No: _____

Appeal Number: 19-12243-F

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA GAINESVILLE DIVISION

IVORY LEE ROBINSON,

Petitioner,

v. **Case No. 1:18cv20-MW/CAS**

JULIE L. JONES, Secretary, Florida Department of Corrections,

Respondent.
_____/

ORDER ACCEPTING REPORT AND RECOMMENDATION

This Court has considered, without hearing, the Magistrate Judge's Report and Recommendation, ECF No. 18, and has also reviewed *de novo* Petitioner's objections to the report and recommendation, ECF No. 21. Accordingly,

IT IS ORDERED:

The report and recommendation is **accepted and adopted**, over Petitioner's objections, as this Court's opinion. The Clerk shall enter judgment stating, "Respondent's motion to dismiss, ECF No. 16, is **GRANTED**, the petition for writ of habeas corpus, ECF No. 1, is **DISMISSED**, a Certificate of Appealability is

DENIED, and leave to appeal *in forma pauperis* is **DENIED**. Petitioner's Application for Certificate of Appealability, ECF No. 22, is **DENIED**." The Clerk shall close the file.

SO ORDERED on February 1, 2019.

s/Mark E. Walker
Chief United States District Judge

JUDGMENTS:

EXHIBIT-(B)

PAGE(S):

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

IVORY LEE ROBINSON,

Defendant.

CASE NO.: 01-2002-CF-002039-A

DIVISION: III

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J.K. "BUDDY" IRBY
CLERK OF COURTS
ALACHUA CO., FLORIDA

ORDER DENYING MOTION FOR POST-CONVICTION RELIEF

THIS CAUSE comes before the Court upon Defendant's "3.850 Motion to Vacate and Set Aside Judgment/Conviction and Sentence for Lack of In Personam and/or Subject Matter Jurisdiction," filed September 29, 2009, pursuant to Florida Rule of Criminal Procedure 3.850. Upon consideration of the motion and the record, this Court finds and concludes as follows:

1. On August 1, 2003, after a jury trial, Defendant was found guilty of attempted second-degree murder with a firearm (count I) and possession of a firearm by a convicted felon (count II). *See* Verdict. Disposition was continued until a later date. On September 8, 2003, the court sentenced Defendant to a total of twenty-five (25) years imprisonment in the Department of Corrections. *See* Judgment and Sentence. Defendant filed an appeal. On November 16, 2004, the First District Court of Appeal *per curiam* affirmed Defendant's conviction and sentence. *See* Mandate.

2. In the instant motion, Defendant alleges that the trial court lacked subject matter jurisdiction due to an invalid information file by the State. According to Defendant, the State's Information, as to count I, erroneously fails to refer to the attempt statute, section 777.04, Florida Statutes, or to allege the elements of attempted murder.

3. Defendant's motion is procedurally barred as untimely under Fla. R. Crim. P. 3.850(b). A rule 3.850 motion is untimely if filed beyond the two year limit prescribed by the rule. *See Wilkinson v. State*, 504 So.2d 29, 29 (Fla. 2d DCA 1987). The motion must be filed within two years after the movant's judgment and

sentence become final. *See* Fla. R. Crim. P. 3.850(b). A movant's judgment and sentence become final "when any such direct review proceedings have concluded and jurisdiction to entertain a motion for post-conviction relief returns to the sentencing court." *Ward v. Dugger*, 508 So.2d 778, 779 (Fla. 1st DCA 1987). Here, Defendant's judgment and sentence became final on December 2, 2004, when the mandate on Defendant's direct appeal was issued. *See* Mandate. Because the instant motion was filed more than two (2) years after Defendant's judgment and sentence became final, it is barred as untimely. In addition, Defendant's motion fails to allege any grounds which would meet an exception to the time-limitation. *See* Fla. R. Crim. P. 3.850(b).

4. Even if Defendant's motion were timely filed, the claim raised in it is without merit. *See Moseley v. State*, 7 So. 3d 550, 552 (Fla. 5th DCA 2009) (citing *State v. Gray*, 435 So. 2d 816, 818 (Fla. 1983)). The State's Information sufficiently alleges the elements of attempted second-degree murder even though it fails to cite to the attempt statute, section 777.04, Florida Statutes.

Based on the foregoing, it is ORDERED AND ADJUDGED that:

Defendant's motion is hereby DENIED. Defendant may appeal this decision to the First District Court of Appeal within thirty (30) days of this Order's effective date.

DONE AND ORDERED on this 1 day of October 2009.

DAVID A. GLANT,
CIRCUIT JUDGE

J.K. "Buddy" Irby, Clerk of Circuit & County Court, Eighth Judicial Circuit of Florida, in and for Alachua County, hereby certifies this to be a true and correct copy of the document now of record in this office. Witness my hand and seal this 5 day of Oct. 2009.
J.K. "Buddy" Irby, Clerk of Circuit & County Court
By _____ Deputy Clerk

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

IVORY LEE ROBINSON,

Defendant.

CASE NO.: 01-2002-CF-002039-A

DIVISION: III

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J.K. "BUDDY" IRBY
CLERK OF COURTS
ALACHUA COUNTY, FL
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ORDER DENYING FIFTH MOTION FOR POST-CONVICTION RELIEF

THIS CAUSE comes before the Court upon Defendant's "Complaint/Petition for Writ of Habeas Corpus/Redress pursuant to a Manifest Injustice and a Denial of Due Process in a Criminal Procedure," filed July 14, 2014. The Civil Division transferred the petition into the above-captioned case so that it could be considered as a motion for post-conviction relief under Fla. R. Crim. P. 3.850. Upon consideration of the motion and the record, this Court finds and concludes as follows:

1. Defendant's motion is procedurally barred as untimely under Fla. R. Crim. P. 3.850(b). A rule 3.850 motion is untimely if filed beyond the two year period prescribed by the rule. *See Wilkinson v. State*, 504 So.2d 29, 29 (Fla. 2d DCA 1987). The motion must be filed within two years after the movant's judgment and sentence become final. *See* Fla. R. Crim. P. 3.850(b). A movant's judgment and sentence become final "when any such direct review proceedings have concluded and jurisdiction to entertain a motion for post-conviction relief returns to the sentencing court." *Ward v. Dugger*, 508 So.2d 778, 779 (Fla. 1st DCA 1987). Defendant's judgment and sentence became final on December 2, 2004, when the First District Court of Appeal issued its mandate on Defendant's direct appeal. *See* Mandate. Because the instant motion was filed more than two (2) years after Defendant's judgment and sentence became final, it is procedurally barred as

untimely.

2. Defendant is hereby advised that the filing of frivolous claims may subject him to sanctions by the Court. *See* Fla. R. Crim. P. 3.850(n). In addition, Defendant is advised that the filing of false or frivolous claims may subject him to discipline by the Department of Corrections. *See* § 944.28(2)(a), Fla. Stat. (2013); Fla. R. Crim. P. 3.850(n). Section 944.279(1), Florida Statutes, specifically provides that a court may "at any time" determine whether a collateral criminal proceeding is filed in good faith. This statute equates a lack of "good faith" with a determination that the collateral action was "frivolous." *See* § 944.279(1), Fla. Stat. (stating that when a court finds that an inmate files a "frivolous or malicious collateral criminal proceeding," the inmate is subject to "disciplinary procedures pursuant to the rules of the Department of Corrections"); § 944.28(2)(a), Fla. Stat. (authorizing the Department of Corrections to forfeit gain-time when an inmate files a "frivolous suit, action, claim, proceeding, or appeal"); *Smith v. State*, 35 Fla. L. Weekly D1794 (Fla. 1st DCA August 10, 2010).

Based on the foregoing, it is **ORDERED AND ADJUDGED** that:

Defendant's motion is hereby **DENIED**. Defendant may appeal this decision to the First District Court of Appeal within thirty (30) days of this Order's effective date.

DONE AND ORDERED on this 30th day of July 2014.

MARK W. MOSELEY,
CIRCUIT JUDGE

~~14 of 17~~ (4)
~~X IX 13~~

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

CASE NO.: 01-2002-CF-002039-A

DIVISION: III

vs.

IVORY LEE ROBINSON,

Defendant.

ORDER DENYING SECOND MOTION TO CORRECT ILLEGAL SENTENCE

THIS CAUSE comes before the Court upon Defendant's "Motion to Correct Illegal Sentence," filed March 16, 2016, pursuant to Florida Rule of Criminal Procedure 3.800(a). Upon consideration of the motion and the record, this Court finds and concludes as follows:

1. On August 1, 2003, after a jury trial, Defendant was found guilty of Attempted Second-Degree Murder with a Firearm (count I) and Possession of a Firearm by a Convicted Felon (count II). *See* Verdict. Disposition was continued until a later date. On September 8, 2003, the court sentenced Defendant, on count I, to a mandatory minimum 25 years imprisonment in the Department of Corrections, pursuant to section 775.087(2), Florida Statutes; and, on count II, to a mandatory minimum 3 years imprisonment in the Department of Corrections, pursuant to section 775.087(2), Florida Statutes. *See* Judgment and Sentence. The sentences were ordered to run concurrently. Defendant filed an appeal. On November 16, 2004, the First District Court of Appeal *per curiam* affirmed the judgment and sentence. *See* Mandate.

2. In the instant motion, Defendant alleges the following grounds for relief:

(Ground One) The conviction for Attempted Second-Degree Murder with a Firearm should not have been enhanced from a second-degree

(5)

felony to a first-degree felony because the jury did not find that Defendant actually possessed the firearm; and,

(Ground Two) The mandatory minimum of 25 years imposed on count I (Attempted Second-Degree Murder with a Firearm) is illegal because the jury did not find that Defendant caused death or great bodily harm.

3. As to Ground One, the claim raised is conclusively refuted by the record. The verdict form for count I reflects that the jury found that Defendant not only possessed a firearm, but that he also discharged it and injured the victim. *See* Verdict. In addition, under count II (Possession of a Firearm by a Convicted Felon), the jury specifically found that Defendant "actually possessed" the firearm. *Id.* Accordingly, the claim raised is without merit.

4. As to Ground Two, the claim raised is conclusively refuted by the record. Defendant was charged with, and found guilty of, shooting the victim in this case. *See* Information; Verdict. Even though the language is not precise, it is clear from the verdict that the jury found beyond a reasonable doubt that Defendant discharged a firearm causing great bodily harm. *See, e.g., Gentile v. State*, 87 So. 3d 55, 57 (Fla. 4th DCA 2012) ("To be sure, petitioner acted alone and no possibility exists that the jury convicted him under an accomplice liability theory; the jury could not have found that someone other than petitioner himself personally carried or used the deadly weapon. Further, the only manner in which petitioner was alleged to have attempted to murder the victim was through the use of a deadly weapon.... [A]ny error in the jury's failure to make a more specific finding is clearly

harmless because of the overwhelming evidence that he used a deadly weapon."). Accordingly, the claim raised is without merit.

Based on the foregoing, it is **ORDERED AND ADJUDGED** that:

Defendant's motion is hereby **DENIED**. Defendant may appeal this decision to the First District Court of Appeal within thirty (30) days of this Order's effective date.

DONE AND ORDERED on this 21 day of March 2016.

ORIGINAL SIGNED BY
MARK W. MOSELEY
CIRCUIT JUDGE

MARK W. MOSELEY,
CIRCUIT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copy of the foregoing Order was furnished by U.S. Mail/inter-office delivery, on this 21 day of March 2016, to the following:

Ivory Lee Robinson – DC# 022383
Columbia Correctional Institution Annex
216 SE Corrections Way
Lake City, FL 32025

Jeanne Singer, Chief Assistant State Attorney
State Attorney's Office

ORIGINAL SIGNED BY
JOY CUMMINGS
JUDICIAL ASSISTANT

Joy Cummings, Judicial Assistant

(7)

IN THE CIRCUIT COURT OF
THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff,

vs.

IVORY LEE ROBINSON,

Defendant.

CASE NO.: 01-2002-CF-002039-A

DIVISION: III

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J.K. "BUDDY" IRBY
CLERK OF COURTS
ALACHUA COUNTY FL

ORDER DENYING MOTION FOR REHEARING

THIS CAUSE comes before the Court upon Defendant's "Motion for Rehearing/Redress Considerations on Order Denying a Rule 3.800(a) Motion to Correct Illegal Sentence," filed April 7, 2016, pursuant to Fla. R. Crim. P. 3.800(b)(1)(B). Defendant seeks a rehearing on the order denying his motion to correct illegal sentence. Upon consideration of the motion and the record, this Court finds and concludes as follows:

Defendant does not raise any issue that was overlooked or unconsidered by this Court in its original order.

Therefore, it is **ORDERED AND ADJUDGED** that:

Defendant's motion for rehearing is hereby **DENIED**. Defendant may appeal the denial of his underlying motion to correct illegal sentence to the First District Court of Appeal within thirty (30) days of this Order's effective date.

DONE AND ORDERED on this 11th day of April 2016.

MARK W. MOSELEY, CIRCUIT JUDGE

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

IVORY LEE ROBINSON,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

_____/

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

CASE NO. 1D15-0547

Opinion filed February 27, 2015.

Petition for Writ of Habeas Corpus -- Original Jurisdiction.

Ivory Lee Robinson, pro se, Petitioner.

Pamela Jo Bondi, Attorney General, Tallahassee; Jennifer Parker, General Counsel, Department of Corrections, Tallahassee, for Respondent.

PER CURIAM.

The petition for writ of habeas corpus is dismissed. See Baker v. State, 878 So. 2d 1236 (Fla. 2004). The petitioner is warned that any future collateral attacks on the

judgment and sentence in Alachua County Circuit Court case number 01-2002-CF-002039A may result in sanctions, including but not limited to referral for disciplinary action, a prohibition on future *pro se* filings, or both. See Fla. Stat. § 944.279(1); State v. Spencer, 751 So. 2d 47 (Fla. 1999).

MARSTILLER, RAY, and SWANSON, JJ., CONCUR.

-2(2)(10)

215 So.3d 1262
District Court of Appeal of Florida,
First District.

Ivory Lee ROBINSON, Appellant,
v.
STATE of Florida, Appellee.

CASE NO. 1D16-1988
|
Opinion filed April 4, 2017
|
Rehearing Denied May 4, 2017

Synopsis

Background: Defendant, whose convictions for attempted second-degree murder and possession of a firearm by a felon were confirmed on direct appeal, moved to correct an illegal sentence, arguing for the first time since being charged that the absence of "great bodily harm" constituted technical and substantive-defects in the amended information. The Circuit Court, Alachua County, Mark W. Moseley, J., denied the motion, and defendant appealed.

Holdings: The District Court of Appeal, M. K. Thomas, J., held that:

[1] defendant's asserted technical charging error would be deemed waived by his lack of a contemporaneous objection to any technical insufficiency of the amended information prior to the jury verdict and before his sentence was imposed;

[2] any defect in the charging document, namely failure to allege "great bodily harm" as opposed to "bodily harm" that resulted from defendant's shooting of the victim, was cured by the victim's testimony at trial and the jury verdict;

[3] *Apprendi* defects asserted by defendant did not rise to the level of fundamental error; and

[4] even if *Apprendi* defects asserted by defendant constituted a constitutional violation, any such error was harmless.

Affirmed.

West Headnotes (22)

[1] **Sentencing and Punishment**
Illegal sentence

A sentence that patently fails to comport with statutory or constitutional limitations is by definition "illegal."

Cases that cite this headnote

[2] **Sentencing and Punishment**
Illegal sentence

Sentencing and Punishment
Time

Where it can be determined without an evidentiary hearing that a sentence has been unconstitutionally enhanced in violation of the double jeopardy clause, the sentence is illegal and can be declared so at any time. U.S. Const. Amend. 5; Fla. R. Crim. P. 3.800(a).

Cases that cite this headnote

[3] **Constitutional Law**
Necessity;Right to Jury Trial

Jury
Sentencing Matters

As a result of *Apprendi*, certain facts, labeled by state law as "sentencing factors," are regarded as essential elements of the offense for purposes of the Sixth Amendment's jury-trial guarantee and the due process requirement of proof beyond a reasonable doubt. U.S. Const. Amends. 6, 14.

Cases that cite this headnote

[4] **Indictment and Information**
Matter of aggravation in general

The U.S. Supreme Court's requirement that *Apprendi*-type elements be included in all federal indictments is grounded on the Grand Jury Clause of the Fifth Amendment and also

(11) (3)

serves a notice function; but *Apprendi* does not affect trial procedure except when fact-finding is necessary to raise the floor or ceiling of the authorized sentencing range. U.S. Const. Amend. 5.

Cases that cite this headnote

[5] **Criminal Law**
States

A state legislature is "vested," subject to constitutional limitations, with authority to define the elements of a crime.

Cases that cite this headnote

[6] **Criminal Law**
Elements of offense in general

Identification of the elements of a crime which must be charged in a state-issued information is, at least initially, a question of legislative intent.

Cases that cite this headnote

[7] **Criminal Law**
Right to jury determination

Indictment and Information
Mode of Making Objections in General

There exist two avenues for raising an *Apprendi* sentencing error: the first requires a timely objection to the technical-defect, and technical errors may be remedied at the trial level by dismissal or an order for particulars; secondly, if no timely objection is raised rendering the technical-defect as unpreserved, the defendant may raise, on appeal, a claim of fundamental right violation, which is subject to harmless error analysis.

Cases that cite this headnote

[8] **Criminal Law**
In Preliminary Proceedings

A defendant must raise a timely objection at the trial court level in order to preserve a technical-defect challenge to a state-issued charging document, or such claim is waived; in the absence of timely objection, the defendant's claim survives only if fundamental error is established.

Cases that cite this headnote

[9] **Indictment and Information**
Informing accused of nature of charge

Indictment and Information
Enabling accused to prepare for trial

The purpose of an information is to inform the accused of the charge or charges against him, so that the accused will have an opportunity to prepare a defense.

Cases that cite this headnote

[10] **Criminal Law**
Indictment or information in general

Indictment and Information
Informing accused of nature of charge

Indictment and Information
Grounds

While it is the duty of the State to give clear and adequate notice through the information of the crime or crimes being charged, defects in the information are not grounds for automatic reversal or dismissal. Fla. R. Crim. P. 3.140.

Cases that cite this headnote

[11] **Indictment and Information**
Objections to Indictment or Information

Defendant's asserted technical charging error, under rule governing correction of an illegal sentence, would be deemed waived by his lack of a contemporaneous objection to any technical insufficiency of the amended information prior to the jury verdict and before his sentence was imposed. Fla. R. Crim. P. 3.800(a); Fla. Stat. Ann. §§ 924.051(1)(b), 924.051(3).

Cases that cite this headnote

[12] **Criminal Law**

(12) (11)

Indictment or Information

Where an alleged defect in a charging document is not the omission of an essential element of the crime, the defect is fundamental only if due process was denied. U.S. Const. Amend. 14.

Cases that cite this headnote

[13] **Indictment and Information**

Matter of aggravation in general

Different levels of punishment, under state law, do not create separate offenses, and thus, the requirements of the Sixth Amendment regarding notice can be satisfied without necessarily and precisely alleging *Apprendi*-type elements in the charging documents. U.S. Const. Amend. 6.

Cases that cite this headnote

[14] **Criminal Law**

Necessity of Objections in General

Criminal Law

Necessity of specific objection

To preserve error for appellate review, a contemporaneous, specific objection must be made during trial.

Cases that cite this headnote

[15] **Indictment and Information**

Reference to or recital of statute

A charging document that references a specific section of the criminal code sufficiently detailing all the elements of the offense may support a conviction where the pleading otherwise fails to include an essential element of the crime.

Cases that cite this headnote

[16] **Constitutional Law**

Relation between allegations and proof; variance

Criminal Law

Indictment or Information

Habeas Corpus

Indictment, information, affidavit, or complaint

Indictment and Information

Sufficiency of accusation in general

A conviction on a charge not made by the indictment or information is a denial of due process, and an indictment or information that wholly omits to allege one or more of the essential elements of the crime cannot support a conviction for that crime; this is a defect that can be raised at any time-before trial, after trial, on appeal, or by habeas corpus. U.S. Const. Amend. 14.

Cases that cite this headnote

[17] **Criminal Law**

Indictment or information in general

Any defect in the charging document, namely failure to allege "great bodily harm" as opposed to "bodily harm" that resulted from defendant's shooting of the victim, was cured by the victim's testimony at trial and the jury verdict in prosecution for attempted second-degree murder and possession of a firearm by a felon; the jury found the defendant guilty as charged, which included the factual finding the defendant shot the victim, which was sufficient to satisfy "great bodily harm" as a required element of the sentencing enhancement. Fla. Stat. Ann. §§ 782.04, 790.23.

Cases that cite this headnote

[18] **Criminal Law**

Right to jury determination

Failure to subject a sentencing factor to the jury is subject to harmless error analysis, if the error is of a fundamental nature.

Cases that cite this headnote

[19] **Criminal Law**

Indictment or Information

Apprendi defects asserted by defendant, specifically that the charging instrument failed

(13) (5)

to allege "great bodily harm" as opposed to "bodily harm" that resulted from defendant's shooting of the victim, did not rise to the level of fundamental error in the absence of any showing by defendant that a conviction for second-degree murder and possession of a firearm by a convicted felon could subject him to a reclassification of the charged felony. Fla. Stat. Ann. § 775.087.

Cases that cite this headnote

[20] **Criminal Law**
⇐ Indictment or information in general

Even if *Apprendi* defects asserted by defendant, specifically that the charging instrument failed to allege "great bodily harm" as opposed to "bodily harm" that resulted from defendant's shooting of the victim, constituted a constitutional violation, any such error was harmless, because the defects were cured by the victim's testimony at trial and the jury verdict in prosecution for attempted second-degree murder and possession of a firearm by a felon. Fla. Stat. Ann. §§ 784.045, 790.23.

Cases that cite this headnote

[21] **Criminal Law**
⇐ Indictment or information in general

The test for granting relief based upon a substantive-defect in the charging document is actual prejudice.

Cases that cite this headnote

[22] **Sentencing and Punishment**
⇐ Illegal sentence

An illegal sentence subject to correction under rule governing the correction, reduction, or modification of sentences must be one that no judge under the entire body of sentencing laws could possibly impose under any set of factual circumstances; the illegality must be of a fundamental nature and clear from the face of the record. Fla. R. Crim. P. 3.800(a).

Cases that cite this headnote

*1265 An appeal from an order of the Circuit Court for Alachua County. Mark W. Moseley, Judge.

Attorneys and Law Firms

Ivory Lee Robinson, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Jennifer J. Moore, Assistant Attorney General, Tallahassee, for Appellee.

Opinion

THOMAS, M. K., J.

Ivory Lee Robinson, defendant, appeals an order denying his rule 3.800(a) motion to correct illegal sentence, in which he challenges a twenty-five year mandatory minimum sentence imposed under the "10–20–Life" law. See § 775.087, Fla. Stat. In the first claim, he asserts he was never found in actual possession of a firearm. As this claim was raised and disposed of in a prior appeal, it is barred. Now in his second claim and more than thirteen years after his conviction and sentence, he proclaims his mandatory minimum sentence is illegal pursuant to Apprendi v. New Jersey, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), because: 1) the Amended Information failed to expressly charge that "*great* bodily harm," as opposed to "bodily harm," resulted from his shooting of the victim in the stomach with a .357 revolver handgun (in essence, defendant is raising a technical-defect challenge, in that the Amended Information does not track *precisely* the verbiage of the sentencing enhancement statute); and 2) the "great bodily harm" factor of the enhancement statute was not *precisely* submitted to, and found by the jury beyond a reasonable doubt, resulting in grounds for a substantive-defect challenge. We disagree, and affirm his sentence.

I. Facts

In 2003, the State charged the defendant with attempted second-degree murder and possession of a firearm by a felon pursuant to sections 784.045, 782.04 and 790.23, Florida Statutes (2002). The Amended Information also

(14) (b)

charged section 775.087, Florida Statutes, the sentencing enhancement provision, also known as the "10–20–Life" law. The victim testified at trial and described being shot in the stomach by the defendant. The victim's injuries required immediate medical care and hospitalization. The jury found the defendant guilty on all counts, as charged. In response to special interrogatories submitted, the jury found: 1) "the defendant guilty of Attempted Second[-]Degree Murder, as charged in Count I of the Information;" 2) that he "possessed and discharged a firearm, and by the discharge of said firearm caused injury to another person;" 3) he was guilty of Possession of a Firearm by a Convicted Felon, as charged in Count II of the Information; and 4) he was "in actual possession of a firearm." This Court affirmed the conviction and sentence on direct appeal. Robinson v. State, 888 So.2d 25 (Fla. 1st DCA 2004) (unpublished table decision).

Thereafter, the defendant filed a number of post-conviction pleadings including multiple rule 3.800(a) motions, which asserted no finding of the "use" of a firearm, failure to find "actual" possession of a firearm, and use of a "deadly weapon," among other claims. All were unsuccessful. In March 2016, the defendant filed this rule 3.800(a) motion, arguing for the first time since being charged that the absence of "great bodily harm" constituted technical and substantive-defects in the Amended Information.

II. "Illegal Sentence"

[1] [2] "[T]he definition of 'illegal sentence' as interpreted by case law has narrowed significantly since that term was used in the 1960s and 1970s." Carter v. State, 786 So.2d 1173, 1176 (Fla. 2001). In ***1266** Davis v. State, 661 So.2d 1193, 1196 (Fla. 1995), the Florida Supreme Court defined an "illegal sentence" as "one that exceeds the maximum period set forth by law for a particular offense without regard to the guidelines." But later, the contention Davis mandates that only those sentences that facially exceed the statutory maximums may be challenged as illegal under rule 3.800(a) was rejected. State v. Mancino, 714 So.2d 429, 433 (Fla. 1998). Instead, "[a] sentence that patently fails to comport with statutory or constitutional limitations is by definition 'illegal.' " Id. Further, "where it can be determined without an evidentiary hearing that a sentence has been unconstitutionally enhanced in violation of the double jeopardy clause, the sentence is illegal and can be declared so at any time under rule 3.800." Hopping v. State, 708 So.2d 263, 265 (Fla. 1998). The Florida Supreme Court thus receded from Davis in Mancino and Hopping to the extent that Davis could be read to limit challenges under rule 3.800(a) to only those sentences that exceed the "statutory maximum." Carter, 786 So.2d at 1177.

In 2014, the Florida Supreme Court addressed the question of whether a rule 3.800(a) motion is an appropriate vehicle to attack a defendant's upward-departure sentence under Apprendi, Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), and Plott v. State, 148 So.3d 90 (Fla. 2014). The Court determined "that upward departure sentences that are unconstitutionally enhanced in violation of Apprendi and Blakely fail to comport with constitutional limitations, and consequently, the sentences are illegal under rule 3.800(a)." Plott, 148 So.3d at 95. Recently, however, in Martinez v. State, No. SC15-1620, — So.3d —, 2017 WL 728098 (Fla. Feb. 23, 2017), the Florida Supreme Court declared that an alleged technical-defect in the charging document, which was not preserved at the trial level, does not constitute an "illegal sentence" subject to correction under Florida Rule of Criminal Procedure 3.800(a).

Accordingly, only the defendant's substantive-defect claim (that Apprendi factors were not submitted to and found by the jury) is properly raised by rule 3.800(a) motion.

III. Apprendi & State-Issued Informations

[3] [4] The defendant asserts that pursuant to Apprendi, his conviction and sentence are illegal, as the Amended Information did not "precisely" track the sentencing reclassification statute by charging "*great* bodily harm." [1] As a result of Apprendi, certain facts (though labeled by state law as "sentencing factors") are regarded as essential elements of the offense for purposes of the Sixth Amendment's jury-trial guarantee and the due process requirement of proof beyond a reasonable doubt. The U.S. Supreme Court's requirement that Apprendi-type elements be included in all federal indictments is grounded on the Grand Jury Clause of the Fifth Amendment ***1267** and also serves a notice function. Id. at 476, 120 S.Ct. 2348. But Apprendi does not affect trial procedure except

(15) (7)

when fact-finding is necessary to raise the floor or ceiling of the authorized sentencing range. See Blakely; Alleyne v. United States. — U.S. ——, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013).

The Fifth Amendment's Indictment Clause states, in pertinent part: "[N]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury." U.S. CONST. Amend. V. The U.S. Supreme Court, to date, has not yet held the "Fifth Amendment's grand jury indictment requirement" as applicable to the states. Gosa v. Mayden, 413 U.S. 665, 668, 93 S.Ct. 2926, 37 L.Ed.2d 873 (1973); Byrd v. State, 995 So.2d 1008, 1011 (Fla. 1st DCA 2008). The Sixth Amendment states, in pertinent part: "[I]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed ... and to be informed of the nature and cause of lent the accusation." U.S. CONST. Amend. VI. The states would have a constitutional obligation to include Apprendi-type factors in their charging instruments only if the notice requirement of the Sixth Amendment, which does apply to the states via Fourteenth Amendment due process, imposed such a requirement. Duncan v. Louisiana, 391 U.S. 145, 149, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968) (holding the Sixth Amendment right to a jury trial applies to the states through the Fourteenth Amendment).

[5] [6] A state legislature is "vested," subject to constitutional limitations, "with authority to define the elements of a crime." Chicone v. State, 684 So.2d 736, 741 (Fla. 1996). "Accordingly, identification of the elements of a crime which must be charged in a state-issued information is, at least initially, a question of legislative intent." Id. The Florida Legislature enacted the "10–20–Life" sentencing reclassification statute components as "sentencing factors" rather than elements of the underlying offense—an act within the state's established power. McMillan v. Pennsylvania, 477 U.S. 79, 83, 106 S.Ct. 2411, 91 L.Ed.2d 67 (1986); Patterson v. New York, 432 U.S. 197, 211, 97 S.Ct. 2319, 53 L.Ed.2d 281 (1977); Speiser v. Randall, 357 U.S. 513, 523, 78 S.Ct. 1332, 2 L.Ed.2d 1460 (1958).

A review of the evolution of Apprendi, with emphasis on precedent addressing charging-document defects and the relationship to the jury verdict, is necessary here. Following Apprendi, the United States Supreme Court issued multiple opinions defining an "Apprendi factor." See Blakely; Ring v. Arizona, 536 U.S. 584, 122 S.Ct. 2428, 153 L.Ed.2d 556 (2002); Alleyne. In 2001, the Florida Supreme Court determined that sentencing errors raised under the Prison Releasee Reoffender Act must be preserved for review and rejected the assertion that such error was fundamental. McGregor v. State, 789 So.2d 976, 977 (Fla. 2001). This was likely a precursor to a similar analysis of Apprendi factors.

In 2002, the Supreme Court, in United States v. Cotton, 535 U.S. 625, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002), addressed a defendant's appeal of a technical-pleading deficiency in a federal indictment in the absence of a challenge regarding the jury verdict submission. The defendant asserted the imposition of an illegal sentence as a result of the indictment's failure to charge the precise weight of drugs in his possession at the time of arrest (where amount of drugs was relevant to sentencing enhancement, but not to underlying offense). Id. at 628, 122 S.Ct. 1781. Of note, ***1268** the defendant did not raise an objection to the alleged technical-defect in the indictment at the trial stage. In a unanimous decision written by Justice Rehnquist, in which the sentence was upheld, the Supreme Court applied its Apprendi analysis as follows: under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any factor (other than prior convictions) that increases the maximum penalty for a crime must be: 1) charged in an indictment; 2) submitted to the jury; and 3) proven beyond a reasonable doubt. Id. at 627, 122 S.Ct. 1781. However, the Court found that an overall record review, with an emphasis on the jury verdict, confirmed that the three-fold Apprendi requirements were satisfied.

The Supreme Court, in Cotton, further detailed the deficiency in the indictment did not present a jurisdictional weakness for failure to charge a crime, and also, the omission of the sentencing enhancement factor in the indictment did not justify vacating the enhanced sentence. 535 U.S. at 626, 122 S.Ct. 1781. The Court explained the real threat then to the:

> 'fairness, integrity, or public reputation of judicial proceedings' would be if respondents, despite the overwhelming and uncontroverted evidence that they were involved in a vast drug conspiracy, were to receive a sentence prescribed for those committing less

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> substantial crimes because of an error that was never objected to at trial.

Id. at 634, 122 S.Ct. 1781. Accordingly, Apprendi-type element satisfaction could be accomplished despite charging deficiencies.

In 2006, in a landmark decision, the United States Supreme Court declared Apprendi violations no longer constitute per se fundamental error. See Washington v. Recuenco, 548 U.S. 212, 222, 126 S.Ct. 2546, 165 L.Ed.2d 466 (2006). The Court announced:

> Failure to submit a sentencing factor to the jury is not "structural" error. If a criminal defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that most constitutional errors are subject to harmless-error analysis. E.g., Neder v. United States, 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 [(1999)]. Only in rare cases has this Court ruled an error 'structural,' thus requiring automatic reversal. In Neder, the Court held that failure to submit an element of an offense to the jury—there, the materiality of false statements as an element of the federal crimes of filing a false income tax return, mail fraud, wire fraud, and bank fraud, see id. at 20–25, 119 S.Ct. 1827—is not structural, but is subject to Chapman's harmless-error rule, 527 U.S. at 7–20, 119 S.Ct. 1827, ... Apprendi makes clear that "[a]ny possible distinction between an 'element' of a felony ... and a 'sentencing factor' was unknown...during the years surrounding our Nation's founding." 530 U.S. at 478, 120 S.Ct. 2348. Accordingly, the Court has treated sentencing factors, like elements, as facts that have to be tried to the jury and proved beyond a reasonable doubt.

Id. at 213, 126 S.Ct. 2546. Following Recuenco, even failure to submit an Apprendi factor to the jury was not considered structural error, and therefore, not a basis for a per se reversal on direct appeal.

In Galindez v. State, 955 So.2d 517 (Fla. 2007), the Florida Supreme Court applied the Recuenco harmless-error application to Apprendi and Blakely challenges. The Florida Supreme Court detailed, "...[T]o the extent some of our pre-Apprendi decisions may suggest that the failure to submit factual issues to the jury is not subject ***1269** to harmless error analysis, Recuenco has superseded them." Id. at 522–523.

[7] A year later, the Florida Supreme Court in Deparvine v. State, 995 So.2d 351 (Fla. 2008), distinguished the holding and application of its prior decision in State v. Gray, 435 So.2d 816 (Fla. 1983), and addressed preservation and waiver of alleged Apprendi error. Specifically, the court previously held, "[G]enerally, if an indictment or information fails to *completely charge a crime* under the laws of the state, the defect can be raised at any time. Gray, 435 So.2d at 818 (emphasis added). However, now "where a defendant waits until after the State rests its case to challenge the propriety of an indictment, the defendant is required to show not that the indictment is *technically defective* but that it is so fundamentally defective that it cannot support a judgement of conviction." Deparvine, 995 So.2d at 373 (citing Ford v. State, 802 So.2d 1121, 1130 (Fla. 2001) (emphasis added)). Per Deparvine, there exist two avenues for raising an Apprendi error. The first requires a timely objection to the technical-defect. Technical errors may be remedied at the trial level by dismissal or an order for particulars. Secondly, if no timely objection is raised rendering the technical-defect as unpreserved, the defendant may raise, on appeal, a claim of fundamental right violation, which is subject to harmless error analysis. Accordingly, following Deparvine, the holding of Gray could no longer be cited as a basis for per se reversible error as technical-defects were no longer considered "structural error."

The Florida Supreme Court later held that the preservation rules of Deparvine applied to a defendant's challenge to charging documents involving mandatory minimum sentencing under the "10–20–Life" law. Bradley v. State, 3 So.3d 1168 (Fla. 2009). The court highlighted the "slightly different" rules relating to raising sentencing error challenges: 1) when preserved for review by contemporaneous objection, error may be raised on direct appeal; 2) even if not originally preserved, rule 3.800(b) provides a defendant with a mechanism to correct sentencing errors in the trial court at the earliest opportunity and gives defendants a means to preserve these errors for appellate review even while an appeal is pending (but before initial brief); 3) rule 3.850 allows a defendant to raise a sentencing error within two years after the sentence becomes final; and 4) rule 3.800(a) permits "a defendant to allege that the sentence was illegal, that insufficient credit was awarded for time served, or that the sentencing scoresheet was incorrectly calculated." Jackson

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v. State, 983 So.2d 562, 568 (Fla. 2008) (citing Brooks v. State, 969 So.2d 238, 241-42 (Fla. 2007)).

In Price v. State, 995 So.2d 401 (Fla. 2008), the Florida Supreme Court, in further distinguishing Gray, recognized a distinction between technical and substantive-defect challenges to state informations. Price provided a standard for distinguishing a technical-defect from a substantive-defect in declaring a substantive-defect (capable of appeal at any time as violation of fundamental right) as one that "wholly fails to allege any element of the crime .... " Id. at 405.

In 2010, the Florida Supreme Court again reviewed a conviction and sentence based on an alleged information deficiency. Miller v. State, 42 So.3d 204, 216 (Fla. 2010). The court announced "...the test for granting relief based on a defect in the information is actual prejudice to the fairness of the trial" is applicable to Apprendi challenges to state-issued informations, regardless of an enhanced sentencing component. Id.

***1270** A year later, in Carbajal v. State, 75 So.3d 258 (Fla. 2011), the Florida Supreme Court further distinguished the application of Gray. The Court advised:

> We have also explained, however, that while a charging instrument is essential to invoke the circuit court's subject matter jurisdiction, 'defects in charging documents are not always fundamental where the omitted matter is not essential, where the actual notice provided is sufficient, and where all the elements of the crime in question are proved at trial.'

Id. at 262 (quoting Gray, 435 So.2d at 818).

The Eleventh Circuit agreed with the Florida Supreme Court's holding that the Sixth Amendment did not require an indictment specify aggravating circumstances, even in a capital case. Grim v. Secy., Fla. Dep't of Corrs., 705 F.3d 1284 (11th Cir. 2013); seeu ualso Winkles v. State, 894 So.2d 842, 846 (Fla. 2005).

[8] Despite precedent provided by the United States Supreme Court and Florida Supreme Court, conflict exists among the district courts of Florida regarding treatment of Apprendi defects in state-issued informations. District courts continue to intermittently cite Whitehead v. State, 884 So.2d 139 (Fla. 2d DCA 2004), Rogers v. State, 875 So.2d 769 (Fla. 2d DCA 2004), Davis v. State, 884 So.2d 1058 (Fla. 2d DCA 2004), and Daniel v. State, 935 So.2d 1240 (Fla. 2d DCA 2006), as supporting per se reversible error for technical-defects in charging documents. See McKenzie v. State, 31 So.3d 275 (Fla. 2d DCA 2010); Green v. State, 139 So.3d 460 (Fla. 1st DCA 2014); Lewis v. State, 177 So.3d 64 (Fla. 2d DCA 2015). However, the Florida Supreme Court's recent opinion in Martinez v. State, No. SC15-1620, —— So.3d ——, 2017 WL 728098 (Fla. Feb. 23, 2017), declares technical-defects in state-issued charging documents are no longer considered "structural" constituting per se reversible error and do not qualify as an "illegal sentence" subject to a rule 3.800(a) challenge. A defendant must raise a timely objection at the trial court level in order to preserve a technical-defect challenge, or such claim is waived. In the absence of timely objection, the defendant's claim survives only if fundamental error is established.

IV. The Amended Information

The subject Amended Information charged:

> ... IVORY LEE ROBINSON, in Alachua County, Florida, on or about May 26, 2002, unlawfully and by an act imminently dangerous to another, and evincing a depraved mind regardless of human life, but without a premediated design to effect the death of any particular person, did attempt **to kill and murder** WILLIAM FRANK MABREY, **by shooting** William Frank Mabrey, a human being, **with a firearm** and/ or IVORY LEE ROBINSON did unlawfully commit a battery upon WILLIAM FRANK MABREY by actually and intentionally touching or striking said person against said person's will, or **causing bodily harm** to WILLIAM FRANK MABREY and in the commission of said battery did **use a deadly weapon**, to-wit: .357 Llama Comanche Stoger Industries Revolver Serial Number S830231, and in the course or commission of said offenses, Ivory Lee Robinson did **discharge a firearm**; to wit; 357 Llama Comanche Stoger Industries Revolver. Serial Number S83023; and as a **result of the discharge of said firearm**, Ivory Lee Robinson did **cause an injury** to WILLIAM FRANK MABREY, **in violation of Section 775.087**, Florida Statutes, ***1271** Section 784.045(1)(a)(2), and Section 782.04(2), Florida Statutes. (L10).
>
> COUNT II: ... IVORY LEE ROBINSON, in Alachua County, Florida, on or about May 26, 2002, having

(18) (10)

been convicted of a felony in the courts of this state or of a crime against the United States of America which is designated as a felony or convicted of an offense in another state, territory or country punishable by imprisonment for a term exceeding one year, did own or have in his care, custody, **actual possession** or control, a certain **firearm**, to-wit: . 357 Llama Comanche Stoger Industries Revolver Serial Number S830231, contrary to Section 790.23(1), Florida Statutes. (L5)

(Emphasis added.)

[9] [10] The purpose of an information is to inform the accused of the charge(s) against him, so that the accused will have an opportunity to prepare a defense. Florida charges the majority of crimes by information.[2] Florida Rule of Criminal Procedure 3.140 provides, "[T]he indictment or information on which the defendant is to be tried shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged." In addition, Florida Rule of Criminal Procedure 3.140(d)(1) further requires the information to recite:

> ... official or customary citation of the statute, rule, regulation or other provision of law that the defendant is alleged to have violated. Error in or omission of the citation shall not be grounds for dismissing the count or reversal of a conviction based thereon if the error or omission did not mislead the defendant to the defendant's prejudice.

Rule 3.140 allows a court to order the prosecuting attorney to furnish a statement of particulars when the information fails to inform the defendant sufficiently to prepare a defense. With respect to any defect,

> no indictment or information, or any count thereof, shall be dismissed or judgement arrested, or new trial granted on account of any defect in the form of the information or of misjoinder of offenses or for any cause whatsoever, unless the court shall be of the opinion that the indictment or information is so vague, indistinct, and indefinite as to mislead the accused and embarrass him or her in the preparation of a defense or expose the accused after conviction or acquittal to substantial danger of a new prosecution for the same offense.

Fla. R. Crim. P. 3.140(o). These sections reveal the duty of the State to give clear and adequate notice, but with the disclaimer that defects are not grounds for automatic reversal or dismissal. See Leeman v. State, 357 So.2d 703, 705 (Fla. 1978).

Technical-Defect Challenge

[11] Here, defendant asserts the Amended Information is technically flawed pursuant to Apprendi, which he argues requires the phrase "*great* bodily harm" be precisely charged as an essential element of the enhancement provision. Accordingly, he asserts such an omission constitutes per se reversible error and cannot be cured by jury verdict. The defendant claims error based on a semantic comparison arguing that the information does not sufficiently charge the required Apprendi elements. In support, the defendant cites to the Second District's opinions in Daniel and Whitehead. These cases presented challenges to minimum mandatory sentences and the ***1272** charging documents did not track the language of the enhancement statute. In both, the jury ultimately found the specific factors pursuant to special interrogatories. Daniel, 935 So.2d at 1241; Whitehead, 884 So.2d at 139. The Second District reversed both sentences, finding that the jury verdict could not cure the "defects" in the charging document and an information must *precisely* track the sentencing enhancement statute. Id. However, Daniel and Whitehead are readily distinguishable and have now been abrogated by the Florida Supreme Court in Martinez, No. SC15-1620, — So.3d at ——, 2017 WL 728098, at *4. In Daniel, the State conceded error on a portion of the sentencing and the case involved multiple defendants- a fact pattern demanding greater specificity in pleading. Daniel, 935 So.2d at 1241.

[12] Technical-defects in a charging document are reviewed differently than the failure to assert an essential element of the crime. Gray, 435 So.2d at 818. "Great bodily harm" is not an essential element of attempted

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second-degree murder or possession of a firearm by a convicted felon, but rather, it allows for reclassification of the underlying crimes pursuant to section 775.087, Florida Statutes. Because the alleged defect was not the omission of an essential element of the crime, the defect is fundamental only if due process was denied. Connolly v. State, 172 So.3d 893, 904 (Fla. 3d DCA 2015); Delgado v. State, 43 So.3d 132, 133 (Fla. 3d DCA 2010) ("An information is fundamentally defective only where it totally omits an essential element of the crime or is so vague, indistinct or indefinite that the defendant is misled or exposed to double jeopardy."); State v. Wimberly, 459 So.2d 456, 458–59 (Fla. 5th DCA 1984) ("There is a difference between an information that completely fails to charge a crime and one where the charging allegations are incomplete or imprecise. The former is fundamentally defective. However, where the information is merely imperfect or imprecise, the failure to timely file a motion to dismiss under Rule 3.190(c) waives the defect and it cannot be raised for the first time on appeal .... If the information recites the appropriate statute alleged to be violated, and if the statute clearly includes the omitted words, it cannot be said that the imperfection of the information prejudiced the defendant in his defenses.") (quoting Jones v. State, 415 So.2d 852, 853 (Fla. 5th DCA 1982)); Brewer v. State, 413 So.2d 1217, 1221 (Fla. 5th DCA 1982) (en banc) (finding no fundamental error where the deficiency of the charging document was not a total omission of an essential element of the crime); Kane v. State, 392 So.2d 1012, 1013 (Fla. 5th DCA 1981); State v. Cadieu, 353 So.2d 150, 151 (Fla. 1st DCA 1977) ("The law does not favor a strategy of withholding attack on the information until the defendant is in jeopardy, then moving to bar the prosecution entirely.").

[13] Florida does not view Apprendi type facts as within the essential elements pleading requirement because Apprendi-elements do not alter the offense itself (as opposed to the punishment that can be imposed). The different levels of punishment, under state law, do not create separate offenses. Florida now adopts the position that the requirements of the Sixth Amendment regarding notice can be satisfied without necessarily and precisely alleging Apprendi-type elements in the charging documents. See Deparvine; Grim v. Sec'y Fla. Dep't of Corrs., 705 F.3d 1284 (11th Cir. 2013); Miller v. State, 42 So.3d 204 (Fla. 2010); DuBoise v. State, 520 So.2d 260 (Fla. 1988). Additionally, the Florida Supreme Court has noted "it will be a rare occasion that an information tracking the language of the statute defying the crime will be found inefficient to *1273 put the accused on notice of the misconduct charged." Price, 995 So.2d at 405.

[14] Defendant's appeal of the technical-defect was initiated under rule 3.800(a), as opposed to rule 3.800(b). Accordingly, the asserted technical charging error must be deemed waived by the defendant's lack of a contemporaneous objection prior to the jury verdict and before the sentence was imposed in 2003. To preserve error for appellate review, a contemporaneous, specific objection must be made during trial. Jackson v. State, 983 So.2d 562, 568 (Fla. 2008); Gore v. State, 964 So.2d 1257, 1265 (Fla. 2007). Further, the alleged pleading insufficiency at issue here does not result in an "illegal sentence" subject to correction at any time under rule 3.800(a). The Florida Supreme Court recognizes that a defendant can waive the failure to precisely charge grounds for a mandatory minimum under the "10–20–Life" law. See Martinez; Nelson v. State, 191 So.3d 950 (Fla. 4th DCA 2016); Rolling v. State, 41 Fla. L. Weekly D1906, — So.3d —, 2016 WL 4723682 (Fla. 3rd DCA Aug. 17, 2016); Connolly v. State, 172 So.3d 893 (Fla. 3d DCA 2015); Bradley v. State, 3 So.3d 1168 (Fla. 2009).

The technical-defect challenge raised by the defendant is also contrary to the "Criminal Appeal Reform Act of 1996," which provides that "[a]n appeal may not be taken from a judgment or order of a trial court unless a prejudicial error is alleged and is properly preserved or, if not properly preserved, would constitute fundamental error." § 924.051(3), Fla. Stat. An issue is not preserved within the meaning of the statute unless it was "timely raised before, and ruled on by, the trial court." § 924.051(1)(b) Fla. Stat., (Supp. 1996); see Latson v. State, 193 So.3d 1070 (Fla. 1st DCA 2016) (Winokur, J., concurring). Here, the defendant did not raise any objection as to the technical insufficiency of the Amended Information prior to the jury verdict. Accordingly, fundamental error must be established to maintain a viable argument on appeal.

Substantive-Defect Challenge

[15] [16] A charging document that "references a specific section of the criminal code" sufficiently detailing "all the elements of the offense" may support a conviction where the pleading otherwise fails to include an essential

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element of the crime. DuBoise v. State, 520 So.2d 260, 265 (Fla. 1988); Figueroa v. State, 84 So.3d 1158, 1161 (Fla. 2d DCA 2012). However, "a conviction on a charge not made by the indictment or information is a denial of due process[,]" and an indictment or information, that "wholly omits to allege one or more of the essential elements of the crime" cannot support a conviction for that crime. Gray, 435 So.2d at 818. This is a "defect that can be raised at any time-before trial, after trial, on appeal, or by habeas corpus." Id.

[17] Defendant also claims that his conviction and sentence are illegal, as the Apprendi factor of "great bodily harm" was not charged in the Amended Information and found by the jury beyond a reasonable doubt. Relying again on Daniel, the defendant argues that a jury verdict cannot cure any alleged deficiencies in the charging document. He also asserts that the jury did not find all sentencing factors under section 775.087, Florida Statutes, in violation of Apprendi. The trial court expressly denied defendant's argument that the Amended Information did not precisely track the enhancement statute—finding that even though the language is not precise, it is clear, and the jury found beyond a reasonable doubt that defendant discharged a firearm causing "great bodily harm."

*1274 Here, the trial court cited Gentile v. State, 87 So.3d 55 (Fla. 4th DCA 2012), in denying defendant's rule 3.800(a) motion. In Gentile, the information alleged the defendant committed the offense with a deadly weapon. Id. at 57. The Fourth District determined that by inference, the jury's verdict found the defendant guilty of using a deadly weapon because it found him guilty "as charged in the information." Id. Thus, the verdict form's reference to the information was sufficient to support Gentile's sentence reclassification.

[18] The Florida Supreme Court has consistently held a jury verdict may "cure" an Apprendi defect in a state-issued information. See Galindez v. State, 955 So.2d 517 (Fla. 2007); Miller; Price; Grim. Post–2006, failure to submit a sentencing factor to a jury is no longer considered structural error. Such failure is subject to harmless error analysis, if the error is of a fundamental nature. Recuenco, 548 U.S. at 221, 126 S.Ct. 2546. Here, any defect in the charging document, namely failure to allege "great bodily harm" as opposed to "bodily harm," was cured by the victim's testimony at trial and the jury verdict. The jury found the defendant guilty as charged, which included the factual finding the defendant shot the victim. We find this sufficient to satisfy "great bodily harm" as a required element of the sentencing enhancement.

If a pleading should require an identification of the particular injury, additional detail is commonly seen as flowing from the factual specificity requirement rather than the essential elements requirement. See United States v. Gayle, 967 F.2d 483 (11th Cir. 1992). Here, the record on appeal confirms Count I of the Amended Information charged that defendant "did attempt to kill ... by shooting ... with a firearm ... causing bodily harm ... did use a deadly weapon ... did possess a firearm ... did discharge a firearm ... did cause injury ... in violation of Section 775.087, Florida Statutes, Section 784.045(1)(a)(2), and Section 782.04(2), Florida Statutes." We agree with the State. The fact the defendant shot the victim, coupled with the statutory citation, was sufficient to give notice of the "great bodily harm" element of section 775.087, Florida Statutes. See Coke v. State, 955 So.2d 1216, 1217 (Fla. 4th DCA 2007) (concluding that an information, which charged the defendant with aggravated battery by "shooting [the victim] in the legs," was sufficient to advise the defendant of the "great bodily harm" element, as language was more specific than "simply alleging great bodily harm"); Nelson v. State, 191 So.3d at 952–53 (concluding the information indicating that the victim was "shot" was sufficient to provide notice of the "great bodily harm" element).

V. Fundamental Error & Harmless Error

[19] [20] A review of the Amended Information and the record demonstrates fundamental error was not present because: 1) the Amended Information did not omit an essential element of the charged offenses; 2) the Amended Information referenced section 775.087, Florida Statutes, in the charging document; 3) the defendant had notice the State would be seeking a reclassification of his conviction under section 775.087, Florida Statutes, based on the defendant's personal possession of a firearm during the commission of the underlying offenses; and 4) the defendant claims no surprise or prejudice in the preparation or presentation of his defense and establishes no other grounds of actual prejudice.

The Florida Supreme Court has clarified that, although a specific finding in an interrogatory on the verdict form is

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preferable, what is ultimately required is a "clear *1275 jury finding." State v. Iseley, 944 So.2d 227, 231 (Fla. 2006). The Court emphasized:

> [A]ll that is required for the application of a reclassification or enhancement statute to an offense is a clear jury finding of the facts necessary to the reclassification or enhancement 'either by (1) a specific question or special verdict form (which is the better practice), or (2) the inclusion of a reference to [the fact necessary for reclassification] in identifying the specific crime for which the defendant is found guilty.'

Gentile, 87 So.3d at 57 (Fla. 4th DCA 2012) (quoting Sanders v. State, 944 So.2d 203, 207 (Fla. 2006) (quoting Iseley, 944 So.2d at 231)).

[21] The test for granting relief based upon a substantive-defect in the charging document is "actual prejudice." Gray, 435 So.2d at 818. Because the defect did not pertain to an essential element of the crime, the defect is fundamental only if the defendant demonstrates that he was denied due process. In other words, because the defendant failed to make a contemporaneous objection, the defect was not fundamental error unless he is able to demonstrate insufficient notice that a conviction for second-degree murder and possession of a firearm by a convicted felon could subject him to a reclassification under section 775.087, Florida Statutes (2002).

[22] "An illegal sentence subject to correction under rule 3.800(a) must be one that no judge under the entire body of sentencing laws could possibly impose under any set of factual circumstances." Martinez at ——, 2017 WL 728098, at *4 (citing Wright v. State, 911 So.2d 81, 83 (Fla. 2005); seeu ualso Carter v. State, 786 So.2d 1173, 1181 (Fla. 2001). The illegality must be of a fundamental nature and clear from the face of the record. Wright, 911 So.2d at 83–84. We find no such fundamental error.

Prior decisions of this Court in Boyce v. State, 202 So.3d 456 (Fla. 1st DCA 2016), and Arnett v. State, 128 So.3d 87 (Fla. 1st DCA 2013), are factually distinguishable.[3] Furthermore, clarity has been provided by the Florida Supreme Court in Martinez at ——, 2017 WL 728098, at *4.

Conclusion

In the wake of Galindez, Deparvine, and Martinez, the menu options for a defendant's Apprendi-error appeal have been limited. Technical-defects in a charging document are no longer "structural" constituting per se reversible error. A defendant's failure to raise a timely objection to a charging document's technical insufficiency, prior to a jury verdict, results in waiver of a pure pleading challenge. Subsequently, a defendant may only appeal by arguing constitutional error, which is subject to harmless error review.

Defendant failed to properly preserve the technical-defect claim, and his "illegal sentence" challenge is not cognizable under a rule 3.800(a) motion. His substantive challenge failed to establish fundamental *1276 error. Alternatively, even if the Apprendi defects asserted by the defendant constitute a constitutional violation, we find the error to be harmless.

For these reasons, we affirm the trial court's denial of defendant's rule 3.800(a) motion.

WOLF and BILBREY, J.J., CONCUR.

All Citations

215 So.3d 1262, 42 Fla. L. Weekly D758

Footnotes

1 It is important to distinguish between "enhancement" of penalty laws and "reclassification" of offense laws. Admittedly, in some instances such a distinction may be without a difference in its practical effect, but the legislature has chosen to make a distinction. Enhancement is commonly associated with the province of the judge in sentencing, as in the case of habitual offenders, section 775.084, and the wearing of a mask, section 775.0845. Reclassification speaks to the degree of the crime charged, and in legislative application, appears to attach at the time the indictment or information is filed and not at the time a conviction is obtained. Section 775.081 "classifies" felonies. Section 775.087(1) "reclassifies" all felonies with specified exceptions when certain conditions attend to the commission of the crimes. Cooper v. State, 455 So.2d 588, 589 (Fla. 1st DCA 1984). Subsections (2) and (3) of section 775.087, Florida Statutes, "enhance" the penalty.

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2 In Florida, a capital crime must be charged by indictment; all other felonies may be charged by information. See Fla. CONST. Art. I, section 15(a). If the Indictment Clause applied to the states, Florida could not prosecute non-capital felonies by information.

3 In Arnett, the defendant was charged with possession of a firearm by a convicted felon. 128 So.3d at 87. The information did not charge "actual possession" of a firearm (key element of the underlying charge), nor did it charge the sentencing reclassification or enhancement. Id. at 88. This Court reversed on the basis that the "enhancement must be *clearly* charged in the information." Id. (emphasis added). In Boyce, this Court reversed an enhanced sentence when the information failed to charge "actual possession" of a firearm despite the underlying burglary crime involving multiple defendants. 202 So.3d at 456. The information failed to detail whether the defendant was being charged under the principal or accomplice theory and was silent with respect to the State's intent to seek the enhancement sentence; The State did not provide notice of its intent to seek sentencing enhancement against Boyce until after the jury trial. Id.

End of Document

Judgment Issue- One(1):

Florida Supreme Court's Case No: SC16-14, Robinson V. Jones, (2016) W.L. 698537 at (Fla. 2016) Review Declined and Petition denied; And:

Judgments Issues- two(2) and three(3):

R2: Ivory Lee Robinson Vs. State of Florida, Supreme Court of Florida. Case No: SC17-982, Lower Tribunal Case Number(s): 1D16-1988; 012--002-CF 002039AXXXX Lower Tribunal Filing Date: 5/24/2017, Review Declined, Robinson V. State, 2017 W.L. 4684023 at Fla. 2017, "Rehearing denied."

JUDGMENT:

EXHIBIT-(C)

PAGE(S):

Judgment of the U.S. Court of Appeal..... 1-8

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
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July 10, 2019

Ivory Lee Robinson
Cross City CI - Inmate Legal Mail
568 NE 255TH
PO BOX 1500
CROSS CITY, FL 32628

Appeal Number: 19-12243-F
Case Style: In re: Ivory Robinson
District Court Docket No: 1:18-cv-00020-MW-CAS

The enclosed order has been entered. No further action will be taken in this matter.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Dionne S. Young, F
Phone #: (404) 335-6224

Enclosure(s)

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12243-F

IN RE: IVORY ROBINSON,

Petitioner.

Application for Leave to File a Second or Successive
Habeas Corpus Petition, 28 U.S.C. § 2244(b)

Before: MARCUS, WILSON and JULIE CARNES, Circuit Judges.

BY THE PANEL:

Pursuant to 28 U.S.C. § 2244(b)(3)(A), Ivory Robinson has filed an application seeking an order authorizing the district court to consider a second or successive petition for a writ of habeas corpus. Such authorization may be granted only if:

> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(b)(2). "The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that

the application satisfies the requirements of this subsection." *Id.* § 2244(b)(3)(C); *see also Jordan v. Sec'y, Dep't of Corrs.*, 485 F.3d 1351, 1357–58 (11th Cir. 2007) (explaining our determination that an applicant has made a *prima facie* showing that the statutory criteria have been met is simply a threshold determination).

In March 2006, Robinson filed his original § 2254 petition, which the district court denied with prejudice in June 2008. He raised two ineffective-assistance-of-counsel claims in that petition that are relevant to his instant application. First, he asserted that his appellate counsel failed to argue that he had been convicted of an uncharged offense because "attempted second-degree murder" had been listed only in the heading for the relevant count, while the body of that count described the offense of "aggravated assault." He also claimed that his appellate counsel failed to argue that his 25-year mandatory-minimum sentence had been unlawfully imposed because the jury had not specifically found the aggravating sentencing factor of "great bodily harm," as such harm had not been alleged in the charging document.

In May 2012, Robinson filed his first application for leave to file a second or successive § 2254 petition (the "first successive application"), in which he alleged that he had been convicted of the uncharged crime of "attempted second-degree murder" because the charging document had not included an allegation that he had intentionally acted in a way that would have resulted in the death of the victim, which was an element of the offense. He argued that his conviction for an uncharged offense was a violation of his right to due process under the Fourteenth Amendment, per *Jackson v. Virginia*, 443 U.S. 307 (1979). Similarly, he argued that the sentencing court erred by imposing a sentence pursuant to a conviction that was based on the defective charging document. In June 2012, we denied Robinson's application because he had not alleged the

existence of a new rule of constitutional law or newly discovered evidence sufficient to grant his application.

In his instant application, Robinson indicates that he wishes to raise three claims in a second or successive § 2254 petition, though he does not specify whether those claims are based on a new rule of constitutional law or newly discovered evidence. First, he argues that he was convicted without due process, as the charging document was "fundamentally defective" because it failed to allege the essential elements of attempted second-degree murder or to refer to the specific section of the Florida code that detailed the elements of that offense, in violation of the Fifth and Fourteenth Amendments' prohibition on convictions for uncharged crimes. In support of that argument, Robinson cites to *Cole v. Arkansas*, 333 U.S. 196 (1948), and *Thornhill v. Alabama*, 310 U.S. 88 (1940). Second, he asserts that the state trial court unconstitutionally imposed a mandatory-minimum sentence, in violation of *Apprendi v. New Jersey*, 530 U.S. 466 (2000) (holding that facts that increase the range of penalties to which a criminal defendant is exposed are elements of the crime that must be submitted to the jury), because neither the charging document nor the jury's verdict referenced whether he actually possessed the firearm that formed the basis for the sentencing enhancement, in violation of the Fifth, Sixth, and Fourteenth Amendments. Third, he claims that the jury's verdict did not specifically indicate that it had found that his discharge of the firearm caused "great bodily harm," as required for the application of the sentence enhancement under *Apprendi* and *Alleyne v. United States*, 570 U.S. 99 (2013) (citing *Apprendi* and holding that any fact that triggers a mandatory-minimum sentence is an element of the crime that must be submitted to a jury, insofar as that fact increases the range of penalties to which a defendant is exposed).

A claim presented in an application for leave to file a successive § 2254 petition that was presented in a prior application that was denied "shall be dismissed." *See* 28 U.S.C. § 2244(b)(1); *In re Everett*, 797 F.3d 1282, 1288 (11th Cir. 2015) (stating that a state prisoner's original § 2254 petition is a "prior application" for the purposes of § 2244(b)(1)). A claim is the same, for the purposes of § 2244(b)(1), when the basic gravamen of the legal argument is the same. *In re Everett*, 797 F.3d at 1288. In other words, where the core factual allegation and core legal basis for a claim in an instant petition or application is the same as that raised in a prior petition or application, the claims are the same for the purposes of § 2244(b)(1). *See In re Hill*, 715 F.3d 284, 294 (11th Cir. 2013) (holding that a petitioner's instant and prior claims were the same for the purposes of § 2244(b)(1) where they were both reducible to the claim that his execution would violate the Eighth and Fourteenth Amendments). New supporting evidence or legal arguments in support of a prior claim are insufficient to create a new claim. *In re Everett*, 797 F.3d at 1288. Section 2244(b)(1)'s requirement that a repetitious claim be dismissed is jurisdictional. *In re Bradford*, 830 F.3d 1273, 1275 (11th Cir. 2016).

Here, we lack jurisdiction to entertain Robinson's first claim because he raised a similar Fourteenth Amendment due-process claim based on his allegedly defective charging document in his first successive application. Although that claim focused on the charging document's failure to allege that he acted with the requisite intent for Florida attempted second-degree murder, that argument is reducible to the claim that the charging document's failure to allege each element of the offense constituted a due-process violation. Therefore, it is the same for the purposes of § 2244(b)(1), and we lack jurisdiction to review it. *In re Everett*, 797 F.3d at 1288; *In re Hill*, 715 F.3d at 294.

We also lack jurisdiction to address Robinson's second claim concerning the imposition of a mandatory-minimum sentence based on a conviction stemming from a defective charging document because it is essentially the same due-process claim he raised in his first successive application. Although Robinson has not previously raised his argument that the jury's failure to specifically find that he possessed a firearm renders his mandatory-minimum sentence unconstitutional under *Apprendi*, that claim is nothing more than a new legal argument supporting the same due-process claim he raised in his original § 2254 petition—that his sentence was enhanced based on an element of Florida attempted second-degree murder that was not found by the jury because the factual basis for that element was not alleged in the charging document. That new legal argument cannot transform Robinson's previously-raised due-process claim into a new claim for the purposes of § 2244(b)(1). *In re Everett*, 797 F.3d at 1288. Thus, we lack jurisdiction to consider Robinson's second claim.

For the same reasons, Robinson's third claim—that he was convicted of an uncharged offense because the charging document did not allege that the discharge of the firearm caused the requisite harm—is reducible to the due-process claim that he raised in his first successive application. The fact that he originally argued that the charging document failed to allege that he possessed the required *intent*, as opposed to his instant claim that the charging document failed to allege that his discharge of the firearm caused the required *harm*, does not change the fact that both arguments reduce to a due-process claim arising from the charging document's failure to allege an element of the offense for which he was convicted. Therefore, because Robinson's second and third claims do not constitute "new" claims for the purposes of § 2244(b)(1), we lack jurisdiction to address them. *In re Everett*, 797 F.3d at 1288; *In re Hill*, 715 F.3d at 294; *see* 28 U.S.C. § 2244(b)(1); *In re Bradford*, 830 F.3d at 1275.

Accordingly, his application for leave to file a second or successive motion is hereby DISMISSED.

Documents:

EXHIBITS-(D)

CW

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

Case Number: 01-2002-02039-CFA

DIVISION III

vs.

IVORY LEE ROBINSON, B/M, 07/19/1947; [redacted]

CHARGES:
I) ATTEMPTED SECOND DEGREE MURDER
II) POSSESSION OF FIREARM BY FELON

AMENDED INFORMATION

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

WILLIAM P. CERVONE, STATE ATTORNEY for the Eighth Judicial Circuit, prosecuting for the State of Florida, under oath, alleges by information that IVORY LEE ROBINSON, in Alachua County, Florida, on or about May 26, 2002, unlawfully and by an act imminently dangerous to another, and evincing a depraved mind regardless of human life, but without a premeditated design to effect the death of any particular person, did attempt to kill and murder WILLIAM FRANK MABREY, by shooting William Frank Maybrey, a human being, with a firearm, and /or IVORY LEE ROBINSON did unlawfully commit a battery upon WILLIAM FRANK MABREY by actually and intentionally touching or striking said person against said person's will, or causing bodily harm to WILLIAM FRANK MABREY and in the commission of said battery did use a deadly weapon, to-wit: .357 Llama Comanche Stoger Industries Revolver Serial Number S830231, and in the course or commission of said offenses, Ivory Lee Robinson did possess a firearm; to wit: .357 Llama Comanche Stoger Industries Revolver Serial Number S830231, and in the course or commission of said offenses, Ivory Lee Robinson did discharge a firearm; to wit: 357 Llama Comanche Stoger Industries Revolver Serial Number S83023; and as a result of the discharge of said firearm, Ivory Lee Robinson did cause an injury to WILLIAM FRANK MABREY, in violation of Section 775.087, Florida Statutes, Section 784.045(1)(a)(2), and Section 782.04(2), Florida Statutes. (L10)

COUNT II: And WILLIAM P. CERVONE, STATE ATTORNEY for the Eighth Judicial Circuit, prosecuting for the State of Florida, under oath, further alleges, by information that IVORY LEE ROBINSON, in Alachua County, Florida, on or about May 26, 2002, having been convicted of a felony in the courts of this state or of a crime against the United States of America which is designated as a felony or convicted of an offense in another state, territory or country punishable by imprisonment for a term exceeding one year, did own or have in his care, custody, actual possession or control, a certain firearm, to-wit: .357 Llama Comanche Stoger Industries Revolver Serial Number S830231, contrary to Section 790.23 (1), Florida Statutes. (L5).

FILED IN OPEN COURT
07-29-2003
D.C.

~~0000037~~
~~0000052~~
(1)

STATE OF FLORIDA
COUNTY OF ALACHUA

Personally appeared before me the undersigned BRIAN S. KRAMER Assistant State Attorney, Eighth Judicial Circuit of Florida, who, being first duly sworn, says that the allegations set forth 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 is filed in good faith, and does hereby certify that he/she has received testimony under oath from the material witness or witnesses for the offense.

WILLIAM P. CERVONE
STATE ATTORNEY

BRIAN S. KRAMER
Assistant State Attorney
Florida Bar No.: 0981265

The foregoing instrument was acknowledged before me this 17th day of July, 2003 by BRIAN S. KRAMER, Assistant State Attorney, who is personally known to me and who did take an oath.

NOTARY PUBLIC Debora L. Spivey
MY COMMISSION #. CC981581 EXPIRES
August 23, 2004

~~0000053~~ ~~0000030~~

(2)

F.S. 777.04(1) ATTEMPTED SECOND DEGREE MURDER

Before you can find the defendant guilty of an Attempt Second Degree Murder, the State must prove the following two elements beyond a reasonable doubt:

1. IVORY LEE ROBINSON intentionally committed an act which would have resulted in the death of WILLIAM FRANK MABREY except that someone prevented IVORY LEE ROBINSON from killing WILLIAM FRANK MABREY or he failed.

2. The act was imminently dangerous to another and demonstrating a depraved mind without regard for human life.

An "act" includes a series of related actions arising from and performed pursuant to a single design or purpose.

An act is "imminently dangerous to another and demonstrating a depraved mind" if it is an act or series of acts that:

1. a person of ordinary judgment would know is reasonably certain to kill or do serious bodily injury to another, and

2. is done from ill will, hatred, spite or an evil intent, and

3. is of such a nature that the act itself indicates an indifference to human life.

In order to convict of Second Degree Murder, it is not necessary for the State to prove the defendant had an intent to cause death.

It is not an attempt to commit Murder in the Second Degree if the defendant abandoned his attempt to commit the offense or otherwise prevented its commission, under circumstances indicating a complete and voluntary renunciation of his criminal purpose.

If you find that the State has proven that the defendant committed the crime of Attempted Murder in the Second Degree, you must decide whether the State has proven beyond a reasonable doubt that the defendant possessed, discharged, or injured William Frank Mabrey by the discharge of a firearm. To aid you in doing so, I will now define the term "firearm" "Antique firearm" and "possession" for you.

A "firearm" is legally defined as any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term "firearm" does not include an antique firearm unless the antique firearm is used in the commission of a crime.

"Antique firearm" means any firearm manufactured in or before 1918 (including any matchlock, flintlock, percussion cap, or similar early type of ignition system) or replica thereof,

VA 1

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR Alachua COUNTY, FLORIDA

STATE OF FLORIDA
Plaintiff,

Case Number: 01-2002-CF-002039-A

DIVISION III

vs.

IVORY LEE ROBINSON
Defendant.

VERDICT

WE THE JURY, find as follows as to the defendant IVORY LEE ROBINSON in this case:

AS TO COUNT I:

X 1. The defendant is guilty of Attempted Second Degree Murder, as charged in Count I of the Information.
_____ 2. The defendant is guilty of Attempted Voluntary Manslaughter, a lesser included offense.
_____ 3. The defendant is guilty of Aggravated Battery, a lesser included offense.
_____ 4. The defendant is guilty of Battery, a lesser included offense.
_____ 5. The defendant is guilty of Assault, a lesser included offense.
_____ 6. The defendant is not guilty.

If you find the defendant guilty of any of the above offenses you shall check one of the following:

a) _____ The defendant possessed a firearm.
b) _____ The defendant possessed and discharged a firearm.
c) X The defendant possessed and discharged a firearm, and by the discharge of said firearm caused injury to another person.
d) _____ The defendant did not possess a firearm.

AS TO COUNT II:

X 1. The defendant is guilty of Possession of a Firearm by a Convicted Felon, as charged in Count II of the Information.
_____ 2. The defendant is not guilty.

If you find the defendant guilty of the above offense you shall check one of the following:

(4)

FILED IN OPEN COURT
8/1, 2003
Steve Donahey

a) X The defendant was in actual possession of a firearm.

b) _____ The defendant was not in actual possession of a firearm.

So say we all, this 1 day of August, 2003, at GAINESVILLE, Alachua County, Florida.

Foreman

(5)

000125

IN THE CIRCUIT COURT OF
THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

[ ] Community Control Violator
[ ] Probation Violator

STATE OF FLORIDA
vs
Ivory Lee Robinson
Defendant

RE IN OFFICIAL RECORDS
INSTRUMENT # 2905891 1 PG(S)
1/28/2015 4:33 PM
BOOK 4327 PAGE 295
J. K. IRBY
Clerk of the Court, Alachua County, Florida
ERECORDED Receipt # 636614
Doc Stamp-Mort: $0.00
Doc Stamp-Deed: $0.00
Intang. Tax: $0.00

Case: 01-2002-CF-2039-A
Division: E3

Amended As Per Order Dated January 22, 2015 As to Degree of Crime On Count I

JUDGMENT

The defendant, Ivory Lee Robinson, being personally before this court represented by Audrancee Martin the attorney of record, and the state represented by Brian Kramer and having

[X] been tried and found guilty by jury ~~by court~~ of the following crime(s)
[ ] entered a plea of guilty to the following crime(s)
[ ] entered a plea of nolo contendere to the following crime(s)
[ ] admitted to violating probation
[ ] been found in violation of probation at hearing

Count	Crime	Offense Statute Number(s)	Degree of Crime
I	Attempt Murder In the Second Degree While Armed with A Firearm	777.04 & 782.04(2)	1F
II	Possession Firearm By Convicted Felon	790.23	2F

[X] and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is here ADJUDICATED GUILTY of the above crime (s):

[ ] and good cause being shown, IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD .

The qualifying offender per F.S. 943.325(1)(b)(5) is required to submit an FDLE-approved blood or biological specimen, F.S. 943.325(7). Unless the defendant has been declared indigent by the court, he/she shall pay the actual costs of collecting the approved biological specimens required under F.S. 943.325.

DONE AND ORDERED in Open Court in Gainesville, Alachua County, Florida this 26 day of January, 2015
Nunc Pro Tunc August 1, 2003

Mark W. Mosley
Judge of the Circuit Court

Filed in Open Court _____ 20___ by _____ D.C.

I HEREBY CERTIFY THAT A COPY OF THIS Judgment was furnished by U .S. Mail and/or hand delivery at the addresses of rec counsel for the state and defense/defendant pro se this _____ day of _____, 20___.

BY Deputy Clerk: _____

J.K. IRBY, CLERK OF COURTS
ALACHUA COUNTY FL
2015 JAN 26 PM 3:23
FILED
CK 33

~~6 of 17~~ (6)
~~44~~
~~48~~

__ Probation Violator __ Resentence
__ Community Control Violator

Defendant: Lucy Robinson 01-2002-CF-2039A

SENTENCE Division: III
(As to Count I)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Authorsei Martin, and having been adjudicated guilty herein, and the court having given the defendant an 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 (date) _____ deferred imposition of sentence until this date
[_] and the court having previously entered a judgment in this case on (date) _____ now resentences 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 section 775.083, Florida Statutes, plus $_____, as the 5% surcharge required by section 960.25, 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 Alachua County Department of Corrections.
[_] The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To be imprisoned (check one; unmarked sections are inapplicable)
[_] For a term of natural life.
[✓] For a term of 25 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 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 sentence, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

[✓] Jail Credit - It is further ordered that the defendant shall be allowed a total of 411 days as credit for time incarcerated before imposition of this sentence.

Consecutive/Concurrent as to Other Counts - It is further ordered that the sentence imposed for this count shall run (check one) ____ consecutive to ____ concurrent with the sentence set forth in count ____ of this case.

(7)

__ Probation Violator , __ Resentence
__ Community Control Violator

Defendant: Avery Robinson 01-2002-CF-2039-A

Division: III

SENTENCE
(As to Count II)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, Lawrence Martin, and having been adjudicated guilty herein, and the court having given the defendant an 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 (date) _____ deferred imposition of sentence until this date
[_] and the court having previously entered a judgment in this case on (date) _____ now resentences 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 section 775.083, Florida Statutes, plus $_____, as the 5% surcharge required by section 960.25, 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 Alachua County Department of Corrections.
[_] The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To be imprisoned (check one; unmarked sections are inapplicable)
[_] For a term of natural life.
[✓] For a term of 3 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 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 sentence, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

[✓] Jail Credit - It is further ordered that the defendant shall be allowed a total of 41 days as credit for time incarcerated before imposition of this sentence.

Consecutive/Concurrent as to Other Counts - It is further ordered that the sentence imposed for this count shall run (check one) ____ consecutive to ✓ concurrent with the sentence set forth in count I of this case.

0001 C

(8)

Defendant: Avery Robinson Case Number: 01-2002-CF-2039-A

SPECIAL PROVISIONS

(As to Count II)

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

Mandatory/Minimum Provisions:

[X] Firearm - It is further ordered that the 3-year minimum imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.

[_] Drug Trafficking - It is further ordered that the _____ mandatory minimum imprisonment provision of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.

[_] Controlled Substance Within 1,000 Feet of School - It is further ordered that the 3-year minimum imprisonment provision of section 893.13(1)(e)1, Florida Statutes, is hereby imposed for the sentence specified in this count

[_] Habitual Felony Offender - The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provision of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.

[_] Habitual Violent Felony Offender - The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of ___ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

[_] Law Enforcement Protection Act - It is further ordered that the defendant shall serve a minimum of ___ years before release in accordance with section 775.0823, Florida Statutes.

[_] Capital Offense - It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.

[_] Short-Barreled Rifle, Shotgun, Machine Gun - It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentences specified in this count.

[_] Continuing Criminal Enterprise - It is further ordered that the 25-year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.

[_] Taking a Law Enforcement Officer's Firearm - It is further ordered that t 3-year mandatory minimum imprisonment provision of section 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this co

[_] Prison Credit - It is further orderd that the defendant be allowed credit for all time previously served on this count in the Department of Coorrections prior to resentencing.

[_] Sexual Predatory - It is further ordered that the Defendant be designated sexual predator pursuant to 775.21, Florida Statutes. Factual findings consistent with this provision is by separate order.

[_] Sexual Offender - It is further ordered that the Defendant be declared a sexual offender as defined in 943.0435,944.606, and 944607, Florida Statutes

00138

(9)

Defendant: Ivory Robinson FN 01-2002-CF-2039A

OTHER PROVISIONS

[_] Retention of Jurisdiction - The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983).

Consecutive/Concurrent as to Other Convictions - It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) __ consecutive to __ concurrent with (check one) the following:

[_] any active sentence being served.

[_] specific sentences: _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Alachua 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 this 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 30 days from this date with the clerk of this 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 orders: 25 years minimum mandatory per section 775.087(2)(a)(3) (10-20-life) as to Count I

In imposing the above sentence, the Court further recommends: _____

If a bail bond is in effect and has not been forfeited, the bond is hereby cancelled and the surety is discharged from liability on such bond. If the bond is a blanket bond covering multiple cases, the surety is discharged from this case only and the bond shall remain viable and intact to secure the defendant's appearance in pending cases. Such cancellation and release of liability shall also apply to any bonds in effect and not forfeited in those cases listed below as a nolle prosequi.

G21000

DONE AND ORDERED in open Court in Gainesville, Alachua County, Florida this 8 day of September, 2023.

Judge of the Circuit Court
PETER K. SIEG

Filed in Open Court September 8, 2023 by [signature] D.C.

I HEREBY CERTIFY THAT A COPY OF THIS Judgment was furnished by U.S. Mail and/or hand delivery at the addresses of record to counsel for the state and defense/defendant pro se this 11 day of September, 2023
BY. Deputy Clerk: [signature]

(10)