

No. 21-_____

SUPREME COURT OF THE UNITED STATES

JIMMIE BARGE,

Petitioner,

VS.

STATE OF FLORIDA,

Respondent.

TABLE OF APPENDICES

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APPENDIX: A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-11566-J

JIMMIE BARGE,

Petitioner-Appellant,

versus

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Florida

ORDER:

Jimmie Barge moves for a certificate of appealability and leave to proceed *in forma pauperis*, in order to appeal the district court's denial of his 28 U.S.C. § 2254 habeas corpus petition. Barge's motion for a certificate of appealability is DENIED because he has failed to make a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). His motion for leave to proceed *in forma pauperis* on appeal is DENIED AS MOOT.


UNITED STATES CIRCUIT JUDGE

APPENDIX: B

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

JIMMIE BARGE,
Petitioner,

vs.

Case No.: 3:20cv405/LAC/EMT

SECRETARY DEP'T OF CORR.,
Respondent.

ORDER

The chief magistrate judge issued a Report and Recommendation on February 4, 2021 (ECF No. 16). The parties were furnished a copy of the Report and Recommendation and afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). I have made a *de novo* determination of the timely filed objections.

Having considered the Report and Recommendation and the objections thereto, I have determined the Report and Recommendation should be adopted.

Accordingly, it is **ORDERED**:

1. The chief magistrate judge's Report and Recommendation (ECF No. 16) is adopted and incorporated by reference in this order.

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2. The petition for writ of habeas corpus (ECF No. 1) is **DENIED**.
3. A certificate of appealability is **DENIED**.

DONE AND ORDERED this 12th day of April, 2021.

s/L.A. Collier
LACEY A. COLLIER
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX: C

STATE OF FLORIDA
VS.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER: 1999-CF-010077-A-O
DIVISION: Young, Tom
COURTROOM: 12-A

RICKY TYRONE NEAL, Defendant

DOB: 12/6/1957

ORDER

This cause coming on this day for Hearing, with Asst State Attorney, R. SEEGOBIN, present and you, the defendant, RICKY TYRONE NEAL being now Present and represented by ADAM REISS, WILLIAM PONALL Present AND WILLIAM PONALL, you have:

Count: 001	ROBBERY ARMED WITH A WEAPON	812.13(2)(B)	First Degree - Felony
Count: 002	KID. W/INT. TO INFIL HARM/TERROR W/WEAP.	787.01(1)(A)(3)	Life
Count: 003	SECOND DEGREE MURDER	782.04(2)	First Degree - Felony
Count: 004	CR-AGGRAVATED BATTERY (GREAT BODILY HARM)	784.045(1)(A)(1)	First Degree - Felony
Count: 005	CARJACKING	812.133(2)(B)	First Degree - Felony
Count: 006	CR-FLEEING OR ATTEMPTING TO ELUDE	316.1935(2)	Third Degree - Felony
Count: 007	CR-DRIVING WHILE LIC. SUSPENDED (2 PRIOR CONV)	322.34(2)(C)	Third Degree - Felony
Count: 008	CR-RESISTING OFFICER WITH VIOLENCE	843.01	Third Degree - Felony
Count: 009	VIOLATION OF DOMESTICK INJUNCTION/D.V. ACT	741.31(4)(A)	First Degree - Misd

COURT ORDERS:

Court Minutes
Per the Court:

-DEFENSE MOTION TO DECLARE FLA
STATUTE 775.082(9) UNCONSTITUTIONAL - IS
GRANTED AS STATED

DONE, ORDERED and FILED in Open Court on December 8, 2020

Honorable Judge:

Tom - 17
Tom Young

RICKY TYRONE NEAL / OCJ 99-32048 M-3F
P.O. BOX 4970

Deputy Clerk in Attendance: Mieshia L.
Office of Tiffany M. Russell, Orange County Clerk of the Circuit and County Courts

COPIES TO:

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 Dockets

ACS
 C.F.S.C.

State Atty
 Other

Defense Atty
 Defendant

5020-2600

PAYMENT LOCATIONS (Monday - Friday) If paying by check/money order, please make check/money order payable to Orange County Clerk of Courts.

Downtown
425 N. Orange Ave., Suite 410
Orlando, FL. 32801

West Orange Branch
475 Story Rd.
Ocoee, FL. 34761
Monday through Friday

Northwest Branch
1111 N. Rock Springs Rd.
Apopka, FL. 32703

Northeast Branch
450 N. Lakemont Ave.
Winter Park, FL. 32792

APPENDIX: D

RULE 3.992(a) CRIMINAL PUNISHMENT CODE SCORESHEET

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

1. SENT. DATE 01/21/2015 9/30	2. PREP'S NAME ANDRES/LAS	SAO	3. COUNTY OF ESCAMBIA	4. SENTENCING JUDGE NOBLES
5. NAME (LAST, FIRST, MID, SUF) BARGE, JIMMIE, , JR	6. DOB 07/22/1967	8. RACE BLACK	10. PRI. OFF. DATE 107/01/2013	12.
		9. GENDER MALE	11. PRIMARY DOCKET # 1404167	JWTR PLEA
13. UNIFORM DOCKET #	7. DC # 211929	COURT DIVISION PENDING		

1

DEGREE	LEVEL
1ST DEG 812.13(2) (B) ROBB. WPN-NOT DEADLY	08
(Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)	

III. ADDITIONAL OFFENSE(S): Supplemental page attached - NO

11. ADDITIONAL OFFENSE(S). Supplemental page attached NO
 Docket# FEL/MM F.S.# OFFENSE QUALIFY COUNTS POINTS TOTAL
 DEGREE LEVEL A S C R
 (Level-Points:M=0.2,1=0.7,2=1.2,3=2.4,4=3.6,5=5.4,6=18,7=28,8=37,9=46,10=58)
 Prior capital felony triples Add. Off. points - NO Suppl. page points 0.0
 II 0.0

III. VICTIM INJURY

	Number	Total		Number	Total		
2nd Deg. Murder	240 X	0.0 =	0.0	Slight	4 X	0.0 =	0.0
Death	120 X	0.0 =	0.0	Sex Penet.	80 X	0.0 =	0.0
Severe	40 X	0.0 =	0.0	Sex Cont.	40 X	0.0 =	0.0
Moderate	18 X	0.0 =	0.0				

IV. PRIOR RECORD: Supplemental page attached - YES

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUAL	DESCRIPTION ASCR	NBR	PTS	TOTAL	
3RD DEG	893.13(6) (A)	03		COCAINE - POSSESSIO	001 X	1.6	=	1.6
MISDEME	784.03	M		SIMPLEBATTERY-MISD	006 X	0.2	=	1.2
2ND DEG	784.045(1) (B)	07		AGGRAV. BATTERY, VICT	002 X	14.0	=	28.0
MISDEME	812.014(3) (A)	M		PETIT-THEFT-MISD	004 X	0.2	=	0.8
2ND DEG	812.13(2) (C)	06		ROBB. NO GUN/DDLY.W	003 X	9.0	=	27.0
1ST DEG	812.13(2) (B)	08		ROBB. WPN-NOT DEADL	001 X	19.0	=	19.0
MISDEME	843.02	M		RESIST.LEO/NO VIOL.	003 X	0.2	=	0.6
(Lev-Pnts:M=0.2,1=0.5,2=0.8,3=1.6,4=2.4,5=3.6,6=9,7=14,8=19,9=23,10=29)								

Supplemental page points: 0.8
IV. 79.0
Page 1 Subtotal: 153.0

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

NAME (LAST, FIRST, MI)	DOCKET #
BARGE, JIMMIE,	1404167

Page 1 Subtotal: 153.0
V. 0.0

V. Legal Status violation = 4 Points V. 0.0

— Escape Failure to appear Fleeing Supersedeas bond

— Incarceration Pretrial Intervention or diversion Program

— Court Imposed or post prison release community supervision resulting in a conviction

VI. Community Sanction violation before the court for sentencing VI. 0.0

— Probation Community Control Pretrial Intervention or diversion

— 6 points for any violation other than new felony conviction *

— each successive violation OR

— New felony conviction = 12 points x each successive violation if new offense results in conviction before or at the same time as sentence for violation of probation OR

— 12 Points x each successive violation for a violent felony offender of special concern when the violation is not based solely on failure to pay costs, restitution OR

— New felony conviction = 24 points x each successive violation for a violent felony offender of special concern if new offense results in a conviction before or at the same for violation of probation

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 points VII. 0.0

Enhancements (only if the primary offense qualifies for enhancement)

Law Enf. Protect	Drug Trafficker	Motor Vehicle Theft	Criminal Gang Offense	Domestic Violence in the Presence of Related Child (offenses committed on or after 03/12/2007)	Adult-on-Minor Sex Offense (offenses committed on or after 10/01/2014)
X 1.5/2.0/2.5	X 1.5	X 1.5	X 1.5	X 1.5	X 2.0

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

RULE 3.992(b) CRIMINAL PUNISHMENT CODE SUPPLEMENTAL SCORESHEET

NAME (LAST, FIRST, MIDDLE, SUFFIX)	DOCKET	UNIFORM CASE NUMBER	DATE OF SENT
BARGE, JIMMIE,	1404167		01/21/2015
, JR			9/30

II. ADDITIONAL OFFENSE(S):

Docket#	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY ASCR	COUNTS	POINTS	TOTAL

(Level-Points:M=0.2,1=0.7,2=1.2,3=2.4,4=3.6,5=5.4,6=18,7=28,8=37,9=46,10=58)
II. 0.0

IV. PRIOR RECORD:

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUAL ASCR	DESCRIPTION	NBR	PTS	TOTAL
3RD DEG	812.014(2)(C)1	02		GRAND THEFT, 300 L/5 001 X	0.8	=	0.8

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

Reasons for Departure - Mitigating Circumstances

(reasons may be checked here or written on the scoresheet)

- Legitimate, uncoerced plea bargain
- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction, or for a physical disability, and the defendant is amenable to treatment.
- The need for payment of restitution to the victim outweighs the need for a prison sentence.
- The victim was an initiator, willing participant, aggressor, or provoker of the incident.
- The defendant acted under extreme duress or under the domination of another person.
- Before the identity of the defendant was determined, the victim was substantially compensated.
- The defendant cooperated with the State to resolve the current offense or any other offense.
- The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.
- At the time of the offense the defendant was too young to appreciate the consequences of the offense.
- The defendant is to be sentenced as a youthful offender.
- The defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program.
- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

Pursuant to 921.0026(3) the defendant's substance abuse or addiction does not justify a downward departure from the lowest permissible sentence, except for the provisions of s.921.0026(2)(m).

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

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

SENTENCE COMPUTATION

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

If total sentence points are greater than 44:

153.0 minus 28 = 125.0 X .75 = 93.7
total sentence points lowest permissible prison sentence in months

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

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

~~363.0~~ Life
maximum sentence
in years

TOTAL SENTENCE IMPOSED

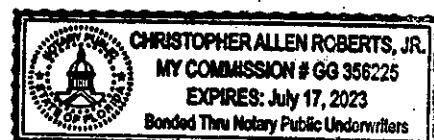
	Years	Months	Days
<input checked="" type="checkbox"/> State Prison <input checked="" type="checkbox"/> Life			
<input type="checkbox"/> County Jail <input type="checkbox"/> Time Served			
<input type="checkbox"/> Community Control			
<input type="checkbox"/> Probation <input type="checkbox"/> Modified			

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

Mitigated Departure Plea Bargain Prison Diversion Program
Other Reason _____

JUDGE'S SIGNATURE

Christopher A. Roberts 9/30/15



*OK after 7
10/12/21*