOC: P, STATUS: A)

COUNT 3: [REDACTED] on or about January 1, 2012, in the County and State aforesaid, did forcibly, secretly or by threat confine, abduct or imprison [REDACTED] a child under the age of thirteen, against his will and without lawful authority, with intent to commit or facilitate the commission of a felony, to-wit: BURGLARY AND/OR ROBBERY and during the commission of said kidnapping, ELASAD JAMIE ALSAEDI carried, displayed, used, threatened, or attempted to use a weapon, to-wit: HANDGUN AND/OR SHOTGUN, while actually possessing a firearm, contrary to Section 787.01(1)(a)2 and (1)(b); and 775.087(1) and (2) (a), Florida Statutes, in such case made, and provided and against the peace and dignity of the State of Florida. (GOC: P, STATUS: A,)

COUNT 4: [REDACTED] on or about January 1, 2012, in the County and State aforesaid did unlawfully, without authority forcibly, by threat, or secretly confine, abduct, imprison, or restrain one

[REDACTED] against her will, contrary to Section 787.02(1)(a), Florida Statutes, in such case made, and provided and against the peace and dignity of the State of Florida. (GOC: P, STATUS: A)

COUNT 5: [REDACTED] on or about January 1, 2012, in the County and State aforesaid did unlawfully, without authority forcibly, by threat, or secretly confine, abduct, imprison, or restrain one, [REDACTED] against his will, contrary to Section 787.02(1)(a), Florida Statutes, in such case made, and provided and against the peace and dignity of the State of Florida. (GOC: P, STATUS: A)

COUNT 6: [REDACTED] on or about January 1, 2012, in the County and State aforesaid did intentionally and unlawfully threaten by word or act to do violence to the person of [REDACTED] coupled with an apparent ability to do so and did an act creating a well-founded fear in the said [REDACTED] that such violence was imminent, and in so doing did use a deadly weapon, to-wit: HANDGUN AND/OR SHOTGUN, and during the commission of said aggravated assault, ELASAD JAMIE ALSAEDI carried, displayed, used, threatened, or attempted to use a FIREARM, to-wit: HANDGUN AND/OR SHOTGUN, while actually possessing said firearm, contrary to Section 784.021(1)(a); and 775.087(1) and (2)(a), Florida Statute, in such case made, and provided and against the peace and dignity of the State of Florida. (GOC: P, STATUS: E)

COUNT 7: [REDACTED] on or about January 1, 2012, in the County and State aforesaid did intentionally and unlawfully threaten by word or act to do violence to the person of [REDACTED] coupled with an apparent ability to do so and did an act creating a well-founded fear in the said [REDACTED] that such violence was imminent, and in so doing did use a deadly weapon, to-wit: HANDGUN AND/OR SHOTGUN, and during the commission of said aggravated assault, ELASAD JAMIE ALSAEDI carried, displayed, used, threatened, or attempted to use a FIREARM, to-wit: HANDGUN AND/OR SHOTGUN, while actually possessing said firearm, contrary to Section 784.021(1)(a); and 775.087(1) and (2)(a), Florida Statute, in such case made, and provided and against the peace and dignity of the State of Florida. (GOC: P, STATUS: E)

STATE OF FLORIDA
COUNTY OF SARASOTA

Personally appeared before me, EARL MORELAND, the undersigned State Attorney of the Twelfth Judicial Circuit of the State of Florida, in and for Sarasota County or his duly designated Assistant State Attorney, who being duly sworn, says the allegations in the foregoing information are based upon facts

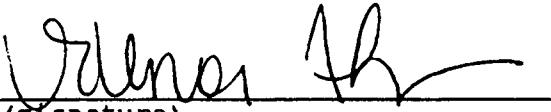
that have been sworn to as true, and which, if true, would constitute the offense therein charged, and that this information is filed in good faith in instituting this prosecution and that testimony was received under oath from a material witness or witnesses.

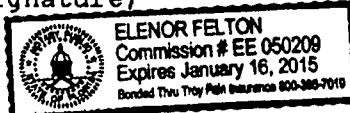
EARL MORELAND, STATE ATTORNEY
TWELFTH JUDICIAL CIRCUIT

BY: 

SHANNON HANKIN
Assistant State Attorney
Twelfth Judicial Circuit
State of Florida
2071 Ringling Blvd., 4th FL
Sarasota, FL 34237
Florida Bar # 812471

The foregoing instrument was acknowledged before me this 10 day of August, 2012 by SHANNON HANKIN who is personally known to me to be an Assistant State Attorney for the Twelfth Judicial Circuit and who did take an oath.


(signature)



(printed name or stamp)
NOTARY PUBLIC, STATE OF FLORIDA

Division 2
Agency No.: SSO, 12-000034
Arrested: 01/01/2012
SAO No.: 12CF000133AS
OBTS No.: 5801173745
Booking No.: 12-26
Arraignment Date: 01/27/2012
Summons Requested:
Capias Requested: COUNTS 6 AND 7 ONLY
Habitual: YES NO
PRR: YES NO

10/20/LIFE YES NO

CC: DEP. Darby, #2119

ATTACHMENT 2

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA
 IN THE COUNTY COURT IN AND FOR SARASOTA COUNTY, FLORIDA

DIVISION: CRIMINAL

JUDGMENT

CASE NUMBER: 2012 CF 000007 NC

PLAINTIFF

VS. DEFENDANT

STATE OF FLORIDA

ELASAD JAMIE ALSAEDI

STAMP FOR RECORDING

Probation Violator Community Control Violator Retrial Resentence

DANIEL HERNANDEZ

The Defendant, **ELASAD JAMIE ALSAEDI** being personally before this Court represented by ~~DANIEL HERNANDEZ~~, the attorney of record and the State represented by ~~STATE ATTORNEY~~ and having:

SHANNON HANKIN/CRAIG SCHAEFFER

(Check Applicable Provision) 1. Been tried and found GUILTY by jury/by Court of the following crime(s)
 2. Entered a plea of GUILTY to the following crime(s)
 3. Entered a plea of NOLO CONTENDRE to the following crime(s)

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIMES	CASE NUMBER	OBTS NUMBER
6 and 7	AGGRAV ASSLT-W DEADLY WEAPON WITHOUT INTENT TO KILL	784.021(1A)	3rd Degree Felony	2012 CF 000007 NC	5801173745
2	ROBBERY WITH A FIREARM OR DEADLY WEAPON	812.13(2A)*2	1st Degree Felony Punishable By Life	2012 CF 000007 NC	5801173745
1	ARMED BURGLARY OF A STRUCTURE, CONVEYANCE OR DWELL WITH ASSAULT OR BATTERY	810.02(2B)*1	1st Degree Felony Punishable By Life <i>Felony</i>	2012 CF 000007 NC	5801173745
3	ARMED KIDNAPPING	787.01(1A2)*2	Life Felony	2012 CF 000007 NC	
4 and 5	FALSE FALSE IMPRISONMENT-ADULT	787.02(1A)	3rd Degree Felony	2012 CF 000007 NC	

(Check If Applicable) and no cause being shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).
 and having been convicted or found guilty of, or having entered a plea of NOLO CONTENDERE or GUILTY, regardless of adjudication, to attempts or offenses relating to sexual battery (ch. 794), lewd and lascivious conduct (ch. 800), or murder (\$782.04), aggravated battery (\$784.045), car jacking (\$812.133), or home invasion robbery (\$812.135), or any other offense specified in section 943.325, the defendant shall be required to submit blood specimens.
 and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

Pursuant to the provisions of §960.29-960.293, Florida Statutes, a lien is hereby imposed in favor of the State of Florida and/or Sarasota County as follows:

Defendant was convicted for an offense other than a capital or life felony. This lien is for liquidated damages in the amount of fifty dollars (\$50.00) per day of the defendant's sentence.
 Defendant was convicted for a capital or life felony. This lien is for liquidated damages in the amount of two-hundred and fifty thousand dollars (\$250,000.00).

ALL LIQUIDATED DAMAGE SUMS BEAR INTEREST AT THE RATE SET FORTH IN §55.03, FLORIDA STATUTE

DONE AND ORDERED in open court at Sarasota, Florida, this 13th day of September, 2012.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail/hand delivery to the State Attorney County Probation Defendant Defense Attorney *Elasad Jamie*

Charles E. Roberts
CIRCUIT JUDGE CHARLES E ROBERTS

Witness my hand and official seal this *19* day of *September* 2012
KAREN E. RUSHING, CLERK OF THE CIRCUIT COURT
By: *Karen E. Rushing* Deputy Clerk



Case: 2012 CF 000007 NC



00052915484
DT: JDR

judgment

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA <input type="checkbox"/> IN THE COUNTY COURT IN AND FOR SARASOTA COUNTY, FLORIDA	
DIVISION: CRIMINAL	
CASE #: 2012 CF 000007 NC	
JUDGMENT	
PLAINTIFF	VS. DEFENDANT
STATE OF FLORIDA	ELASAD JAMIE ALSAEDI

STAMP FOR RECORDING

FINGERPRINTS OF DEFENDANT

1. R Thumb



2. R Index



3. R Middle



4. R Ring



5. R Little



1. L Thumb



2. L Index



3. L Middle



4. L Ring



5. L Little



Fingerprints taken by: Greg Holloway DEPUTY
 Name Title

I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, ELASAD JAMIE ALSAEDI and that they were placed thereon by said Defendant in my presence in open court of this date.

DONE AND ORDERED in open court at Sarasota, Florida, this 13 day of Sept, 2012.

CIRCUIT JUDGE CHARLES E. ROBERTS

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE TWELVETH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA	
DIVISION CRIMINAL	CASE NUMBER: 2012 CF 000007 NC OBTS NUMBER: 5801173745
PLAINTIFF STATE OF FLORIDA	VS. DEFENDANT ELASAD JAMIE ALSAEDI
SENTENCE AND SPECIAL PROVISIONS	

FILED FOR RECORD

2012 SEP 19 PM 4:09

KAREN E. RUELLA
CLERK OF CIRCUIT COURT
SARASOTA COUNTY

STAMP FOR RECORDING

SENTENCE

(As to Counts 1 - 3)

The Defendant, being personally before this Court, accompanied by the Defendant's attorney of record, DANIEL HERNANDEZ, and having been adjudicated guilty herein, and the Court having given the Defendant opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable)

- and the Court having on deferred imposition of sentence until this date
- and the Court having previously entered a judgment in this case on now re-sentences the Defendant
- and the Court having placed the Defendant on probation community control and having subsequently revoked the Defendant's probation community control

IT IS THE SENTENCE OF THE COURT THAT:

- The Defendant pay a fine of \$, pursuant to § 775.083, Florida Statutes, plus \$ as the 5% surcharge required by § 938.04, Florida Statutes.
- The Defendant is hereby committed to the custody of the **Department of Corrections**.
- The Defendant is hereby committed to the custody of the Sheriff of Sarasota County, Florida
- The Defendant is sentenced as a youthful offender in accordance with § 958.04, Florida Statutes

FILED FOR RECORD STAMP

TO BE IMPRISONED (check one; unmarked sections are inapplicable):

- For a term of natural life
- For a term of **40 YEARS**.
- Said SENTENCE SUSPENDED for a period of subject to conditions set forth in this Order



If "split" sentence, complete the appropriate paragraph.

- Followed by a period of probation community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.
- However, after serving a period of imprisonment in , the balance of the sentence shall be suspended and the Defendant shall be placed on probation community control for a period of under the supervision of the Department of Corrections according to the terms and conditions of probation community control set forth in a separate order entered herein.

In the event the Defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

SPECIAL PROVISIONS

(As to Counts 1 - 3)

By appropriate notation, the following provisions apply to the sentence imposed:

MANDATORY/MINIMUM PROVISIONS:

Firearm	<input checked="" type="checkbox"/> It is further ordered that the <input type="checkbox"/> 3-year minimum <input checked="" type="checkbox"/> 10-year minimum <input type="checkbox"/> 20-year minimum <input type="checkbox"/> 25 year to Life minimum Imprisonment provisions of §775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count. Pursuant to the 25 year to Life minimum Imprisonment provision of §775.087(2), Florida Statutes (if checked above) the court imposes a minimum Imprisonment sentence of 10 YEARS AS TO COUNTS 1 – 3.
Drug Trafficking	<input type="checkbox"/> It is further ordered that the mandatory minimum imprisonment provision of § 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
Controlled Substance Within 1,000 Feet of School	<input type="checkbox"/> It is further ordered that the 3-year minimum imprisonment provision of § 893.12(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.
Habitual Felony Offender	<input type="checkbox"/> The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of § 775.084(4)(a), Florida Statutes. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony Offender	<input type="checkbox"/> The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of § 775.084(4)(b), Florida Statutes. A minimum term of year(s) must be served prior to release. The requisite findings of the Court are set forth in a separate order or stated on the record in open court.
Law Enforcement Protection Act	<input type="checkbox"/> It is further ordered that the Defendant shall serve a minimum of year(s) before release in accordance with § 790.0823, Florida Statutes.
Capital Offense	<input type="checkbox"/> It is further ordered that the Defendant shall serve no less than 25 years in accordance with provisions of § 775.082(1), Florida Statutes.
Short-Barreled Rifle, Shotgun, Machine Gun	<input type="checkbox"/> It is further ordered that the 5-year minimum sentence provisions of § 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.
Continuing Criminal Enterprise	<input type="checkbox"/> It is further ordered that the 25-year minimum sentence provisions of § 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.
Taking a Law Enforcement Officer's Firearm	<input type="checkbox"/> It is further ordered that the 3-year mandatory minimum imprisonment provision of § 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE TWELVETH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA	
DIVISION CRIMINAL	CASE NUMBER: 2012 CF 000007 NC OBTS NUMBER: 5801173745
PLAINTIFF STATE OF FLORIDA	VS. DEFENDANT ELASAD JAMIE ALSAEDI

SENTENCE AND SPECIAL PROVISIONS

STAMP FOR RECORDING

SENTENCE (As to Counts 4 - 7)

The Defendant, being personally before this Court, accompanied by the Defendant's attorney of record, DANIEL HERNANDEZ, and having been adjudicated guilty herein, and the Court having given the Defendant opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defendant should not be sentenced as provided by law, and no cause being shown,

(Check one if applicable)

- and the Court having on deferred imposition of sentence until this date
- and the Court having previously entered a judgment in this case on now re-sentences the Defendant
- and the Court having placed the Defendant on probation community control and having subsequently revoked the Defendant's probation community control

IT IS THE SENTENCE OF THE COURT THAT:

- The Defendant pay a fine of \$, pursuant to § 775.083, Florida Statutes, plus \$ as the 5% surcharge required by § 938.04, Florida Statutes.
- The Defendant is hereby committed to the custody of the **Department of Corrections**.
- The Defendant is hereby committed to the custody of the Sheriff of Sarasota County, Florida
- The Defendant is sentenced as a youthful offender in accordance with § 958.04, Florida Statutes

FILED FOR RECORD STAMP

TO BE IMPRISONED (check one; unmarked sections are inapplicable):

- For a term of natural life
- For a term of **185.4 MONTHS**.
- Said SENTENCE SUSPENDED for a period of subject to conditions set forth in this Order

If "split" sentence, complete the appropriate paragraph.

- Followed by a period of on probation community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.
- However, after serving a period of imprisonment in , the balance of the sentence shall be suspended and the Defendant shall be placed on probation community control for a period of under the supervision of the Department of Corrections according to the terms and conditions of probation community control set forth in a separate order entered herein.

In the event the Defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the Defendant begins service of the supervision terms.

SPECIAL PROVISIONS (As to Counts 4 - 7)

By appropriate notation, the following provisions apply to the sentence imposed:

MANDATORY/MINIMUM PROVISIONS:

Firearm	<input checked="" type="checkbox"/> It is further ordered that the <input checked="" type="checkbox"/> 3-year minimum <input type="checkbox"/> 10-year minimum <input type="checkbox"/> 20-year minimum <input type="checkbox"/> 25 year to Life minimum Imprisonment provisions of §775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count. Pursuant to the 25 year to Life minimum imprisonment provision of §775.087(2), Florida Statutes (if checked above) the court imposes a minimum imprisonment sentence of 3 YEARS AS TO COUNTS 6 and 7.
Drug Trafficking	<input type="checkbox"/> It is further ordered that the mandatory minimum imprisonment provision of § 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
Controlled Substance Within 1,000 Feet of School	<input type="checkbox"/> It is further ordered that the 3-year minimum imprisonment provision of § 893.12(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count.
Habitual Felony Offender	<input type="checkbox"/> The Defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of § 775.084(4)(a), Florida Statutes. The requisite findings by the Court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony Offender	<input type="checkbox"/> The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of § 775.084(4)(b), Florida Statutes. A minimum term of year(s) must be served prior to release. The requisite findings of the Court are set forth in a separate order or stated on the record in open court.
Law Enforcement Protection Act	<input type="checkbox"/> It is further ordered that the Defendant shall serve a minimum of year(s) before release in accordance with § 790.0823, Florida Statutes.
Capital Offense	<input type="checkbox"/> It is further ordered that the Defendant shall serve no less than 25 years in accordance with provisions of § 775.082(1), Florida Statutes.
Short-Barreled Rifle, Shotgun, Machine Gun	<input type="checkbox"/> It is further ordered that the 5-year minimum sentence provisions of § 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.
Continuing Criminal Enterprise	<input type="checkbox"/> It is further ordered that the 25-year minimum sentence provisions of § 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.
Taking a Law Enforcement Officer's Firearm	<input type="checkbox"/> It is further ordered that the 3-year mandatory minimum imprisonment provision of § 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

OTHER PROVISIONS:

Retention of Jurisdiction The Court retains jurisdiction over the Defendant pursuant to § 947.16(4)(a), Florida Statutes.

Jail Credit It is further ordered that the Defendant shall be allowed a total of 257 **DAYS** as credit for time incarcerated before imposition of this sentence.

Prison Credit It is further ordered that the Defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to re-sentencing.

Consecutive/Concurrent as to Other Counts It is further ordered that the sentence imposed for this count shall run consecutive to concurrent with the sentence set forth in **ALL COUNTS** of this case.

Consecutive/Concurrent as to Other Convictions It is further ordered that the composite term of all sentences imposed for the counts specified in the Order shall run consecutive to concurrent with the following: (check one)
 any active sentence being served
 specific sentences

In the event the above sentence is to the Department of Corrections, the Sheriff of SARASOTA County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the Department together with a copy of the Judgment and Sentence and any other documents specified by Florida Statute.

The Defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within thirty (30) days from this date with the Clerk of the Court and the Defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigence.

In imposing the above sentence, the Court further recommends: **COURT COSTS ORDERED BY THE COURT.**

DONE AND ORDERED in open Court at Sarasota County, Florida this 13TH day of SEPTEMBER, 2012.


CIRCUIT JUDGE CHARLES E ROBERTS

CERTIFICATE OF SERVICE
I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail and delivery to the
 State Attorney County Probation Defendant
 Defense Attorney Karen E. Rushing
Witness my hand and official seal this 14 day of September 2012
KAREN E. RUSHING, CLERK OF THE CIRCUIT COURT
By: Karen E. Rushing Deputy Clerk



ATTACHMENT 3

Rule 3.992(a) Criminal Punishment Code Scoresheet

The Criminal Punishment Code Scoresheet Preparation Manual is available at: http://www.dc.state.fl.us/pub/sen_cpcm/index.html

1. DATE OF SENTENCE <u>9/13/12</u>	2. PREPARER'S NAME <u>Hankin</u>	3. COUNTY <u>SRQ</u>	4. SENTENCING JUDGE <u>Roberts</u>
5. NAME (LAST, FIRST, M.I.) <u>AlSaedi, Elasad</u>	6. DOB <u>10/19/85</u>	8. RACE <input type="checkbox"/> B <input checked="" type="checkbox"/> W <input type="checkbox"/> OTHER	10. PRIMARY OFF. DATE <u>1/1/12</u>
	7. DC #	9. GENDER <input checked="" type="checkbox"/> M <input type="checkbox"/> F	11. PRIMARY DOCKET # <u>12CF7</u>
		12. PLEA <input checked="" type="checkbox"/> GUILTY <input type="checkbox"/> NOT GUILTY <input type="checkbox"/> NO PLEA	

I. PRIMARY OFFENSE: If Qualifier, please check A S C R (A=Attempt, S=Solicitation, C=Conspiracy, R=Reclassification)

FELONY DEGREE	F.S.#	DESCRIPTION	OFFENSE LEVEL	POINTS
775.087(1)(a)(2)(a)(2)				

LF 180.02(1)(a)(2)(a)(2)(b) Armed Burg Dwelling FA + Assault/Patt

(Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)

Prior capital felony triples Primary Offense points

II. ADDITIONAL OFFENSE(S): Supplemental page attached

DOCKET#	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY A S C R	COUNTS	POINTS	TOTAL
<u>Same</u>	<u>LF</u>	<u>775.087</u>	<u>8</u>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<u>1</u>	<u>37</u>	<u>37</u>

DESCRIPTION Armed Kidnapping

<u>Same</u>	<u>DBLE</u>	<u>812.13(1)(2)(a)</u>	<u>9</u>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<u>1</u>	<u>46</u>	<u>46</u>
-------------	-------------	------------------------	----------	---	----------	-----------	-----------

DESCRIPTION Robbery w/ FA

<u>Same</u>	<u>3F</u>	<u>787.02(1)(a)</u>	<u>6</u>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<u>1</u>	<u>18</u>	<u>36</u>
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DESCRIPTION Agg. Assault w/ FA

<u>Same</u>	<u>3F</u>	<u>787.02(1)(a)</u>	<u>6</u>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<u>2</u>	<u>18</u>	<u>36</u>
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DESCRIPTION False Imprisonment

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

Prior capital felony triples Additional Offense points

Supplemental page points

II.

III. VICTIM INJURY:

	Number	Total		Number	Total
2nd Degree Murder	240 x	<u> </u> = <u> </u>	Slight	4 x	<u> </u> = <u> </u>
Death	120 x	<u> </u> = <u> </u>	Sex Penetration	80 x	<u> </u> = <u> </u>
Severe	40 x	<u> </u> = <u> </u>	Sex Contact	40 x	<u> </u> = <u> </u>
Moderate	18 x	<u> </u> = <u> </u>			

III.

IV. PRIOR RECORD: Supplemental page attached

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
<u>F3</u>	<u>812.09(1)</u>	<u>5</u>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<u>Crim Poss Statn prop (N#165495)</u>	<u>1</u>	<u>3.6</u>	<u>3.6</u>
<u>M</u>	<u>1</u>	<u>M</u>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<u>Dis. Conduct (N#124070)</u>	<u>1</u>	<u>.2</u>	<u>.2</u>
<u>M</u>	<u>1</u>	<u>M</u>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<u>False info to LEO</u>	<u>2</u>	<u>.2</u>	<u>.4</u>
					<u>X</u>	<u> </u>	<u> </u>
					<u>X</u>	<u> </u>	<u> </u>
					<u>X</u>	<u> </u>	<u> </u>
					<u>X</u>	<u> </u>	<u> </u>
					<u>X</u>	<u> </u>	<u> </u>
					<u>X</u>	<u> </u>	<u> </u>
					<u>X</u>	<u> </u>	<u> </u>

(Level = Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

Supplemental page points

IV.

2012 SEP 13 PM 5:17

4.2

Page 1 Subtotal: 275.2

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after October 1, 1998 and subsequent revisions.

Distribution:
White/Original/Clerk
Green/ DC Data
Canary/ State Attorney

Pink/Defense Attorney
Goldenrod/ DC Offender File



NAME (LAST, FIRST, MI)

Alsaedi, Elasad

DOCKET #

12CF7

Page 1 Subtotal: 275.2

V. Legal Status violation = 4 Points

Escape Fleeing Failure to appear Supersedeas bond Incarceration Pretrial intervention or diversion program
 Court imposed or post prison release community supervision resulting in a conviction

V. _____

VI. Community Sanction violation before the court for sentencing

Probation Community Control Pretrial Intervention or diversion

VI. _____

6 points for any violation other than new felony conviction x _____ each successive violation OR
 New felony conviction = 12 points x _____ each successive violation if new offense results in conviction before or at same time as sentence for violation of probation OR
 12 points x _____ each successive violation for a violent felony offender of special concern when the violation is not based solely on failure to pay costs, fines, or restitution OR
 New felony conviction = 24 points x _____ each successive violation for a violent felony offender of special concern if new offense results in a conviction before or at the same time for violation of probation

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 Points

VII. _____

VIII. Prior Serious Felony - 30 Points

VIII. _____

Subtotal Sentence Points _____

IX. Enhancements (only if the primary offense qualifies for enhancement)

Law Enf. Protect.

Drug Trafficker

Motor Vehicle Theft

Criminal Gang Offense

Domestic Violence in the Presence of Related Child

(offenses committed on or after 3/12/07)

____ x 1.5 ____ x 2.0 ____ x 2.5

____ x 1.5

____ x 1.5

____ x 1.5

____ x 1.5

Enhanced Subtotal Sentence Points

TOTAL SENTENCE POINTS

IX. _____

275.2

SENTENCE COMPUTATION

If total sentence points are less than or equal to 44, the lowest permissible sentence is any non-state prison sanction. If the total sentence points are 22 points or less, see Section 775.082(10), Florida Statutes, to determine if the court must sentence the offender to a non-state prison sanction.

If total sentence points are greater than 44:

275.2 minus 28 = 247.2 x .75 = 185.4

total sentence points

lowest permissible prison sentence in months

If total sentence points are 60 points or less and court makes findings pursuant to both Florida Statute 948.20 and 397.334(3), the court may place the defendant into a treatment-based drug court program.

The maximum sentence is up to the statutory maximum for the primary and any additional offenses as provided in s. 775.082, F.S., unless the lowest permissible sentence under the Code exceeds the statutory maximum. Such sentences may be imposed concurrently or consecutively. If total sentence points are greater than or equal to 363, a life sentence may be imposed.

Life

maximum sentence in years

TOTAL SENTENCE IMPOSED

Years _____ Months _____ Days _____

40 *

State Prison Life
 County Jail Time Served
 Community Control
 Probation Modified

Please check if sentenced as habitual offender, habitual violent offender, violent career criminal, prison releasee reoffender, or a mandatory minimum applies.

Mitigated Departure Plea Bargain Prison Diversion Program

Other Reason 10 yrs + 3 yrs all concurrent (775-087)

JUDGE'S SIGNATURE

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after October 1, 1998, and subsequent revisions.

Appendix "C"

(Order denying motion for rehearing to correct illegal sentence)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO. 2012-CF-7 NC

ELASAD JAMIE ALSAEDI,

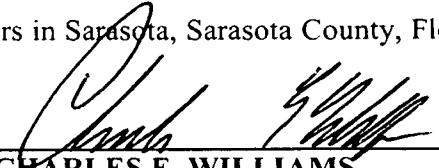
Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR REHEARING

THIS MATTER is before the Court on Defendant's *pro se* Motion for Rehearing, filed December 9, 2019, pursuant to Fla. R. Crim. P. 3.800(b)(1)(B), seeking rehearing of the Court's November 15, 2019, order denying his motion to correct illegal sentence. Upon review of the motion, the court file, and applicable law, the Court finds no overlooked issue of fact or law that would materially change its ruling. It is, therefore,

ORDERED AND ADJUDGED that Defendant's Motion for Rehearing is **DENIED**.

DONE AND ORDERED in Chambers in Sarasota, Sarasota County, Florida, this 16 day of December 2019.


CHARLES E. WILLIAMS
Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 16 day of December 2019, copies of the foregoing Order were furnished by U.S. Mail/hand delivery and/or electronic mail to: **Elasad J. Alsaedi**, DC #D24134, Graceville Correctional Facility, 5168 Ezell Rd., Graceville, FL 32440; and **Office of the State Attorney**, saorounds@saol2.org, 2071 Ringling Blvd., Suite 400, Sarasota, FL 34237.

By 
Judicial Assistant

Appendix "D"

(Amended motion to correct illegal sentence)

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

STATE OF FLORIDA,
Plaintiff,

v.

Case No.: 2012-CF-000007

EL-ASAD J. ALSAEDI,
Defendant.

AMENDED MOTION TO CORRECT ILLEGAL SENTENCE

THE DEFENDANT, El-Asad J. Alsaedi, moves this Honorable Court, pursuant to Rule 3.800(a), Fla. R. Crim. P., to correct an illegal sentence. The trial Court imposed a sentence upon the Defendant that exceeds the prescribed statutory maximum, resulting in an *Apprendi/Blakely* violation. In support of this motion, the Defendant states the following:

JURISDICTION

Although the term “illegal sentence” is undefined in rule 3.800(a), to be entitled to relief pursuant to this rule a sentence must be one that no judge may impose. See *Martinez v. State*, 211 So. 3d 989 (Fla. 2017) (“Noting that the term ‘illegal sentence’ is not defined in the rule, we have held that to be subject to

correction under rule 3.800(a) a sentence must be 'one that no judge under the entire body of sentencing laws could possibly impose.'") (citing *Wright v. State*, 911 So. 81, at 83 (Fla. 2005)). In other words, "a sentence that patently fails to comport with statutory or constitutional limitations is by definition 'illegal.'" *Id.* (citing and quoting *Plott v. State*, 184 So. 3d 90, at 94 (Fla. 2014)). Accordingly, "claim[s] of error under *Apprendi* and *Blakely* [are] cognizable in a rule 3.800(a) motion." *Id.*, at 91 (Fla. 2014).

PROCEDURAL HISTORY

On the 1st of January, 2012, the Defendant was arrested for: Armed Home Invasion Robbery; 2 counts of Aggravated Assault; and Larceny-Grand Theft. By September 10th, 2012, the State had filed a second amended information, charging the Defendant with: Count 1 – Armed Burglary with a Firearm and/or Assault and/or Battery; Count 2 – Robbery with a Firearm or Deadly Weapon; Count 3 – Armed Kidnapping (commit felony and minor under 13); Count 4 – False Imprisonment; Count 5 – False Imprisonment; Count 6 – Aggravated Assault with a Firearm; and Count 7 – Aggravated Assault with a Firearm. The Defendant proceeded to a trial by jury and was found guilty as charged on all counts. As to counts 1-3, the Defendant was sentenced to 40 years with a 10 year minimum mandatory. In regards to counts 4-7, he was sentenced to 185.4 months. All sentences were imposed concurrently.

GOVERNING PRINCIPLES

In October of 1998, the Legislature enacted §921.002 and §921.0025, Fla. Stat. Section 921.002 is the Criminal Punishment Code (hereinafter CPC). The CPC is the current sentencing scheme used to calculate a convicted felon's sentence. It expresses that the sentencing judge may impose a sentence anywhere between the lowest permissible sentence and up to and including the statutory maximum. See §921.002(1)(f) and (1)(g), Fla. Stat.

Section 921.0025 adopts and implements Rules 3.701, 3.702, 3.703, and 3.988 in accordance with chapter 921 for application to the CPC. Rules 3.701, 3.702, and 3.703 are the rules governing the sentencing guidelines. Specifically, rule 3.701 are the rules regarding the 1983 Sentencing guidelines, rule 3.702 are the rules governing the 1994 sentencing guidelines, and rule 3.703 are the rules pertaining to amended 1994 sentencing guidelines. Rule 3.988 prescribes the recommended and permitted sentencing ranges that corresponds to rule 3.701 (the 1983 sentencing guidelines).

Moving on, in *Apprendi v. New Jersey*, 147 L Ed 2d 435, the United States Supreme Court expressed that any fact, other than a prior conviction, which increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury and proved beyond a reasonable doubt. *Id. at 455*. Shortly after, the Court decided *Blakely v. Washington*, 159 L Ed 2d 403. This decision expressed

that the definition of a prescribed statutory maximum, is the maximum sentence a trial court may impose based on the facts reflected by the jury's verdict or admitted by the defendant. *Id. at 413-14* ("Our precedents make clear, however, that the "statutory maximum" for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant ... In other words, the relevant "statutory maximum" is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts 'which the law makes essential to the punishment,' and the judge exceeds his proper authority.").

LEGAL ARGUMENT

The Sixth Amendment right to a trial by jury was implemented to ensure the people's control over the judicial branch of Government. See *Blakely v. Washington*, 159 L Ed 2d 403, 412 ("Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary"). It is also meant to guard against oppression that may be inflicted by our judicial branch of Government. See *Apprendi v. New Jersey*, 147 L Ed 2d 435, 447 ("[T]o guard against a spirit of oppression and tyranny on the part of rulers' and 'as the great bulwark of [our] civil and political liberties,' ... trial by jury has been

understood to require that ‘the truth of every accusation, whether preferred in the shape of indictment, information, or appeal should afterwards be confirmed by the unanimous suffrage of twelve of [the defendant’s] equals and neighbors’”). This right is embedded in the Constitution because of the lack of trust that the Framer’s had for the Government. *Blakely*, Supra, at 416 (“... [T]he very reason the Framers put a jury-trial guarantee in the Constitution is that they were unwilling to trust government to mark out the role of the jury”).

This right plays an intricate role in our judicial system. Its “reasonable doubt” standard applies to the jury verdict and the length of the Defendant’s sentence. *Apprendi*, Supra, at 447-48 (“Equally well-founded is the companion right to have the jury verdict based on proof beyond a reasonable doubt. [...] We went on to explain that the reliance on the ‘reasonable doubt’ standard among common-law jurisdictions ‘reflect[s] a profound judgment about the way in which law should be enforced and justice administered); and *Apprendi*, at 451 (“Since *Winship*, we have made clear beyond peradventure that *Winship*’s due process and associated jury protections extend, to some degree, ‘to determinations that [go] not to a defendant’s guilt or innocence, but simply to the length of his sentence) (citations omitted). It is because of this right, coupled with the Fifth Amendment right to Due Process, that criminal proceedings are initiated by an information or indictment, with specific allegations. The allegations must be clearly expressed to the point that the Defendant

may be able to determine the type of offense and the judgment he faces. *Id.*, at 448 (“As a general rule, criminal proceedings were submitted to a jury after being initiated by an indictment containing ‘all the facts and circumstances which constitute the offence, … stated with such certainty and precision, that the defendant … may be enabled to determine the species of offence they may constitute, in order that he may prepare his defence [sic] accordingly … and that there may be no doubt as to the judgment which should be given, if the defendant be convicted. … The defendant’s ability to predict with certainty the judgment from the face of the felony indictment flowed from the invariable linkage of punishment with crime.’” (citing and quoting 4 Blackstone 369-370) (“[A]fter verdict, and barring a defect in the indictment, pardon of benefit of clergy, ‘the court must pronounce that judgment, which the law hath annexed to the crime (emphasis added)’”).

The above mentioned linkage of punishment with crime necessitates the allegations within the information or indictment to be precise in order to impose, or seek, a specific punishment. *Id.*, at 449 (“Just as the circumstances of the crime and the intent of the defendant at the time of commission were often essential to be alleged in the indictment, so too were the circumstances mandating a particular punishment. ‘Where a statute annexes a higher degree of punishment to a common-law felony, if committed under particular circumstances, an indictment for the offence, in order to bring the defendant within that higher degree of punishment,

must expressly charge it to have been committed under those circumstances, and must state the circumstances with certainty and precision'') (citations omitted). These allegations must be charged against the Defendant and proven beyond a reasonable doubt, unless the allegation pertains to prior a conviction. *Id.*, at 446 (‘‘[U]nder the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, **any fact** (other than prior conviction) **that increases the maximum penalty for a crime must be charged in an indictment**, submitted to a jury, and proven beyond a reasonable doubt’’).

It is, therefore, clearly evident that the sentences permitted to be imposed upon the Defendant is a determination made by the Legislature. See *Apprendi*, Supra, at 448-49 (‘‘As Blackstone, among many others, has made clear, ‘[t]he judgment, though pronounced or awarded by the judges, is not their determination or sentence, but the determination and sentence of the law.’ (citation omitted)); and §921.002(1), *Fla. Stat.* (The provision of criminal penalties and of limitations upon the application of such penalties is a matter of predominantly substantive law and, as such, is a matter properly addressed by the Legislature). And being that sentences imposed is a legislative matter, the Defendant has the right to have the prosecutor prove every fact in regard to the punishment. See *Blakely*, Supra, at 420 (‘‘As Apprendi held, every defendant has the right to insist that the prosecutor prove to a jury all facts legally essential to the punishment’’).

Moreover, the CPC establishes a general range for sentencing the Defendant. On the lower end of the scale, the Defendant may not be sentenced below the lowest permissible sentence unless reasons for departure are provided. See §921.002(1)(f), *Fla. Stat.* On the high end, the Defendant may be sentenced up to and including the statutory maximum. See §921.002(1)(g), *Fla. Stat.*

While the CPC establishes a general range, the adoption and implementation of the sentencing guidelines, as provided in §921.0025, inserts a recommended and permitted sentencing range within the CPC's general range. The Legislature finds the recommended range to be appropriate for the Defendant's score. See §3.701(d)(8), *Fla. R. Crim. P.* (The recommended sentences provided in the guideline grids are assumed to be appropriate for the composite score of the offender). The permitted range allows a sentencing judge to apply discretion in sentencing the Defendant slightly beyond or below the recommended range without the need for justification. *Id.*

A sentence outside of the recommended range by more than 25% is considered to be a departure sentence. Departure sentences require the company of oral articulation and written reasons. See *Rule 3.702(d)(18) and 3.703(d)(30), Fla. R. Crim. P.* (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 ... must be accompanied by a written statement delineating the reasons for departure.); and Rules 3.702(d)(18)(A) and 3.703(d)(30)(A), Fla. R. Crim. P. (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.).

Furthermore, the United States Supreme Court's decisions in *Apprendi* and *Blakely* have had a significant impact on sentencing proceedings everywhere. See *State v. Johnson*, 122 So. 3d 856, at 858 (Fla. 2013) ("The Supreme Court's decisions in *Apprendi* and *Blakely* have caused considerable confusion in criminal sentencing at both the federal and state levels."). After *Apprendi*, but prior to *Blakely*, courts in the State of Florida were under the impression that a sentencing judge may make factual findings to the extent that the sentence did not go beyond the statutory maximum provided in §775.082, Fla. Stat. Later on, the ruling in *Blakely* placed a greater limitation upon sentencing judges regarding sentences that may be imposed. ("We understood that *Apprendi* permitted judges to make factual findings 'as long as the resulting sentence [did] not exceed the statutory maximum,' prescribed by the applicable statute. [] By limiting the 'statutory maximum' to the sentence congruent with the facts 'reflected in the jury verdict or admitted by the defendant,' *Blakely*,

542 U.S. at 303 (original emphasis omitted), however, the Supreme Court altered the effect of Apprendi. As we stated above, courts interpreting Apprendi reasoned that judges still had the power to make findings of facts affecting the sentence as long as the statutory maximum contained in the Florida Statutes was not exceeded. Under Blakely, courts no longer have that power under determinate sentencing schemes.”) *Id. at 865.*

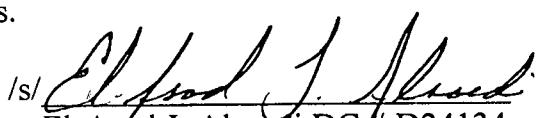
Although a scoresheet under rule 3.988 was not generated, this Honorable Court and the State has constructive knowledge that the Defendant scores out to 344 points¹ for the offenses he was charged with, and convicted of. This score places the Defendant within a recommended range of 12-17 years with 15 years being the median, and a permitted range of 9-22 years. See *Rule 3.988(i), Fla. R. Crim. P.*; and *Hall v. State*, 823 So. 2d 757, at 764 (“By virtue of the Florida Statutes and the laws of Florida, a defendant has constructive notice of the penalty for statutory crimes.”) (citing and quoting *State v. Beasley*, 580 So. 2d 139, 142 (Fla. 1991) (“As to notice, publication in the Laws of Florida or the Florida Statutes gives all citizens constructive notice of the consequences of their actions.”)).

¹ The scoresheet that provides the most severe sanction is 3.988(i), and the point assessment is as follows: Armed kidnapping is a life felony and provides 241 points as the primary offense; Armed Burglary with an Assault and Armed Robbery are two counts of first degree felonies, punishable by life, providing 45 points as additional offenses; two counts of False Imprisonment and two counts of Aggravated Assault are four counts of third degree felonies, also providing 22 points as additional offenses; 18 points for the Defendant’s prior record consisting of one third degree felony and three misdemeanors; and finally, an 18 points for the use of a firearm (Rules 3.702(d)(12) and 3.703(d)(19)).

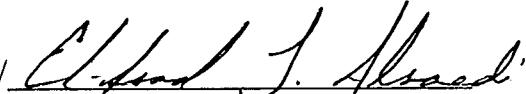
CONCLUSION

The Defendant's current sentence for counts 1-3, concurrent terms of 40 years with a 10 year minimum mandatory, greatly exceeds his applicable recommended range by nearly 138%. He was not charged with any sentence enhancement that would permit such a sentence. And based on the laws of Florida and Constitutional provisions of the United States, the Defendant's sentence is illegal. The restraints of the charging information and the jury's verdict, as well as the holdings in *Apprendi* and *Blakely*, do not authorize a sentence beyond 25% of the Defendant's applicable recommended range under Rule 3.988(i).

WHEREFORE, the Defendant prays for, and respectfully requests, a new sentencing proceeding with the imposition of a sentence within the Defendant's applicable range of the sentencing guidelines.

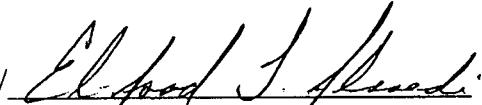
/s/ 
El-Asad J. Alsaedi DC# D24134
Graceville Correctional Facility
5168 Ezell Rd.
Graceville, Florida 32440

**UNDER 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 understand the contents of the foregoing motion, that the facts contained
in the motion are true and correct, and that I have a reasonable belief that the motion
is timely filed. I certify 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.

/s/ 
El-Asad J. Alsaedi DC # D24134

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Correct an Illegal Sentence has been placed in the hands of classification personnel, at Graceville Correctional Facility, for the purpose of mailing to The State Attorney's Office at 2071 Ringling Blvd, Suite 400, Sarasota, Florida 34237-7000 on this 6th day of November, 2019.

/s/ 
El-Asad J. Alsaedi DC # D24134

Appendix "E"

(Motion for Rehearing to correct illegal sentence)

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

Provided to Graceville Correctional Facility
on 12-4-19 for mailing
by MC C.A.

v.

Case No.: 2012-CF-000007

EL-ASAD J. ALSAEDI,
Defendant.

MOTION FOR REHEARING TO CORRECT ILLEGAL SENTENCE

THE DEFENDANT, El-Asad J. Alsaedi, *pro se*¹, moves this Honorable Court for a Rehearing on his Motion to Correct Illegal Sentence, pursuant to Rule 3.800(b)(1)(B) of the Fla. R. Crim. P. Exhibits relevant to the Defendant's claim will be attached to this motion, curing the deficiency in his original motion². In support thereof, the Defendant states the following:

ORDER DENYING MOTION TO CORRECT ILLEGAL SENTENCE

The denial of the motion to correct illegal sentence is based on: 1) The Defendant claiming that his sentence is illegal because it deviates from the

¹ "Pro se litigants are given leniency on certain procedural technicalities in how they draft motions or request relief." See *Kidwell v. Kidwell*, 181 So. 3d 1190 (Fla. 3rd DCA 2015) (citing *Haines v. Kerner*, 404 US 519, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)).

² See *Washington v. State*, 70 So. 3d 634 (Fla. 1st DCA 2011), reversing an order on a Rule 3.800(a) motion and remanding for further proceedings because the defendant's motion for rehearing cured the deficiencies within his motion.

guidelines recommended range by more than 25% and was not accompanied by a written reason for departure; 2) His reliance on the rules pertaining to the sentencing guidelines is misplaced because the CPC governs all non-capital felonies committed on or after October 1st, 1998, and a single sentencing range not being established under the CPC; 3)The Defendant's sentence not being a departure sentence under his CPC scoresheet; and 4) His claim that the court erroneously imposed an upward departure without written reasons is not cognizable under rule 3.800(a).

MISAPPREHENSION OF FACTS AND LAW

First, this Honorable Court has misconstrued the Defendant's claim. He does not claim that his sentence is illegal because it was not accompanied by written reasons for departure. He claims that his sentence is illegal because he was not charged with any statutory enhancement that would permit this Honorable Court to deviate from the recommended range of the sentencing guidelines, resulting in an *Apprendi/Blakely* violation.

Secondly, this Honorable Court avers that the Defendant's reliance on the rules pertaining to the sentencing guidelines is misplaced because the CPC governs all non-capital felonies committed on or after October 1st, 1998. The Defendant respectfully avows that this Honorable Court has overlooked the construction of the CPC. The Criminal Punishment Code is composed of subsections 921.002 to

921.0027³, Florida Statutes. In the midst of the aforementioned subsections is subsection **921.0025**. Subsection **921.0025**⁴ adopts and implements rules 3.701, 3.702, 3.703, and 3.988, Fla. R. Crim. P., in accordance with chapter 921 of the Florida Statutes for application to the CPC.

The rules adopted within **§921.0025**, with the exception of rule 3.988, are the sentencing guidelines. Rule 3.988 contains the recommended and permitted ranges that correspond to the sentencing guidelines under rule 3.701. The adoption and implementation of these rules by the legislature was a deliberate intention that provided sentencing ranges, limiting a judge on the sentence that may be imposed. Therefore, contrary to *Moore*⁵, the CPC does establish a single sentencing range.

Moreover, even though the CPC **does** establish a single sentencing range, there are circumstances that do not restrict a sentencing judge from imposing a statutory maximum as expressed in §921.0024(2). The sentencing guidelines provide rules for deviation from the recommended and permitted ranges, which would then allow the sentencing judge to apply a sentence that is up to and including

³ See *In re Adoption of Fla. Rules of Crim. Proc. 3.704 and 3.992 to Implement the Fla. Crim. Punishment Code*, 721 So. 2d 265 (Fla. 1998) (The Florida Criminal Punishment Code governs sentencing for all felonies, except capital felonies, committed on or after October 1, 1998. See ch. 98-204, Laws of Fla.; §§ 921.002-.0027, Fla. Stat. (1997)).

⁴ **§ 921.0025. Adoption and implementation of revised sentencing scoresheets.** Rules 3.701, 3.702, 3.703, and 3.988, Florida Rules of Criminal Procedure, as revised by the Supreme Court, and any other rule pertaining to the preparation and submission of felony sentencing scoresheets, are adopted and implemented in accordance with this chapter for application to the Criminal Punishment Code.

⁵ *Moore v. State*, 882 So. 2d 977, 985 (Fla. 2004) (“[A] single sentencing range is not established under the CPC as occurred under the prior guidelines.”)

the statutory maximum. To provide a departure sentence, the sentencing judge must orally articulate his reason for departure and provide a written statement. See *Rule(s) 3.701(d)(11), 3.702(d)(18) and (d)(18)(A), and 3.703(d)(30) and (d)(30)(A), Fla. R. Crim. P.*⁶. And in order to deviate from the guidelines, the written reasons provided, as expressed in the previously mentioned rules, are supposed be established by a preponderance of evidence. See *Rule 3.701(d)(6)*⁷.

Acknowledgment of the ability to depart from the guidelines should not stop there. Further scrutiny is required to fully understand the rules regarding departures. The rules provide that the level of proof necessary to substantiate a reason for departure is a preponderance of evidence. This is no longer the standard since the United States Supreme Court's rulings in *Apprendi v. New Jersey*, 147 L Ed 2d 435 (2000) and *Blakely v. Washington*, 159 L Ed 2d 403 (2004). In *Apprendi*, "the United States Supreme Court held that, other than a prior conviction, any fact that increases

⁶ **Rule 3.701(d)(11)**, Fla. R. Crim. P., states, in relevant part: "Departures from the recommended or permitted guideline sentence should be avoided unless there are circumstances or factors that reasonably justify aggravating or mitigating the sentence. Any sentence outside the permitted guideline range must be accompanied by a written statement delineating the reasons for departure."

Rules 3.702(d)(18) and 3.703(d)(30), Fla. R. Crim. P., states, in relevant part: "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%, 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."

Rules 3.702(d)(18)(A) and 3.703(d)(30)(A), Fla. R. Crim. P., states, in relevant part: "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."

⁷ **Rule 3.701(d)(6)**, Fla. R. Crim. P., states, in relevant part: "...The level of proof necessary to establish facts supporting a departure from a sentence under the guidelines is a preponderance of evidence."

the punishment for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt.” See *Kormondy v. State*, 845 So. 2d 41, 54 (Fla. 2003). In *Blakely*, “the Supreme Court explained that the ‘statutory maximum’ for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant. In other words, the relevant ‘statutory maximum’ is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings. When a judge inflicts punishment **that the jury's verdict alone** does not allow, the jury has not found all the facts ‘which the law makes essential to the punishment,’ and the judge exceeds his proper authority.” See *Williams v. State*, 242 So. 3d 280, 290 (Fla. 2018).

Apprendi and *Blakely* have become two landmark cases that have had a significant impact on sentencing within the State of Florida. While applying *Apprendi* and *Blakely* to the correct application of the CPC, it changes the way a sentence may be imposed. The term “**prescribed statutory maximum**,” as provided in *Apprendi*, plays an intricate role. This term received greater emphasis and clarification in the Court’s ruling in *Blakely*. It was explained to be the maximum sentence a judge may impose without any additional findings.

Now we must keep in mind the legislature’s adoption of the sentencing guidelines. And in applying *Apprendi* and *Blakely* to sentencing in Florida Courts,

the “**prescribed statutory maximum**,” or the “**statutory maximum for *Apprendi* purposes**,” would be a defendant’s sentencing guideline ranges under 3.988. So, based on the holding of *Apprendi* and *Blakely*, to depart from the sentencing guidelines and apply the statutory maximum as expressed in §921.0024(2), the judge must base his reasons for departure on either: a) a defendant’s prior record; b) factual findings made by the jury; or c) an admission by the defendant.

Next, this Honorable Court expressed in its order denying that the Defendant’s sentence is not a departure sentence under his CPC scoresheet. And the Defendant agrees. Yet this Honorable Court overlooks that the CPC scoresheet should have attachments. See §921.0024(7), *Fla. Stat*⁸. These attachments are the sentencing guideline scoresheet under *Rule 3.988(j)*, *Fla. R. Crim. P.* Although subsection 921.0024(7) does not specify that a scoresheet under rule 3.988(j) should accompany the CPC scoresheet, it can be inferred through strict observation of **§921.0025** and §921.0024(7).

Subsection **921.0025** included rule 3.988 in its adoption. It is the only rule listed, among three others, that is not a rule governing the sentencing guidelines, but a form consisting of mathematical formulas to arrive at a specific sanction that is to

⁸ §921.0024(7), *Fla. Stat.* (2019), states: “A digitized sentencing scoresheet must be prepared for every defendant who is sentenced for a felony offense. The individual offender’s digitized Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets, must be included with the uniform judgment and sentence form provided to the Department of Corrections.”

be imposed upon a criminal defendant. It is of significant importance because the legislature chose this rule, which corresponds to rule 3.701, rather than using rule 3.990 (the form used to calculate sentences imposed corresponding to rule 3.702), or rule 3.991 (the form used to calculate sentences imposed corresponding to rule 3.703). In addition, subsection 921.0024(7) states that in relevant part:

“...The individual offender’s digitized Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets...”

This demonstrates that a sentence imposed is not solely based on the CPC scoresheet, but also on the scoresheet provided by rule 3.988(j). The CPC scoresheet only establishes the **permissible sentencing range** for a criminal defendant. Not the actual **sentencing range**. Ultimately, just because the CPC scoresheet doesn’t demonstrate that the Defendant’s sentence is a departure sentence does not establish that his sentence is not a departure sentence. Under the sentencing guideline scoresheet, which should have been calculated and included with the CPC scoresheet, it is a departure sentence.

Finally, this Honorable Court’s order denying provides that the Defendant’s claim, the court erroneously imposed an upward departure sentence without written reasons, is not cognizable under rule 3.800(a). Once again, the Defendant does not claim that his sentence is illegal because it was not accompanied by written reason.

He claims that his sentence is illegal because he was not charged with any sentence enhancement that would permit a sentence beyond his sentencing guideline range.

The Defendant was charged with the criminal offenses of Armed Burglary with a Firearm and/or Assault and/or Battery, Armed Robbery with a Firearm, Armed Kidnapping, two counts of False Imprisonment, and two counts of Aggravated Assault with a Firearm. Aside from these criminal offenses, the only other violation the Defendant was charged with is the 10/20/Life statute (§775.087(1) and (2)(a), Fla. Stat.). See Exhibit "A" (Second Amended Information). The 10/20/Life statute only authorized the imposition of a 10 year mandatory minimum to the burglary, robbery, and kidnapping.

As a result of a guilty verdict, the Defendant received three 40 year sentences and four 185.4 month sentences. All sentences were imposed concurrently. See Exhibit "B" (Judgment and Sentence). This sentence exceeds the sentencing guidelines, or prescribed statutory maximum, resulting in an illegal sentence that is an *Apprendi/Blakely* violation. Therefore, the Defendant's claim is cognizable on 3.800(a). See *Plott v. State*, 148 So. 3d 90, 95 (Fla. 2014) ([W]e hold that upward departure sentences that are unconstitutionally enhanced in violation of *Apprendi* and *Blakely* patently fail to comport with constitutional limitations, and consequently, the sentences are illegal under rule 3.800(a)).

CONCLUSION

WHEREFORE, the Defendant prays, and respectfully requests, that this Honorable Court reconsider his Motion to Correct Illegal Sentence and resentence him to his recommended sentencing guidelines range of 12-17 years.

/s/


El-Asad J. Alsaedi DC # D24134
Graceville Correctional Facility
5168 Ezell Rd.
Graceville, Florida 32440

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Motion to Correct an Illegal Sentence has been placed in the hands of classification personnel, at Graceville Correctional Facility, for the purpose of mailing to The State Attorney's Office at 2071 Ringling Blvd, Suite 400, Sarasota, Florida 34237-7000 on this 4th day of December, 2019.

/s/ 
El-Asad J. Alsaedi DC # D24134