

No.

IN THE SUPREME COURT OF THE UNITED STATES

HAROLD STEWART, 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

HAROLD STEWART,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D2022-2586

[January 18, 2024]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Hon. Scott Suskauer, Judge; L.T. Case No. 502020CF001001AMB.

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

Ashley Moody, Attorney General, Tallahassee, and Heidi L. Bettendorf, Senior Assistant Attorney General, West Palm Beach, for appellee.

PER CURIAM.

Affirmed.

MAY, CIKLIN and GERBER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

Florida Statute 92.55 permits the trial court to facilitate the witness' testimony when necessary "to protect[] the victim or witness from severe emotional or mental harm due to the defendant's presence." Therefore, before allowing E.S. to testify with the aid of a therapy canine, the trial court was required to find that E.S. needed the canine to be protected "from severe emotional or mental harm due to the defendant's presence." The trial court made no such finding, or even that allowing the therapy canine was necessary to facilitate E.S.'s testimony.

On the other hand, allowing the therapy canine to be with E.S. on the witness stand generated sympathy within the jury to Appellant's prejudice because it suggested that she was vulnerable and worthy of sympathy. The jury likely also found that the dog's presence bolstered E.S.' credibility, in that she needed the canine to talk about the terrible acts that had been done to her. The trial court abused its discretion when it permitted E.S. to testify with a therapy canine and this Court must reverse Appellant's convictions and remand for a new trial.

V. 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. Preservation

Appellant can raise this issue for the first time on appeal because the issue isn't whether he preserved this issue by objecting in the trial court; the issue is whether he personally waived his constitutional right to a twelve-person jury, and he did not. For example, even if defense counsel had no objection to a five-person jury, but the trial court did not secure the defendant's personal waiver of his or her right to a six-person jury, the case would present reversible error on appeal. *Wallace v. State*, 722 So. 2d 913, 914 (Fla. 2d DCA 1998); *Gamble v. State*, 696 So. 2d 420, 420 (Fla. 5th DCA 1997); *Blair v. State*, 698 So. 2d 1210, 1217-18 (Fla. 1997); see also *Johnson v. State*, 994 So. 2d 960, 963-64 (Fla. 2008) (holding that defendant must personally waive constitutional right to have jury decide prior-convictions element in felony DUI case; defense counsel's stipulation that trial court act as factfinder is insufficient). In short, the defendant himself or herself must agree to be tried by a jury with fewer jurors than constitutionally required. Appellant acknowledges this Court came to a different conclusion in *Albritton v. State*, 48 Fla. L. Weekly D922 (Fla. 4th DCA May 3, 2023). But this Court may have overlooked *Wallace*, *Gamble*, *Blair*, and *Johnson*.

In addition, Appellant acknowledges that this Court rejected this argument in *Guzman v. State*, 350 So. 3d 72 (Fla. 4th DCA 2022), and that the Florida Supreme Court has denied review of *Guzman* in *Guzman v. State*, No. SC22-1597. However, in rejecting Guzman's argument, this Court cited *State v. Khorrami*, 1 CA-CR 20-0088, 2021 WL 3197499 (Ariz. Ct. App. July 29, 2021). *Guzman*, 350 So. 3d at 73. At the time of this Court's decision, Khorrami's petition for writ of certiorari in the United States Supreme Court was pending. The petition was subsequently denied, over dissents by Justice Kavanaugh and Justice Gorsuch, who wrote an opinion stating that he would grant the writ. *Khorrami v. Arizona*, 21-1553, 2022 WL 16726030 (U.S. Nov. 7, 2022). This Court should compare Justice Gorsuch's opinion that a twelve-person jury is constitutionally required with the First District's recent opinion that said that that position was "nearly frivolous." *Brown v. State*, 48 Fla. L. Weekly D775, D777 n.1 (Fla. 1st DCA Apr. 12, 2023)).

Appellate attorneys have the obligation to "zealously assert[] the client's position under the rules of the adversary system." R. Regulating Fla. Bar prmbl. 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); see also *Hollingsworth v. State*, 293 So. 3d 1049, 1051 (Fla. 4th

DCA 2020) (“Appellate counsel acted in good faith and did not deserve the court’s criticism [for arguing that existing law should be reversed].”); R. Regulating Fla. Bar 4-3.1 (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). Therefore, although acknowledging this Court is bound by *Guzman*, Appellant asserts that the Office of the Public Defender Fifteenth Judicial Circuit intends to petition the United States Supreme Court for a writ of certiorari on this issue and Appellant hereby seeks to preserve this argument for further review.

C. 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. He argues that the Sixth and Fourteenth Amendments guarantee the right to a twelve-person jury when the defendant is charged with an offense punishable by more than six months in jail. See *State v. Horwitz*, 191 So. 3d 429 (Fla. 2016); *A.B. v. Florida Dept. of Children & Family Services*, 901 So. 2d 324, 326 (Fla. 3d DCA 2005)

The Supreme Court held in *Williams v. Florida*, 399 U.S. 78, 86 (1970), that juries as small as six were constitutionally permissible. But *Williams* is impossible to square with the 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. This full-scale embrace of the fixed-meaning canon, see Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 78 (2012) ("Words must be given the meaning they had when the text was adopted."), means that trial by a six-person jury violates the Sixth and Fourteenth Amendments to the United States Constitution.

Although there is no legal significance to the United States Supreme Court's denial of a petition for writ of certiorari in *State v. Khorrami*, 1 CA-CR 20-0088, 2021 WL 3197499 (Ariz. Ct. App. July 29, 2021),¹ there are differences between Florida's and Arizona's systems that may account for the denial of the writ. In Arizona, criminal defendants are guaranteed "a twelve-person jury in cases when the sentence authorized by law is death or

¹ See *Ramos v. Louisiana*, 140 S.Ct. 1390 n. 56 (2020) ("[t]he significance of a denial of a petition for certiorari ought no longer ... require discussion. This Court has said again and again and again that such a denial has no legal significance whatever bearing on the merits of the claim") (citations omitted).

imprisonment for thirty years or more.... Otherwise, a criminal defendant may be tried with an eight-person jury.” *State v. Khorrami*, 2021 WL 3197499, at *8 (citations omitted). Florida juries are smaller (six versus eight), and those smaller juries are mandated in every case except capital cases.

In addition, the origin of Florida’s rule is disturbing. In his dissent in *Khorrami*, Justice Gorsuch observed: “During the Jim Crow era, some States restricted the size of juries and abandoned the demand for a unanimous verdict as part of a deliberate and systematic effort to suppress minority voices in public affairs.” *Khorrami v. Arizona*, 2022 WL 16726030, at *5 (Gorsuch, J., dissenting) (citations omitted). He noted, however, that Arizona’s law was likely motivated by costs not race. *Id.* But Florida’s jury of six did arise in that Jim Crow era context of a “deliberate and systematic effort to suppress minority voices in public affairs.” *Id.* 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); *Florida Fertilizer*, 34 So. at 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) (“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 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, 15-16. See also Shofner 266.

Smaller juries and non-unanimous verdicts were part of a Jim Crow era effort “to suppress minority voices in public affairs.” *Khorrami v. Arizona*, 2022 WL 16726030, at *5 (Gorsuch, J., dissenting); see also *Ramos*, 140 S. Ct. 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 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.

IN THE CIRCUIT COURT, FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO: 2020CF001001AMB

DIV: X

OBTS NUMBER:

STATE OF FLORIDA

v.

HAROLD STEWART,

B/M,

11/05/1945, [REDACTED]

PROBATION VIOLATOR
 COMMUNITY CONTROL VIOLATOR
 RETRIAL
 RESENTENCE

JUDGMENT

The above defendant, being personally before this Court represented by PUBLIC DEFENDER - DIVISION X
(attorney)

<input checked="" type="checkbox"/> Having been tried and found guilty of the following crime(s):	<input type="checkbox"/> Having entered a plea of guilty to the following crime(s):	<input type="checkbox"/> Having entered a plea of nolo contendere to the following crime(s):
---	---	--

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE
1-2	Sex Batt. Under 12	794.011(2)(a)	Cup. F.
3-4	Lo L Molestation	800.04(3)(a)-(b)	Life F.

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.

SENTENCE

STAYED The Court hereby stays and withholds imposition of sentence as to count(s) and places the Defendant on probation and/or Community Control under the supervision of the Dept. Of Corrections (conditions of probation set forth in separate order).

SENTENCE

DEFERRED The Court hereby defers imposition of sentence until

The Defendant in Open Court was advised of his right to appeal from the Judgment by filing notice of appeal with the Clerk of Court within thirty days following the date sentence is imposed or probation is ordered pursuant to this adjudication. The defendant was also advised of his right to the assistance of counsel in taking said appeal at the expense of the State upon showing of indigency.

DONE AND ORDERED in Open Court at Palm Beach County, Florida, this 22 day of Sept., 2020.

CIRCUIT COURT JUDGE

PG. 11/2

FILED
Circuit Criminal Department

SEP 22 2022

JOSEPH ABRUZZO
Clerk of the Circuit Court & Comptroller
Palm Beach County
000225

IN THE CRIMINAL DIVISION OF THE CIRCUIT/COUNTY COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY

CASE NO. 50-2020-CF-001001-AXXX-MB

DIV. X: Felony - X (Circuit)

OBTS NUMBER:

STATE OF FLORIDA

V

HAROLD STEWART
DEFENDANT

[] COMMUNITY
CONTROL
VIOLATOR

[] PROBATION
VIOLATION

November 5, 1945

Black

Male

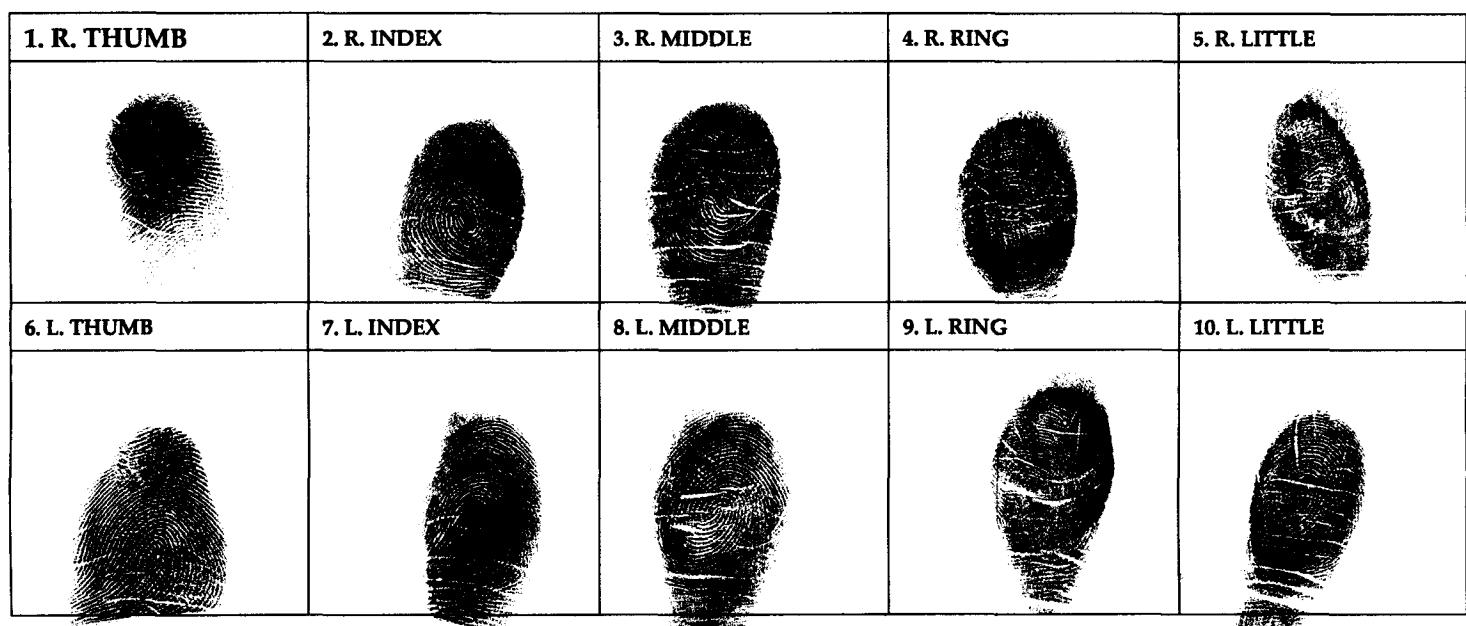
DATE OF BIRTH

RACE

GENDER

The fingerprints below are those of said Defendant taken by Deputy Sheriff

C. SIERRA #7661



I hereby certify that the above and foregoing fingerprints are the fingerprints of the defendant, HAROLD STEWART, and that they were placed thereon by said defendant in my presence this 27 day of SEPT, 20 22.

Circuit/County Court Judge - Clerk - Deputy Sheriff
(Please Circle Title)

Pg. 2/2

000226

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

SENTENCE
(As to Count(s) 1, 2)

Defendant: Harold Stewart

Case Number: ZOCF1001AMB

OBTS Number: _____

The Defendant, being personally before this Court, accompanied by the defendant's attorney of record, APD, 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 Defendant should not be sentenced as provided by law, and no cause being shown,

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of \$ _____ pursuant to § 755.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 938.04, Florida Statutes.

The Defendant is hereby committed to the custody of the

Department of Corrections
 Sheriff of Palm Beach County, Florida

Department of Corrections as a youthful offender

For a term of Life. It is further ordered that the Defendant shall be allowed a total of 915 days as credit for time incarcerated prior to imposition of this sentence. It is further ordered that the composite term of all sentences imposed for the counts specified in the order shall run

consecutive to concurrent with (check one) the following:

Any active sentence being served.

Specific sentences: CTS. 1, 2, 3, 4 in ZOCF1001AMB

The instant sentence is based upon the Court having previously placed the Defendant on probation and having subsequently revoked the Defendant's probation for violation(s) of condition(s) _____.

In the event the above sentence is to the Department of Corrections, the Sheriff of Palm Beach County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of the Judgment and Sentence, and any other documents specified by Florida Statute. Additionally, pursuant to §947.16(4), Florida Statutes, the Court retains jurisdiction over the Defendant.

The Sentencing Court objects to the Defendant being placed into the Youthful Offender Basic Training Program pursuant to Florida Statute §958.045.

Pursuant to §322.055, 322.056, 322.26, 322.274, Florida Statutes, The Department of Highway Safety and Motor Vehicles is directed to revoke the Defendant's privilege to drive. The Clerk of the Court is Ordered to report the conviction and revocation to the Department of Highway Safety and Motor Vehicles.

DONE AND ORDERED in Open Court at West Palm Beach, Palm Beach County, Florida this 22 day of Sept., 2022.

FILED
Circuit Criminal Department

SEP 22 2022


CIRCUIT JUDGE

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

SENTENCE
(As to Count(s) 3,4)

Defendant: Harold Stewart

Case Number: 20CF1001AMB

OBTS Number: _____

The Defendant, being personally before this Court, accompanied by the defendant's attorney of record, APD, 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 Defendant should not be sentenced as provided by law, and no cause being shown,

IT IS THE SENTENCE OF THE COURT that:

The Defendant pay a fine of \$ _____ pursuant to § 755.083, Florida Statutes, plus \$ _____ as the 5% surcharge required by section 938.04, Florida Statutes.

The Defendant is hereby committed to the custody of the

Department of Corrections
 Sheriff of Palm Beach County, Florida

Department of Corrections as a youthful offender

For a term of 25 years. It is further ordered that the Defendant shall be allowed a total of 9105 days as credit for time incarcerated prior to imposition of this sentence. It is further ordered that the composite term of all sentences imposed for the counts specified in the order shall run

consecutive to concurrent with (check one) the following:

Any active sentence being served.

Specific sentences: cts. 1, 2, 3, 4 in 20CF1001AMB

The instant sentence is based upon the Court having previously placed the Defendant on probation and having subsequently revoked the Defendant's probation for violation(s) of condition(s) _____.

In the event the above sentence is to the Department of Corrections, the Sheriff of Palm Beach County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of the Judgment and Sentence, and any other documents specified by Florida Statute. Additionally, pursuant to §947.16(4), Florida Statutes, the Court retains jurisdiction over the Defendant.

The Sentencing Court objects to the Defendant being placed into the Youthful Offender Basic Training Program pursuant to Florida Statute §958.045.

Pursuant to §322.055, 322.056, 322.26, 322.274, Florida Statutes, The Department of Highway Safety and Motor Vehicles is directed to revoke the Defendant's privilege to drive. The Clerk of the Court is Ordered to report the conviction and revocation to the Department of Highway Safety and Motor Vehicles.

DONE AND ORDERED in Open Court at West Palm Beach, Palm Beach County, Florida this 22 day of Sept., 2022.

FILED
Circuit Criminal Department

SEP 22 2022

CIRCUIT JUDGE

October 2019

JOSEPH ABRUZZO
Clerk of the Circuit Court & Comptroller
Palm Beach County

000228

Form 14

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

**SENTENCE WITH
SPECIAL PROVISIONS**

FILED

Circuit Criminal Department

SEP 22 2022

JOSEPH ABRUZZO
Clerk of the Circuit Court & Comptroller
Palm Beach County

(As to Count(s) 1, 2, 3, 4)

Defendant: Harold Stewart

Case Number: 20CF1001AMB

OBTS Number: _____

The Defendant, being personally before this Court, accompanied by the defendant's attorney of record, APD, 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 Defendant should not be sentenced as provided by law, and no cause being shown,

IT IS THE SENTENCE OF THE COURT that:

By reference to count, the following additional provisions apply to the sentence imposed:

Count

FIREARM

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

PRISON RELEASEE RE-OFFENDER

The Defendant is adjudicated a prison release re-offender and has been sentenced in accordance with the provisions of Florida Statute 775.082(9). The Defendant shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Additionally, the Defendant must serve 100 percent of the statutory maximum. The requisite findings by the Court are set forth in a separate order or stated in the record in Open Court.

DRUG TRAFFICKING

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

CONTROLLED SUBSTANCE WITHIN 1,000 FEET OF SCHOOL

It is further ordered that the 3-year minimum imprisonment provision of section 893.13(1)(c)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 by the Court are set forth in a separate order or stated on the record in Open Court.

THREE TIME VIOLENT FELONY OFFENDER

The Defendant is adjudicated a three-time violent felony offender and has been sentenced in accordance with the provisions of Florida Statute 775.084(4)(c). The requisite findings by the Court are set forth in a separate order or stated in the record in Open Court.

VIOLENT CAREER CRIMINAL

The Defendant is adjudicated a habitual violent offender and has been sentenced to an extended term in accordance with the provisions of Florida Statute 775.084(4)(d). A minimum term of _____ years must be served prior to release. The requisite findings by the Court are set forth in a separate order or stated in the record in Open Court.

DUI MANSLAUGHTER

It is further ordered that the Defendant shall serve a mandatory minimum of four (4) years before release in accordance with Florida Statute 316.193.

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. (Offenses committed before January 1, 1994)

CRIMES AGAINST LAW ENFORCEMENT OFFICERS (check one)

- The Defendant having been convicted of Aggravated Assault on a Law Enforcement Officer, it is further ordered that the Defendant shall serve a minimum of 3 years before release in accordance with Florida Statute 784.07(2)(c).
- The Defendant having been convicted of Aggravated Battery on a Law Enforcement Officer, it is further ordered that the Defendant shall serve a minimum of 5 years before release in accordance with Florida Statute 784.07(2)(d).
- The Defendant having been convicted of Battery on a Law Enforcement Officer and having possessed a firearm or destructive device during the commission of said offense, it is further ordered that the Defendant shall serve a minimum of 3 years before release in accordance with Florida Statute 784.07(3)(a).

CAPITAL OFFENSE

It is further ordered that the Defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes. (Offenses committed before October 1, 1995)

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. (Offenses committed before January 1, 1994)

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 count. (Offenses committed before January 1, 1994)

SEXUAL OFFENDER/SEXUAL PREDATOR DETERMINATIONS:

1, 2, 3, 4

SEXUAL PREDATOR

The Defendant is adjudicated a sexual predator as set forth in section 775.21, Florida Statutes.

SEXUAL OFFENDER

The Defendant meets the criteria for a sexual offender as set forth in section 943.0435(1)(a)1a., b., c., or d.

AGE OF VICTIM

The victim was _____ years of age at the time of the offense.

AGE OF DEFENDANT

The Defendant was _____ years of age at the time of the offense.

RELATIONSHIP TO VICTIM

The Defendant is not the victim's parent or guardian.

SEXUAL ACTIVITY [F.S. 800.04(4)]

The offense _____ did _____ did not involve sexual activity.

USE OF FORCE OR COERCION [F.S. 800.04(4)]

The sexual activity described herein _____ did _____ did not involve the use of force or coercion.

USE OF FORCE OR COERCION/UNCLOTHED GENITALS [F.S. 800.04(5)]

The molestation _____ did _____ did not involve unclothed genitals or genital area.

The molestation _____ did _____ did not involve the use of force or coercion.

OTHER PROVISIONS:

CRIMINAL GANG ACTIVITY

The felony conviction is for an offense that was found, pursuant to section 874.04, Florida Statutes, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

RETENTION OF JURISDICTION

The Court retains jurisdiction over the Defendant pursuant to section 947.16(4), Florida Statutes.

SUSPENDED AND/OR SPLIT SENTENCES:

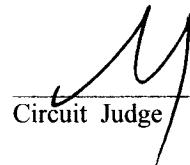
Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in a separate order entered herein.

However, after serving a period of _____ imprisonment the balance of such sentence shall be suspended and the Defendant shall be placed on probation for a period of _____ under supervision of the Department of Corrections, according to the terms and conditions of probation as set forth in a separate order entered herein.

Followed by a period of _____ on probation under the supervision of the Department of Corrections, according to the terms and conditions of probation as set forth in a separate order entered herein.

In the event the above sentence is to the Department of Corrections, the Sheriff of Palm Beach County, Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections together with a copy of the Judgment and Sentence, and any other documents specified by Florida Statute. Additionally, pursuant to §947.16(4), Florida Statutes, the Court retains jurisdiction over the Defendant.

DONE AND ORDERED in Open Court at Palm Beach County, Florida on this 22 day of Sept,
20 2014.


Circuit Judge