

No.

IN THE SUPREME COURT OF THE UNITED STATES

HOWARD NELSON BARTEE, III, 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

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

HOWARD NELSON BARTEE, III,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D22-1932

[September 6, 2023]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Dan L. Vaughn, Judge; L.T. Case No. 312018CF000196.

Carey Haughwout, Public Defender, and Nancy Jack, Assistant Public Defender, West Palm Beach, for appellant.

Ashley Moody, Attorney General, Tallahassee, and Anesha Worthy, Assistant Attorney General, West Palm Beach, for appellee.

GERBER, J.

The defendant appeals from his convictions for burglary of an occupied dwelling with a firearm, and attempted manslaughter with discharge of a firearm. The defendant raises five arguments seeking to overturn his convictions, but none of those five arguments has merit. Thus, we affirm the defendant's convictions without further discussion.

We write to address only the defendant's sixth argument – the circuit court erred in denying his postconviction motion to correct the written judgment's statutory citation and felony degree for his burglary of an occupied dwelling with a firearm conviction. The state concedes, and we agree, that the written judgment requires correction. As the state's answer brief submits:

[T]he language in the information alleged all of the necessary elements of section 810.02(2)(b)[, Florida Statutes (2017)] and the jury found [the Defendant] guilty of each element [of the statute]. However, the written judgment lists

a violation of subsection (a). ... [T]he judgment should not reflect a violation of section 810.02(2)(a), and this Court should remand for the trial court to correct the written judgment so it [indicates] a violation of ... section 810.02(2)(b) to reflect the language in the information and the jury's findings. [See] *Sweeney v. State*, 138 So. 3d 1095, 1095 (Fla. 4th DCA 2014) (remanding for trial court to correct statute number on appellant's written judgment and sentencing documents); [cf.] *Moseley v. State*, 688 So. 2d 999, 1000 (Fla. 2d DCA 1997) ("Because the information recited the appropriate factual description of a violation of section 810.02(2)(a), we treat the citation to the incorrect statute as a scrivener's error and remand this case for correction of the judgment to indicate a conviction under section 810.02(2)(a).").

This Court should also remand for the trial court to correct the written judgment so it properly reflects that [burglary of an occupied dwelling with a firearm] is a first-degree felony punishable by life. Section 810.02(2)(b) provides that [burglary of an occupied dwelling with a firearm] ... is a first-degree felony punishable by a term of years not exceeding life or up to 30 years. See also 775.082(3)(b), Fla. Stat. (2017). However, as the Defendant pointed out, the written judgment incorrectly lists [that offense] as a life felony. [See] *Flowers v. State*, 16 So. 3d 1047, 1047 (Fla. 1st DCA 2009) (remanding for the written judgment to be corrected where it listed the crime as a life felony rather than a first-degree felony punishable by life imprisonment).

(internal record citations omitted).

Based on the foregoing, we remand for the circuit court to correct the written judgment to indicate the defendant's burglary of an occupied dwelling with a firearm conviction constitutes: (1) a violation of section 810.02(2)(b), Florida Statutes (2017); and (2) a first-degree felony punishable by life. The defendant's presence is not required for this ministerial act. See *Prentice v. State*, 319 So. 3d 57, 62 (Fla. 4th DCA 2021) ("[Because] correction of the written judgment in this case is a ministerial act, neither resentencing nor Appellant's presence is required for this purpose.").

Convictions affirmed; remanded for correction of written judgment.

GROSS and DAMOORGIAN, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

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

A. Standard of review

Construction of a constitutional provision is a pure question of law that is reviewed de novo. *State v. Horwitz*, 191 So. 3d 429 (Fla. 2016).

B. The Sixth and Fourteenth Amendments guarantee the right to a twelve-person jury when the defendant is charged with a felony.

Appellant was convicted of felonies by a jury comprised of a mere six people. In particular, the charges Appellant faced carried a maximum 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*, 350 So. 3d 72 (Fla. 4th DCA 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." The majority opinion in *Guzman* found this Court was bound by the United States Supreme Court's holding in *Williams v. Florida*, 399 U.S. 78 (1970), 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 75 (Gross, J., concurring) concurring specially. 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*, 399 U.S. at 86, that juries as small as six were constitutionally permissible, *Williams* is impossible to square with the Supreme Court's ruling in *Ramos*, 140 S. Ct. 1390, 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 Article 1, Section 22, of the Florida Constitution provides that “[t]he qualifications and the number of jurors, not fewer than six, shall be fixed by law.” He also recognizes that section 913.10, Florida Statutes, provides for six jurors except in capital cases. See *also* Fla. R. Crim. P. 3.270. But 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.

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.

C. Harm and relief

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. This Court must reverse Appellant's convictions and remand for a new trial before a twelve-person jury.

CONCLUSION

Based on the foregoing arguments and authorities, undersigned counsel requests this Court reverse Appellant's convictions and remand for a new trial.

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/s/NANCY JACK
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Counsel for Appellant

BK: 3558 PG: 1149

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

Defendant: HOWARD NELSON BARTEE III

Case: 312018CF000196AXXXXX

SENTENCE

(As to Count 1)

The Defendant, being personally before this court, accompanied by the defendant's attorney of record, M JORDI ZARAGOZA 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 _____ 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 30 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.

BK: 3558 PG: 1150

Defendant:
HOWARD NELSON BARTEE III

Case:
312018CF000196AXXXXX

SPECIAL PROVISIONS

(As to Count 1)

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

Minimum/Mandatory Provisions:

- | | | |
|---|-------------------------------------|--|
| Firearm | <input checked="" type="checkbox"/> | It is further ordered that the <u>10</u> 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
(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
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
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
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
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
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
Identification
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 count. |

Other Provisions:

- | | | |
|--|--------------------------|--|
| Continuing Criminal
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
Enforcement Officer's
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 count. |
| Retention of Judication | <input type="checkbox"/> | The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983) |

BK: 3558 PG: 1151

Defendant:
HOWARD NELSON BARTEE III

Case:
312018CF000196AXXXXX

- Jail Credit It is further ordered that the defendant shall be allowed a total of 1,612 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: _____.

BK: 3558 PG: 1152

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

Defendant: HOWARD NELSON BARTEE III

Case: 312018CF000196AXXXXX

SENTENCE

(As to Count 2)

The Defendant, being personally before this court, accompanied by the defendant's attorney of record, M JORDI ZARAGOZA 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 _____ 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 5 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.

BK: 3558 PG: 1153

Defendant:
HOWARD NELSON BARTEE III

Case:
312018CF000196AXXXXX

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 Judication The court retains jurisdiction over the defendant pursuant to section 947.16(3), Florida Statutes (1983)

BK: 3558 PG: 1154

Defendant:
HOWARD NELSON BARTEE III

Case:
312018CF000196AXXXXX

- Jail Credit It is further ordered that the defendant shall be allowed a total of 1,612 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: _____.

BK: 3558 PG: 1155

Defendant:
HOWARD NELSON BARTEE III

Case:
312018CF000196AXXXXX

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 ALL FEES/COSTS ARE REDUCED TO A CIVIL LIEN. COURT INSTRUCTED THE DEFENDANT MUST SET UP A PAYMENT PLAN FOR COURT COSTS WITH THE CLERK WITHIN 30 DAYS OF RELEASE OR LICENSE WILL BE SUSPENDED.

DONE AND ORDERED in open court on JULY 14, 2022 at Indian River County, Florida.

NUNC PRO TUNC _____



HONORABLE DAN VAUGHN

FILED FOR RECORD
CLERK OF CIRCUIT COURT
INDIAN RIVER COUNTY, FL
2022 JUL 21 AM 11:40
BY _____ D.C.