

No.

IN THE SUPREME COURT OF THE UNITED STATES

---

---

ANDREW SPOSATO, PETITIONER

v.

STATE OF FLORIDA, RESPONDENT.

---

*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE FOURTH DISTRICT COURT OF APPEAL OF FLORIDA*

---

**APPENDIX TO PETITION FOR A WRIT OF CERTIORARI**

---

---

CAREY HAUGHWOUT

*Public Defender*

Benjamin Hunter Eisenberg

*Assistant Public Defender*

*Counsel of Record*

Office of the Public Defender

Fifteenth Judicial Circuit of Florida

421 Third Street

West Palm Beach, Florida 33401

(561) 355-7600

[beisenberg@pd15.state.fl.us](mailto:beisenberg@pd15.state.fl.us)

[appeals@pd15.org](mailto:appeals@pd15.org)

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

**ANDREW SPOSATO,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D21-2856

[May 24, 2023]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit,  
Indian River County; Dan L. Vaughn, Judge; L.T. Case No.  
312017CF000770A.

Carey Haughwout, Public Defender, and Benjamin Eisenberg, Assistant  
Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Rachael Kaiman,  
Assistant Attorney General, West Palm Beach, for appellee.

**ON MOTION FOR WRITTEN OPINION**

PER CURIAM.

We grant the defendant's motion for written opinion, withdraw our prior  
opinion, and substitute the following in its place.

*Affirmed. See Guzman v. State*, 350 So. 3d 72, 73 (Fla. 4th DCA 2022),  
*rev. pending*, No. SC22-1597.

KLINGENSMITH, C.J., DAMOORGIAN and ARTAU, JJ., concur.

\* \* \*

***Not final until disposition of timely filed motion for rehearing.***

# Supreme Court of Florida

TUESDAY, JUNE 13, 2023

Andrew Sposato,  
Petitioner(s)

v.

State of Florida,  
Respondent(s)

**SC2023-0752**

Lower Tribunal No(s):

4D21-2856;

312017CF000770AXXXX

This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

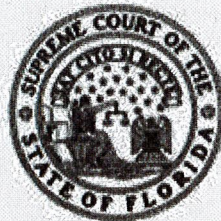
A True Copy  
Test:

SC2023-0752 6/13/2023

John A. Tomasino

Clerk, Supreme Court

SC2023-0752 6/13/2023



RECEIVED 06/13/2023 2:03 pm Fourth District Court Of Appeal

**CASE NO.: SC2023-0752**

Page Two

DL

Served:

BENJAMIN EISENBERG  
RACHAEL KAIMAN  
HON. JEFFREY R. SMITH  
HON. DAN L. VAUGHN  
HON. LONN WEISSBLUM

#### ISSUE IV

APPELLANT WAS ENTITLED TO A TWELVE-PERSON JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS AND HE DID NOT WAIVE THAT RIGHT

Appellant was convicted of felonies by a jury comprised of a mere six people. In particular, one of Appellant's convictions was for a capital offense, carrying a mandatory sentence of life imprisonment without parole. He argues that the Sixth and Fourteenth Amendments guarantee the right to a twelve-person jury when the defendant is charged with a felony.

Appellant notes that this Court recently decided *Guzman v. State*, 4D22-0148, 2022 WL 14688085 (Fla. 4th DCA Oct. 26, 2022), which rejected a defendant's argument "that his convictions by a six-person jury violated the Sixth and Fourteenth Amendments to the United States Constitution." *Id.* at \*1. The majority opinion in *Guzman* explained this Court was bound by the United States Supreme Court's holding in *Williams* that six-person juries are constitutionally permissible until the high court expressly revisited that holding. *Id.*

In a concurring opinion, Judge Gross “explain[ed] that [the defendant’s] legal argument on jury composition present[ed] a classic example of how the law navigates the shifting sands of constitutional analysis.” *Id.* at \*2 (Gross, J., concurring). Although disagreeing with the defendant that *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), had overturned *Williams*, Judge Gross wrote that, “if applied to the issue of jury size, the originalist analysis in *Ramos* would undercut *Williams*’s functionalist underpinnings.” *Id.* at \*5 (Gross, J., concurring). “At a minimum, *Ramos* . . . suggests that *Williams* was wrongly decided.” (Gross, J., concurring). Furthermore, the defendant “has a credible argument that the original public meaning of the Sixth Amendment right to a ‘trial by an impartial jury’ *included* the right to a 12-person jury. *Id.* (Gross, J., concurring).

Appellate attorneys have the obligation to “zealously assert[] the client’s position under the rules of the adversary system.” R. Regulating Fla. Bar prmb1. As part of this obligation, “[c]ounsel has the responsibility to make such [arguments] as may be necessary to keep the defendant’s case in an appellate ‘pipeline.’” *Sandoval v. State*, 884 So. 2d 214, 217 n. 1 (Fla. 2d DCA 2004). Therefore,

although acknowledging this Court is bound by *Guzman*, Appellant seeks to preserve this argument for further review.

On the merits, although the United States Supreme Court held in *Williams v. Florida*, 399 U.S. 78, 86 (1970), that juries as small as six were constitutionally permissible, *Williams* is impossible to square with the Supreme Court's ruling in *Ramos v. Louisiana*, 140 S. Ct. 1390 (2020), which concluded that the Sixth Amendment's "trial by an impartial jury" requirement encompasses what the term "meant at the Sixth Amendment's adoption." *Id.* at 1395.

After the Sixth Amendment was enacted, a bevy of state courts interpreted it to require a twelve-person jury. *See Miller, Comment, Six of One Is Not A Dozen of the Other*, 146 U. Pa. L. Rev. 621, 643 n.133 (1998) (collecting cases from the late 1700s to the 1860s). In 1898, the United States Supreme Court added its voice to the chorus, noting that the Sixth Amendment protects a defendant's right to be tried by a twelve-person jury. *Thompson v. Utah*, 170 U.S. 343, 349-350 (1898). The Supreme Court continued to cite the basic principle that the Sixth Amendment requires a twelve-person jury in criminal cases for seventy more years. *See, e.g., Maxwell v. Dow*, 176 U.S. 581,

586 (1900); *Patton v. United States*, 281 U.S. 276, 288 (1930); *Duncan v. Louisiana*, 391 U.S. 145, 151-152 (1968).

In 1970, however, the *Williams* Court overruled this line of precedent in a decision that Justice Harlan described as “stripping off the livery of history from the jury trial” and ignoring both “the intent of the Framers” and the Court’s long held understanding that constitutional “provisions are framed in the language of the English common law [] and ... read in the light of its history.” *Baldwin v. New York*, 399 U.S. 117, 122-123 (1970) (citation omitted) (Harlan, J., concurring in the result in *Williams*). Indeed, *Williams* recognized that the Framers “may well” have had “the usual expectation” in drafting the Sixth Amendment “that the jury would consist of 12” members. *Williams*, 399 U.S. at 98-99. But *Williams* concluded that such “purely historical considerations” were not dispositive. *Id.* at 99. Rather, the Court focused on the “function” that the jury plays in the Constitution, concluding that the “essential feature” of a jury is it leaves justice to the “commonsense judgment of a group of laymen” and thus allows “guilt or innocence” to be determined via “community participation and [with] shared responsibility.” *Id.* at 100-01. According to the *Williams* Court, both “currently available evidence



[and] theory” suggested that function could just as easily be performed with six jurors as with twelve. *Id.* at 101-102 & n.48.

*Williams*’s ruling that the Sixth Amendment (as incorporated to the States by the Fourteenth) permits a six-person jury cannot stand in light of *Ramos*. There, the Supreme Court held that the Sixth Amendment requires a unanimous verdict to convict a defendant of a serious offense. In reaching that conclusion, the *Ramos* Court overturned *Apodaca v. Oregon*, 406 U.S. 404 (1972), a decision that it faulted for “subject[ing] the ancient guarantee of a unanimous jury verdict to its own functionalist assessment.” 140 S. Ct. at 1401-1402.

That reasoning undermines *Williams* as well. *Ramos* rejected the same kind of “cost-benefit analysis” the Court undertook in *Williams*, observing that it is not the Court’s role to “distinguish between the historic features of common law jury trials that (we think) serve ‘important enough functions to migrate silently into the Sixth Amendment and those that don’t.’” 140 S. Ct. at 1400-01. Ultimately, the *Ramos* Court explained, the question is whether “at the time of the Sixth Amendment’s adoption, the right to trial by jury included” the particular feature at issue. *Id.* at 1402. As the history summarized above establishes, there can be no serious doubt that

the common understanding of the jury trial during the Revolutionary War era was that twelve jurors were required. *See* 140 S. Ct. at 1395.

Even setting aside *Williams*'s now-disfavored functionalist logic, its ruling suffered from another significant flaw: it was based on research that was out of date shortly after the opinion issued. Specifically, the *Williams* Court “f[ou]nd little reason to think” that the goals of the jury guarantee—including, among others, “to provide a fair possibility for obtaining a representative[] cross-section of the community”—“are in any meaningful sense less likely to be achieved when the jury numbers six, than when it numbers 12.” *Id.* at 100. The Court theorized that “in practice the difference between the 12-man and the six-man jury in terms of the cross-section of the community represented seems likely to be negligible.” *Id.* at 102.

In the time since *Williams*, that determination has proven incorrect. Indeed, the Court acknowledged as much just eight years later in *Ballew v. Georgia*, 435 U.S. 223 (1978), when it concluded that the Sixth Amendment barred the use of a five-person jury. Although *Ballew* did not overturn *Williams*, the *Ballew* Court observed that empirical studies conducted in the handful of intervening years highlighted several problems with *Williams*'

assumptions. Moreover, the *Ballew* Court “admit[ted]” that it “d[id] not pretend to discern a clear line between six members and five,” effectively acknowledging that the studies it relied on also cast doubt on the effectiveness of the six-member jury. *Id.* at 239.

Post-*Ballew* research has further undermined *Williams*. Current empirical evidence indicates that “reducing jury size inevitably has a drastic effect on the representation of minority group members on the jury.” Diamond et al., *Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge*, 6 J. of Empirical Legal Stud. 425, 427 (Sept. 2009); see also Higginbotham et al., *Better by the Dozen: Bringing Back the Twelve-Person Civil Jury*, 104 *Judicature* 47, 52 (Summer 2020). Because “the 12-member jury produces significantly greater heterogeneity than does the six-member jury,” Diamond et al., *Achieving Diversity on the Jury, supra*, at 449, it increases “the opportunity for meaningful and appropriate representation” and helps ensure that juries “represent adequately a cross-section of the community.” *Ballew*, 435 U.S. at 237.

Appellant recognizes that the state constitution provides:

SECTION 22. Trial by jury.—The right of trial by jury shall be secure to all and remain inviolate. The qualifications

and the number of jurors, not fewer than six, shall be fixed by law.

Art. I, § 22, Fla. Const. And he recognizes that section 913.10, Florida Statutes, provides for six jurors except in capital cases. *See also* Fla. R. Crim. P. 3.270.

But Florida's provision for a jury of six stems from the dawn of the Jim Crow era, one month after federal troops were withdrawn from the state. In 1875, the Jury Clause of the 1868 constitution was amended to provide that the number of jurors "for the trial of causes in any court may be fixed by law." *See Florida Fertilizer & Mfg. Co. v. Boswell*, 34 So. 241, 241 (Fla. 1903). The common law rule of a jury of twelve was still kept in Florida while federal troops remained in the state. There was no provision for a jury of less than twelve until the Legislature enacted a provision specifying a jury of six in Chapter 3010, section 6. *See Gibson v. State*, 16 Fla. 291, 297-98 (1877); *Florida Fertilizer*, 34 So. 15 241.

The Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla. 294. This was less than a month after the last federal troops were withdrawn from Florida in January 1877. *See* Jerrell H. Shofner, *Reconstruction and*

*Renewal, 1865-1877*, in *The History of Florida* 273 (Michael Gannon, ed., first paperback edition 2018). The jury-of-six thus first saw light at the birth of the Jim Crow era as former Confederates regained power in southern states and state prosecutors made a concerted effort to prevent blacks from serving on jurors.

In *Ramos*, Justice Gorsuch noted that the Louisiana non-unanimity rule arose from Jim Crow era efforts to enforce white supremacy. *Id.* at 1394; *see also id.* at 1417 (Kavanaugh, J., concurring) (non-unanimity was enacted “as one pillar of a comprehensive and brutal program of racist Jim Crow measures against African-Americans, especially in voting and jury service.”). The history of Florida’s jury of six arises from the same historical context.

In view of the foregoing, a jury of six at a criminal trial for any felony offense, particularly a crime punishable by up to life imprisonment, is unconstitutional under the Sixth and Fourteenth Amendments of the United States Constitution.

### **CONCLUSION**

Based on the foregoing arguments and authorities, this Court should reverse and remand for a new trial on all counts.

- Probation Violator                       Modified  
 Community Control Violator       Amended  
 Re-sentence                                       Mitigated  
 Sentence Absentia                       Corrected

In the Circuit Court,  
 Nineteenth Judicial Circuit  
 In and for Indian River County, Florida

Division: Felony  
 Case Number(s):  
 312017CF000770AXXXXXX

State of Florida  
 VS.  
**ANDREW DAVID SPOSATO**  
 Defendant.

**AMENDED**  
 AS TO COUNT 2 TO RUN CONCURRENT  
 WITH COUNT 1

**JUDGMENT**

Defendant's Attorney      DOROTHY NAUMANN  
 State's Attorney              WILLIAM LONG,

The above Defendant, being personally before this Court and having:

- 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)

Count	Crime	Offense Statute Number	Deg of Crime		OBTS #
1	SEXUAL BATTERY - ON A CHILD UNDER 12 BY PERPETRATOR 18 OR OLDER	794.011(2)	F	C	3101113531
2	SEXUAL BATTERY ON A CHILD - FAMILIAL OR CUSTODIAL AUTHORITY	794.011(8B)	F	F	3101114271

and no cause having been shown why the Defendant should not be adjudicated guilty, IT IS ORDERED THAT the Defendant is hereby ADJUDICATED GUILTY of the above crime(s).

and being a qualified offender pursuant to s. 943.325, the Defendant shall be required to submit DNA samples as required by law.

and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD

DONE AND ORDERED in chambers on AUGUST 18, 2022 in Indian River County, Florida

NUNC PRO TUNC \_\_\_\_\_  
 SEPTEMBER 29, 2021

*[Signature]*  
 \_\_\_\_\_  
 CIRCUIT JUDGE DAN VAUGHN

JEFFREY R. SMITH  
 CLERK OF CIRCUIT COURT  
 INDIAN RIVER COUNTY, FLORIDA  
 2022 AUG 19 PM 12:28  
 FILED FOR RECORD  
 FELONY DIVISION

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR INDIAN RIVER COUNTY, STATE OF FLORIDA

Defendant: ANDREW DAVID SPOSATO

Case: 312017CF000770AXXXXXX

**SENTENCE**

(As to Count 1)

The Defendant, being personally before this court, accompanied by the defendant's attorney of record, DOROTHY NAUMANN and having been adjudicated guilty herein, and the court having given 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 bring shown.

(check one if applicable)

- and the Court having on \_\_\_\_\_ deferred imposition of sentence until \_\_\_\_\_.
- and the Court having previously entered a judgment in this case on September 29, 2021 now resentences the Defendant.
- and the Court having placed 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 Sheriff of Indian River County, Florida.
- The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.
- The Defendant is hereby sentenced

- Probation  
 Drug Offender Probation  
 Community Control  
 Sex Offender Probation

**To Be Imprisoned (Check one, unmarked sections are inapplicable):**

- For a term of natural life.
- For a term of \_\_\_\_\_ Year(s) \_\_\_\_\_ Month(s) \_\_\_\_\_ Day(s) as a condition of  Probation  Community Control
- 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 \_\_\_\_\_ Year(s) \_\_\_\_\_ Month(s) \_\_\_\_\_ Day(s) 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.
- 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.

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

Defendant:  
ANDREW DAVID SPOSATO

Case:  
312017CF000770AXXXXX

## SPECIAL PROVISIONS

(As to Count 1)

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

### Minimum/Mandatory Provisions:

- |   |                          |   |
|---|--------------------------|---|
| Firearm   | <input type="checkbox"/> | It is further ordered that the ____ year minimum imprisonment provisions of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.   |
| Drug Trafficking  | <input type="checkbox"/> | It is further ordered that the ____ minimum mandatory imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.  |
| Controlled Substance<br>(within 1000 ft. of school)       | <input type="checkbox"/> | 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<br>Offender                               | <input type="checkbox"/> | The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of 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<br>Felony Offender                       | <input type="checkbox"/> | The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of 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<br>Protection Act                         | <input type="checkbox"/> | It is further ordered that the defendant shall serve a minimum of ____ years before release in accordance with section 775.0823, Florida Statutes.  |
| Short-Barreled Rifle<br>Shotgun, Machine Gun              | <input type="checkbox"/> | It is further ordered that the 5-year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.  |
| Prison Releasee<br>Reoffender                             | <input type="checkbox"/> | The defendant is adjudicated a prison releasee reoffender and has been sentenced to an extended term of ____ years as such in accordance with the provisions of section 775.082(9)(a), Florida Statutes. In accordance with section 775.082(b) the defendant must serve 100 percent of that portion of the total sentence.  |
| Criminal use of Personal<br>Identification<br>Information | <input type="checkbox"/> | It is further ordered that the 3 year mandatory minimum imprisonment provision of section 817.568(2)(b), Florida Statutes hereby imposed for the sentence specified in this court.  |

### Other Provisions:

- |  |                          |  |
|--|--------------------------|--|
| Continuing Criminal<br>Enterprise                | <input type="checkbox"/> | 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<br>Enforcement Officer's<br>Firearm | <input type="checkbox"/> | It is further ordered that the 3-year mandatory minimum imprisonment provision of section 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this court. |
| Retention of Jurisdiction                        | <input type="checkbox"/> | The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983)   |



Defendant:  
ANDREW DAVID SPOSATO

Case:  
312017CF000770AXXXXXX

- Jail Credit  It is further ordered that the defendant shall be allowed a total of 1,233 days as credit for time incarcerated before imposition of this sentence  All Cts. Or Ct. \_\_\_\_\_
- Credit for Time Served in Resentencing after Violation of Probation or Community Control  It is further ordered that the defendant be allowed \_\_\_\_\_ days time served between the date of arrest as a violator following release from prison to the date of re-sentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count \_\_\_\_\_ (Offenses committed before October 1, 1989).
- It is further ordered that the defendant be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of re-sentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on case/count \_\_\_\_\_ (Offenses committed between October 1, 1989, and December 31, 1993).
- The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6).
- The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).
- It is further ordered that the defendant be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of re-sentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count \_\_\_\_\_ (Offenses committed on or after January 1, 1994)
- 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 sentence set forth in count \_\_\_\_\_ of this case.
- Consecutive/Concurrent As To Other Convictions  It is further ordered that the composite term of all sentencing imposed for the counts specified in this order shall run (check one)  consecutive to  concurrent with the following: (check one)
- Any active sentence being served.
- Specific sentences: \_\_\_\_\_

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR INDIAN RIVER COUNTY, STATE OF FLORIDA

Defendant: ANDREW DAVID SPOSATO

Case: 312017CF000770AXXXXX

**SENTENCE**

(As to Count 2)

The Defendant, being personally before this court, accompanied by the defendant's attorney of record, DOROTHY NAUMANN and having been adjudicated guilty herein, and the court having given 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 bring shown.

(check one if applicable)

- and the Court having on \_\_\_\_\_ deferred imposition of sentence until \_\_\_\_\_.
- and the Court having previously entered a judgment in this case on September 29, 2021 now resentsences the Defendant.
- and the Court having placed 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 Sheriff of Indian River County, Florida.
- The Defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.
- The Defendant is hereby sentenced

- Probation  
 Drug Offender Probation  
 Community Control  
 Sex Offender Probation

**To Be Imprisoned (Check one, unmarked sections are inapplicable):**

- For a term of natural life.
- For a term of \_\_\_\_\_ Year(s) \_\_\_\_\_ Month(s) \_\_\_\_\_ Day(s) as a condition of  Probation  Community Control
- 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 \_\_\_\_\_ Year(s) \_\_\_\_\_ Month(s) \_\_\_\_\_ Day(s) 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.
- 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.

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

Defendant:  
ANDREW DAVID SPOSATO

Case:  
312017CF000770AXXXXX

## SPECIAL PROVISIONS

(As to Count 2)

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

### Minimum/Mandatory Provisions:

- Firearm  It is further ordered that the \_\_\_\_ year minimum imprisonment provisions 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 \_\_\_\_ minimum mandatory imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
- Controlled Substance (within 1000 ft. 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 provisions 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.
- 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 sentence specified in this count.
- Prison Releasee Reoffender  The defendant is adjudicated a prison releasee reoffender and has been sentenced to an extended term of \_\_\_\_ years as such in accordance with the provisions of section 775.082(9)(a), Florida Statutes. In accordance with section 775.082(b) the defendant must serve 100 percent of that portion of the total sentence.
- Criminal use of Personal Identification Information  It is further ordered that the 3 year mandatory minimum imprisonment provision of section 817.568(2)(b), Florida Statutes hereby imposed for the sentence specified in this court.

### Other Provisions:

- 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 the 3-year mandatory minimum imprisonment provision of section 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this court.
- Retention of Jurisdiction  The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983)

Defendant:  
ANDREW DAVID SPOSATO

Case:  
312017CF000770AXXXXX

- Jail Credit  It is further ordered that the defendant shall be allowed a total of 1,233 days as credit for time incarcerated before imposition of this sentence  All Cts. Or Ct. \_\_\_\_\_
- Credit for Time Served in Resentencing after Violation of Probation or Community Control  It is further ordered that the defendant be allowed \_\_\_\_\_ days time served between the date of arrest as a violator following release from prison to the date of re-sentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count \_\_\_\_\_ (Offenses committed before October 1, 1989).
- It is further ordered that the defendant be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of re-sentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on case/count \_\_\_\_\_ (Offenses committed between October 1, 1989, and December 31, 1993).
- The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(6).
- The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).
- It is further ordered that the defendant be allowed \_\_\_\_\_ days time served between date of arrest as a violator following release from prison to the date of re-sentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count \_\_\_\_\_ (Offenses committed on or after January 1, 1994)
- 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 sentence set forth in count 1 of this case.
- Consecutive/Concurrent As To Other Convictions  It is further ordered that the composite term of all sentencing imposed for the counts specified in this order shall run (check one)  consecutive to  concurrent with the following: (check one)
- Any active sentence being served.
- Specific sentences: \_\_\_\_\_.

Defendant:  
ANDREW DAVID SPOSATO

Case:  
312017CF000770AXXXXX

Other Provisions:

In the event the above sentence is to the Department of Corrections, the Sheriff of Indian River 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 document 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 assistance of counsel in taking the appeal at the expense of the State on showing of indigency.

In imposing the above sentence, the court further recommends AMENDED PER ORDER FILED ON AUGUST 18, 2022 AS TO COUNT 2 TO RUN CONCURRENT WITH THE SENTENCE IMPOSED IN COUNT 1. ALL OTHER ASPECTS OF THE ORIGINAL SENTENCE REMAIN THE SAME.

DONE AND ORDERED in open court on AUGUST 18, 2022 at Indian River County, Florida.

NUNC PRO TUNC \_\_\_\_\_  
SEPTEMBER 29, 2021

  
\_\_\_\_\_  
HONORABLE DAN VAUGHN

FILED FOR RECORD  
CLERK OF CIRCUIT COURT  
INDIAN RIVER COUNTY, FL  
2022 AUG 19 PM 12:28  
BY \_\_\_\_\_ n.c.