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# EXHIBIT

## “A”

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  
JULY 12, 2012  
KAREN RUSHING CLERK OF COURT  
BY: M. Minthorn 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, D.P.M., J.M., A.J.B.)
- 2) ROBBERY (FIREARM OR DEADLY WEAPON) 812.13(1) and (2)(a); 775.087(1) and (2)(a) (FPBL) (D.P.M.)
- 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) (J.M.)
- 4) FALSE IMPRISONMENT 787.02(1)(a) (D.P.M.) (3 F)
- 5) FALSE IMPRISONMENT 787.02(1)(a) (A.J.B.) (3 F)
- 6) AGGRAVATED ASSAULT WITH A FIREARM 784.021(1)(a); 775.087(1) and (2)(a) (3 F) (J.M.)
- 7) AGGRAVATED ASSAULT WITH A FIREARM 784.021(1)(a); 775.087(1) and (2)(a) (3 F) (A.J.B.)

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, SSN: [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: (Carol S Schwartz, J.M., D.P.M., A.J.B.) 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 J.M. AND/OR D.P.M. AND/OR A.J.B, 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: (D.P.M.) 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 D.P.M. of said property, and in the course of said robbery, ELASAD JAMIE ALSAEDI carried a firearm to-wit: HANGUN 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: (J.M.) on or about January 1, 2012, in the County and State aforesaid, did forcibly, secretly or by threat confine, abduct or imprison J.M. (D.O.B. 8/02/2000) 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: (D.P.M) 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

D.P.M. 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: (A.J.B.)** 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, A.J.B. 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: (J.M.)** 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 J.M., coupled with an apparent ability to do so and did an act creating a well-founded fear in the said J.M. 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)

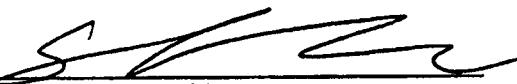
**COUNT 7: (A.J.B.)** on or about January 1, 2012, in the County and State aforesaid did intentionally and unlawfully threaten by word or act to do violence to the person of A.J.B., coupled with an apparent ability to do so and did an act creating a well-founded fear in the said A.J.B. that such violence 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

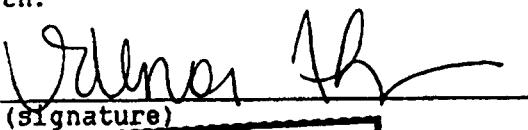
that have been sworn to as true, and which, if true, would constitute the offense therein charged, and that this information is filed in good faith in instituting this prosecution and that testimony was received under oath from a material witness or witnesses.

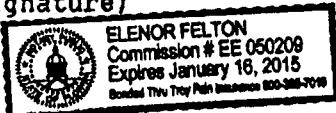
EARL MORELAND, STATE ATTORNEY  
TWELFTH JUDICIAL CIRCUIT

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 January, 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

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**EXHIBIT**  
**“B”**

<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	VS. DEFENDANT
STATE OF FLORIDA	ELASAD JAMIE ALSAEDI
SENTENCE AND SPECIAL PROVISIONS	

FILED FOR RECORD

2012 SEP 19 PM 4:09

KAREN E. RUBIN  
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 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 1 - 3)

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

##### **MANDATORY/MINIMUM PROVISIONS:**

<b>Firearm</b>	<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.
<b>Drug Trafficking</b>	<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.
<b>Controlled Substance Within 1,000 Feet of School</b>	<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.
<b>Habitual Felony Offender</b>	<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.
<b>Habitual Violent Felony Offender</b>	<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.
<b>Law Enforcement Protection Act</b>	<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.
<b>Capital Offense</b>	<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.
<b>Short-Barreled Rifle, Shotgun, Machine Gun</b>	<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.
<b>Continuing Criminal Enterprise</b>	<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.
<b>Taking a Law Enforcement Officer's Firearm</b>	<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.

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:**

<b>Firearm</b>	<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.
<b>Drug Trafficking</b>	<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.
<b>Controlled Substance Within 1,000 Feet of School</b>	<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.
<b>Habitual Felony Offender</b>	<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.
<b>Habitual Violent Felony Offender</b>	<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.
<b>Law Enforcement Protection Act</b>	<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.
<b>Capital Offense</b>	<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.
<b>Short-Barreled Rifle, Shotgun, Machine Gun</b>	<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.
<b>Continuing Criminal Enterprise</b>	<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.
<b>Taking a Law Enforcement Officer's Firearm</b>	<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 13<sup>TH</sup> 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/hand delivery to the  
 State Attorney  County Probation  Defendant  
 Defense Attorney Herb Wainer

Witness my hand and official seal this 14 day of

KAREN E. RUSHING, CLERK OF THE CIRCUIT COURT  
By: Karen E. Rushing Deputy Clerk



Appendix "F"

(Notice of Appeal)

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

**STATE OF FLORIDA,**  
Plaintiff/Appellee,

Provided to Graceville Correctional Facility  
on 1/10/20 for mailing  
by mc

v.

**Case No.: 2012-CF-000007**

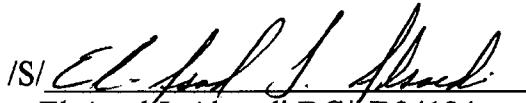
**EL-ASAD J. ALSAEDI,**  
Defendant/Appellant,

**NOTICE OF APPEAL**

**NOTICE IS GIVEN** that the Defendant, El-Asad J. Alsaedi, appeals to the District Court of Appeal for the Second District, the final judgments of this Court dated November 15<sup>th</sup>, 2019, and December 16<sup>th</sup>, 2019.

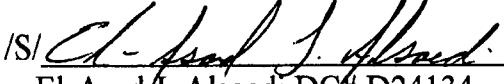
The nature of the order appealed is an Order Denying the Defendant's Motion to Correct Illegal Sentence and Motion For Rehearing.

Dated: January 10<sup>th</sup>, 2020.

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

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that copies of the foregoing Notice of Appeal have been placed in the hands of classification personnel, here at Graceville Correctional Facility, for the purpose of mailing to: The Clerk of the Court at 2000 Main St., Sarasota, Florida 34237; The State Attorney's Office at 2071 Ringling Blvd., Suite 400, Sarasota, Florida 34237-7000; and The Attorney General's Office at 3507 E. Frontage Rd., Suite 200, Tampa, Florida 33607.

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

Appendix "G"  
(Initial brief for appeal)

IN THE DISTRICT COURT OF APPEAL  
FOR THE SECOND DISTRICT  
STATE OF FLORIDA

EL-ASAD J. ALSAEDI,  
Appellant,

v.

STATE OF FLORIDA,  
Appellee,

Provided to Graceville Correctional Facility  
on 4-23-20 for mailing  
by DR EZL

Case No.: 2D20-223  
L.T. Case No.: 2012-CF-000007

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APPELLANT'S INITIAL BRIEF

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On Appeal from the Circuit Court of the Twelfth Judicial Circuit  
In and for Sarasota County, Florida

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

## TABLE OF CONTENTS

ARGUMENT, .....	7
PRELIMINARY STATEMENT,.....	iv
STATEMENT OF THE CASE, .....	1
STATEMENT OF THE FACTS,.....	2
SUMMARY OF THE ARGUMENT,.....	6
 <u>ISSUE ONE:</u>	
MR. ALSAEDI'S SENTENCE IS ILLEGAL BECAUSE IT IS IN VIOLATION OF THE HOLDINGS EXPRESSED BY THE UNITED STATES SUPREME COURT IN APPRENDI V. NEW JERSEY, 530 US 466, 120 S Ct 2348, 147 L Ed 2d 435 (2000), AND BLAKELY V. WASHINGTON, 542 US 296, 124 S Ct 2531, 159 L Ed 2d 403 (2004).....	6
CONCLUSION,.....	22
CERTIFICATE OF COMPLIANCE,.....	26
CERTIFICATE OF SERVICE,.....	26

## TABLE OF CITATIONS

### Cases

<i>Bank of New York Mellon v. Glenville</i> , 252 So. 3d 1120, 1128 (Fla. 2018).....	12, 22
<i>Brown v. State</i> , 260 So.3d 147, 150 .....	16
<i>Daniels v. State</i> , 870 So. 2d 250, 253 (Fla. 2d DCA 2004) .....	7
<i>Hurst v. State</i> , 202 So.3d 40, 48 (Fla. 2016).....	15
<i>Plott v. State</i> , 148 So.3d 90 (Fla. 2014) .....	25
<i>State Dep't of Environmental Regulation v. C.P. Developers, Inc.</i> , 512 So. 2d 258, 261 (Fla. 1 <sup>st</sup> DCA 1987).....	10
<i>State v. Lewars</i> , 259 So. 3d 793, 797 (Fla. 2018) .....	10
<i>State v. Weeks</i> , 202 So.3d 1, 9 (Fla. 2016).....	25
<i>Williams v. State</i> , 244 So. 3d 1173, 1175 (Fla. 2d DCA 2018) .....	7
<b>Statutes</b>	
775.087(1) and (1)(a), Fla. Stat. (2012) .....	23
775.082(3)(a)3, Fla. Stat. (2012).....	23
§787.01(2) Fla. Stat. (2012) .....	23
§921.0024(7), Fla. Stat. (2012) .....	13

§921.0024(2), Fla. Stat. (2012) .....	13
§921.002(g), Fla Stat. (2012) .....	12
§921.002(1)(c), Fla. Stat. (2012).....	14
§921.002(1)(d), Fla. Stat. (2012).....	14
See §921.002(1), Fla. Stat. (2012).....	14
§921.0025, Fla. Stat. (2012).....	14
§921.002, Fla stat. (1997).....	7
§921.002 -.0027, Fla. Stat. (1997).....	8
§921.0025, Fla. Stat. (1998).....	9
§ 921.002, n. 1, Fla. Stat. (1997).....	8

## **Other Authorities**

Ch 97-194, Laws of Fla.....	7
Ch. 98-204, s. 7, Laws of Fla. ....	9
<i>Florida Senate Staff Analysis and Economic Impact Statement CS/SB 1522, page 2</i> (April 2 <sup>nd</sup> , 1998) .....	8, 9

## **Rules**

Rule 3.701 (d)(11), Fla. R. Crim. P. (2012) .....	17
Rule 3.701(b)(6),, Fla. R. Crim. P. (2012) .....	17

<i>Rule 3.701(d)(6), Fla. R. Crim. P (2012) .....</i>	18
<i>Rule 3.701(d)(8), Fla. R. Crim. P. ....</i>	14, 17
<i>Rule 3.702(d)(12), Fla. R. Crim. P. (2012) .....</i>	20
<i>Rule 3.702(d)(18)(A), Fla. R. Crim. P. (2012), .....</i>	17
<i>Rule 3.702(d)(18), Fla. R. Crim. P (2012) .....</i>	17
<i>Rule 3.702(d)(18), Fla. R. Crim. P (2012) .....</i>	17
<i>Rule 3.703 (d)(19), Fla. R. Crim. P. (2012) .....</i>	20
<i>Rule 3.703(d)(30)(A), Fla. R. Crim. P. (2012) .....</i>	17
<i>Rule 3.703(d)(30), Fla. R. Crim. P (2012) .....</i>	17
<i>Rule 3.703(d)(30), Fla. R. Crim. P. (2012) .....</i>	17

## **US Supreme Court Cases**

<i>Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct 2348, 147 L.Ed 2d 435(2000)....</i>	2, 15
<i>Blakely v. Washington, 542 US 296, 159 L Ed 2d 403, 124 S Ct 2531 (2004) .</i>	2, 16, 23

## PRELIMINARY STATEMENT

In this brief, the Appellant, El-Asad J. Alsaedi, will be referred to by name or as the Appellant. The Appellee will be referred to as the State or the Appellee. Citations to the record on appeal will be made by the abbreviation "R.O.A.," followed by the appropriate page number.

The issue argued in this brief may be one that has yet to be presented to this Honorable Court, or any other court in the State of Florida, whereas there are no existing case laws interpreting s. 921.0025, Florida Statutes. The Appellant also expresses an understanding that the courts of Florida are overwhelmed with a high volume of motions, petitions, and briefs composed by *pro se* litigants who constantly misinterpret the law and then inappropriately apply it in their legal arguments. Mr. Alsaedi assures this Honorable Court this is not the case. Lengthy research, careful consideration, and proper preparation, all to the best of the Appellant's ability, have been exhausted in this matter.

Ultimately, through this appeal, it is the Appellant's endeavor to obtain relief and a statutory interpretation of §921.0025. And although it is this Honorable Court's duty to function in its appellate capacity, the Appellant still wishes to express gratitude for its consideration in this matter.

## STATEMENT OF THE CASE

This is an appeal from a final order denying the Appellant's motion to correct an illegal sentence. On the 10<sup>th</sup> of September, 2012, the State had filed a Second Amended Information, charging the Appellant with the following: Count One - Armed Burglary with a Firearm and Aggravated Assault and/or Battery; Count Two - Armed Robbery with a Firearm; Count Three - Armed Kidnapping; Count Four - False Imprisonment; Count Five - False Imprisonment; Count Six - Aggravated Assault; and Count Seven - Aggravated Assault. See R.O.A., pages 80-84. The Appellant proceeded to a trial by jury.

On the 13<sup>th</sup> of September, 2012, the Appellant was found guilty as charged and sentenced. As to counts one through three, he received 40 years with a 10 year mandatory minimum in the Florida Department of Corrections. In regards to counts four through seven, he received 185.4 months (the lowest permissible sentence according to the Criminal Punishment Code), with a 3 year mandatory minimum applicable to counts six and seven.

## STATEMENT OF THE FACTS

On October 28<sup>th</sup>, 2019, Alsaedi filed a motion to correct illegal an sentence pursuant to Rule 3.800(a), Fla. R. Crim. P. See R.O.A., page 24. On the 6<sup>th</sup> of November, 2019, he also filed an amended motion to correct illegal sentence. See R.O.A., page 35. Within these motions, Alsaedi asserts that his sentence is illegal due it is in violation of the holdings expressed by the United States Supreme Court in *Apprendi*<sup>1</sup> and *Blakely*<sup>2</sup>. See R.O.A., pages 24, 30, 35, and 45. In support of these motions, Alsaedi states:

1. The Legislature adopted the sentencing guidelines (rules 3.701, 3.702, 3.703, and 3.988, Fla. R. Crim. P.) for application to the Criminal Punishment Code. See R.O.A., page 37;
2. The sentencing guidelines provides a recommended sentencing range, a permitted sentencing range, and provisions for a departure sentence. See R.O.A., pages 42-43;
3. The level of proof necessary to substantiate a departure sentence is no longer a preponderance of the evidence, but proof beyond a reasonable doubt. See R.O.A., page 74;

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<sup>1</sup> *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct 2348, 147 L.Ed 2d 435(2000).

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

4. Since the level of proof necessary to support a departure sentence is now proof beyond a reasonable doubt, he should have been formally charged with a sentence enhancement in order for the lower court to legally depart from his applicable sentencing range. See R.O.A., page 76; and
5. He was not charged with any sentence enhancement that could legally uphold his sentence. See R.O.A., page 45.

On November 15, 2019, the lower tribunal issued an Order Denying Alsaedi's motion. See R.O.A., page 50. The Order Denying Alsaedi's motion expresses his sentence is legal because:

1. The permissible sentencing range under the Criminal Punishment Code is the lowest permissible sentence up to and including the statutory maximum. See R.O.A., page 50;
2. The Criminal Punishment Code does not establish a single sentencing range. See R.O.A., page 50; and
3. Alsaedi's claim, the court erroneously imposed an upward departure without written reasons, is not cognizable under rule 3.800(a). See R.O.A., page 51.

Following the Order Denying Alsaedi's motion, he filed a motion for rehearing on December 4<sup>th</sup>, 2019. See R.O.A., page 69. The motion for rehearing argues:

1. Alsaedi does not claim his sentence is illegal because it was not accompanied by written reasons for departure, but his sentence is illegal because he was not charged with any statutory enhancement that would permit the lower court to depart from the recommended range of the sentencing guidelines, and such departure resulted in an *Apprendi/Blakely* violation. See R.O.A., page 70;
2. The Criminal Punishment Code is comprised of §§921.002-0027, Fla. Stat., and amidst of the aforementioned sections, §921.0025 adopts rules 3.701, 3.702, 3.703, and 3.988 (the sentencing guidelines) for application to the Criminal Punishment Code. See R.O.A., pages 70-71;
3. The Criminal Punishment Code **does** establish a single sentencing range. See R.O.A., page 71;
4. Although the Criminal Punishment Code **does** provide a single sentencing range, it does not restrict the sentencing judge from imposing the statutory maximum. See R.O.A. pages 71-73;
5. The Criminal Punishment Code only establishes a “permissible sentencing range,” not an “actual sentencing range.” See R.O.A. pages 74-75;
6. The Criminal Punishment Code scoresheet should be accompanied with the forms under rule 3.988, Fla. R. Crim. P. See R.O.A. pages 74-75; and

7. Being Alsaedi claims his sentence is in violation of *Apprendi* and *Blakely*, his sentencing error is cognizable under rule 3.800(a), Fla. R. Crim. P. See R.O.A., pages 75-76.

On the 16<sup>th</sup> of December, 2019, the lower tribunal issued an Order Denying the motion for rehearing, stating it found no overlooked issue of fact or law that would change its ruling. See R.O.A., page 93. This appeal follows.

## **SUMMARY OF THE ARGUMENT**

The sole issue on appeal is Alsaedi's sentence for counts one through three, concurrent terms of 40 years, is illegal because it exceeds his "prescribed statutory maximum" resulting in an *Apprendi/Blakely* violation. It is based on the argument that: 1) Section 921.0025 adopted rules 3.701, 3.702, 3.703, and 3.988 (the sentencing guidelines), for application to the Criminal Punishment Code; 2) After the United States Supreme Court's holdings in *Apprendi v. New Jersey* and *Blakely v. Washington*, the level of proof required to uphold a departure sentence under the sentencing guidelines is no longer a preponderance of the evidence, but proof beyond a reasonable doubt, which requires the factual findings of a jury, an admission, or prior record; and 3) Being that the level of proof necessary to substantiate a departure sentence is now proof beyond a reasonable doubt, Alsaedi should have been formally charged with a statutory sentence enhancement to permit such a departure. Therefore, Alsaedi's sentence should have never exceeded the recommended range of rule 3.988(i), Fla .R. Crim. P.

## ARGUMENT

### ISSUE ONE:

MR. ALSAEDI'S SENTENCE IS ILLEGAL BECAUSE IT IS IN VIOLATION OF THE HOLDINGS EXPRESSED BY THE UNITED STATES SUPREME COURT IN APPRENDI V. NEW JERSEY, 530 US 466, 120 S Ct 2348, 147 L Ed 2d 435 (2000), AND BLAKELY V. WASHINGTON, 542 US 296, 124 S Ct 2531, 159 L Ed 2d 403 (2004)

#### A. Standard of Review:

The denial of a 3.800(a) motion is subject to a de novo standard of review.

See *Williams v. State*, 244 So. 3d 1173, 1175 (Fla. 2d DCA 2018) (“We review the denial of a rule 3.800(a) motion de novo”); see also *Daniels v. State*, 870 So. 2d 250, 253 (Fla. 2d DCA 2004) (“Daniels preserved this issue in his rule 3.800(a) motion, and our standard of review is de novo”). This standard also applies to questions of statutory interpretation. See *Lopez v. Hall*, 233 So. 3d 451, 453 (Fla. 2018) (“We review questions of statutory interpretation de novo”).

#### B. Argument on the Merits:

##### Genesis of the Criminal Punishment Code:

The Criminal Punishment Code, hereinafter CPC, punishment code or the code, was created in 1997. See *Ch 97-194*, Laws of Fla.; and §921.002, Fla stat. (1997). It consisted of:

**§ 921.002.** The Criminal Punishment Code.

**§ 921.0021.** Definitions.

**§ 921.0022.** Criminal Punishment Code; offense severity ranking chart.

**§ 921.0023.** Criminal Punishment Code; ranking unlisted felony offenses.

**§ 921.0024.** Criminal Punishment Code; worksheet computations; scoresheets.

**§ 921.0026.** Mitigating circumstances.

**§ 921.0027.** Criminal Punishment Code and revisions; applicability.

See §921.002 -.0027, Fla. Stat. (1997). This version of the CPC demonstrated an attempt to abolish the sentencing guidelines. See *Florida Senate Staff Analysis and Economic Impact Statement CS/SB 1522*, page 2 (April 2<sup>nd</sup>, 1998). And although it was placed within the 1997 Florida Statutes, the punishment code didn't take effect until October 1<sup>st</sup>, 1998. See § 921.002, n. 1, Fla. Stat. (1997).

In the course of the 1997 legislative session, The Committee Substitute for House Bill 241 took on many changes and at a fast pace. See *Florida Senate Staff Analysis and Economic Impact Statement CS/SB 1522*, page 2 (April 2<sup>nd</sup>, 1998). Due to these changes, and at the rate in which they occurred, review of CS/HB 241 was limited. As a result, the punishment code still needed to be revised prior to its effective date. *Id.*

In between 1997's and 1998's Legislative Sessions, the Criminal Justice Committee was assigned by the Senate President to review CS/HB 241. Their goals were to look over the statutory changes made in CS/HB 241, determine the revisions necessary in order to bring about the desired legislative intent, and provide a smooth

application of the new sentencing structure. *Id.* The Senate Staff's review of CS/HB 241 included consultation with: House Staff; State Attorneys; Public Defenders; the Office of the State Courts Administrator; staff for the Sentencing Commission; and the Office of the Governor. *Id.* Following the review of CS/HB 241, several changes were identified and deemed necessary. These changes are contained in SB 1522.

As part of the changes made, the Legislature enacted §921.0025 (Adoption and implementation of revised sentencing scoresheets). See *Ch. 98-204*, s. 7, Laws of Fla.; *Florida Senate Staff Analysis and Economic Impact Statement CS/SB 1522*, page 2 (April 2<sup>nd</sup>, 1998); and §921.0025, Fla. Stat. (1998). This section of the Florida Statutes adopts the sentencing guidelines for application to the punishment code. It specifically states: "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 chapter 921 for application to the Criminal Punishment Code". *Id.*

The above mentioned rules specified in section 921.0025 are the sentencing guidelines. Rule 3.701 is the rule governing the 1983 sentencing guidelines. Rule 3.702 is the rule pertaining to the 1994 sentencing guidelines. Rule 3.703 is the rule regarding the amended 1994 sentencing guidelines. And rule 3.988 is the sentencing

scoresheets that were used in conjunction with rule 3.701 (the 1983 sentencing guidelines).

The Effect of Rules Adopted By Statute:

When the Legislature chooses to adopt rules, the rule inherits the force of the statute. See *State Dep't of Environmental Regulation v. C.P. Developers, Inc.*, 512 So. 2d 258, 261 (Fla. 1<sup>st</sup> DCA 1987) ("Since the amendments to Rule 17-4.022 were approved by the Legislature in chapter 84-79, section 9, Laws of Florida, and were codified in section 403.8171, Florida Statutes, the rule should be treated as a statute.") (citing *Occidental Chemical v. State Department of Environmental Regulation*, 501 So. 2d 674, 677-678 (Fla. 1<sup>st</sup> DCA 1987); and *Ray v. State* 556 So. 2d 495, 497 (Fla. 1<sup>st</sup> DCA 1990) ("It is our view that when the Legislature adopted the revisions to rule 3.701(d)(13) and the committee note thereto that these changes acquired the force and effect of law.") (citing and quoting *Smith v. State*, 537 So. 2d 982, 987 (Fla. 1987) ("[W]hen Legislature adopted Rules 3.701 and 3.988 in Ch. 84-328, the rules became a statute."). Therefore, being rules 3.701, 3.702, 3.703, and 3.988, Fla. R. Crim. P., are codified in s. 921.0025, Fla. Stat., they are also statutes.

Statutory Interpretation:

The first step in statutory interpretation is the plain-language approach. See *State v. Lewars*, 259 So. 3d 793, 797 (Fla. 2018) ("To answer a question of statutory construction, courts must first look to the statute's language [], considering its words

in the context of the entire section rather than in isolation") (citations omitted). The plain-language approach is employed first as a precautionary measure with the intention of prohibiting courts from misconstruing and misapplying an unambiguous statute. *Id.*, at 798 ("The plain-language approach is required because the courts of this state lack the 'power to construe an unambiguous statute in a way which would extend, modify, or limit[] its express terms or its reasonable and obvious implications'" (citing *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). It also serves the purpose of compelling courts to provide the effect of the statute's expression regardless of the Legislature's intent. *Id.* ("Thus, '[e]ven where a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity'" (citing *St. Petersburg Bank & Trust Co. V. Hamm*, 414 So. 2d 1071, 1073 (Fla. 1982)).

On the other hand, "the plain-language approach is subject to the qualification that if a part of a statute appears to have a clear meaning if considered alone[,] but when given that meaning is inconsistent with other parts of the same statute or others in pari materia, the Court will examine the entire act and those in pari materia in order to ascertain the overall legislative intent. When construing a particular part of a statute it is only when the language being construed in and of itself is of doubtful meaning or doubt as to its meaning is engendered by apparent inconsistency with

other parts of the same or a closely related statute that any matter extrinsic the statute may be considered by the Court in arriving at the meaning of the language employed by the Legislature.” See *Bank of New York Mellon v. Glenville*, 252 So. 3d 1120, 1128 (Fla. 2018) (citing *Fla. State Racing Comm'n v. McLaughlin*, 102 So. 2d 574, 575-76 (Fla. 1958)).

#### Sentencing Pursuant To The CPC

Sentencing in general has proven to be an intricate procedure. The parameters of a sentence that may be imposed are expressed within the body of the punishment code. An understanding of these parameters may be acquired through close examination of §921.002(g), §921.0024(2), §921.0024(7), and §921.0025, Fla. Stat. (2012)<sup>3</sup>.

The punishment code says a sentence imposed may be up to and including the statutory maximum:

“The trial court judge may impose a sentence up to and including the statutory maximum for any offence, including an offense that is before the court due to a violation of probation or community control.”

See §921.002(g), Fla Stat. (2012). It also says that the permitted range for sentencing is the lowest permissible sentence up to and including the statutory maximum:

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<sup>3</sup> The Appellant makes reference to the 2012 version of the Florida Statutes being they are the applicable version to his judgment and sentence

“The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082...”

See §921.0024(2), Fla. Stat. (2012). These two sections establish a general, or overall permissible, sentencing range for the degree of the felony charged. Not an actual sentencing range.

As for the actual sentencing range, the code states the CPC scoresheet and the sentencing guidelines scoresheet are to be included with the uniform judgment and sentence form that is provided to the Department of Corrections:

“A sentencing scoresheet must be prepared for every defendant who is sentenced for a felony offense. A copy of the individual offender’s Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, 3.702, or 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation and submission of felony sentencing scoresheets, must be attached to the copy of the uniform judgment and sentence form provided to the Department of Corrections.”

See §921.0024(7), Fla. Stat. (2012). This section complements the fact the sentencing guidelines are to be applied to the punishment code:

“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.”

See §921.0025, Fla. Stat. (2012). As previously stated in this brief, the rules adopted by this statute are the sentencing guidelines. The sentencing guidelines establish an actual sentencing range that is within the general, or overall permissible, sentencing range.

Basically, the Criminal Punishment Code is a hybrid sentencing structure consisting of the sentencing guidelines and the code itself. The CPC aspect of our sentencing structure mainly targets violent and repeat offenders. See §921.002(1), Fla. Stat. (2012) (“...and to make the best use of state prisons so that violent criminal offenders are appropriately incarcerated...”) §921.002(1)(c), Fla. Stat. (2012) (“The penalty imposed is commensurate with the severity of the primary offence and the circumstances surrounding the primary offense.”) and §921.002(1)(d), Fla. Stat. (2012) (“The severity of the sentence increases with the length and nature of the offender’s prior record.”) It serves the purpose of heightening the severity of a sentence by raising the floor end of an actual sentence provided by the sentencing guidelines.

The sentencing guidelines prescribes what is deemed to be an appropriate sentencing range for a criminal defendant. See *Rule 3.701(d)(8)*, Fla. R. Crim. P. (2012) (“The recommended sentences provided in the guideline grids are assumed to be appropriate for the composite score of the offender”). It calculates points based on an assessment of the defendant’s primary offense, additional offenses, prior

record, firearm possession, victim injury, and legal status. The total of the points calculated places the defendant within a cell that recommends a sentencing range, and advises the court on how far they may deviate from that range.

Apprendi and Blakely:

On June 26<sup>th</sup>, 2000, the United States Supreme Court issued a ruling in the case of *Charles C. Apprendi v. New Jersey*. The Court held “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the **prescribed statutory maximum** must be submitted to the jury, and proved beyond a reasonable doubt.” See *Apprendi v. New Jersey*, 530 US 466, 147 L Ed 2d 435, 120 S Ct 2348 (2000): See also *Hurst v. State*, 202 So.3d 40, 48 (Fla. 2016) (Ten years after Walton, the Supreme Court decided *Apprendi v. New Jersey*, 530 US 466, 147 L Ed 2d 435, 120 S Ct 2348 (2000), in which the court held that the Sixth Amendment does not permit a defendant in a noncapital case, without additional jury findings, to be exposed to a penalty exceeding the maximum he would receive if the punishment was based only on the facts reflected).

Later in June 2004, the Court also decided on the case of *Ralph Howard Blakely v. Washington*. In this case, the Court held: “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 additions facts, but the maximum he may impose without any additional findings." See *Blakely v. Washington*, 542 US 296, 159 L Ed 2d 403, 124 S Ct 2531 (2004); See also *Brown v. State*, 260 So.3d 147, 150 (In Apprendi, the United States Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and be proved beyond a reasonable doubt." 530 U.S. at 490 (emphasis added). In *Blakely v. Washington*, 542 US 296, 159 L Ed 2d 403, 124 S Ct 2531 (2004), the **Supreme Court defined** the "**statutory maximum**" as "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant").

#### The Effect of Apprendi and Blakely On The CPC:

Once again, the punishment code establishes a general, or overall permissible, sentencing range for the degree of the felony charged. The bottom end of this general, or overall permissible, sentencing range is the lowest permissible sentence. The lowest permissible sentence is a calculation based on factors such as the primary offense, additional offenses, prior record, victim injury, firearm possession, and legal status. The top end of this general, or overall permissible, sentencing range is the statutory maximum of the degree felony charged as expressed in section 775.082, Fla. Stat.

The sentencing guidelines provide an actual sentencing range. This sentencing range is also provided by calculating points based on factors such as those considered in determining the lowest permissible sentence of the CPC. The assessment of points places the criminal defendant within a specific sentencing cell which prescribes an appropriate sentencing range. See *Rule 3.701(d)(8)*, *supra*.

Moreover, the sentencing guidelines contains provisions for imposing a sentence that is beyond the recommended and permitted range. This is called a “departure sentence.” See *Rules 3.701(b)(6)*, Fla. R. Crim. P. (2012), *3.701 (d)(11)*, Fla. R. Crim. P. (2012), *3.702(d)(18)*, Fla. R. Crim. P. (2012), *3.702(d)(18)(A)*, Fla. R. Crim. P. (2012), *3.703(d)(30)*, Fla. R. Crim. P. (2012), *and 3.703(d)(30)(A)*, Fla. R. Crim. P. (2012). A sentence is considered a departure sentence once it exceeds 25 of the recommended range. See *Rules 3.702(d)(18)*, Fla. R. Crim. P (2012); and *3.703(d)(30)*, Fla. R. Crim. P (2012) (“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”).

At one point, departure sentences beyond the recommended and permitted ranges had to be based on aggravating factors contained in s. 921.0016(3), Fla. Stat. See *Rules 3.702(d)(18)*, Fla. R. Crim. P (2012); and *3.703(d)(30)*, Fla. R. Crim. P (2012) (“Circumstances or factors that can be considered include, but are not limited to, those listed in subsections 921.0026(3) and (4)”). The aggravating factors for

departure were to be based on a preponderance of evidence. See *Rule 3.701(d)(6)*, Fla. R. Crim. P (2012) (“The level of proof necessary to establish facts supporting a departure from a sentence under the guidelines is a preponderance of the evidence”)

Since the rulings of *Apprendi* and *Blakely* in the United States Supreme Court, sentencing proceedings all over the United States have been altered. Sentences beyond a prescribed statutory maximum must be based on either: a) a factual finding made by the jury; b) an admission by the defendant; or c) the defendant’s prior record. Therefore, the appropriate level of proof to support a departure sentence can no longer be a preponderance of evidence. It is proof beyond a reasonable doubt.

Applied Analysis:

In regard to the Appellant’s Criminal Punishment Code scoresheet, the Appellant does not assert any discrepancies. The calculations within it are true and correct. His general, or overall permissible, sentencing rage is between 185.4 months (nearly 15 ½ years) and up to and including life.

It is the Appellant’s position that his actual sentence of 40 years is illegal. According to the sentencing guidelines, specifically rule 3.988(i), Fla. R. Crim. P, the Appellant scores out to a recommended range of 12 -17 years and a permitted range of 9 – 22 years. Due to the application of the Sentencing guidelines to the CPC, his recommended range and permitted ranges are subject to alteration. The

actual recommended range becomes 15 ½ -17 years, and the actual permitted range becomes 15 ½ - 22 years.

Establishing the Appellant's actual recommended and permitted ranges is accomplished by calculating his general, or overall permissible, sentencing range under the punishment code. This provides what the lower end of each range will be. Upon completion of the CPC's scoresheet, the guideline sentence is to be calculated using the forms provided by rule 3.988(j), Fla .R. Crim. P. Both, the CPC scoresheet and the sentencing guidelines scoresheet, are to be applied in conjunction with each other to arrive at the Appellant's actual recommended and permitted ranges.

While the Appellant concedes to the CPC's scoresheet accuracy, calculation of his guideline sentence is needed to demonstrate his sentence is illegal. This is done through the addition of points based on multiple factors. The total of the points calculated places the Appellant within a specific sentencing cell prescribing a recommended and permitted range.

The first factor to consider is the "Primary Offense at Conviction". In this case, the primary offense is Armed Kidnapping. This offense requires the application of the point system and sentencing chart provided by rule 3.988(i), Fla. R. Crim. P., to forms in 3.988(j), Fla. R. Crim. P. Armed kidnapping is a life felony. A life felony as a primary offense carries 241 points.

The next factor to consider is the “Additional Offenses at Conviction.” The Appellant was also convicted of six more offenses aside from his primary offense. Two of the six additional offenses are first degree felonies, punishable by life, and the other four are third degree felonies. Two counts of first degree felonies, punishable by life, carry 45 points, and four counts of third degree felonies carry 22 points. Together, 67 points are to be assessed as “Additional Offenses at Conviction.”

Following, is the Appellant’s “Prior Record”. His Prior record consists of one third degree felony and two misdemeanors. Two points are added for the third degree felony, as well as five points for the two misdemeanors. The Appellant’s prior record totals 15 points.

After his prior records, there are several other factors to consider; Same Category Priors; Prior DUI Conviction; Legal Status; and Victim Injury. None of these factors are applicable to the Appellant, but there is one factor not listed on form 3.988(j): Possession of a Firearm. See *Rule 3.702(d)(12)*, Fla. R. Crim. P. (2012) and *Rule 3.703 (d)(19)*, Fla. R. Crim. P. (2012) (‘Eighteen sentence points are assessed if the offender is convicted of committing or attempting to commit any felony other than those enumerated in subsection 775.087(2) while having his or her possession of a firearm as defined in subsection 790.001(6)’). Pursuant to these

cited rules, an additional 18 points are added to the rest of the contributing factors that produce a total score.

Assessing all of the above listed factors, the Appellant's total score is 341 points:

Primary Offense.....	241
Additional Offense.....	67
Prior Record.....	15
Possession of a Firearm.....	18
Total.....	341

It places the Appellant within the "Guideline Sentence" cell ranging between 283 – 348 points. Once again, this cell prescribes a recommended range of 12 – 17 years, and a permitted range of 9 – 22 years. Applying these results to the CPC's scoresheet, the ranges are altered to reflect a new prescription. The code now prescribes a recommended range of 15 ½ - 17 years, and a permitted range of 15 ½ - 22 years.

The new ranges prescribed by the code may be subject to a departure of mitigation or aggravation. A mitigation departure is to be based on circumstances provided in s. 921.0026. The aggravating departure, due to the effects of Apprendi and Blakely, must be statutorily charged against the Appellant, i.e.: HFO, HVFO, PRR, or any other statutory sentence enhancement currently existing or to be enacted in the future. Also due to Apprendi and Blakely, the departure **must** be based on: a)

Factual findings made by a jury; b) an admission by the Appellant; or c) the Appellant's prior record.

Based on the code's prescription for the Appellant's charged offenses, his sentence is illegal. He was not charged with offenses totaling a score that permits a sentence of 40 years without necessitating a departure. Nor was he charged with any sentence enhancements allowing an aggravating departure to permit such a sentence.

## CONCLUSION

In conclusion, the punishment code is comprised of §921.002 – 0027. Observation of §921.002(g), §921.0024(2), §921.0024(7), and §921.0025 is required in order to gain full understanding of the code. See *Bank of New York Mellon v. Glenville*, Supra.<sup>4</sup> Observing all four sections will also give full effect to all of the statutory provisions, and allow them to be construed in harmony with each other. *Id.*<sup>5</sup>

Moreover, in comparison, the code, as express in this brief, is also nearly identical to the State of Washington's Sentencing Scheme. In support, the Appellant provides the following examples:

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<sup>4</sup> "So, looking to section 45.032 to understand the meaning of section 45.031 is proper because section 45.031, section 45.032, and several other sections of chapter 45 together comprise a statutory scheme relating to Judicial Foreclosure sale procedures."

<sup>5</sup> "In the end, looking to section 45.032 is in accord with the principle that we give full effect to all statutory provisions and construe related statutory provisions in harmony with one another."

1a. "In Washington, second degree kidnapping is a Class B Felony.[]]. State law provides that no person convicted of a [Class B] Felony shall be punished by confinement...exceeding...a term of ten years. See *Blakely*, 542 US 296, at 299.

1b. Here, in the State of Florida, armed kidnapping is a life Felony. See §787.01(2) Fla. Stat. (2012); and 775.087(1) and (1)(a), Fla. Stat. (2012).<sup>6</sup> A life felony is punishable by a term of life or a term of years not exceeding life. See 775.082(3)(a)3, Fla. Stat. (2012).<sup>7</sup>

2a. "Other provisions of state law, however, further limit the range of sentences a judge may impose. Washington's Sentencing Reform Act specifies, for petitioner's offense of second degree kidnapping with a firearm a "standard range" of 49-53 months." See *Blakely*, *supra*.

2b. The CPC, along with the Sentencing Guidelines, as expressed in the "Applied Analysis" section of this brief, also further limits the

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<sup>6</sup> "A person who kidnaps a person is guilty of a felony of the first degree, punishable by imprisonment for a term of years not exceeding life..."; "unless otherwise provided by law, whenever a person is charged with a felony...and during the commission of such felony the defendant carries, displays, uses, threatens to use...any weapon or firearm..the felony for which the person is charged shall be reclassified as follows: (a) in the case of a felony of the first degree, to a life felony."

<sup>7</sup> "Except as provided by subparagraph 4., for a life felony committed on or after July 1, 1995, by a term or imprisonment for life or by imprisonment for a term or years not exceeding life imprisonment".

Appellant's sentencing range. Accordingly his recommended range is 15 ½ - 17 years and his permitted range is 15 ½ -22.

3a. "a judge may impose a sentence above the standard range if he finds substantial and compelling reasons justifying an exceptional sentence."

See Blakely, *supra*.

3b. Again, as previously expressed in this brief, the sentencing guidelines provide rules for departure sentences.

Blakely was sentenced to 90 months in prison, which was beyond his "standard range", but within the ten year cap for class B felony. The United States Supreme Court found his sentence to be illegal due to the fact it was beyond the prescribed statutory maximum of 49-53 months without factual findings made by the jury, an admission, or his prior record. The Appellant's circumstances greatly resemble Blakely's and the average person would also construe the Criminal Punishment Code in this manner.

In the event where this Honorable Court may construe or interpret the CPC in another manner, the Appellant asserts that such construal or interpretation would render the CPC ambiguous. Based on ambiguity, the rule of lenity would cause this Honorable Court to rule in favor of the Appellant. See *State v. Weeks*, 202 So.3d 1,

9 (Fla. 2016).<sup>8</sup> In addition and contrary to the lower court's order denying, the Appellant's claim is cognizable on a rule 3.800(a) motion being it amounts to an Apprendi/Blakely violation. *See Plott v. State*, 148 So.3d 90 (Fla. 2014).<sup>9</sup>

Ultimately, based on the foregoing facts and argument, the Appellant's case should be reversed and remanded to the lower tribunal for resentencing within the ranges provided in rule 3.988(i) of the Fla. R. Crim. P.

/s/



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

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<sup>8</sup> "The rule of lenity requires ambiguous criminal laws to be interpreted in favor of the defendant's subject to them."

<sup>9</sup> "we conclude that a claim or error under Apprendi and Blakely is cognizable in a rule 3.800(a) motion."

## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that two copies of the foregoing brief has been in the hands of classification personnel, at Graceville Correctional Facility, for the purpose of mailing to: The Second District Court of Appeal at P.O. Box 327, Lakeland, Florida 33802; and The Attorney General's Office at 3507 E. Frontage Rd., Suite 200, Tampa, Fla. 33602 on this        day of April, 2020

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

## **CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY** that this brief complies with the font requirements of Rule 9.210(a)(2), Florida Rules of Appellate Procedure.

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

Appendix "H"

(Example of the Petitioner's Corrected CPL scoresheet)

## APPENDIX

### 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](http://www.dc.state.fl.us/pub/sen_cpcm/index.html)

1. DATE OF SENTENCE	2. PREPARER'S NAME	3. COUNTY	4. SENTENCING JUDGE
5. NAME (LAST, FIRST, M.I.)		6. DOB	8. RACE <input type="checkbox"/> B <input type="checkbox"/> W <input type="checkbox"/> OTHER
		7. DC #	9. GENDER <input type="checkbox"/> M <input type="checkbox"/> F

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

FELONY DEGREE	F.S. # <u>715.067(1) and (a)(4)</u> DESCRIPTION	OFFENSE LEVEL	POINTS
<u>LF</u>	<u>787.01(Y)(a)2(i)(b) Armed Kidnapping</u>	<u>10</u>	<u>116</u>

(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>PPBL</u>	<u>810.02(1)(b)(a)(b)</u>	<u>6</u>	<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 1</u>	<u>37</u>	<u>37</u>	<u>37</u>
DESCRIPTION	<u>Armed Burg w/ Firearm and/or Assault and/or battery</u>						
<u>Same</u>	<u>PPBL</u>	<u>812.13(1)(b)(a)</u>	<u>9</u>	<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 1</u>	<u>46</u>	<u>46</u>	<u>46</u>
DESCRIPTION	<u>Armed Robbery</u>						
<u>Same</u>	<u>3<sup>rd</sup> Fel.</u>	<u>787.02(1)(a)</u>	<u>6</u>	<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 2</u>	<u>18</u>	<u>18</u>	<u>36</u>
DESCRIPTION	<u>False Imprisonment</u>						
<u>Same</u>	<u>3<sup>rd</sup> Fel.</u>	<u>784.021(1)(a)</u>	<u>6</u>	<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 2</u>	<u>18</u>	<u>18</u>	<u>36</u>
DESCRIPTION	<u>Aggravated assault w/ Firearm</u>						

(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.

271

III. VICTIM INJURY:

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

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>812.019(1) 5</u>	<u>5</u>	<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 1</u>	<u>Crim. Poss. Stolen Property</u>	<u>1</u>	<u>x 3.6</u>	<u>3.6</u>
<u>M</u>	<u>/</u>	<u>/</u>	<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 1</u>	<u>Disorderly Conduct</u>	<u>1</u>	<u>x .2</u>	<u>.2</u>
<u>M</u>	<u>/</u>	<u>/</u>	<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 3</u>	<u>False info to LEO</u>	<u>3</u>	<u>x .2</u>	<u>.4</u>
			<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 1</u>		<u>X</u>	<u>=</u>	
			<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 1</u>		<u>X</u>	<u>=</u>	
			<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 1</u>		<u>X</u>	<u>=</u>	
			<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 1</u>		<u>X</u>	<u>=</u>	
			<u><input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> 1</u>		<u>X</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

4.2

IV.

271

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.

NAME (LAST, FIRST, MI)	DOCKET #
Alsaedi, El-Asad	12-CF-7

Page 1 Subtotal: 276.2

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

Enhanced Subtotal Sentence Points \_\_\_\_\_

TOTAL SENTENCE POINTS

IX. 275.2

### SENTENCE COMPUTATION

If the 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 Statutes 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.

Years  
maximum sentence in years

TOTAL SENTENCE IMPOSED

Years Months Days

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 \_\_\_\_\_

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 "I"

(Sentencing guidelines)

Rule 3.988(a)  
Category 1: Murder, Manslaughter



I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	165	226	286	346	_____
1st pbl	150	195	276	336	_____
1st	136	165	226	286	_____
2nd	77	93	106	121	_____
3rd	45	55	65	75	_____
Primary offense counts in excess of four: Add 60 for each additional life Add 60 for each additional 1st pbl Add 60 for each additional 1st Add 15 for each additional 2nd Add 10 for each additional 3rd					
Total					

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	61	73	79	85	_____
1st pbl	45	54	58	63	_____
1st	29	35	38	41	_____
2nd	16	19	21	22	_____
3rd	10	12	13	14	_____
MM	2	3	4	5	_____
Additional offense counts in excess of four: Add 6 for each additional life Add 5 for each additional 1st pbl Add 3 for each additional 1st Add 1 for each additional 2nd Add 1 for each additional 3rd Add 1 for each additional MM					
Total					

III. A. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	50	110	180	270	_____
1st pbl	40	88	138	216	_____
1st	30	66	96	162	_____
2nd	15	33	48	81	_____
3rd	5	11	18	27	_____
MM	1	2	4	6	_____
Prior convictions in excess of four: Add 90 for each additional life Add 78 for each additional 1st pbl Add 66 for each additional 1st Add 33 for each additional 2nd Add 9 for each additional 3rd Add 2 for each additional MM					
Total					

III. B. Prior DUI Convictions

Add 32 for each prior DUI conviction only where primary offense is DUI manslaughter.  
Priors x 32 = \_\_\_\_\_ Total Points

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	21
Total	

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None	x	0	=	_____
Slight	x	7	=	_____
Moderate	x	14	=	_____
Death or severe	x	21	=	_____
Total				

Rule 3.988(a)  
Category 1: Murder, Manslaughter



Chapter 782--Homicide (except subsection 782.04(1)(a)--capital murder)

Subsection 316.193(3)(c)(3)--DUI Manslaughter (automobile)

Subsection 327.351(2)--DUI Manslaughter (vessel)

GUIDELINE SENTENCE

Points	Recommended Range	Permitted Range
66	any nonstate prison sanction	any nonstate prison sanction
67 - 92	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 7 years incarceration
93 - 135	5 (3 - 7)	community control or 1 - 12 years incarceration
136 - 164	10 (7 - 12)	3 - 17
165 - 225	15 (12 - 17)	7 - 22
226 - 285	20 (17 - 22)	12 - 27
286 - 345	25 (22 - 27)	17 - 40
346 - 381	30 (27 - 40)	22 - Life
382+	Life	27 - Life

Note — Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1), §921.001(5), Fla. Stat. (Supp. 1988).

Rule 3.988(b)  
Category 2: Sexual Offenses

2

I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	262	314	340	366	_____
1st	216	259	281	302	_____
2nd	158	190	206	222	_____
3rd	149	179	193	209	_____

Primary offense counts in excess of four:  
Add 26 for each additional life  
Add 21 for each additional 1st  
Add 16 for each additional 2nd  
Add 16 for each additional 3rd

Total \_\_\_\_\_

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	44	53	69	97	_____
1st pbl	40	48	62	88	_____
1st	36	43	56	78	_____
2nd	26	31	40	56	_____
3rd	25	30	39	55	_____
MM	5	6	8	11	_____

Additional offense counts in excess of four:  
Add 28 for each additional life  
Add 26 for each additional 1st pbl  
Add 22 for each additional 1st  
Add 16 for each additional 2nd  
Add 16 for each additional 3rd  
Add 3 for each additional MM

Total \_\_\_\_\_

III. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	264	530	810	1100	_____
1st pbl	211	424	648	880	_____
1st	158	318	486	660	_____
2nd	80	159	243	330	_____
3rd	26	53	81	110	_____
MM	5	10	15	20	_____

Prior convictions in excess of four:  
Add 290 for each additional life  
Add 232 for each additional 1st pbl  
Add 174 for each additional 1st  
Add 87 for each additional 2nd  
Add 29 for each additional 3rd  
Add 5 for each additional MM

Total \_\_\_\_\_

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	30
Total	_____

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None	x	0	=	_____
Contact but no penetration	x	20	=	_____
Penetration or slight injury	x	40	=	_____
Death or serious injury	x	85	=	_____
Total	x	_____	=	_____

Rule 3.988(c)  
Category 3: Robbery

3

I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	102	122	133	148	_____
1st pbl	82	98	107	119	_____
1st	70	84	91	101	_____
2nd	50	60	65	75	_____
3rd	34	41	44	54	_____
Primary offense counts in excess of four:					
Add 15 for each additional life					
Add 12 for each additional 1st pbl					
Add 10 for each additional 1st					
Add 10 for each additional 2nd					
Add 10 for each additional 3rd					
Total					

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	20	24	26	28	_____
1st pbl	17	20	22	24	_____
1st	14	17	18	19	_____
2nd	10	12	13	14	_____
3rd	7	8	9	10	_____
MM	1	2	3	4	_____
Additional offense counts in excess of four:					
Add 2 for each additional life					
Add 2 for each additional 1st pbl					
Add 1 for each additional 1st					
Add 1 for each additional 2nd					
Add 1 for each additional 3rd					
Add 1 for each additional MM					
Total					

III. A. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	100	210	330	460	_____
1st pbl	80	168	264	368	_____
1st	60	126	198	276	_____
2nd	30	63	99	138	_____
3rd	10	21	33	46	_____
MM	2	5	8	12	_____
Prior convictions in excess of four:					
Add 130 for each additional life					
Add 104 for each additional 1st pbl					
Add 78 for each additional 1st					
Add 39 for each additional 2nd					
Add 13 for each additional 3rd					
Add 4 for each additional MM					
Total					

III. B. Same Category Priors

Add 25 for each prior category 3 offense.  
\_\_\_\_ Priors x 25 = \_\_\_\_\_ Total Points

IV. Legal Status at Time of Offense

Status	Points	
	0	17
No restrictions	0	17
Legal constraint		
Total		_____

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None	0			_____
Slight	7			_____
Moderate	14			_____
Death or severe	21			_____
Total				_____

Rule 3.988(c)  
Category 3: Robbery



Section 812.13--Robbery

Section 812.131 - Carjacking

Section 812.135 - Home Invasion Robbery

GUIDELINE SENTENCE

Points	Recommended Range	Permitted Range
34 - 53	any nonstate prison sanction	any nonstate prison sanction
54 - 65	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 3 1/2 years incarceration
66 - 81	3 (2 1/2 - 3 1/2)	community control or 1 - 4 1/2 years incarceration
82 - 101	4 (3 1/2 - 4 1/2)	2 1/2 - 5 1/2
102 - 121	5 (4 1/2 - 5 1/2)	3 1/2 - 7
122 - 151	6 (5 1/2 - 7)	4 1/2 - 9
152 - 183	8 (7 - 9)	5 1/2 - 12
184 - 229	10 (9 - 12)	7 - 17
230 - 295	15 (12 - 17)	9 - 22
296 - 357	20 (17 - 22)	12 - 27
358 - 417	25 (22 - 27)	17 - 40
418 - 453	30 (27 - 40)	22 - Life
454 +	Life	27 - Life

Note--Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1), § 921.001(5), Fla. Stat. (Supp. 1988).

Rule 3.988(d)  
Category 4: Violent Personal Crimes



I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
1st	147	176	191	206	_____
2nd	105	126	136	146	_____
3rd	73	88	95	102	_____
Primary offense counts in excess of four: Add 15 for each additional 1st Add 10 for each additional 2nd Add 7 for each additional 3rd					
Total					

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
1st	29	35	38	41	_____
2nd	21	25	27	29	_____
3rd	15	18	20	21	_____
MM	3	4	5	6	_____
Additional offense counts in excess of four: Add 3 for each additional 1st Add 2 for each additional 2nd Add 1 for each additional 3rd Add 1 for each additional MM					
Total					

III. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	50	110	160	270	_____
1st pbl	40	88	128	216	_____
1st	30	66	96	162	_____
2nd	15	33	48	81	_____
3rd	5	11	18	27	_____
MM	1	2	4	6	_____
Prior convictions in excess of four: Add 90 for each additional life Add 88 for each additional 1st pbl Add 66 for each additional 1st Add 33 for each additional 2nd Add 9 for each additional 3rd Add 2 for each additional MM					
Total					

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	36
Total	

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None	x	0	=	_____
Slight	x	12	=	_____
Moderate	x	24	=	_____
Death or severe	x	36	=	_____
Total				_____

**Rule 3.988(d)**  
**Category 4: Violent Personal Crimes**



**Chapter 784—Assault, Battery**

**Section 836.05--Threats, Extortion**

**Section 836.10--Written Threats to Kill or Do Bodily Injury**

**Section 843.01--Resisting Officer with Violence**

**Subsection 381.411(4)(b)--Battery on HRS Employee**

**GUIDELINE SENTENCE**

Points	Recommended Range	Permitted Range
73 - 112	any nonstate prison sanction	any nonstate prison sanction
113 - 154	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 3 1/2 years incarceration
155 - 176	3 (2 1/2 - 3 1/2)	community control or 1 - 4 1/2 years incarceration
177 - 192	4 (3 1/2 - 4 1/2)	2 1/2 - 5 1/2
193 - 206	5 (4 1/2 - 5 1/2)	3 1/2 - 7
207 - 228	6 (5 1/2 - 7)	4 1/2 - 9
229 - 254	8 (7 - 9)	5 1/2 - 12
255 - 292	10 (9 - 12)	7 - 17
293 - 352	15 (12 - 17)	9 - 22
353 - 412	20 (17 - 22)	12 - 27
413 - 472	25 (22 - 27)	17 - 40
473 +	30 (27 - 40)	22 - 40

Note--Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1), § 921.001(5), Fla. Stat. (Supp. 1988).

Rule 3.988(e)  
Category 5: Burglary

5

I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	80	96	104	112	_____
1st pbl	70	84	91	98	_____
1st	60	72	78	84	_____
2nd	30	36	39	42	_____
3rd	20	24	26	28	_____
Primary offense counts in excess of four:					
Add 8 for each additional life					
Add 7 for each additional 1st pbl					
Add 6 for each additional 1st					
Add 3 for each additional 2nd					
Add 2 for each additional 3rd					
Total					

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	16	19	21	23	_____
1st pbl	14	16	18	20	_____
1st	12	14	16	17	_____
2nd	6	7	8	9	_____
3rd	4	5	6	7	_____
MM	1	2	3	4	_____
Additional offense counts in excess of four:					
Add 2 for each additional life					
Add 2 for each additional 1st pbl					
Add 1 for each additional 1st					
Add 1 for each additional 2nd					
Add 1 for each additional 3rd					
Add 1 for each additional MM					
Total					

III. A. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	60	130	210	307	_____
1st pbl	48	104	168	246	_____
1st	36	78	126	184	_____
2nd	18	39	63	90	_____
3rd	6	13	21	30	_____
MM	1	2	3	4	_____
Prior convictions in excess of four:					
Add 97 for each additional life					
Add 78 for each additional 1st pbl					
Add 58 for each additional 1st					
Add 27 for each additional 2nd					
Add 9 for each additional 3rd					
Add 1 for each additional MM					
Total					

III. B. Same Category Priors

Add 5 for each prior category 5 offense.  
Priors x 5 = \_\_\_\_\_ Total Points

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	10
Total	

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None	x	0	=	_____
Slight	x	5	=	_____
Moderate	x	10	=	_____
Death or severe	x	15	=	_____
Total		_____		

Rule 3.988(e)  
Category 5: Burglary



I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	80	96	104	112	_____
1st pbl	70	84	91	98	_____
1st	60	72	78	84	_____
2nd	30	36	39	42	_____
3rd	20	24	26	28	_____

Primary offense counts in excess of four:  
 Add 8 for each additional life  
 Add 7 for each additional 1st pbl  
 Add 6 for each additional 1st  
 Add 3 for each additional 2nd  
 Add 2 for each additional 3rd

Total

III. A. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	60	130	210	307	_____
1st pbl	48	104	168	246	_____
1st	36	78	126	184	_____
2nd	18	39	63	90	_____
3rd	6	13	21	30	_____
MM	1	2	3	4	_____

Prior convictions in excess of four:  
 Add 97 for each additional life  
 Add 78 for each additional 1st pbl  
 Add 58 for each additional 1st  
 Add 27 for each additional 2nd  
 Add 9 for each additional 3rd  
 Add 1 for each additional MM

Total

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	16	19	21	23	_____
1st pbl	14	16	18	20	_____
1st	12	14	16	17	_____
2nd	6	7	8	9	_____
3rd	4	5	6	7	_____
MM	1	2	3	4	_____

Additional offense counts in excess of four:  
 Add 2 for each additional life  
 Add 2 for each additional 1st pbl  
 Add 1 for each additional 1st  
 Add 1 for each additional 2nd  
 Add 1 for each additional 3rd  
 Add 1 for each additional MM

Total

III. B. Same Category Priors

Add 5 for each prior category 5 offense.  
 \_\_\_\_\_ Priors x 5 = \_\_\_\_\_ Total Points

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	10
Total	

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None	x	0	=	_____
Slight	x	5	=	_____
Moderate	x	10	=	_____
Death or severe	x	15	=	_____
Total		_____		

Rule 3.988(f)  
**Category 6: Thefts, Forgery, Fraud**

6

**I. Primary Offense at Conviction**

Degree	Counts				Points
	1	2	3	4	
Life	86	103	112	120	_____
1st	70	84	91	98	_____
2nd	35	42	46	49	_____
3rd	13	16	17	18	_____
Primary offense counts in excess of four: Add 8 for each additional life Add 7 for each additional 1st Add 3 for each additional 2nd Add 1 for each additional 3rd					
Total					

**II. Additional Offenses at Conviction**

Degree	Counts				Points
	1	2	3	4	
Life	17	20	22	24	_____
1st pbl	16	18	20	22	_____
1st	14	17	18	19	_____
2nd	7	8	9	10	_____
3rd	3	4	5	6	_____
MM	1	2	3	4	_____
Additional offense counts in excess of four: Add 2 for each additional life Add 2 for each additional 1st pbl Add 1 for each additional 1st Add 1 for each additional 2nd Add 1 for each additional 3rd Add 1 for each additional MM					
Total					

**III. A. Prior Record**

Degree	Counts				Points
	1	2	3	4	
Life	50	110	180	270	_____
1st pbl	40	88	138	216	_____
1st	30	66	96	162	_____
2nd	15	33	48	81	_____
3rd	5	11	18	27	_____
MM	1	2	4	6	_____
Prior convictions in excess of four: Add 90 for each additional life Add 78 for each additional 1st pbl Add 66 for each additional 1st Add 33 for each additional 2nd Add 9 for each additional 3rd Add 2 for each additional MM					
Total					

**III. B. Same Category Priors**

Add 5 for each prior category 6 offense.  
 $\text{Priors} \times 5 = \text{Total Points}$

**IV. Legal Status at Time of Offense**

Status	Points	
	No restrictions	Legal constraint
No restrictions	0	6
Legal constraint	6	_____
Total		_____

**V. Victim Injury (physical)**

Degree of Injury	x	Number	=	Points
None	x	0	=	_____
Slight	x	3	=	_____
Moderate	x	6	=	_____
Death or severe	x	9	=	_____
Total		_____	=	_____

**Rule 3.988(f)**  
**Category 6: Thefts, Forgery, Fraud**



<b>Assistance</b> Chapter 322-- Drivers' Licenses Chapter 409-- Social and Economic <b>Chapter 443-- Unemployment</b>	Section 493.3175-- Sale of Property by a Licensee Section 192.037-- Escrow Accounts Section 206.56-- Theft of State Funds Section 370.142-- Lobster Trap Tags Section 494.0018-- Mortgage Brokers Sections 496.413, 496.417--Solicitation of Contributions Section 517.301(1)(a)-- Fraudulent Securities Transactions Subsections 585.145(3), 585.85(2)-- Veterinary Inspection Section 687.146-- Loan Brokers
<b>Compensation</b> Chapter 509-- Public Lodging and Public Food Service Establishments Chapter 812-- Theft (except section 812.13--Robbery) Chapter 815-- Computer-Related Crimes Chapter 817-- Fraudulent Practices Chapter 831-- Forgery and Counterfeiting Chapter 832-- Worthless Checks Section 415.11-- Abuse, Neglect or Exploitation of Aged Person or Disabled Adult	Section 493.3175-- Sale of Property by a Licensee Section 192.037-- Escrow Accounts Section 206.56-- Theft of State Funds Section 370.142-- Lobster Trap Tags Section 494.0018-- Mortgage Brokers Sections 496.413, 496.417--Solicitation of Contributions Section 517.301(1)(a)-- Fraudulent Securities Transactions Subsections 585.145(3), 585.85(2)-- Veterinary Inspection Section 687.146-- Loan Brokers

**GUIDELINE SENTENCE**

Points	Recommended Range	Permitted Range
13 - 36	any nonstate prison sanction	any nonstate prison sanction
37 - 56	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 3 1/2 years incarceration
57 - 74	3 (2 1/2 - 3 1/2)	community control or 1 - 4 1/2 years incarceration
75 - 90	4 (3 1/2 - 4 1/2)	2 1/2 - 5 1/2
91 - 104	5 (4 1/2 - 5 1/2)	3 1/2 - 7
105 - 122	6 (5 1/2 - 7)	4 1/2 - 9
123 - 146	8 (7 - 9)	5 1/2 - 12
147 - 180	10 (9 - 12)	7 - 17
181 - 240	15 (12 - 17)	9 - 22
241 - 300	20 (17 - 22)	12 - 27
301 - 360	25 (22 - 27)	17 - 40
361 - 420	30 (27 - 40)	22 - Life
421 +	Life	27 - Life

Note--Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1), § 921.001(5), Fla. Stat. (Supp. 1988).

Rule 3.988(g)  
Category 7: Drugs

7

I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	151	181	196	211	_____
1st	137	164	178	192	_____
2nd	65	78	84	91	_____
3rd	42	50	55	59	_____

Primary offense counts in excess of four:

Add 15 for each additional life  
Add 14 for each additional 1st  
Add 7 for each additional 2nd  
Add 4 for each additional 3rd

Total

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	30	36	39	42	_____
1st pbl	28	34	37	40	_____
1st	27	32	35	38	_____
2nd	13	16	17	18	_____
3rd	8	10	11	12	_____
MM	2	3	4	5	_____

Additional offense counts in excess of four:

Add 3 for each additional life  
Add 3 for each additional 1st pbl  
Add 3 for each additional 1st  
Add 1 for each additional 2nd  
Add 1 for each additional 3rd  
Add 1 for each additional MM

Total

III. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	60	130	210	300	_____
1st pbl	48	104	168	240	_____
1st	36	78	126	180	_____
2nd	18	39	63	90	_____
3rd	6	13	21	30	_____
MM	1	2	3	4	_____

Prior convictions in excess of four:

Add 90 for each additional life  
Add 72 for each additional 1st pbl  
Add 54 for each additional 1st  
Add 27 for each additional 2nd  
Add 9 for each additional 3rd  
Add 1 for each additional MM

Total

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	14
Total	_____

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None	x	0	=	_____
Slight	x	5	=	_____
Moderate	x	10	=	_____
Death or severe	x	15	=	_____
		Total	=	_____

Rule 3.988(g)  
Category 7: Drugs



Section 499.005--Regulation of Drugs and Cosmetics  
Chapter 893--Drugs

GUIDELINE SENTENCE

Points	Recommended Range	Permitted Range
42 - 75	any nonstate prison sanction	any nonstate prison sanction
76 - 113	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 3 1/2 years incarceration
114 - 133	3 (2 1/2 - 3 1/2)	community control or 1 - 4 1/2 years incarceration
134 - 147	4 (3 1/2 - 4 1/2)	2 1/2 - 5 1/2
148 - 162	5 (4 1/2 - 5 1/2)	3 1/2 - 7
163 - 184	6 (5 1/2 - 7)	4 1/2 - 9
185 - 208	8 (7 - 9)	5 1/2 - 12
209 - 244	10 (9 - 12)	7 - 17
245 - 304	15 (12 - 17)	9 - 22
305 - 364	20 (17 - 22)	12 - 27
365 - 424	25 (22 - 27)	17 - 40
425 - 483	30 (27 - 40)	22 - Life
484 +	Life	27 - Life

Note--Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1), § 921.001(5), Fla. Stat. (Supp. 1988).

Rule 3.988(i)  
Category 9: All Other Felony Offenses

9

**I. Primary Offense at Conviction**

Degree	Counts				Points
	1	2	3	4	
Life	241	289	376	526	_____
1st pbl	181	217	282	395	_____
1st	133	160	207	290	_____
2nd	108	130	140	150	_____
3rd	52	62	68	72	_____
Primary offense counts in excess of four:					
Add 150 for each additional life					
Add 113 for each additional 1st pbl					
Add 83 for each additional 1st					
Add 10 for each additional 2nd					
Add 4 for each additional 3rd					
Total					

**III. Prior Record**

Degree	Counts				Points
	1	2	3	4	
Life	100	210	330	460	_____
1st pbl	80	168	264	368	_____
1st	60	126	198	276	_____
2nd	30	63	99	138	_____
3rd	10	21	33	46	_____
MM	2	5	8	12	_____
Prior convictions in excess of four:					
Add 130 for each additional life					
Add 104 for each additional 1st pbl					
Add 78 for each additional 1st					
Add 39 for each additional 2nd					
Add 13 for each additional 3rd					
Add 4 for each additional MM					
Total					

**II. Additional Offenses at Conviction**

Degree	Counts				Points
	1	2	3	4	
Life	48	58	75	105	_____
1st pbl	38	45	58	82	_____
1st	27	32	42	59	_____
2nd	22	26	34	48	_____
3rd	10	12	16	22	_____
MM	2	3	4	5	_____
Additional offense counts in excess of four:					
Add 30 for each additional life					
Add 24 for each additional 1st pbl					
Add 17 for each additional 1st					
Add 14 for each additional 2nd					
Add 6 for each additional 3rd					
Add 1 for each additional MM					
Total					

**IV. Legal Status at Time of Offense**

Status	Points	Total
No restrictions	0	
Legal constraint	24	

**V. Victim Injury (physical)**

Degree of Injury	x	Number	=	Points
None	0	_____	_____	_____
Slight	8	_____	_____	_____
Moderate	16	_____	_____	_____
Death or severe	24	_____	_____	_____
Total				

Rule 3.988(i)  
Category 9: All Other Felony Offenses

9

I. Primary Offense at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	241	289	376	526	_____
1st pbl	181	217	282	395	_____
1st	133	160	207	290	_____
2nd	108	130	140	150	_____
3rd	52	62	68	72	_____

Primary offense counts in excess of four:  
Add 150 for each additional life  
Add 113 for each additional 1st pbl  
Add 83 for each additional 1st  
Add 10 for each additional 2nd  
Add 4 for each additional 3rd

Total \_\_\_\_\_

III. Prior Record

Degree	Counts				Points
	1	2	3	4	
Life	100	210	330	460	_____
1st pbl	80	168	264	368	_____
1st	60	126	198	276	_____
2nd	30	63	99	138	_____
3rd	10	21	33	46	_____
MM	2	5	8	12	_____

Prior convictions in excess of four:  
Add 130 for each additional life  
Add 104 for each additional 1st pbl  
Add 78 for each additional 1st  
Add 39 for each additional 2nd  
Add 13 for each additional 3rd  
Add 4 for each additional MM

Total \_\_\_\_\_

II. Additional Offenses at Conviction

Degree	Counts				Points
	1	2	3	4	
Life	48	58	75	105	_____
1st pbl	38	45	58	82	_____
1st	27	32	42	59	_____
2nd	22	26	34	48	_____
3rd	10	12	16	22	_____
MM	2	3	4	5	_____

Additional offense counts in excess of four:  
Add 30 for each additional life  
Add 24 for each additional 1st pbl  
Add 17 for each additional 1st  
Add 14 for each additional 2nd  
Add 6 for each additional 3rd  
Add 1 for each additional MM

Total \_\_\_\_\_

IV. Legal Status at Time of Offense

Status	Points
No restrictions	0
Legal constraint	24

Total \_\_\_\_\_

V. Victim Injury (physical)

Degree of Injury	x	Number	=	Points
None	x	0	=	_____
Slight	x	8	=	_____
Moderate	x	16	=	_____
Death or severe	x	24	=	_____

Total \_\_\_\_\_

**Rule 3.988(i)**  
**Category 9: All Other Felony Offenses**

**9**

All felonies not included in categories one through eight

**GUIDELINE SENTENCE**

Points	Recommended Range	Permitted Range
52 - 108	any nonstate prison sanction	any nonstate prison sanction
109 - 132	community control or 12 - 30 months incarceration	any nonstate prison sanction or community control or 1 - 3 1/2 years incarceration
133 - 148	3 (2 1/2 - 3 1/2)	community control or 1 - 4 1/2 years incarceration
149 - 162	4 (3 1/2 - 4 1/2)	2 1/2 - 5 1/2
163 - 180	5 (4 1/2 - 5 1/2)	3 1/2 - 7
181 - 208	6 (5 1/2 - 7)	4 1/2 - 9
209 - 240	8 (7 - 9)	5 1/2 - 12
241 - 282	10 (9 - 12)	7 - 17
283 - 348	15 (12 - 17)	9 - 22
349 - 410	20 (17 - 22)	12 - 27
411 - 470	25 (22 - 27)	17 - 40
471 - 506	30 (27 - 40)	22 - Life
507 +	Life	27 - Life

Note--Any person sentenced for a felony offense committed after October 1, 1988, whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or to a term of incarceration not to exceed 22 months. Such sentence is not subject to appeal. However, before imposing such sentence, the court shall give due consideration to the criteria in s. 921.005(1), § 921.001(5), Fla. Stat. (Supp. 1988)