No.

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH AIKEN, 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

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

JOSEPH AIKEN,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D22-1437

[July 13, 2023]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Robert R. Makemson, Judge; L.T. Case No. 432020CF001073A.

Carey Haughwout, Public Defender, and Christine C. Geraghty, Assistant Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Sorraya M. Solages-Jones, Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

WARNER, DAMOORGIAN and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

IV. Aiken was entitled to a twelve-person jury under the Sixth and Fourteenth Amendments, and he did not waive that right.

Aiken acknowledges this Court's ruling in *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), which relied on *Williams v. Florida*, 399 U.S. 78, 86 (1970). *Guzman* also noted the case of *State v. Khorrami*, No. 1 CA-CR 20-0088, 2021 WL 3197499 (Ariz. Ct. App. July 29, 2021), which at the time had a petition for a writ of certiorari on this issue pending in the United States Supreme Court (docket No. 21-1553). Unfortunately, the US Supreme Court has denied certiorari in *Khorrami*.

Despite the denial of certiorari in *Khorrami*, undersigned counsel is hopeful that a similar case will soon be taken up and *Williams* can be reconsidered. In order to pursue that hope with this case, or to at least keep this case in the appellate pipeline should another case be taken, undersigned counsel asks this Court, if it is inclined to follow *Guzman* and affirm this issue, to include a citation to *Guzman*. *See Sandoval v. State*, 884 So. 2d 214, 216 n.1 (Fla. 2d DCA 2004) ("Counsel has the responsibility to make such objections at sentencing as may be necessary to keep the defendant's case in an appellate 'pipeline.'"); see also R. Regulating Fla. Bar 4-3.1 (stating

that a lawyer may assert an issue involving "a good faith argument for an extension, modification, or reversal of existing law"); *United States v. Marseille*, 377 F.3d 1249, 1257 & n.14 (11th Cir. 2004) (defendant making an argument he knows must lose for purposes of preserving it for a later court).

The standard of review of constitutional claims is de novo. *See A.B. v. Fla. Dept. of Children & Family Servs.*, 901 So. 2d 324, 326 (Fla. 3d DCA 2005).

Aiken was convicted by a jury comprised of a mere six people. T443–44. This was in violation of the Sixth and Fourteenth Amendments' guarantee of a right to a twelve-person jury when the defendant is charged with a felony.

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 more recent 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 time of the Sixth Amendment's adoption." *Id.* at 1395; U.S. CONST. amend. VI.

Prior to 1970, subjecting Aiken to a trial with only six jurors would have indisputably violated his Sixth Amendment rights. As the *Ramos* Court observed, even Blackstone recognized that under the common law, "no person could be found guilty of a serious crime unless 'the truth of every accusation … should … be confirmed by the unanimous suffrage of twelve of his equals and neighbors[.]" *Ramos*, 140 S. Ct. at 1395. "A 'verdict, taken from eleven, was no verdict' at all." *Id.*

After the Sixth Amendment was enacted, a bevy of state courts—ranging from Alabama to Missouri to New Hampshire—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) *overruled on other grounds* by *Collins v. Youngblood*, 497 U.S. 37, 51-52 (1990). As the *Thompson* Court explained, since the time of Magna Carta, the word "jury" had been understood to mean a body of twelve people. *Id.* Given that understanding had been

accepted since 1215, the Court reasoned, "[i]t must" have been "that the word 'jury'" in the Sixth Amendment was "placed in the constitution of the United States with reference to [that] meaning affixed to [it]." *Id.* at 350.

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. For example, in 1900, the Court explained that "there [could] be no doubt" "[t]hat a jury composed, as at common law, of twelve jurors was intended by the Sixth Amendment to the Federal Constitution." *Maxwell v. Dow*, 176 U.S. 581, 586 (1900). Thirty years later, the Court reiterated that it was "not open to question" that "the phrase 'trial by jury'" in the Constitution incorporated juries' "essential elements" as "they were recognized in this country and England," including the requirement that they "consist of twelve men, neither more nor less." *Patton v. United States*, 281 U.S. 276, 288 (1930). And as recently as 1968, the Court remarked that "by the time our Constitution was written, jury trial in criminal cases had been in existence in England for several centuries and carried impressive credentials traced by many to Magna Carta," such as the necessary inclusion of twelve members. *Duncan v.*

Louisiana, 391 U.S. 145, 151-152 (1968).[1]

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, 122-24 (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

[1] *See also*, *e.g.*, *Capital Traction Co v. Hof*, 174 U.S. 1, 13 (1899) ("'Trial by jury,' in the primary and usual sense of the term at the common law and in the American constitutions, is not merely a trial by a jury of 12 men" but also contains other requirements); *Rassmussen v. United States*, 197 U.S. 516, 529 (1905) ("The constitutional requirement that 'the trial of all crimes, except in cases of impeachment, shall be by jury,' means, as this court has adjudged, a trial by the historical, common-law jury of twelve persons").

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; *cf. Burch v. Louisiana*, 441 U.S. 130, 137 (1979) (acknowledging that *Williams* and its progeny "departed from the strictly historical requirements of jury trial").

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." *Ramos*, 140 S. Ct. at 1401-02.

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.'" *Ramos*, 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—"a verdict, taken from eleven, was no verdict at all." *See id.* at 1395 (quotation marks omitted).

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."

Williams, 399 U.S. 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. For example, *Ballew* noted that more recent research showed that (1) "smaller juries are less likely to foster effective group deliberation," *id.* at 232, (2) smaller juries may be less accurate and cause "increasing inconsistency" in verdict results, *id.* at 234, (3) the chance for hung juries decreases with smaller juries, disproportionally harming the defendant, *id.* at 236; and (4) decreasing jury sizes "foretell[] problems … for the representation of minority groups in the community," undermining a jury's likelihood of being "truly representative of the community," *id.* at 236-37.

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; *see also id.* at 245-46 (Powell, J., concurring) (agreeing that five-member juries are unconstitutional, while acknowledging that "the line between five- and six-member juries is difficult to justify").

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) ("Larger juries are also more inclusive and more representative of the community. … In reality, cutting the size of the jury dramatically increases the chance of excluding minorities."). Because "the 12-member jury produces significantly greater heterogeneity than does the six-member jury," Diamond et al., 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.

Other important considerations also weigh in favor of the twelve-member jury. For instance, studies indicate that twelve-member juries deliberate longer, recall evidence better, and rely less on irrelevant factors during deliberation. *See* Smith & Saks, *The Case for Overturning Williams v. Florida and the Six-Person Jury*, 60 FLA. L. REV. 441, 465 (2008). Minority views are also more likely to be thoroughly expressed in a larger jury, as "having a large minority helps make the minority subgroup more influential," and, unsurprisingly, "the chance of minority members having allies is greater on a twelve-person jury." *Id.* at 466. Finally, larger juries deliver more predictable results. In the civil context, for example, "[s]ix-person juries are four times more likely to return extremely high or low damage awards compared to the average." Higginbotham et al., at 52.

Aiken 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. The historical background is as follows:

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) (quoting and discussing Chapter 3010, section 6, Laws of Florida (1877)); *Florida Fertilizer*, 34 So. at 241 (noting that previously all juries had twelve members).

The Legislature enacted chapter 3010 with the jury-of-six provision on February 17, 1877. *Gibson*, 16 Fla. at 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) ("there were [no] federal troops" in Florida after 23 January 1877").

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.

On its face the 1868 constitution extended the franchise to Black men. But the historical context shows that that it was part of the overall resistance to Reconstruction efforts to protect the rights of Black citizens. The constitution was the product of a remarkable series of events including a coup in which leaders of the white southern (or native) faction took possession of the assembly hall in the middle of the night, excluding Radical Republican delegates from the proceedings. *See* Richard L. Hume, *Membership of the Florida Constitutional Convention of 1868: A Case Study of Republican Factionalism in the Reconstruction South*, 51 Fla. Hist. Q. 1, 5-6 (1972); SHOFNER, at 266. A reconciliation was effected as the "outside"

whites "united with the majority of the body's native whites to frame a constitution designed to continue white dominance." Hume at 15.

The racist purpose of the resulting constitution was spelled out by Harrison Reed, a leader of the prevailing faction and the first governor elected under the 1868 constitution, who wrote to Senator Yulee that the new constitution was constructed to bar Blacks from legislative office:

> Under our Constitution the Judiciary & State officers will be appointed & the apportionment will prevent a negro legislature.

Hume, at 15-16. *See also* SHOFNER, at 266.

In *Ramos*, Justice Gorsuch noted that the Louisiana non-unanimity rule arose from Jim Crow era efforts to enforce white supremacy. *Ramos*, 140 So. Ct. 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 is unconstitutional under the Sixth and Fourteenth Amendments of the

United States Constitution. *See* U.S. CONST. amend. VI, U.S. CONST. amend. XIV.

Finally, Aiken did not waive his Sixth Amendment right to a twelve-person jury. A defendant may waive his right to a constitutional jury, but the "express and intelligent consent of the defendant" is required. *Patton*, 281 U.S. at 312. *See also Johnson v. State*, 994 So. 2d 960, 964 (Fla. 2008) (holding Johnson's general silence "did not constitute a valid waiver" to "his right to a jury trial").

This Court should reverse the judgment and sentence and remand for a new trial with a twelve-person jury, as required by the Sixth and Fourteenth Amendments to the United States Constitution.

Recorded in Martin County, FL 5/6/2022 8:58 AM
Carolyn Timmann, Clerk of the Circuit Court & Comptroller
CFN#2958845 BK 3311 PG 1774 PAGE 1 of 12

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY FLORIDA**

UCN: 432020CF001073CFAXMX
Case Number: 20001073CFAXMX
OBTS#: 4302101169

STATE OF FLORIDA
vs.

JOSEPH DEVON AIKEN
Defendant.

Judgment

☐ PROBATION VIOLATOR
☐ COMMUNITY CONTROL VIOLATOR
☐ MODIFICATION
☐ RESENTENCE
☐ RETRIAL
☐ AMENDED

The defendant, JOSEPH DEVON AIKEN, being personally before the court represented by JORDAN M SHOWE, the attorney of record and the state represented by MARCUS JOHNSON and having

been tried and found guilty by jury/by court of the following crime(s):

CNT#	Statute	Statute Description	Level/Degree
1	893.135(1k1)	TRAFFICKING IN PHENETHYLAMINES - 10 GRAMS OR MORE BUT LESS THAN 200 GRAMS	Felony/FIRST DEGREE

☐ The __ PROBATION __COMMUNITY CONTROL previously ordered in this case is revoked.
☐ PRIOR ADJUDICATION on _____.
☑ It is ordered that the defendant is hereby Guilty of the above crime(s).
☐ It is ordered that the defendant is hereby Adjudication Withheld 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.

DONE and ORDERED at Martin County, Florida this Thursday, May 5, 2022.

CIRCUIT JUDGE ROBERT MAKEMSON

2022 MAY -5 AM 11:08
FILED FOR RECORD
MARTIN CO., FL

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY FLORIDA

STATE OF FLORIDA,

UCN: 432020CF001073CFAXMX
Case Number: 20001073CFAXMX

vs.

JOSEPH DEVON AIKEN
Defendant.

Charges/Costs/Fees

The defendant is hereby ordered to pay the following sums:

FEL CIVIL LIEN PD APPL 40	$	50.00	10/13/2020
STATE ATTY PROSECUTION CS	$	200.00	05/05/2022
Felony Costs plus 5% and Mandatory Fine	$	52,915.00	05/05/2022

_____ OTHER _____ _____

Total Assessed at Judgment: $53,165.00
Total Assessment balance: $53,165.00

DONE and ORDERED at Martin County, Florida this 5th day of May, 2022.

CIRCUIT JUDGE ROBERT MAKEMSON

STATE OF FLORIDA
IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY FLORIDA

STATE OF FLORIDA
vs.
JOSEPH DEVON AIKEN
Defendant.

UCN: 432020CF001073CFAXMX
Case Number: 20001073CFAXMX

Sentence

(As to Count 1)

The defendant, being personally before this court, accompanied by the defendants' attorney of record, JORDAN M SHOWE, 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 applicable provision)

☐ and the court having on deferred imposition of sentence until this date 05/05/2022.

☐ and the court having previously entered a judgment in this case on _____ 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 is hereby committed to the custody of the PRISON.

☐ The defendant pay a fine pursuant to section 775.083, Florida Statutes, plus a 5% surcharge pursuant to section 950.25 Florida Statutes, as indicated on the Fine/Costs/Fee Page.

☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED:

☑ For a term of 12.00 years

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

STATE OF FLORIDA

vs.

JOSEPH DEVON AIKEN
Defendant.

UCN: 432020CF001073CFAXMX
Case Number: 20001073CFAXMX

Special Provisions

(As to Count _____)

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

Mandatory/Minimum Provisions:

Firearm/Weapon

_____ It is further ordered that the _____ -year minimum imprisonment provisions of section 775.087, Florida Statutes, is hereby imposed for the sentence specified in this court.

Drug Trafficking

✓ It is further ordered that the 3 -year mandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this court.

Controlled Substance Within 1,000 Feet of School/Park/Community Center

_____ It is further ordered that the 3-year minimum imprisonment provisions of section 893.13, 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 the 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 775.0923, Florida Statutes.

Capital Offense

_____ It is further ordered that the defendant shall serve no less than 24 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 sentence specified in this court.

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 court.

Taking a Law Enforcement Officer's Firearm

_____ It is further ordered that the 3-year minimum provisions of section 775.0875(1), Florida Statutes, are hereby imposed for the sentence specified in this court.

Leaving the Scene of an Accident with Death

_____ It is further ordered that the 4-year minimum sentence provisions of section 316.027(2)(c), Florida Statutes, are hereby imposed for the sentence specified in this court.

STATE OF FLORIDA

UCN: 432020CF001073CFAXMX
Case Number: 20001073CFAXMX

vs.

JOSEPH DEVON AIKEN
Defendant.

Other Provisions:

Retention of 947.16(3), Florida Jurisdiction

____ The court retains jurisdiction over the defendant pursuant to section Statutes (1983).

Jail Credit

✓ It is further ordered that the defendant shall be allowed a total of 503 /days credit for time incarcerated before imposition of this sentence.

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 date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply original jail time credit and shall compute and 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 resentencing. 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 shall be allowed _____days time served between date of arrest as a violator following release from prison to the date of resentencing. 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

____ It is further ordered that the sentence imposed for this count ____ shall run (CHECK ONE) ____Consecutive to ____ Concurrent with the sentence

Set for in count _____ of this case.

_____

UCN: 432020CF001073CFAXMX
Case Number: 20001073CFAXMX

As to Other Counts ____ All Counts concurrent with each other.

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 the sentence

_____ any active sentence being served.

_____ specific sentences:_____

_____

_____

STATE OF FLORIDA

UCN: 432020CF001073CFAXMX
Case Number: 20001073CFAXMX

vs.

JOSEPH DEVON AIKEN
Defendant.

Other Provisions (continued)

In the Event the above sentence is to the Department of Corrections, the Sheriff of Martin 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 defendants right to be 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/orders:

DRIVERS LICENSE IS SUSPENDED FOR 6 MONTHS
ALL COSTS TO A CIVIL LIEN EXCEPT COST OF PROSECUTION

DONE and ORDERED at Martin County, Florida this 5th day of May, 2022.

CIRCUIT JUDGE ROBERT MAKEMSON

CERTIFICATE OF CLERK

I HEREBY CERTIFY ~~that~~ a true and correct copy of the foregoing has been furnished by US Mail/Courthouse Box/Email to the Defense Counsel this 5th day of May, 2022

Carolyn Timmann, Clerk of the Court

By: Carol Margan DC
Deputy Clerk

CLERK OF THE CIRCUIT COURT • MARTIN COUNTY, FLORIDA • CAROLYN TIMMANN

STATE OF FLORIDA
IN THE Circuit COURT OF THE Nineteenth JUDICIAL CIRCUIT
IN AND FOR MARTIN COUNTY FLORIDA

STATE OF FLORIDA,
-vs-

Case Number: 20-1073 CFA

JOSEPH DEVON AIKEN
Defendant.

Fingerprint Form

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
1. L. Thumb	2. L. Index	3. L. Middle	4. L. Ring	5. L. Little
				

Fingerprints taken by J. GUIN 1459/775 (Name) DEPUTY SHERIFF (Title)

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the Defendant, Joseph D. Aiken,

and that they were placed thereon by said Defendant in my presence in Open Court this 5th day of May, 2022.

By: R McGinn
Circuit Judge

R[illegible]3.992(a) Criminal Punishment Code Sc[illegible]sheet

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

1. DATE OF SENTENCE	2. PREPARER'S NAME MARCUS JOHNSON	3. COUNTY MARTIN	4. SENTENCING JUDGE BAUER	
5. NAME (LAST, FIRST, MI.I.) AIKEN, JOSEPH D.	6. DOB 1/9/1984	8. RACE WHITE	10. PRIMARY OFF. DATE 10/10/2020	12.
	7. DC #	9. GENDER MALE	11. PRIMARY DOCKET # 4320CF001073	PLEA ☐ TRIAL ☐

I. PRIMARY OFFENSE: Qualifier:

FELONY DEGREE	F.S.#	DESCRIPTION	OFFENSE LEVEL	POINTS
1	893.135(1)(~~b~~)(~~1.~~)(c)(1)	TRAFF ~~COCAINE 28-U/200GR~~ Phenethylamines	7	56

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

Prior capital felony doubles Primary Offense points ☐ **I.** 56.0000

II. ADDITIONAL OFFENSE(S): Supplemental page attached ☐

DOCKET #	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A/S/C/R	COUNTS	POINTS	TOTAL
DESCRIPTION							
DESCRIPTION							
DESCRIPTION							
DESCRIPTION							

(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 doubles Additional Offense points ☐ Supplemental page points _____

II. _____

III. VICTIM INJURY:

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

III. _____

IV. PRIOR RECORD: Supplemental page attached ☒

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A/S/C/R	DESCRIPTION	NUMBER		POINTS		TOTAL
5/MM	901.36(1)	M		GIVE LEO FALSE NAME-MIS	1	X	0.2	=	0.2000
5/MM	322.34	M		DRIVE W/LIC. S/R/C/D-MI	5	X	0.2	=	1.0000
5/MM	893.147(1)	M		POSS.DRUG PARAPHERNA.-M	2	X	0.2	=	0.4000
5/MM	843.02	M		RESIST.LEO/NO VIOL.-MIS	4	X	0.2	=	0.8000
3	893.13(6)(A)	3		POSS.CONTROL.SUBS/OTHER	1	X	1.6	=	1.6000
2	893.13(1)(A)1	5		COCAINE-SALE/MANUF/DELI	1	X	3.6	=	3.6000
3	893.13(6)(A)	3		POSS.CONTROL.SUBS/OTHER	3	X	1.6	=	4.8000
5/MM	893.13(6)(B)	M		POSSES MARIJUANA-MISD	5	X	0.2	=	1.0000
5/MM	900.04	M		CONTEMPT OF COURT-MISD	1	X	0.2	=	0.2000

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

Supplemental page points 12.6

IV. 26.2000

Page 1 Subtotal: 82.2000

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FILED FOR RECORD
MARTIN CO., FL

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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. I.)	DOCKET #
AIKEN, JOSEPH D.	4320CF001073

Page 1 Subtotal: 82.2000

V. Legal Status Violation = 4 Points
☐ Escape ☐ Fleeing ☐ Failure to Appear ☐ Supersedeas bond ☐ Incarceration ☐ Pretrial intervention or diversion program
☐ Court imposed post prison release community supervision resulting in a conviction **V.** _____

VI. Community Sanction Violation before the court for sentencing **VI.** _____
☐ Probation ☐ Community Control ☐ Pretrial intervention or diversion
☐ 6 points for any violation other than new felony conviction **X** _____ each successive violation OR
☐ New felony conviction = 12 points **X** _____ each successive violation if new offense results in conviction before or at same time as sentence for violation of probation OR
☐ 12 points **X** _____ each successive violation for a violent felony offender of special concern when the violation is not based solely on failure to pay costs, fines, or restitution OR
☐ New felony conviction = 24 points **X** _____ each successive violation for a violent felony offender of special concern if new offense results in a conviction before or at the same time for violation of probation

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 points **VII.** _____
VIII. Prior Serious Felony = 30 points **VIII.** _____

Subtotal Sentence Points 82.2000

IX. Enhancements (only if 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 03-12-07)	Adult-on-Minor Sex Offense (offenses committed on or after 10-1-14)
☐ x 1.5 ☐ x 2.0 ☐ x 2.5	☐ x 1.5	☐ x 1.5	☐ x 1.5	☐ x 1.5	☐ x 2.0

Enhanced Subtotal Sentence Points **IX.** _____

TOTAL SENTENCE POINTS **82.2000**

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:

82.2000 (total sentence points) minus 28 = 54.2000 x .75 = 40.650000 (Lowest permissible prison sentence in months)

If total sentence points are 60 points or less than 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 the total sentence points are greater than or equal to 363, a life sentence may be imposed.

30 (maximum sentence in years)

TOTAL SENTENCE IMPOSED

		Years	Months	Days
☒ State Prison	☐ Life	12.0		
☐ County Jail	☐ Time Served			
☐ Community Control				
☐ Probation ☐ Modified				

Please check if sentenced as ☐ habitual offender, ☐ habitual violent offender, ☐ violent career offender, ☐ prison release reoffender, or a ☒ mandatory minimum applies.
☐ Mitigated Departure ☐ Plea Bargain ☐ Prison Diversion Program
Other Reason _____

JUDGE'S SIGNATURE R Kleman

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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(2), Supplemental Criminal Punishment Code Scoresheet

NAME (LAST, FIRST, MI. I.)	DOCKET #	DATE OF SENTENCE
AIKEN, JOSEPH D.	4320CF001073	05/05/2022

X. ADDITIONAL OFFENSE(S):

DOCKET #	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A/S/C/R	COUNTS	POINTS	TOTAL
DESCRIPTION							
DESCRIPTION							
DESCRIPTION							
DESCRIPTION							
DESCRIPTION							

(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. _____

IV. PRIOR RECORD:

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A/S/C/R	DESCRIPTION	NUMBER		POINTS		TOTAL
3	812.131(2)(B)	5		SUDDEN SNATCH NO WEAPON	1	X	3.6	=	3.6000
3	827.03(1)(B-C)	6		ABUSE CHILD	1	X	9	=	9.0000
						X		=	
						X		=	
						X		=	
						X		=	

(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. 12.6000

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 post adjudicatory 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).

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

STATE OF FLORIDA

UNIFORM COMMITMENT TO CUSTODY OF DEPARTMENT OF CORRECTIONS

The Circuit Court of the 19th Judicial Circuit, in and for Martin County, Florida, in the case of

STATE OF FLORIDA

vs.

JOSEPH DEVON AIKEN
Defendant

Case No. 20001073CFAXMX

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA, TO THE SHERIFF OF THE ABOVE-REFERENCED COUNTY AND THE DEPARTMENT OF CORRECTIONS, GREETINGS:

The above named defendant has been duly charged, convicted, adjudicated guilty, and sentenced for the offense(s) set forth in the attached certified copies of Indictment(s)/Information(s), Original Judgment(s) Adjudicating Guilty and Sentencing Order(s). In addition to the Original Judgment, if judicial supervision has been revoked subsequent to the entry of the judgment adjudicating guilt, a certified copy of the order revoking supervision (rather than a duplicative judgment adjudicating guilt) is also attached in support of this commitment.

Now therefore, this is to command you, the Sheriff, to take and keep and, within a reasonable time after receiving this commitment, deliver the defendant into the custody of the Department of Corrections; and this is to command you, the Secretary of the Department of Corrections, to keep and imprison the defendant for the term of the sentence. Herein fail not.

WITNESS the Clerk, and the Seal thereof, this 5th day of May, 2022.

Carolyn Timmann, Clerk of the Court

By: _____ DC
Deputy Clerk

CLERK OF THE CIRCUIT COURT • MARTIN COUNTY, FLORIDA • CAROLYN TIMMANN