

Supreme Court of Florida

MONDAY, SEPTEMBER 9, 2024

Lolita Barthel,
Petitioner(s)
v.
State of Florida,
Respondent(s)

SC2024-1304
Lower Tribunal No(s).:
2D2023-2803;
291995CF011397000CHC

Petitioner's Notice to Invoke Discretionary Jurisdiction, seeking review of the order or opinion issued by the 2nd District Court of Appeal on August 23, 2024, is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. See *Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi Publ'g Co. v. Editorial Am. S.A.*, 385 So. 2d 1369 (Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

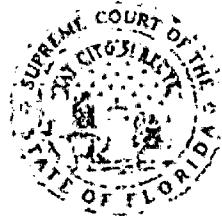
No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy

Test:

SC2024-1304 9/9/2024

John A. Tomasino
Clerk, Supreme Court



CASE NO.: SC2024-1304

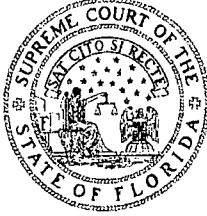
Page Two

SC2024-1304 9/9/2024

TD

Served:

CRIM APP TAMPA ATTORNEY GENERAL
LOLITA BARTHEL
DAVID CAMPBELL
2DCA CLERK
HILLSBOROUGH CLERK
HON. ROBIN FERNANDEZ FUSON



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO
CLERK
MARK CLAYTON
CHIEF DEPUTY CLERK
JULIA BREEDING
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

Monday, September 30, 2024

RE: Lolita Barthel,
 Petitioner(s)
v.

State of Florida,
 Respondent(s)

Case Number: SC2024-1304
Lower Tribunal Case Number(s): 2D2023-2803;
291995CF011397000CHC

The Florida Supreme Court has received the following document reflecting a filing date of September 30, 2024.

Notice of Appeal

Petitioner's Notice of Appeal is returned herewith. Petitioner is advised that the United States Supreme Court is the appropriate Court to review a decision of this Court. Enclosed is a sample packet to assist you in filing your petition.

LC

cc:
Lolita Barthel
David Campbell

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT**

1700 N. Tampa Street, Suite 300, Tampa FL 33602

August 23, 2024

LOLITA BARTHEL,
APPELLANT(S)
V.

CASE NO.: 2D2023-2803
L.T. No.: 95-CF-011397-C

STATE OF FLORIDA,
APPELLEE(S).

BY ORDER OF THE COURT:

Appellant's motion for rehearing is denied. Appellant's motion for written opinion is denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel, Clerk
2D2023-2803 8/23/24



DC

Served:
LOLITA BARTHEL
HILLSBOROUGH CLERK
DAVID CAMPBELL
ATTORNEY GENERAL, TAMPA

M A N D A T E

DISTRICT COURT OF APPEAL OF FLORIDA SECOND DISTRICT

This cause having been brought to this Court for review, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause, if required, in accordance with the decision of this Court, incorporated as part of this order, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Chief Judge Daniel H. Sleet of the District Court of Appeal of the State of Florida, Second District, and the seal of said Court at Tampa, Florida, on this day.

DATE: September 17, 2024
CASE NO. 2D2023-2803
COUNTY OF ORIGIN: Hillsborough County
L.T. CASE NO. 95-CF-011397-C
CASE STYLE: LOLITA BARTHEL,
Appellant(s)
v.

STATE OF FLORIDA,
Appellee(s).

Mary Elizabeth Kuenzel
2D2023-2803 9/17/24
Mary Elizabeth Kuenzel, Clerk
2D2023-2803 9/17/24



cc:
LOLITA BARTHEL
HILLSBOROUGH CLERK

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

LOLITA BARTHEL,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D2023-2803

July 26, 2024

Appeal pursuant to Fla. R. App. P. 9.141(b)(2) from the Circuit Court for Hillsborough County; Robin F. Fuson, Judge.

Lolita Barthel, pro se.

PER CURIAM.

Affirmed.

VILLANTI, BLACK, and SMITH, JJ., Concur.

Opinion subject to revision prior to official publication.

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT**

1700 N. Tampa Street, Suite 300, Tampa FL 33602

September 19, 2024

LOLITA BARTHEL,
APPELLANT(S)
V.

CASE NO.: 2D2023-2803
L.T. No.: 95-CF-011397-C

STATE OF FLORIDA,
APPELLEE(S).

BY ORDER OF THE COURT:

Article I, section 16(b)(10)(b), Florida Constitution, provides that all state-level appeals and collateral attacks on any judgment must be complete within two years from the date of appeal in noncapital cases unless a court enters an order with specific findings as to why the court was unable to comply and the circumstances causing the delay. Pursuant to the administrative procedures and definitions set forth in Supreme Court of Florida Administrative Order No. AOSC19-76, this case was not completed within the required time because the case was initiated in this court after the time had already expired.

This order is for reporting purposes only. It does not affect the decision in this case or the date of the mandate if one has issued, and it has no effect on related proceedings in the lower tribunal or in federal court.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel, Clerk
2D2023-2803 9/19/24



MEP

Served:
LOLITA BARTHEL
HILLSBOROUGH CLERK

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

LOLITA BARTHEL,

Appellant,

v.

Case No. CASE # 2D23-2803

STATE OF FLORIDA,

Appellee.

APPELLEE'S SUMMARY RULE 3.802 NOTICE TO COURT

COMES NOW the APPELLEE, the STATE OF FLORIDA, by and through the undersigned Assistant Attorney General, and gives notice that it does not intend to file a brief in the above-captioned case unless requested to do so by this Court. This appears to be an appeal from the summary denial of post-conviction proceedings as indicated on the "Acknowledgment of New Case" received from this Court.

Respectfully submitted,

ASHLEY MOODY
ATTORNEY GENERAL

/s/ David Campbell
DAVID CAMPBELL
Assistant Attorney General
Florida Bar No. 65275
Concourse Center 4
3507 E. Frontage Road, Suite 200
Tampa, Florida 33607-7013
(813)287-7900
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CrimAppTpa@myfloridalegal.com
David.Campbell@myfloridalegal.com

COUNSEL FOR APPELLEE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail to LOLITA BARTHEL, DOC No. T01421 , Florida Women's Reception Center, 3700 NW 111th Place, Ocala, Florida 34482-1479, on January 12, 2024.

/s/ David Campbell
COUNSEL FOR APPELLEE

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA,

CASE NO: 95-CF-011397-C
95-CF-011398-C

v.

LOLITA BARTHEL,
Defendant.

DIVISION: G

ORDER DISMISSING DEFENDANT'S APPLICATION FOR SENTENCE REVIEW

THIS MATTER is before the Court on Defendant's "Application for Sentence Review Hearing pursuant to Florida Rule of Criminal Procedure 3.996," filed on November 1, 2023, pursuant to Florida Rule of Criminal Procedure 3.802. After reviewing the motion, the court file, and the record, the Court finds as follows:

PROCEDURAL HISTORY

The State charged Defendant with multiple crimes in cases 95-CF-011397-C (referred to hereinafter as the Murder case, due to the lead charge being murder) and 95-CF-011398-C (referred to hereinafter as the Robbery case, due to the lead charge being robbery), and the cases were tried separately. Because of the interrelatedness of the sentences in those two cases, the Court lays out the history of both cases chronologically.

On October 15 and 17, 1996, in the Robbery case, number 95-CF-011398-C, a jury found Defendant guilty of three counts of Robbery with a Firearm (counts one, two, and three) and two counts of Armed Burglary of a Dwelling (counts four and five). On November 12, 1996, the Court sentenced Defendant to life in prison on counts one, two, and four, and to 25 years' prison on counts three and five, all counts to run concurrently with each other. (See November 12, 1996, Judgment and Sentence, attached.) Defendant appealed, and the Second District Court of Appeal affirmed *per curiam*. See *Barthel v. State*, 720 So. 2d 523 (Fla. 2d DCA 1998).

On December 18, 1996, in the Murder case, number 95-CF-011397-C, a jury found Defendant guilty of Murder in the First Degree (count one), Armed Burglary of a Dwelling with a Battery (count two), Robbery with a Firearm (count three), Burglary of a Conveyance (count four), and Organized Fraud (count seven). On December 19, 1996, the Court sentenced Defendant to life in prison on counts one, two, and three, and to five years' prison on counts four and seven, with all counts running concurrently with ~~each other and consecutive~~ to the sentence imposed in the Robbery case, number 95-CF-011398-C. (See December 19, 1996, Judgment and Sentence, attached.) Defendant appealed, and the Second District Court of Appeal affirmed *per curiam*. See *Barthel v. State*, 711 So. 2d 533 (Fla. 2d DCA 1998).

On May 12, 2011, in the Robbery case, Defendant filed a motion for postconviction relief pursuant to *Graham v. Florida*, 560 U.S. 48 (2010). On February 20, 2012, the Court granted, in part, Defendant's motion for postconviction relief and found her to be entitled to resentencing on counts one, two, and four.

On November 5, 2012, Defendant, filed a motion seeking "Retroactive Application of Miller vs. Alabama" in the Murder case. The Court treated the motion as one seeking to correct an illegal sentence pursuant to Rule 3.800(a), and on May 17, 2013, denied the motion. Defendant filed a notice of appeal on June 11, 2013.

On October 18, 2013, the Court resentenced Defendant in the Robbery case to 40 years' imprisonment on counts one, two, and four, with all counts ordered to run concurrently with one another and concurrently with any other sentence Defendant was then serving. (See Amended Sentence, attached.) Defendant did not file an appeal of that sentence.

On May 15, 2015, the Second District Court of Appeal issued a decision on Defendant's appeal of the denial of her motion to correct illegal sentence in the Murder case. The Second

District reversed and remanded for the trial court to “conduct a resentencing proceeding for [Defendant’s] homicide conviction, applying the principles of chapter 2014-220, Laws of Florida.” *See Barthel v. State*, 163 So. 3d 1224 (Fla. 2d DCA 2015).

On July 1, 2019, the Court resentenced Defendant in the Murder case, number 95-CF-011397-C, to life in prison on counts one, two, and three, ordering that all counts run concurrently with each other, and consecutive to the sentence imposed in the Robbery case. The Court found that Defendant was entitled to a review of her sentence on count one after 15 years in accordance with Section 921.1402(2)(c) and to review of her sentences on counts two and three after 20 years in accordance with Section 921.1402(2)(d). (*See* Second and Third Amended Sentences, attached.) Defendant appealed, and the Second District Court of Appeal affirmed *per curiam*. *See Barthel v. State*, 321 So. 3d 167 (Fla. 2d DCA 2020).

On November 21, 2022, Defendant filed a motion to correct or clarify her sentences, believing that her 2013 resentencing in the Robbery case rendered her sentences in both cases concurrent to each other, and that the Court erroneously ordered the sentence in the Murder case to run consecutive to the sentence in the Robbery case at her resentencing in 2019. On December 2, 2022, the Court denied that motion, explaining that her sentences in the Murder case had always been, and continued to be, consecutive to her sentences in the Robbery case.

On November 1, 2023, Defendant filed the instant application for sentence review.

ANALYSIS

In her application, Defendant seeks review of her sentences in the Murder case, number 95-CF-011397-C, because it has been “28 years since Defendant was incarcerated.” (*See* Defendant’s Application, attached.) She attaches correspondence she received from the Department of Corrections notifying her that she may be entitled to seek review of her sentences

in that case. However, because Defendant is not eligible for a sentence review under section 921.1402, her application must be dismissed.

Section 921.1402(2), Florida Statutes, provides that a juvenile offender is “is entitled to a review of his or her sentence after” a specified number of years depending on the crime for which the sentence was imposed and the subsection of section 775.082 under which the sentence was imposed. In Defendant’s case, she “is entitled to a review of his or her sentence after 15 years” on count one because she received a sentence greater than 15 years pursuant to section 775.082(1)(b)2., Florida Statutes. She is also “entitled to a review of his or her sentence after 20 years” on counts two and three because she received a sentence greater than 20 years pursuant to section 775.082(3)(c), Florida Statutes.

But as the Court explained in its December 2, 2022, order denying her motion to clarify or correct her sentences, Defendant’s sentences in this case, the Murder case, run consecutive to her sentences in the Robbery case. (*See* December 2, 2022, Order Denying Defendant’s Motion to Clarify and/or Correct Sentence, attached.) Defendant’s sentence in this case, the Murder case, has always been consecutive to her sentence in the Robbery case, as it was ordered in her original 1996 sentence and in her 2019 resentencing. When a sentence is ordered to be served consecutively to another sentence, a defendant does not begin serving the consecutive sentence until after the first sentence has been served.

Defendant began serving the 40-year sentences in the Robbery case on October 18, 2013, and received 6609 days of credit for time served pretrial in the county jail.¹ Assuming Defendant received the maximum allowable gain time under the version of section 944.275(4) in effect at the

¹ Rather than render her sentence *nunc pro tunc* to the original sentencing date, the Court gave Defendant credit for all the time she had spent in jail and prison prior to resentencing.

time she committed her offenses,² she did not finish serving her sentences in the Robbery case until 2019 at the earliest.

Only once she completes her sentence in the Robbery case will Defendant begin serving her sentences in the Murder case. She will not be eligible for sentence review on count one until she has served 15 years of that sentence, ~~and will not be eligible~~ for sentence review on counts two and three until she ~~has~~ served 20 years of those sentences. *See Hegwood v. State*, 308 So. 3d 647, 649 (Fla. 4th DCA 2020) (“The plain meaning of section 921.1402 dictates that Hegwood is entitled to a review of each consecutive life sentence after twenty-five years of that sentence.”); *see also Hernandez v. State*, 325 So. 3d 82, 89 (Fla. 3d DCA 2018) (remanding for the trial court to amend Hernandez’s consecutive life sentence “to provide for a review after 25 years of time served on that sentence . . . , operative only at such time (if any) as Hernandez is released from further imprisonment on his Count I sentence and his consecutive Count II sentence actually commences.”). Because Defendant has only served, at most, four years of the sentences in the instant case, she is not currently eligible for a sentence review.

It is therefore **ORDERED AND ADJUDGED** that Defendant’s “Application for Sentence Review Hearing pursuant to Florida Rule of Criminal Procedure 3.996” is hereby **DISMISSED** in accordance with the above order.

DONE AND ORDERED in Chambers, in Hillsborough County, Florida.

95-CF-011397-C 12/8/2023 8:14:41 AM
95-CF-011397-C 12/8/2023 8:14:41 AM

ROBIN FUSON, Circuit Judge

² See § 944.275(4), Fla. Stat. (1995); *Sullivan v. Jones*, 165 So. 3d 26, 29 (Fla. 1st DCA 2015), (gain time is applied to each consecutive sentence separately).

Attachments:

Defendant's Application for Sentence Review Hearing pursuant to Florida Rule of
Criminal Procedure 3.996
December 19, 1996, Judgment and Sentence
Second Amended Sentence
Third Amended Sentence
November 12, 1996, Judgment and Sentence
Amended Sentence
December 2, 2022, Order Denying Defendant's Motion to Clarify and/or
Correct Sentence

Copies to:

Lolita Barthel, DC# T01421
Florida Women's Reception Center
3700 NW 111th Place
Ocala, FL 34482

Assistant State Attorney, Division G

APPENDIX D

LIST OF APPENDICES - GROUND ONE:

(1) Case Reversed - Lolita Barthel v. State, 163 So. 3d 1224; 2015 Fla. App. LEXIS 7241 (2nd DCA. 2015)

(2) Trial Court Order, February 27, 2020

“Defendant is entitle to review of her sentence on count one after (15)years in accordance with Section 921.1402(2)(c), and after Twenty (20) years on counts Two and Three in accordance with section 921.1402(2)(d)”

(3) Transcripts re-sentencing hearing September 10, 2019

“There was no specific finding in the verdict for the jury to let us know that they found that she was the actual shooter”

(4) Letter submitted for the Florida Dpt. of Correction

“You may be entitled to petition the court for review”. Section 921.1402(3)

(5) Order rendered by the trial court on December 8, 2023

“Because Defendant has only served, at most, four years of the sentences in the instant case, she is not currently eligible for a sentence review”

(6) Grand jury indictment without the elements of the crime

(7) Jury Instructions

LOLITA BARTHEL, Appellant, v. STATE OF FLORIDA, Appellee.
COURT OF APPEAL OF FLORIDA, SECOND DISTRICT
163 So. 3d 1224; 2015 Fla. App. LEXIS 7241; 40 Fla. L. Weekly D 1139
Case No. 2D13-2817
May 15, 2015, Opinion Filed

Editorial Information: Subsequent History

Released for Publication June 10, 2015.

Editorial Information: Prior History

Appeal from the Circuit Court for Hillsborough County; William Fuente, Judge.

Counsel Howard L. Dammig, II, Public Defender, and Maureen E. Surber, Assistant Public Defender, Bartow, for Appellant.
Pamela Jo Bondi, Attorney General, Tallahassee, and Wendy Buffington, Assistant Attorney General, Tampa, for Appellee.

Judges: NORTHCUTT, Judge. SILBERMAN and MORRIS, JJ., Concur.

Opinion

Opinion by: NORTHCUTT

Opinion

{163 So. 3d 1224} NORTHCUTT, Judge.

Lolita Barthel was convicted of first-degree murder and other crimes in Hillsborough County Circuit Court case number 95-011397. She was sentenced to life imprisonment for the murder conviction and for her convictions for armed burglary of a dwelling with battery and armed robbery. Barthel sought resentencing under *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). The court denied her motion, opining that *Miller* did not apply retroactively to cases that were final before it was decided.

The Florida Supreme Court has now determined that *Miller* indeed does apply to convictions and sentences that were final before it issued. *Falcon v. State*, 162 So. 3d 954, 2015 Fla. LEXIS 534, 40 Fla. L. Weekly S151 (Fla. Mar. 19, 2015); see also *Toye v. State*, 133 So. 3d 540 (Fla. 2d DCA 2014). Therefore, we reverse the circuit court's order and we remand with directions that it conduct a resentencing proceeding for Barthel's homicide conviction, applying the principles of chapter 2014-220, Laws of Florida. See *Horsley v. State*, 160 So. 3d 393, 2015 Fla. LEXIS 535, *43, 40 Fla. L. Weekly S155, S160 (Fla. Mar. 19, 2015).

The circuit court's ruling addressed only Barthel's sentence for the homicide conviction. As we noted above, she was also sentenced to life imprisonment for other crimes in the same case. She asks us to order resentencing proceedings for those convictions as well, relying on *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). But we must decline that request because we find no record indication that she moved for resentencing under *Graham*. However, on remand Barthel is free to file a motion seeking *Graham* resentencing for her nonhomicide life sentences. We offer no opinion on the merits of such a motion.

Reversed and remanded with directions.

SILBERMAN and MORRIS, JJ., Concur.

SENTENCE

The Defendant, being personally before this court, accompanied by the defendant's attorney of record, PUBLIC DEFENDER, 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

The defendant is hereby committed to the custody of the Department of Corrections: Florida State Prison

Ct.1 SENTENCE: CRIMINAL

Confinement (Effective 07/01/2019, TO BE IMPRISONED FOR A TERM OF LIFE, FLORIDA DEPARTMENT OF CORRECTIONS):

Credit for Time Served: 269 Days (INCLUDE ALL PRIOR PRISON CREDIT)

Provisions

- 3rd AMENDED SENTENCE- PER ORDER 2/25/2020- TO REFLECT DEFENDANT'S ENTITLEMENT TO PRISON CREDIT IN ADDITION TO THE PREVIOUSLY-AWARDED JAIL CREDIT
- 2nd AMENDED SENTENCE-AMENDED SENTENCE PER SENTENCING ORDER SIGNED BY JUDGE SABELLA ON 7/1/2019- DEFENDANT IS HEREBY SENTENCED TO LIFE IMPRISONMENT ON COUNTS ONE, TWO AND THREE, CONCURRENTLY WITH EACH OTHER AND THE SENTENCES ON COUNTS FOUR AND SEVEN, BUT CONSECUTIVELY TO THE SENTENCE IN CASE 95-CF-011398
- DEFENDANT IS ENTITLED TO A REVIEW OF HER SENTENCE ON COUNT ONE AFTER FIFTEEN (15) YEARS IN ACCORDANCE WITH SECTION 921.1402(2)(c), AND AFTER TWENTY (20) YEARS ON COUNTS TWO AND THREE IN ACCORDANCE WITH SECTION 921.1402(2)(d).
- DEFT TO RECEIVE PRISON CREDIT

Special Provisions

- RESENTENCING

Sentence Status (CONCURRENT, COUNTS 1,2,3, 4 & 7 TO RUN CONCURRENT, COUNTS 1,2,3 TO RUN CONCURRENT WITH EACH OTHER & THE SENTENCING ON COUNTS 4 & 7 , BUT CONSECUTIVELY TO THE SENTENCE ON CASE 95-CF-11398A)

Ct.2 SENTENCE: CRIMINAL

Confinement (Effective 07/01/2019, TO BE IMPRISONED FOR A TERM OF LIFE, FLORIDA DEPARTMENT OF CORRECTIONS):

Credit for Time Served: 269 Days (INCLUDE ALL PRIOR PRISON CREDIT)

Provisions

- 3rd AMENDED SENTENCE- PER ORDER 2/25/2020- TO REFLECT DEFENDANT'S ENTITLEMENT TO PRISON CREDIT IN ADDITION TO THE PREVIOUSLY-AWARDED JAIL CREDIT
- 2nd AMENDED SENTENCE-AMENDED SENTENCE PER SENTENCING ORDER SIGNED BY JUDGE SABELLA ON 7/1/2019- DEFENDANT IS HEREBY SENTENCED TO LIFE IMPRISONMENT ON COUNTS ONE, TWO AND THREE, CONCURRENTLY WITH EACH OTHER AND THE SENTENCES ON COUNTS FOUR AND SEVEN, BUT CONSECUTIVELY TO THE SENTENCE IN CASE 95-CF-011398
- DEFENDANT IS ENTITLED TO A REVIEW OF HER SENTENCE ON COUNT ONE AFTER FIFTEEN (15) YEARS IN ACCORDANCE WITH SECTION 921.1402(2)(c), AND AFTER TWENTY (20) YEARS ON COUNTS TWO AND THREE IN ACCORDANCE WITH SECTION 921.1402(2)(d).
- DEFT TO RECEIVE PRISON CREDIT

Special Provisions

- RESENTENCING

Sentence Status (CONCURRENT, COUNTS 1,2,3, 4 & 7 TO RUN CONCURRENT, COUNTS 1,2,3 TO RUN CONCURRENT WITH EACH OTHER & THE SENTENCING ON COUNTS 4 & 7 , BUT CONSECUTIVELY TO THE SENTENCE ON CASE 95-CF-11398A)

Ct.3 SENTENCE: CRIMINAL

Confinement (Effective 07/01/2019, TO BE IMPRISONED FOR A TERM OF LIFE, FLORIDA DEPARTMENT OF CORRECTIONS)

Credit for Time Served: 269 Days (INCLUDE ALL PRIOR PRISON CREDIT)

Provisions

- 3rd AMENDED SENTENCE- PER ORDER 2/25/2020- TO REFLECT DEFENDANT'S ENTITLEMENT TO PRISON CREDIT IN ADDITION TO THE PREVIOUSLY-AWARDED JAIL CREDIT
- 2nd AMENDED SENTENCE-AMENDED SENTENCE PER SENTENCING ORDER SIGNED BY JUDGE SABELLA ON 7/1/2019- DEFENDANT IS HEREBY SENTENCED TO LIFE IMPRISONMENT ON COUNTS ONE, TWO AND THREE, CONCURRENTLY WITH EACH OTHER AND THE SENTENCES ON COUNTS FOUR AND SEVEN, BUT CONSECUTIVELY TO THE SENTENCE IN CASE 95-CF-011398
- DEFENDANT IS ENTITLED TO A REVIEW OF HER SENTENCE ON COUNT ONE AFTER FIFTEEN (15) YEARS IN ACCORDANCE WITH SECTION 921.1402(2)(c), AND AFTER TWENTY (20) YEARS ON COUNTS TWO AND THREE IN ACCORDANCE WITH SECTION 921.1402(2)(d).
- DEFT TO RECEIVE PRISON CREDIT

Special Provisions

- RESENTENCING

Sentence Status (CONCURRENT, COUNTS 1,2,3, 4 & 7 TO RUN CONCURRENT, COUNTS 1,2,3 TO RUN CONCURRENT WITH EACH OTHER & THE SENTENCING ON COUNTS 4 & 7 , BUT CONSECUTIVELY TO THE SENTENCE ON CASE 95-CF-11398A)

Ct.4 SENTENCE: CRIMINAL

Confinement (Effective 07/01/2019, TO BE IMPRISONED FOR A TERM OF 5 Years, FLORIDA DEPARTMENT OF CORRECTIONS)

Credit for Time Served: 269 Days (INCLUDE ALL PRIOR PRISON CREDIT)

Provisions

- AMENDED SENTENCE- PER ORDER 2/25/2020- TO REFLECT DEFENDANT'S ENTITLEMENT TO PRISON CREDIT IN ADDITION TO THE PREVIOUSLY-AWARDED JAIL CREDIT
- DEFT TO RECEIVE PRISON CREDIT

Special Provisions

- RESENTENCING

Sentence Status (CONCURRENT, COUNTS 1,2,3, 4 & 7 TO RUN CONCURRENT, COUNTS 1,2,3 TO RUN CONCURRENT WITH EACH OTHER & THE SENTENCING ON COUNTS 4 & 7 , BUT CONSECUTIVELY TO THE SENTENCE ON CASE 95-CF-11398A)

Ct.7 SENTENCE: CRIMINAL

Confinement (Effective 07/01/2019, TO BE IMPRISONED FOR A TERM OF 5 Years, FLORIDA DEPARTMENT OF CORRECTIONS)

Credit for Time Served: 269 Days (INCLUDING PRIOR PRISON CREDIT)

Provisions

- AMENDED SENTENCE- PER ORDER 2/25/2020- TO REFLECT DEFENDANT'S ENTITLEMENT TO PRISON CREDIT IN ADDITION TO THE PREVIOUSLY-AWARDED JAIL CREDIT
- DEFT TO RECEIVE PRISON CREDIT

Special Provisions

- RESENTENCING

Comment:

Sentence Status (CONCURRENT, COUNTS 1,2,3, 4 & 7 TO RUN CONCURRENT, COUNTS 1,2,3 TO RUN CONCURRENT WITH EACH OTHER & THE SENTENCING ON COUNTS 4 & 7 , BUT CONSECUTIVELY TO THE SENTENCE ON CASE 95-CF-11398A)

Fee Totals:

- **\$100.00** CR-2399 INVESTIGATIVE COSTS SAO REVENUE FS 938.27(8) FS AUTH: 938.27(8)
- **\$200.00** CF-R252 ADDITIONAL COURT COST - CLERK - CIR CRIM FS AUTH: 938.05(1)(a)
- **\$1.00** CF-R617 CRIMES COMPENSATION FEE 938.03 FS AUTH: 938.03
- **\$3.00** CF-RA20 CRIME STOPPERS TRUST FUND FEE FS AUTH: 938.06
- **\$50.00** CR-8081 CRIME PREVENTION FS AUTH: 775.083(2)
- **\$65.00** CR-8097 ADDITIONAL COSTS (BOCC) - PROGRAMS FS AUTH: 939.185(1)(a)/ORD 18-42(a)
- **\$49.00** CR-8311 FCCA CRIMES COMPENSATION TRUST FUND FS AUTH: 938.03
- **\$17.00** CR-A362 CRIME STOPPERS TRUST FUND FS AUTH: 938.06
- **\$25.00** FS AUTH: 938.05(1)(a)
- **\$3.00** CR-2616 STATE ASSESSMENT (ADDL CRT COST CLEAR) 938.01 FS AUTH: 938.01
- **\$2.00** CR-2629 HILLSBOROUGH COUNTY LOCAL ASSESSMENT FS AUTH: 938.15 318.18(11)(d)
- **\$100.00** CR-2810 DOR - JAC INDIGENT CRIMINAL DEFENSE TRUST FUND FS AUTH: 938.29 - 27.562
- **\$6.00** CF-R229 FELONY PREP FEE FOR CRIMINAL JUDGMENT - 28.24(8) FS AUTH: FS 28.24(8)
- **\$1.00** CR-R229D FELONY PREP FEE FOR CRIMINAL JUDGMENT - 28.24(8) FS AUTH: FS 28.24(8)
- **\$6.00** CF-R228 FELONY PREP FEE FOR CRIM SATISFACTION - 28.24(8) FS AUTH: FS 28.24(8)
- **\$1.00** CR-R228D FELONY PREP FEE FOR CRIM SATISFACTION - 28.24(8) FS AUTH: FS 28.24(8)
- **\$10.00** TF-1100S RECORDING FEE FOR CRIM SATISFCTN 28.24(12)(a)(b)(d) FS AUTH: FS 28.24(12)(a)(b)(d)

Fee Total : \$639.00

****FEE TOTALS INCLUDE ALL OUTSTANDING FEES OWED ON THE CASE AT THE TIME OF THIS JUDGMENT, EXCEPT FOR COST OF SUPERVISION FEES. SEE ORDER OF PROBATION FOR DETAILS. THE ABOVE FEES INCLUDE THE ASSESSMENT OF JUDGMENT AND SATISFACTION FEES, AS APPLICABLE.**

In the event the above sentence is to the Department of Corrections, the Sheriff of Hillsborough 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 defendant's right to the 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:

DONE AND ORDERED in open court at Hillsborough County, Florida, on 02/25/2020


95-CF-011397-C 2/27/2020 5:20:34 PM

Christopher C Sabella, Circuit Judge

1 IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL
2 CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA

CASE NO. 95-CF-011397

6 || vs.

DIVISION: TD 2

10 This case came on to be heard before the
11 Honorable Christopher Sabella, Circuit Judge, at the
12 Hillsborough County Courthouse Annex, Tampa, Florida,
13 on July 1, 2019 commencing at approximately 9:00 a.m.

14 APPEARANCES.

15 Travis Coy, Assistant State Attorney,
16 419 North Pierce Street,
16 Tampa, Florida 33602
16 On behalf of the State.

18 Debra Goins, Assistant Public Defender
700 East Twiggs Street,
19 Tampa, Florida 33602
On behalf of the Defendant.

AOC CIRCUIT COURT REPORTERS
HILLSBOROUGH COUNTY, FLORIDA

1 I previously, just by way of history, had
2 decided after previous motion and hearings that
3 this resentencing on Count One was to occur under
4 Section 775.082(1)(b)(2). And the reason for that
5 was that the State had charged Miss Barthel
6 including the principal theory on that. And there
7 was no specific finding in the verdict for the jury
8 to let us know that they found that she was the
9 actual shooter. So I simply could not make that
10 conclusion.

11 I will let you know, though, that I have read
12 the testimony of the codefendants who testified.
13 And I think it was very compelling testimony, and
14 had the jury been given that opportunity, they may
15 have -- probably would have made that finding. But
16 they did not and so, therefore, I couldn't go the
17 other route that the State had asked me to go. And
18 the resentencing on Count One is specifically
19 pursuant to 775.082(1)(b)(2) because of those
20 specific two reasons, which requires then the Court
21 to analyze the factors in 921.1402(2), and that is
22 Factors A through J, which I have done and I have
23 thoroughly considered each and every one of the
24 factors.

25 Now, Miss Barthel is also being resentenced on

AOC CIRCUIT COURT REPORTERS
HILLSBOROUGH COUNTY, FLORIDA



FLORIDA
DEPARTMENT of
CORRECTIONS

Governor
RON DESANTIS
Secretary
RICKY D. DIXON

501 South Calhoun Street, Tallahassee, FL 32399-2500

www.dc.state.fl.us

Lolita Barthel, DC# T01421
Florida Women's Reception Center
3700 NW 111th Place
Ocala, FL 34482-1479

As you may be aware, the law governing sentencing of juvenile offenders has undergone significant change over the last several years since the U.S. Supreme Court issued its opinions in Graham v Florida and Miller v Alabama. In 2014 the Florida legislature created new statutes for juvenile sentencing (s.921.1401) and judicial review (s.921.1402), and the Florida Supreme Court has ordered the retroactive application of the new statutory process.

Section 921.1402(2)(c) provides that a juvenile offender sentenced for a capital felony, life felony, or first degree felony punishable by life under s.782.04, who is found by the court to not actually have killed, intended to kill or attempted to kill the victim and who does not have a disqualifying prior conviction, is entitled to a judicial review of his or her sentence after 15 years. Section 921.1402(3) requires the Department to notify a juvenile offender of his/her eligibility to request a sentence review hearing 18 months before the juvenile is entitled to review.

Department records reflect that your sentence for First Degree Murder in Hillsborough County case number 95-CF-11397 requires the Department to provide notice pursuant to s.921.1402(3), as you may be entitled to petition the court for review. This notice is provided to ensure that all potentially affected inmates are aware of the new juvenile sentencing system, for whatever action each one deems appropriate based on the facts of their case. Please note, if you believe you are entitled to a sentence review hearing, it is your responsibility to petition the court to request review. However, it is ultimately up to the court to decide if an inmate is entitled to judicial review, and the law is not fully settled regarding certain factual situations relating to juvenile sentencing.

One final note, the sentence or sentences that require this notice may not control your release date as you may have other sentences that are not subject to judicial review under s.921.1402 and will end later.


Inmate Signature

10.26.23
Date

*INSPIRING SUCCESS BY TRANSFORMING ONE LIFE AT A TIME *



**FLORIDA
DEPARTMENT of
CORRECTIONS**

Governor

RON DESANTIS

Secretary

RICKY D. DIXON

501 South Calhoun Street, Tallahassee, FL 32399-2500

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Lolita Barthel, DC# T01421
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3700 NW 111th Place
Ocala, FL 34482-1479

As you may be aware, the law governing sentencing of juvenile offenders has undergone significant change over the last several years since the U.S. Supreme Court issued its opinions in *Graham v Florida* and *Miller v Alabama*. In 2014 the Florida legislature created new statutes for juvenile sentencing (s.921.1401) and judicial review (s.921.1402), and the Florida Supreme Court has ordered the retroactive application of the new statutory process. Section 921.1402(2)(d) provides that a juvenile offender sentenced to a term of more than 20 years for an offense that is not included under s.782.04 (Murder) is entitled to a judicial review of the sentence after 20 years. Section 921.1402(3) requires the Department to notify a juvenile offender of his/her eligibility to request a judicial review hearing 18 months before the juvenile is entitled to review.

Department records reflect that your sentence for Burglary with Assault, Hillsborough County case number 95-CF-11397, requires the Department to provide notice pursuant to s.921.1402(3), as you may be entitled to petition the court for review. This notice is provided to ensure that all potentially affected inmates are aware of the new juvenile sentencing system, for whatever action each one deems appropriate based on the facts of their case. Please note, if you believe you are entitled to a sentence review hearing, it is your responsibility to petition the court to request review. However, it is ultimately up to the court to decide if an inmate is entitled to judicial review, and the law is not fully settled regarding certain factual situations relating to juvenile sentencing.

One final note, the sentence or sentences that require this notice may not control your release date as you may have other sentences that are not subject to judicial review under s.921.1402 and will end later.

Lolita Barthel
Inmate Signature

10 · 26 · 23
Date

in that case. However, because Defendant is not eligible for a sentence review under section 921.1402, her application must be dismissed.

Section 921.1402(2), Florida Statutes, provides that a juvenile offender is “is entitled to a review of his or her sentence after” a specified number of years depending on the crime for which the sentence was imposed and the subsection of section 775.082 under which the sentence was imposed. In Defendant’s case, she “is entitled to a review of his or her sentence after 15 years” on count one because she received a sentence greater than 15 years pursuant to section 775.082(1)(b)2., Florida Statutes. She is also “entitled to a review of his or her sentence after 20 years” on counts two and three because she received a sentence greater than 20 years pursuant to section 775.082(3)(c), Florida Statutes.

But as the Court explained in its December 2, 2022, order denying her motion to clarify or correct her sentences, Defendant’s sentences in this case, the Murder case, run **consecutive** to her sentences in the Robbery case. (See December 2, 2022, Order Denying Defendant’s Motion to Clarify and/or Correct Sentence, attached.) Defendant’s sentence in this case, the Murder case, has always been consecutive to her sentence in the Robbery case, as it was ordered in her original 1996 sentence and in her 2019 resentencing. When a sentence is ordered to be served consecutively to another sentence, a defendant does not begin serving the consecutive sentence until after the first sentence has been served.

Defendant began serving the 40-year sentences in the Robbery case on October 18, 2013, and received 6609 days of credit for time served pretrial in the county jail.¹ Assuming Defendant received the maximum allowable gain time under the version of section 944.275(4) in effect at the

¹ Rather than render her sentence *nunc pro tunc* to the original sentencing date, the Court gave Defendant credit for all the time she had spent in jail and prison prior to resentencing.

time she committed her offenses,² she did not finish serving her sentences in the Robbery case until 2019 at the earliest.

Only once she completes her sentence in the Robbery case will Defendant begin serving her sentences in the Murder case. She will not be eligible for sentence review on count one until she has served 15 years of that sentence, and will not be eligible for sentence review on counts two and three until she has served 20 years of those sentences. *See Hegwood v. State*, 308 So. 3d 647, 649 (Fla. 4th DCA 2020) (“The plain meaning of section 921.1402 dictates that Hegwood is entitled to a review of each consecutive life sentence after twenty-five years of that sentence.”); *see also Hernandez v. State*, 325 So. 3d 82, 89 (Fla. 3d DCA 2018) (remanding for the trial court to amend Hernandez’s consecutive life sentence “to provide for a review after 25 years of time served on that sentence . . . , operative only at such time (if any) as Hernandez is released from further imprisonment on his Count I sentence and his consecutive Count II sentence actually commences.”). Because Defendant has only served, at most, four years of the sentences in the instant case, she is not currently eligible for a sentence review.

It is therefore **ORDERED AND ADJUDGED** that Defendant’s “Application for Sentence Review Hearing pursuant to Florida Rule of Criminal Procedure 3.996” is hereby **DISMISSED** in accordance with the above order.

DONE AND ORDERED in Chambers, in Hillsborough County, Florida.

95-CF-011397-C 12/8/2023 8:14:41 AM
95-CF-011397-C 12/8/2023 8:14:41 AM

ROBIN FUSON, Circuit Judge

² See § 944.275(4), Fla. Stat. (1995); *Sullivan v. Jones*, 165 So. 3d 26, 29 (Fla. 1st DCA 2015), (gain time is applied to each consecutive sentence separately).

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY
STATE OF FLORIDA

THE 20TH DAY OF MARCH, 1996. SUPERCEDES INDICTMENT FILED
SEPTEMBER, 27, 1995

THE STATE OF FLORIDA

v.

QUONTESHA KENYEL WORLDS
CHRISTOPHER JAMES ELLIS
AND LOLITA BARTHEL

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA

COUNT ONE

The Grand Jurors of the County of Hillsborough, State of Florida, charge that QUONTESHA KENYEL WORLDS, CHRISTOPHER JAMES ELLIS AND LOLITA BARTHEL, on the 18th day of August, 1995, in the County of Hillsborough and State of Florida, did unlawfully and feloniously kill a human being, to-wit: RICHARD MENENDEZ with a premeditated design to effect the death of RICHARD MENENDEZ or any other human being by shooting him with a firearm, contrary to the form of the statute in such cases made and provided, to-wit: Florida Statute 782.04(1) and,

COUNT TWO

The Grand Jurors of the County of Hillsborough, State of Florida, charge that QUONTESHA KENYEL WORLDS, CHRISTOPHER JAMES ELLIS AND LOLITA BARTHEL, on the 18th day of August, 1995 in the County of Hillsborough and State of Florida, did unlawfully enter or remain in a certain dwelling the property of RICHARD OR MARIE MENENDEZ with the intent to commit an offense therein and while in

000026

State v. Quontesha Kenyel Worlds,
Christopher James Ellis
and Lolita Barthel
Case Number 95-11397
March 20, 1996
Page 2 of 6 Pages

the aforesaid dwelling the said QUONTESHA KENYEL WORLDS,
CHRISTOPHER JAMES ELLIS AND LOLITA BARTHEL did commit battery upon
RICHARD MENENDEZ and were armed with a dangerous weapon, to-wit:
a firearm, contrary to the form of the statute in such cases made
and provided, to-wit: Florida Statute 810.02 (1) (2) (a) (B) and (C).

COUNT THREE

The Grand Jurors of the County of Hillsborough, State of Florida, charge that QUONTESHA KENYEL WORLDS, CHRISTOPHER JAMES ELLIS AND LOLITA BARTHEL, on the 18th day of August, 1995, in the County of Hillsborough and State of Florida, did then and there unlawfully, by force, violence, assault or putting in fear rob, steal and take away from the person or custody of RICHARD MENENDEZ certain property to wit: jewelry and other property, the value of said property being three hundred (\$300.00) dollars or more but less than twenty thousand (\$20,000.00) dollars, with intent to permanently or temporarily deprive RICHARD MENENDEZ of said property, and in the course of said robbery, QUONTESHA KENYEL WORLDS, CHRISTOPHER JAMES ELLIS AND LOLITA BARTHEL carried a deadly weapon, to-wit: a firearm, contrary to the form of the statute in such cases made and provided, to-wit: Florida Statute 812.13(1) and (2)(a) and,

COUNT FOUR

The Grand Jurors of the County of Hillsborough, State of Florida, charge that QUONTESHA KENYEL WORLDS, CHRISTOPHER JAMES

JAMES
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State v. Quontesha Kenyel Worlds,
Christopher James Ellis
and Lolita Barthel
Case Number 95-11397
March 20, 1996
Page 3 of 6 Pages

ELLIS AND LOLITA BARTHEL, on the 18th day of August, 1995, in the County of Hillsborough and State of Florida, did unlawfully enter or remain in a certain conveyance, to-wit: an automobile, the property of **RICHARD OR MARIE MENENDEZ**, with intent to commit an offense therein, contrary to the form of the statute in such cases made and provided, to-wit: Florida Statute 810.02(1) and (3) and,

COUNT FIVE

The Grand Jurors of the County of Hillsborough, State of Florida, charge that **CHRISTOPHER JAMES ELLIS**, on the 18th day of August, 1995, in the County of Hillsborough and State of Florida, did with intent to defraud the issuer or a person or organization providing money, goods, services or anything else of value, use a credit card to obtain money, goods, services or anything else of a value of one hundred (\$100.00) dollars or more by representing, without the consent of the cardholder, that he is the holder of the card so used, contrary to the form of the statute in such cases made and provided, to-wit: Florida Statute 817.61 and,

COUNT SIX

The Grand Jurors of the County of Hillsborough, State of Florida, charge that **CHRISTOPHER JAMES ELLIS**, on the 18th day of August, 1995, in the County of Hillsborough and State of Florida, did with intent to defraud the issuer or a person or organization providing money, goods, services or anything else of value, use a credit card to obtain money, goods, services or anything else of a

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State v. Quontesha Kenyel Worlds,
Christopher James Ellis
and Lolita Barthel
Case Number 95-11397
March 20, 1996
Page 4 of 6 Pages

value of one hundred (\$100.00) or more dollars by representing, without the consent of the cardholder, that he is the holder of the card so used, contrary to the form of the statute in such cases made and provided, to-wit: Florida Statute 817.61 and,

COUNT SEVEN

The Grand Jurors of the County of Hillsborough, State of Florida, charge that **QUONTESHA KENYEL WORLDS, CHRISTOPHER JAMES ELLIS AND LOLITA BARTHEL**, on the 18th day of August, 1995, in the County of Hillsborough and State of Florida, did unlawfully engage in a scheme constituting a systematic, ongoing course of conduct with intent to defraud one or more persons by false or fraudulent pretenses, representations, or promises or willful misrepresentations of a future act and so obtained property from **BAKER SHOES, JARMEN SHOES, THE BODY SHOP, TARGET, DOLCE SHOES, JEANS WEST AND FOOT LOCKER** of an aggregate value of less than twenty thousand (\$20,000.00) dollars, contrary to the form of the statute in such cases made and provided, to-wit: Florida Statute 817.034(4)(a)3 and,

COUNT EIGHT

The Grand Jurors of the County of Hillsborough, State of Florida, charge that **QUONTESHA KENYEL WORLDS AND CHRISTOPHER JAMES ELLIS**, on the 21st day of August, 1995, in the County of Hillsborough and State of Florida, did unlawfully traffic or endeavor to traffic in stolen property, to-wit: jewelry and other

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63

State v. Quontesha Kenyel Worlds,
Christopher James Ellis
and Lolita Barthel
Case Number 95-11397
March 20, 1996
Page 5 of 6 Pages

property, the property of RICHARD OR MARIE MENENDEZ, a further description of said property being to the State Attorney unknown, and in so doing the defendant knew or should have known that ^{the} ~~the~~ ^{said} property was stolen, contrary to the form of the statutes ⁱⁿ ~~in~~ ^{of} ~~of~~ ^{such} ~~such~~ cases made and provided, to-wit: Florida Statute 812.019(1).

INDICTMENT FOR MURDER IN THE FIRST DEGREE
F.S 782.04(1)
[FIRST COUNT]

INDICTMENT FOR BURGLARY OF A DWELLING
WITH BATTERY WITH DANGEROUS WEAPON USED
F.S 810.02 (1) (2)(A) (B)

2 [SECOND COUNT]

INDICTMENT FOR ROBBERY WITH A FIREARM
F.S 812.13(1) AND (2) (A)
[THIRD COUNT]

INDICTMENT FOR BURGLARY OF
A CONVEYANCE
F.S 810.02 (1) AND (3)
[FOURTH COUNT]

INDICTMENT FOR FRAUDULENT USE OF
CREDIT CARD
(ELLIS ONLY)
F.S 817.61
[FIFTH COUNT]

INDICTMENT FOR FRAUDULENT USE OF
CREDIT CARD
(ELLIS ONLY)
F.S 817.61
[SIXTH COUNT]

INDICTMENT FOR ORGANIZED FRAUD
F.S 817.034 (4) (A) 3
1 [SEVENTH COUNT]

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38

State v. Quontesha Kenyel Worlds,
Christopher James Ellis
and Lolita Barthel
Case Number 95-11397
March 20, 1996
Page 6 of 6 Pages

INDICTMENT FOR DEALING IN STOLEN PROPERTY

F.S 812.019(1)

(WORLDS AND ELLIS ONLY)

[EIGHTH COUNT]

A TRUE BILL:

Michael R. Frost
Foreperson of the Grand Jury

A NO TRUE BILL:

Foreperson of the Grand Jury

I, Prosecutor for the Thirteenth Judicial Circuit, in and for Hillsborough County, State of Florida, do hereby aver, as authorized and required by law, that I have acted in an advisory capacity to the Grand Jurors of Hillsborough County previous to their returning the above indictment in the above styled cause.

Michael R. Frost
PROSECUTOR
THIRTEENTH JUDICIAL CIRCUIT
HILLSBOROUGH COUNTY

Presented before *Sam Perdue*

Circuit Judge

QUONTESHA KENYEL WORLDS

DOB: 10/6/75
RACE: BLACK
GENDER: FEMALE
SSN: 262-79-8073

CHRISTOPHER JAMES ELLIS

DOB: 4/5/77
RACE: BLACK
GENDER: MALE
SSN: 217-04-1942

LOLITA BARTHEL

DOB: 9/6/77
RACE: BLACK
GENDER: FEMALE
SSN: 262-83-4534
NICK COX/og

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AP

1 reasonable doubt, you must find her guilty.

2 In considering the evidence, you should
3 consider the possibility that although it may not
4 convince you that the defendant committed the main
5 crime of which she is charged, and there are five
6 counts, in each of those five counts, there may be
7 evidence that she committed other acts which are
8 known as lesser included crimes. This is the part
9 that makes it a little complicated. Therefore, if
10 you decide that the main accusation in each count
11 has not been proven beyond a reasonable doubt, you
12 will next need to decide whether any of the lesser
13 included offenses have been proven beyond all
14 reasonable doubt, and here is how the verdict form
15 reads:

16 As to Count One, we, the jury, find the
17 defendant guilty of Murder in the First Degree, as
18 charged.

19 Or the defendant is guilty of the lesser
20 included crime of Murder in the Second Degree, and
21 in the course of committing the crime, the defendant
22 carried or possessed a firearm.

23 Or the defendant is guilty of the lesser
24 included crime of Murder in the Second Degree with a
25 firearm.

1 accident and misfortune in doing any lawful act by
2 lawful means with usual ordinary caution and without
3 any unlawful intent.

4 Or when the killing occurs by accident and
5 misfortune in the heat of passion upon any sudden
6 and sufficient provocation.

7 Or when the killing is committed by accident
8 and misfortune resulting from sudden combat if a
9 dangerous weapon is not used and the killing is not
10 done in a cruel or unusual manner.

11 A "dangerous weapon" is defined as any weapon
12 which taking into account the manner in which it is
13 used is likely to cause death or great bodily harm.

14 Okay. There are two ways in which a person
15 may be convicted of first degree murder. One is
16 known as premeditated murder, and the other is known
17 as felony murder.

18 Before you can find the defendant guilty of
19 First Degree Premeditated Murder, the State must
20 prove the following three elements beyond a
21 reasonable doubt:

22 First, that Mr. Menendez is dead.

23 And, second, that the death was caused by the
24 criminal act or agency of Ms. Barthel.

25 And, third, that there was a premeditated

1 killing of Richard Menendez.

2 Now, "killing with premeditation" is killing
3 after consciously deciding to do so. The decision
4 must be present in the mind at the time of the
5 killing, of course, and the law does not fix the
6 exact period of time that must pass between the
7 formation of the premeditated intent to kill and the
8 actual killing, and the period of time must be long
9 enough to allow reflection by the defendant. The
10 premeditated intent to kill must be formed before
11 the killing. *

12 The question of premeditation is a question of
13 fact to be decided by you all from the evidence. It
14 will be sufficient proof of premeditation if the
15 circumstances of the killing and the conduct of the
16 accused convince you beyond a reasonable doubt that
17 the existence -- convince you beyond a reasonable
18 doubt of the existence of premeditation at the time
19 of the killing.

20 Before you can find the defendant guilty of
21 First Degree Felony Murder, the State must prove the
22 following three elements beyond a reasonable doubt:

23 Again, that Mr. Menendez is dead.

24 And, second, that his death was caused by the
25 criminal act or agency of Ms. Barthel.

APPENDIX E

LIST OF APPENDICES - GROUND TWO:

- (1) Transcripts December 19, 1996, The court orally announce the sentence:
"Those sentences to run concurrent or at the same time or consecutive or after the sentence previously imposed by this court in that case or cases." (See Trial Transcripts Page 487 L. 20).
- (2) Transcripts December 19, 1996, written sentence:
"Other provision, Continued: Consecutive... XX Specific Sentences: 95-11398"
- (3) Transcripts September 10, 2019, The court orally announce the re-sentence:
"I Sentence to Miss Barthel to life imprisonment on Count One, Two and Three concurrently to with each other. And the sentence on Counts Four and Seven, which remained the same but consecutively to the sentence in case No. 95-CF-001398". The petitioner present evidences that, the oral pronouncement of the re-sentence, did not ordered that the Counts One, Two and Three run consecutively. (See Re-sentence transcripts, page 5, L-13).
- (4) Transcripts February 25, 2020, written re-sentence:
"Defendant is hereby sentenced to life imprisonment on counts One, Two and Three, concurrently with each other and the sentence in the count Fourth and Seven, but consecutively to the sentence in case 95-CF-011398."
- (5) Trial Court order on February 25, 2020:
"Finally, with regards to Defendant's contention that the sentencing documents must be corrected to show that (she) already served 25 years in prison, the Court agrees and finds Defendant is entitled to have an amended judgment and sentence prepared to reflect her entitlement to all prior prison credit"
- (6) Trial Court order on February 25, 2020 – Written Finding For Departure Sentence:
"The Court notes Defendant was not entitled to resentencing on counts four and Five. Further, the sentences on counts four and five have already expired."

1 answer the Court's question.

2 THE COURT: Well, we have to disclose them on
3 the record, dispose of them on the record.

4 MR. COX: I would ask that she be sentenced
5 to five years in prison and run this concurrent.

6 THE COURT: Anything else?

7 MR. TRAINA: Only that I'm asking the Court
8 for concurrent sentencing. I think that I
9 previously mentioned that. Nothing further.

10 THE COURT: Ms. Barthel, anything that you
11 want to say?

12 THE DEFENDANT: No, sir.

13 THE COURT: It's the judgment and order and
14 sentence of the Court that you be adjudicated
15 guilty of each of these five counts, the counts of
16 which you were found guilty by the jury, and on the
17 first three counts, I, II and III, confined in the
18 Florida State Prison for the remainder of your
19 natural life.

20 Those sentences to run concurrent or at the
21 same time or consecutive or after the sentence
22 previously imposed by this Court in that case or
23 cases.

24 And on Count IV and VII, five years in the

25 BREVARD COUNTY PROSECUTOR
800 EAST KENNEDY BLVD., CA-1-128, TAMPA, FL 33602

1 concurrent with the previously imposed sentence.

2 The Court finds on the record two reasons for
3 upward departure in your case, one is there is a /
4 contemporaneous conviction for an offense scoring 8/
5 or higher and this offense indicates an escalating
6 pattern of criminal activity on your part and the
7 Court feels that you're not amenable to any type of
8 rehabilitation, so you're out of here. Okay.

9 Fingerprint her.

10 MR. TRAINA: Judge, I intend to file a Motion
11 for New Trial. Does the Court intend to give me a
12 date that I could be heard on that?

13 THE COURT: You file it and set it on Monday.

14 MR. TRAINA: This coming Monday?

15 THE COURT: No, whenever it's filed call my
16 secretary and we'll set it on then.

17 MR. TRAINA: Thank you, Judge.

18 MR. COX: Could I ask, were you not going to
19 use the reason for the unscored capital conviction?
20 I have an order for that particular thing if the
21 Court finds that is appropriate.

22 THE COURT: I'm basing it on the nexus of the
23 last of these aggravating factors, primary offense
24 and been convicted of one or more offenses that is

25 BEVERLY MORENO, dR#Bv@P#e@FF\$C@AedCOUR#AREBORS same
800 EAST KENNEDY BLVD., CA-1-128, TAMPA, FL 33602

DEFENDANT BARTHEL, LOLITA FELICIA

CASE NUMBER 95-11397
OBTS NUMBER 0008029565

OTHER PROVISION, CONTINUED:

CONSECUTIVE/ IT IS FURTHER ORDERED THAT THE COMPOSITE TERM OF ALL CONCURRENT AS TO SENTENCES IMPOSED FOR THE COUNTS SPECIFIED IN THIS ORDER OTHER CONVICTIONS SHALL RUN (CHECK ONE) CONSECUTIVE TO CONCURRENT WITH THE FOLLOWING:
(CHECK ONE)
 ANY ACTIVE SENTENCE BEING SERVED.
 SPECIFIC SENTENCES: 95-11398

IN THE EVENT THE ABOVE SENTENCE IS TO THE DEPARTMENT OF CORRECTIONS, THE SHERIFF OF HILLSBOROUGH 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 DEFENDANT'S RIGHT TO THE ASSISTANCE OF COUNSEL IN TAKING THE APPEAL AT THE EXPENSE OF THE STATE ON SHOWING OF INDOGENCY.

IN IMPOSING THE ABOVE SENTENCE, THE COURT FURTHER RECOMMENDS:

SENTENCING GUIDELINES FILED

DONE AND ORDERED IN OPEN COURT AT HILLSBOROUGH COUNTY, FLORIDA,
THIS 19TH DAY OF DECEMBER, 1996.


JUDGE

FILED

DEC 19 1996

RICHARD AKE, CLERK

PAGE 14

1 Counts Two and Three pursuant to the order sending
2 it back. And that is -- sentence is pursuant to
3 section 775.082(3)(c).

4 So after considering everything, including the
5 relevant factors and each of the factors set forth
6 in Section 921.1401(2), the testimony and evidence
7 presented during the May 20th, 21st and 22nd of
8 2019 resentencing hearing, the sentencing memoranda
9 and exhibits submitted by counsel, as well as the
10 court file and the record, the Court finds that
11 based on the facts of this case, that life
12 imprisonment is an appropriate sentence on Counts
13 One, Two and Three and, therefore, I sentence
14 Miss Barthel to life imprisonment on Counts One,
15 Two and Three concurrently with each other.

16 And the sentence on Counts Four and Seven,
17 which remained the same but consecutively to the
18 sentence in Case No. 95-CF-011398. Because this
19 sentence is pursuant to 775.0821(1)(b)(2) on
20 Count One, I further find that defendant is
21 entitled to a sentence review after 15 years in
22 accordance with Section 921.1402(2)(c) on
23 Count One. And additionally because the defendant
24 is sentenced pursuant to 775.082(3)(c) on Counts
25 two and Three, the defendant is entitled to a

AOC CIRCUIT COURT REPORTERS
HILLSBOROUGH COUNTY, FLORIDA

SENTENCE

The Defendant, being personally before this court, accompanied by the defendant's attorney of record, PUBLIC DEFENDER, 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 :

The defendant is hereby committed to the custody of the Department of Corrections: Florida State Prison

Ct.1 SENTENCE: CRIMINAL

Confinement (Effective 07/01/2019, TO BE IMPRISONED FOR A TERM OF LIFE, FLORIDA DEPARTMENT OF CORRECTIONS)

Credit for Time Served: 269 Days (INCLUDE ALL PRIOR PRISON CREDIT)

Provisions

- 3rd AMENDED SENTENCE- PER ORDER 2/25/2020- TO REFLECT DEFENDANT'S ENTITLEMENT TO PRISON CREDIT IN ADDITION TO THE PREVIOUSLY-AWARDED JAIL CREDIT
- 2nd AMENDED SENTENCE-AMENDED SENTENCE PER SENTENCING ORDER SIGNED BY JUDGE SABELLA ON 7/1/2019- DEFENDANT IS HEREBY SENTENCED TO LIFE IMPRISONMENT ON COUNTS ONE, TWO AND THREE, CONCURRENTLY WITH EACH OTHER AND THE SENTENCES ON COUNTS FOUR AND SEVEN, BUT CONSECUTIVELY TO THE SENTENCE IN CASE 95-CF-011398
- DEFENDANT IS ENTITLED TO A REVIEW OF HER SENTENCE ON COUNT ONE AFTER FIFTEEN (15) YEARS IN ACCORDANCE WITH SECTION 921.1402(2)(c), AND AFTER TWENTY (20) YEARS ON COUNTS TWO AND THREE IN ACCORDANCE WITH SECTION 921.1402(2)(d).
- DEFT TO RECEIVE PRISON CREDIT

Special Provisions

- RESENTENCING

Sentence Status (CONCURRENT, COUNTS 1,2,3, 4 & 7 TO RUN CONCURRENT, COUNTS 1,2,3 TO RUN CONCURRENT WITH EACH OTHER & THE SENTENCING ON COUNTS 4 & 7 , BUT CONSECUTIVELY TO THE SENTENCE ON CASE 95-CF-11398A)

Ct.2 SENTENCE: CRIMINAL

Confinement (Effective 07/01/2019, TO BE IMPRISONED FOR A TERM OF LIFE, FLORIDA DEPARTMENT OF CORRECTIONS)

Credit for Time Served: 269 Days (INCLUDE ALL PRIOR PRISON CREDIT)

Provisions

- 3rd AMENDED SENTENCE- PER ORDER 2/25/2020- TO REFLECT DEFENDANT'S ENTITLEMENT TO PRISON CREDIT IN ADDITION TO THE PREVIOUSLY-AWARDED JAIL CREDIT
- 2nd AMENDED SENTENCE-AMENDED SENTENCE PER SENTENCING ORDER SIGNED BY JUDGE SABELLA ON 7/1/2019- DEFENDANT IS HEREBY SENTENCED TO LIFE IMPRISONMENT ON COUNTS ONE, TWO AND THREE, CONCURRENTLY WITH EACH OTHER AND THE SENTENCES ON COUNTS FOUR AND SEVEN, BUT CONSECUTIVELY TO THE SENTENCE IN CASE 95-CF-011398
- DEFENDANT IS ENTITLED TO A REVIEW OF HER SENTENCE ON COUNT ONE AFTER FIFTEEN (15) YEARS IN ACCORDANCE WITH SECTION 921.1402(2)(c), AND AFTER TWENTY (20) YEARS ON COUNTS TWO AND THREE IN ACCORDANCE WITH SECTION 921.1402(2)(d).
- DEFT TO RECEIVE PRISON CREDIT

Special Provisions

- RESENTENCING

Sentence Status (CONCURRENT, COUNTS 1,2,3, 4 & 7 TO RUN CONCURRENT, COUNTS 1,2,3 TO RUN CONCURRENT WITH EACH OTHER & THE SENTENCING ON COUNTS 4 & 7 , BUT CONSECUTIVELY TO THE SENTENCE ON CASE 95-CF-11398A)

Fee Totals:

- \$100.00 CR-2399 INVESTIGATIVE COSTS SAO REVENUE FS 938.27(8) FS AUTH: 938.27(8)
- \$200.00 CF-R252 ADDITIONAL COURT COST - CLERK - CIR CRIM FS AUTH: 938.05(1)(a)
- \$1.00 CF-R617 CRIMES COMPENSATION FEE 938.03 FS AUTH: 938.03
- \$3.00 CF-RA20 CRIME STOPPERS TRUST FUND FEE FS AUTH: 938.06
- \$50.00 CR-8081 CRIME PREVENTION FS AUTH: 775.083(2)
- \$65.00 CR-8097 ADDITIONAL COSTS (BOCC) - PROGRAMS FS AUTH: 939.185(1)(a)/ORD 18-42(a)
- \$49.00 CR-8311 FCCA CRIMES COMPENSATION TRUST FUND FS AUTH: 938.03
- \$17.00 CR-A362 CRIME STOPPERS TRUST FUND FS AUTH: 938.06
- \$25.00 FS AUTH: 938.05(1)(a)
- \$3.00 CR-2616 STATE ASSESSMENT (ADDL CRT COST CLEAR) 938.01 FS AUTH: 938.01
- \$2.00 CR-2629 HILLSBOROUGH COUNTY LOCAL ASSESSMENT FS AUTH: 938.15 318.18(11)(d)
- \$100.00 CR-2810 DOR - JAC INDIGENT CRIMINAL DEFENSE TRUST FUND FS AUTH: 938.29 - 27.562
- \$6.00 CF-R229 FELONY PREP FEE FOR CRIMINAL JUDGMENT - 28.24(8) FS AUTH: FS 28.24(8)
- \$1.00 CR-R229D FELONY PREP FEE FOR CRIMINAL JUDGMENT - 28.24(8) FS AUTH: FS 28.24(8)
- \$6.00 CF-R228 FELONY PREP FEE FOR CRIM SATISFACTION - 28.24(8) FS AUTH: FS 28.24(8)
- \$1.00 CR-R228D FELONY PREP FEE FOR CRIM SATISFACTION - 28.24(8) FS AUTH: FS 28.24(8)
- \$10.00 TF-1100S RECORDING FEE FOR CRIM SATISFCTN 28.24(12)(a)(b)(d) FS AUTH: FS 28.24(12)(a)(b)(d)

Fee Total : \$639.00

****FEE TOTALS INCLUDE ALL OUTSTANDING FEES OWED ON THE CASE AT THE TIME OF THIS JUDGMENT, EXCEPT FOR COST OF SUPERVISION FEES. SEE ORDER OF PROBATION FOR DETAILS. THE ABOVE FEES INCLUDE THE ASSESSMENT OF JUDGMENT AND SATISFACTION FEES, AS APPLICABLE.**

In the event the above sentence is to the Department of Corrections, the Sheriff of Hillsborough 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 defendant's right to the 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:

DONE AND ORDERED in open court at Hillsborough County, Florida, on 02/25/2020

95-CF-011397-C 2/27/2020 5:20:34 PM

Christopher C Sabella, Circuit Judge

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO: 95-CF-011397-C

v.

LOLITA BARTHEL,
Defendant.

DIVISION: TR-2

ORDER GRANTING, IN PART, AND DENYING, IN PART, DEFENDANT'S MOTION
TO CORRECT SENTENCING ERRORS

and

ORDER DIRECTING THE CLERK TO PREPARE AN AMENDED JUDGMENT AND
SENTENCE

THIS MATTER is before the Court on the "State's Response to Defendant's Motion Correct Sentencing Errors," filed on February 3, 2020. Previously, Defendant filed her "Motion to Correct Sentencing Errors" on January 23, 2020, pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). On January 29, 2020, the Court ordered the State to respond to Defendant's motion. The State filed its response on February 3, 2020. After reviewing Defendant's motion, the State's response, the court file, and the record, the Court finds as follows:

In her motion, Defendant alleges three sentencing errors. *See Motion to Correct Sentencing Errors*, attached. First, Defendant argues the "resentencing court erred in resentencing [Defendant] without first obtaining a pre-sentence investigation report." *Id.* Defendant contends she "was a juvenile at the time of the offense, and [because] the trial court had sentencing discretion, the trial court's failure to order a PSI before resentencing ... was error." *Id.* Defendant cites to *White v. State*, 271 So. 3d 1023 (Fla. 4th DCA 2019), in support of her argument that she is entitled to a new resentencing hearing. *Id.*

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PUBLIC DEFENDER
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Next, Defendant argues her “life sentence on counts 2 and 3 is an upward departure sentence that was not supported by written reasons.” *Id.* Defendant states that at her original sentencing hearing, the “trial court departed upward on counts 2 and 3,” but at “resentencing in 2019, there was no mention of any upward departure sentence, and no written order to that effect.” *Id.* Defendant argues the trial court “made no mention of having reviewed the scoresheet or the [original] sentencing hearing” and, accordingly, this “was an illegal sentence because there [were] no written reasons for the departure sentence on counts 2 and 3.” *Id.*

Finally, Defendant contends the amended sentence fails “to take into account the credit for time served that [Defendant] has already served” and therefore, the “sentencing documents must be corrected to show that [she] has already served nearly 25 years in prison.” *Id.* Defendant concludes by arguing the “Court should order a new resentencing where the resentencing judge must order and consider a PSI, resentence [Defendant] on counts 2 and 3 to a guideline sentence, and grant [her] the proper credit for time served that she has earned.” *Id.*

In response, the State first argues “Defendant is not entitled to a pre-sentence investigation report.” *See State’s Response to Defendant’s Motion to Correct Sentencing Errors*, attached. The State contends “the resentencing court in the instant case did not err in [failing to order] a PSI because one was previously done at the time of … Defendant’s original sentence.” *Id.* The State argues Defendant “is not permitted to what surmounts as an attempt to have another PSI done for purposes of being resentenced again.” *Id.*

Next, the State argues “the resentencing court did demonstrate that it reviewed and relied upon the initial sentencing court’s written reasons for departure.” *Id.* The State contends the “resentencing court has shown that it has adopted the trial court’s written reasons for departure, thereby negating any failure by the resentencing court in not submitting any written order

explaining the basis for upward departure separately and repetitively.” *Id.* Finally, the State “concedes that … Defendant is entitled to the proper credit for time served.” *Id.*

After reviewing Defendant’s motion, the State’s response, the court file, and the record, the Court finds Defendant is entitled to the relief she seeks, in part. Initially, the Court finds Defendant’s contention that the Court erred in resentencing her “without first obtaining a pre-sentence investigation report” is incorrect. In *Lee v. State*, 234 So. 3d 562, 564 (Fla. 2018), the Florida Supreme Court held that the “trial court may, but is not required to under the rule or statute, order an updated PSI.” While the Court did not order an updated PSI in the instant case, it did receive into evidence and review the PSI that was prepared for Defendant’s original sentencing hearing. *See Non-Jury/Hearing/Motion/Data Sheet and Defense Exhibit List*, attached; *see also* July 1, 2019, Hrg. T. p. 5 (“So after considering everything, including … the testimony and evidence presented during the May 20th, 21st, and 22nd of 2019 resentencing hearing …”). **Accordingly, the Court finds Defendant is not entitled to another resentencing hearing with the inclusion of an updated PSI.**

With regard to Defendant’s contention that her “life sentence on counts 2 and 3 is an upward departure sentence that was not supported by written reasons,” the Court finds Defendant is entitled to relief. Specifically, the Court finds the sentence imposed on counts two and three does constitute an upward departure sentence. Further, because the Court did not specifically acknowledge that it was imposing an upward departure sentence on counts two and three nor did it specifically adopt the original sentencing court’s written reasons for upward departure, the Court finds it appropriate to now supplement the record with written reasons for the departure sentence. *See Mandri v. State*, 813 So. 2d 65 (Fla. 2002) (holding that written reasons for a departure sentence may be filed in response to a Florida Rule of Criminal Procedure 3.800(b) motion).

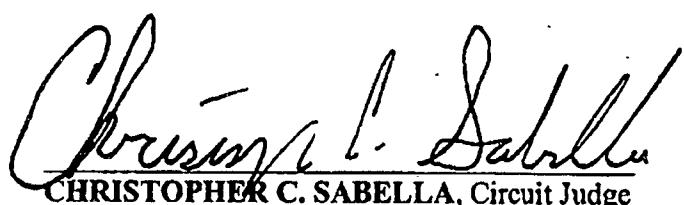
Accordingly, the Court grants Defendant's motion to the extent it will simultaneously file an order explaining its reason for departure.

Finally, with regard to Defendant's contention that the "sentencing documents must be corrected to show that [she] has already served nearly 25 years in prison," the Court agrees and finds Defendant is entitled to have an amended judgment and sentence prepared to reflect her entitlement to all prior prison credit. Therefore, the Court will direct the Clerk of Court to prepare an amended judgment and sentence in accordance with this order.

It is therefore **ORDERED AND ADJUDGED** that Defendant's "Motion to Correct Sentencing Errors" is hereby **GRANTED, IN PART**, and **DENIED, IN PART**, in accordance with the order above.

It is further **ORDERED** that the Clerk of Court **SHALL PREPARE** an amended judgment and sentence in case 95-CF-011397-C in order to reflect Defendant's entitlement to prison credit in addition to the previously-awarded jail credit.

DONE AND ORDERED in Chambers in Hillsborough County, Florida this 25 day of February, 2020.



CHRISTOPHER C. SABELLA, Circuit Judge

Attachments:

State's Response to Defendant's Motion to Correct Sentencing Errors
Non-Jury/Hearing/Motion/Data Sheet
Defense Exhibit List
July 1, 2019, Hearing Transcript

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO: 95-CF-011397-C

v.

LOLITA BARTHEL,
Defendant.

DIVISION: TR-2

WRITTEN FINDINGS FOR DEPARTURE SENTENCE

THIS MATTER is before the Court on Defendant's resentencing pursuant to the Second District Court of Appeal's order in *Barthel v. State*, 163 So. 3d 1224 (Fla. 2d DCA 2015), and this Court's December 1, 2016, and December 12, 2018, orders. A jury previously found Defendant guilty of Murder in the First Degree (count one); Armed Burglary of a Dwelling with a Battery, with the specific finding that in the course of committing the crime, Defendant carried or possessed a firearm (count two); Robbery with a Firearm, with the specific finding that in the course of committing the crime, Defendant carried or possessed a firearm (count three); Burglary of a Conveyance (count four); and Organized Fraud (count five). Due to Defendant's age at the time of the offenses, she was entitled to a resentencing hearing on counts one, two, and three.

Ordinarily, Defendant would be entitled to a guidelines sentence on counts two and three.¹ However, after hearing the testimony, evidence, and argument presented at the resentencing hearing and reviewing the trial transcript and court file, the Court reiterates its finding that an upward departure sentence on counts two and three is appropriate. In making this finding, the Court hereby adopts the order rendered by the original sentencing court justifying the upward departure sentence. *See* December 19, 1996, Order, attached.

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¹ The Court notes Defendant was not entitled to resentencing on counts four and five. Further, the sentences on counts four and five have already expired.

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DONE AND ORDERED in Chambers in Hillsborough County, Florida this _____ day
of February, 2020.

CONFORMED COPY
ORIGINAL SIGNED

FEB 25 2020

CHRISTOPHER SABELLA
CIRCUIT JUDGE

CHRISTOPHER C. SABELLA, Circuit Judge

Attachments:

December 19, 1996, Order

Send copies to:

Pamela Izakowitz, Esquire
Assistant Public Defender
P.O. Box 9000 – Drawer PD
Bartow, FL 33831

Travis Coy, Esquire
Assistant State Attorney

Deborah Goins, Esquire
Assistant Public Defender

APPENDIX F

LIST OF APPENDICES - GROUND THREE:

Case No. 95-CF-011398-C:

(1) Sentence as juvenile offender upon the Case No.95-CF-011398-C:

Sentenced based on a Prior Record, as "Grand Theft" and "various" which at the time, were not prior conviction.

(2) On November 12, 1996, the judge alone found aggravating circumstances:

- "Defendant is not amenable to rehabilitation or supervision"
- "Primary Offense is scored at level 7 or higher and the defendant has been convicted"

(3) Transcripts Re-sentence on October 25 2013, the court adopted the same "aggravating circumstances"

Case No. 95-CF-011397-C:

(4) On December 19, 1996, the judge alone found aggravating circumstances:

- "Defendant is not amenable to rehabilitation or supervision"
- "Primary Offense is scored at level 7 or higher and the defendant has been convicted"

(5) Order Court of Appeal, Reversed and remanded with directions, See Lolita Barthel v. State, 163 So. 3D 1224, Fla. App. LEXIS 7241; 40 Fla. L. Weekly D 1139 (Fla. 2nd Dca 2015).

"However, her sentence was unconstitutional not because of the length of her sentence, but because it did not provide her a meaningful opportunity for early release based on maturation and rehabilitation"

(6) Order rendered on February 25, 2020, "Written finding for Departure Sentence"

"the court hereby adopts the order rendered by the original sentencing court justifying the upward departure sentence."

(7) Order of re-sentence, rendered on February 25, 2020

"There was no specific finding in the verdict for the jury to let us know that they found that she was the actual shooter." (See Re-sentencing transcripts Page. 4, L-6). "I think it was very compelling testimony...therefore, I couldn't go the other route that the State had asked me to go." (See Re-sentencing transcripts Page 4, L11).

If reasons cited for departure are not listed below, please write reasons on the reverse side, in the area specified "Reasons for Departure"

Reasons for Departure - Aggravating Circumstances

- Legitimate, uncoerced, plea bargain.
- Offense was one of violence and was committed in a manner that was especially heinous, atrocious or cruel.
- Offenses arose from separate episodes. Primary offense is at level 4 or higher and the defendant has committed 5 prior offenses within a 180 day period that have resulted in convictions.
- Primary offense is scored at level 3 and the defendant has committed 8 or more offenses within a 180 day period that have resulted in convictions.
- Offense was committed within 6 months of defendant's discharge from a release program or state prison.
- Defendant occupied a leadership role in a criminal organization.
- Offense committed by a public official under color of office.
- Defendant knew victim to be a law enforcement officer at the time of the offense, the offense was a violent offense; and that status is not an element of the primary offense.
- Offense created substantial risk of death or great bodily harm to many persons or to one or more small children.
- Victim especially vulnerable due to age or physical or mental disability.
- Offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation or national origin of the victim.
- Victim suffered extraordinary physical or emotional trauma or permanent physical injury, or was treated with particular cruelty.
- Victim was physically attacked by the defendant in the presence of one or more members of the victim's family.
- Offense resulted in substantial economic hardship to a victim and consisted of an illegal act or acts committed by means of concealment, guile or fraud to obtain money or property, to avoid payment or loss of money or property or to obtain business or professional advantage when two or more of the following circumstances were present:
 - Offense involved multiple victims or multiple incidents per victim.
 - Offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;
 - The defendant used position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationship; or
 - The defendant was in the past involved in other conduct similar to that involved in the current offense.
- Offense committed in order to prevent or avoid arrest, to impede or prevent prosecution for the conduct underlying the arrest, or to effect an escape from custody.
- Defendant is not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct as described in s. 921.001(8).
- Defendant induced a minor to participate in any of the offenses pending before the court for disposition.
- Primary offense is scored at level 7 or higher and the defendant has been convicted of one or more offense that scored, or would have scored, at an offense level 8 or higher.
- Defendant has an extensive unscoreable juvenile record.

Reasons for Departure - Mitigating Circumstances

- Legitimate, uncoerced plea bargain.
- 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.
- Defendant requires specialized treatment for addiction, mental disorder, or 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.
- 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.
- Defendant to be sentenced as a youthful offender

155

Resentence
Amended Sentence

* AMENDED *

IN THE CIRCUIT COURT, 13TH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
DIVISION : *PR2*
CASE NUMBER : 95-CF-011398
OBTS NUMBER : 7623683

STATE OF FLORIDA
VS
BARTHEL, LOLITA, FELICIA
DEFENDANT

COURT REDUCES SENTENCES AS TO:
CTS 1,2 &4.

JUDGMENT

THE DEFENDANT BARTHEL, LOLITA, FELICIA
THIS COURT REPRESENTED WITH ASSISTANT PUBLIC DEFENDER URQUIZA, CRYSTAL
THE ATTORNEY OF RECORD AND THE STATE REPRESENTED BY ASSISTANT STATE ATTORNEY
SMITH, MATTHEW, AND HAVING

Been tried and found Guilty by a jury of the following crime(s) 1, 2, 4

COUNT	CRIME	OFFENSE	STATUTE	NUMBER	DEGREE	OF COURT	CRIME ACTION DATE
1	ATT ROBBERY (FIREARM-LESS \$30	81213	1	2A	FP	12-NOV-1996	
2	ATT ROBBERY (FIREARM-LESS \$30	81213	1	2A	FP	17-OCT-1996	
3	ARMED BURGLARY OF A DWELLING	81002	2B		FP	17-OCT-1996	
4	ROBBERY (FIREARM \$300 OR MORE	81213	1	2A	FP	17-OCT-1996	
5	ARMED BURGLARY OF A DWELLING	81002	2B		FP	17-OCT-1996	

And no cause being shown why the defendant should not be adjudicated guilty,
it is ordered that the defendant is hereby adjudicated guilty of the above
crime(s).

Count 3 was previously sentenced on 12-NOV-1996 to COMMITMENT TO FL STATE PRISON
Count 5 was previously sentenced on 12-NOV-1996 to COMMITMENT TO FL STATE PRISON

IF YOU ARE A "QUALIFYING OFFENDER" UNDER SECTION
943.325, FLORIDA STATUTES, YOU ARE REQUIRED TO SUBMIT A
DNA SAMPLE IN A MANNER CONSISTENT WITH FLORIDA LAW

INSTRUMENT#: 2013407172, O BK 22225
PG 357-364 10/25/2013 at 12:24:22 PM,
DEPUTY CLERK: DJOHNSON Pat Frank, Clerk
of the Circuit Court Hillsborough County

PAGE 01

95-CF-011398 F24-0240002544-001
WORLDS, KENYEL QUON 8 PAGES
N GERMAN 10/23/2013 FAMSE

* A M E N D E D *

DEFENDANT BARTHEL, LOLITA, FELICIA

DIVISION : *TR2*
CASE NUMBER : 95-CF-011398
OBTS NUMBER : 7623683

----- SENTENCE -----
AS TO COUNT(s) : 1

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCCOMPANIED BY THE DEFENDANT'S ATTORNEY OF RECORD, ASSISTANT PUBLIC DEFENDER URQUIZA, CRYSTAL AND HAVING BEEN ADJUDGED 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

And the Court having previously entered a judgment in this case on 12-NOV-1996
now resentence the defendant.

IT IS THE SENTENCE OF THE COURT THAT THE DEFENDANT :
Is hereby committed to the custody of the Department of Corrections for a
term of: 40 Years
Count 1: NO MIN/MAN

2

----- PAGE 04 -----

* AMENDED *

DEFENDANT BARTHEL, LOLITA, FELICIA

DIVISION : *TR2*
CASE NUMBER : 95-CF-011398
OBTS NUMBER : 7623683

SENTENCE
AS TO COUNT(s) : 2

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCCOMPANIED BY THE
DEFENDANT'S ATTORNEY OF RECORD, ASSISTANT PUBLIC DEFENDER URQUIZA, CRYSTAL
AND HAVING BEEN ADJUDGED 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

And the Court having previously entered a judgment in this case on 17-OCT-1996
now resentences the defendant.

IT IS THE SENTENCE OF THE COURT THAT THE DEFENDANT :
Is hereby committed to the custody of the Department of Corrections for a
term of: 40 Years
Count 2: NO MIN/MAN

* A Y E N D E D *

DEFENDANT BARTHEL, LOLITA, FELICIA

DIVISION : *TRZ*
CASE NUMBER : 95-CF-011398
OBTS NUMBER : 7623683

----- SENTENCE -----
AS TO COUNT(s) : 4

THE DEFENDANT, BEING PERSONALLY BEFORE THIS COURT, ACCCOMPANIED BY THE DEFENDANT'S ATTORNEY OF RECORD, ASSISTANT PUBLIC DEFENDER URQUIZA, CRYSTAL AND HAVING BEEN ADJUDGED 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

And the Court having previously entered a judgment in this case on 17-OCT-1996 now resentences the defendant.

IT IS THE SENTENCE OF THE COURT THAT THE DEFENDANT :
Is hereby committed to the custody of the Department of Corrections for a term of: 40 Years
Count 4: NO MIN/MAN

RULE 3.99 SENTENCING GUIDELINES ESHEET

1. DATE OF SENTENCE 12/19/96 MO D Y Y R	2. PREPARED BY <input type="checkbox"/> DC <input checked="" type="checkbox"/> SAO Cex	3. COUNTY Hudson County	4. SENTENCING JUDGE Padgett
5. NAME (LAST, FIRST, M.I.) BARTHEL, LOLITA	6. DOB M O D Y Y R 09 06 71	7. DC# 0608049375	8. OBTS# 0608049375
9. RACE <input checked="" type="checkbox"/> B <input type="checkbox"/> W <input type="checkbox"/> OTH	10. GENDER <input type="checkbox"/> M <input checked="" type="checkbox"/> F	11. HISP. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	12. PLEA <input type="checkbox"/> GUILTY <input checked="" type="checkbox"/> NOT GUILTY

Check here if this sentencing is for only a revocation of probation or community control.

I. PRIMARY OFFENSE: If Qualifier, please check A S C (A = Attempt, S = Solicitation, C = Conspiracy) **POINTS**

DOCKET#	FELONY DEGREE	F.S.#	OFFENSE LEVEL	OFF. DATE
95-11397	1 PB	812.13	09	09/18/95

Description: **Robbery - F Roben**

(Level = Pts: 1 = 4, 2 = 10, 3 = 16, 4 = 22, 5 = 28, 6 = 36, 7 = 42, 8 = 74, 9 = 91, 10 = 116)

I. **91**

II. ADDITIONAL OFFENSE(S): Supplemental page attached

DOCKET#	FEL/MM	F.S.#	OFFENSE LEVEL	QUALIFY	CNTS	POINTS
95-11397	1 PB	810.02	8	000	1	x 9.6 = 9.6

Description: **Armed Burglary Owning w/ BATTERY**

95-11397	F-3	810.02	4	000	1	x 36 = 36
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Description: **BURGLARY - AUTO**

95-11397	F-3	817.034	3	000	1	x 7 = 7
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Description: **ORGANIZED FRAUD**

(Level = Pts: M = 0.2, 1 = 0.7, 2 = 1.2, 3 = 2.4, 4 = 3.6, 5 = 5.4, 6 = 7.2, 7 = 8.4, 8 = 9.6, 9 = 10.8, 10 = 12.0)

FILED

Supplemental page points **0**

II. **15.6**

III. VICTIM INJURY:

	Number	Total		Number	Total
2ND Degree Murder	120 X 1	= 120	RICHARD AKE, CLERK		
Death	60 X 1	= 60	Sex Penetration	40 X 1	= 40
Severe	40 X 1	= 40	Sex Contact	18 X 1	= 18
Moderate	18 X 1	= 18			

III. **60**

IV. PRIOR RECORD: Supplemental page attached

FEL/MM DEGREE	F.S. #	OFFENSE LEVEL	QUALIFY: A S C	DESCRIPTION	NUM	POINT(S)
F-1A	812.13	09	000	Robbery - Frob	3	x 7.2 = 21.6
F-1A	810.02	08	000	Armed Burg. Owne	2	x 6.4 = 12.8
F-3	812.014	2	000	Grand Theft	1	x .8 = .8
var	Various	m	000	VARIOUS	2	x .2 = .4
			000		X	=

(Level = Pts: M = 0.2, 1 = 0.5, 2 = 0.8, 3 = 1.6, 4 = 2.4, 5 = 3.6, 6 = 4.8, 7 = 5.6, 8 = 6.4, 9 = 7.2, 10 = 8.0)

Supplemental page points **0**

IV. **35.6**

Page Subtotal **202.2**

000150

Effective Date: January 1, 1994

White (Original) / Clerk
Green / DC Data
Canary / State Attorney

Pink / Defense Attorney
Goldenrod / DC Offender File

-Annex 141-

203

If reasons cited for departure are not listed below, please write in the area specified "Reasons for Departure"

Reasons for Departure - Aggravating Circumstances

- Legitimate, uncoerced, plea bargain.
- Offense was one of violence and was committed in a manner that was especially heinous, atrocious or cruel.
- Offenses arose from separate episodes. Primary offense is at level 4 or higher and the defendant has committed 5 or more offenses within a 180 day period that have resulted in convictions.
- Primary offense is scored at level 3 and the defendant has committed 8 or more offenses within a 180 day period that have resulted in convictions.
- Offense was committed within 6 months of defendant's discharge from a release program or state prison.
- Defendant occupied a leadership role in a criminal organization.
- Offense committed by a public official under color of office.
- Defendant knew victim to be a law enforcement officer at the time of the offense, the offense was a violent offense; and that status is not an element of the primary offense.
- Offense created substantial risk of death or great bodily harm to many persons or to one or more small children.
- Victim especially vulnerable due to age or physical or mental disability.
- Offense was motivated by prejudice based on race, color, ancestry, ethnicity, religion, sexual orientation or national origin of the victim.
- Victim suffered extraordinary physical or emotional trauma or permanent physical injury, or was treated with particular cruelty.
- Victim was physically attacked by the defendant in the presence of one or more members of the victim's family.
- Offense resulted in substantial economic hardship to a victim and consisted of an illegal act or acts committed by means of concealment, guile or fraud to obtain money or property, to avoid payment or loss of money or property or to obtain business or professional advantage when two or more of the following circumstances were present:
 - Offense involved multiple victims or multiple incidents per victim.
 - Offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;
 - The defendant used position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationship; or
 - The defendant was in the past involved in other conduct similar to that involved in the current offense.
- Offense committed in order to prevent or avoid arrest, to impede or prevent prosecution for the conduct underlying the arrest, or to effect an escape from custody.
- Defendant is not amenable to rehabilitation or supervision, as evidenced by an escalating pattern of criminal conduct as described in s. 921.001(8).
- Defendant induced a minor to participate in any of the offenses pending before the court for disposition.
- Primary offense is scored at level 7 or higher and the defendant has been convicted of one or more offense that scored, or would have scored, at an offense level 8 or higher.
- Defendant has an extensive unscoreable juvenile record.

Reasons for Departure - Mitigating Circumstances

- Legitimate, uncoerced plea bargain.
- 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.
- Defendant requires specialized treatment for addiction, mental disorder, or 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.
- 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.
- Defendant to be sentenced as a youthful offender

000153

286

LOLITA BARTHEL, Appellant, v. STATE OF FLORIDA, Appellee.
COURT OF APPEAL OF FLORIDA, SECOND DISTRICT
163 So. 3d 1224; 2015 Fla. App. LEXIS 7241; 40 Fla. L. Weekly D 1139
Case No. 2D13-2817
May 15, 2015, Opinion Filed

Editorial Information: Subsequent History

Released for Publication June 10, 2015.

Editorial Information: Prior History

Appeal from the Circuit Court for Hillsborough County; William Fuente, Judge.

Counsel Howard L. Dimmig, II, Public Defender, and Maureen E. Surber, Assistant Public Defender, Bartow, for Appellant.
Pamela Jo Bondi, Attorney General, Tallahassee, and Wendy Buffington, Assistant Attorney General, Tampa, for Appellee.

Judges: NORTHCUTT, Judge. SILBERMAN and MORRIS, JJ., Concur.

Opinion

Opinion by: NORTHCUTT

Opinion

{163 So. 3d 1224} NORTHCUTT, Judge.

Lolita Barthel was convicted of first-degree murder and other crimes in Hillsborough County Circuit Court case number 95-011397. She was sentenced to life imprisonment for the murder conviction and for her convictions for armed burglary of a dwelling with battery and armed robbery. Barthel sought resentencing under *Miller v. Alabama*, 132 S. Ct. 2455, 183 L. Ed. 2d 407 (2012). The court denied her motion, opining that *Miller* did not apply retroactively to cases that were final before it was decided.

The Florida Supreme Court has now determined that *Miller* indeed does apply to convictions and sentences that were final before it issued. *Falcon v. State*, 162 So. 3d 954, 2015 Fla. LEXIS 534, 40 Fla. L. Weekly S151 (Fla. Mar. 19, 2015); see also *Toye v. State*, 133 So. 3d 540 (Fla. 2d DCA2014). Therefore, we reverse the circuit court's order and we remand with directions that it conduct a resentencing proceeding for Barthel's homicide conviction, applying the principles of chapter 2014-220, Laws of Florida. See *Horsley v. State*, 160 So. 3d 393, 2015 Fla. LEXIS 535, *43, 40 Fla. L. Weekly S155, S160 (Fla. Mar. 19, 2015).

The circuit court's ruling addressed only Barthel's sentence for the homicide conviction. As we noted above, she was also sentenced to life imprisonment for other crimes in the same case. She asks us to order resentencing proceedings for those convictions as well, relying on *Graham v. Florida*, 560 U.S. 48, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). But we must decline that request because we find no record indication that she moved for resentencing under *Graham*. However, on remand Barthel is free to file a motion seeking *Graham* resentencing for her nonhomicide life sentences. We offer no opinion on the merits of such a motion.

Reversed and remanded with directions.

SILBERMAN and MORRIS, JJ., Concur.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO: 95-CF-011397-C

v.

LOLITA BARTHEL,
Defendant.

DIVISION: TR-2

WRITTEN FINDINGS FOR DEPARTURE SENTENCE

THIS MATTER is before the Court on Defendant's resentencing pursuant to the Second District Court of Appeal's order in *Barthel v. State*, 163 So. 3d 1224 (Fla. 2d DCA 2015), and this Court's December 1, 2016, and December 12, 2018, orders. A jury previously found Defendant guilty of Murder in the First Degree (count one); Armed Burglary of a Dwelling with a Battery, with the specific finding that in the course of committing the crime, Defendant carried or possessed a firearm (count two); Robbery with a Firearm, with the specific finding that in the course of committing the crime, Defendant carried or possessed a firearm (count three); Burglary of a Conveyance (count four); and Organized Fraud (count five). Due to Defendant's age at the time of the offenses, she was entitled to a resentencing hearing on counts one, two, and three.

Ordinarily, Defendant would be entitled to a guidelines sentence on counts two and three.¹ However, after hearing the testimony, evidence, and argument presented at the resentencing hearing and reviewing the trial transcript and court file, the Court reiterates its finding that an upward departure sentence on counts two and three is appropriate. In making this finding, the Court hereby adopts the order rendered by the original sentencing court justifying the upward departure sentence. *See December 19, 1996, Order, attached.*

1
PUBLIC DEFENDER

2020 FEB 28 PM 4:1

¹ The Court notes Defendant was not entitled to resentencing on counts four and five. Further, the sentences on counts four and five have already expired.

RECEIVED

SCANNED

DONE AND ORDERED in Chambers in Hillsborough County, Florida this _____ day
of February, 2020.

CONFORMED COPY
ORIGINAL SIGNED

FEB 25 2020

CHRISTOPHER SABELLA
CIRCUIT JUDGE

CHRISTOPHER C. SABELLA, Circuit Judge

Attachments:

December 19, 1996, Order

Send copies to:

Pamela Izakowitz, Esquire
Assistant Public Defender
P.O. Box 9000 – Drawer PD
Bartow, FL 33831

Travis Coy, Esquire
Assistant State Attorney

Deborah Goins, Esquire
Assistant Public Defender

1 IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL
- CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CRIMINAL DIVISION

STATE OF FLORIDA CASE NO. 95-CF-011397

6 || vs.

10 This case came on to be heard before the
11 Honorable Christopher Sabella, Circuit Judge, at the
12 Hillsborough County Courthouse Annex, Tampa, Florida,
on July 1, 2019 commencing at approximately 9:00 a.m.

14 APPEARANCES.

15 Travis Coy, Assistant State Attorney,
16 419 North Pierce Street,
Tampa, Florida 33602
On behalf of the State.

18 Debra Goins, Assistant Public Defender
700 East Twiggs Street,
19 Tampa, Florida 33602
On behalf of the Defendant.

AOC CIRCUIT COURT REPORTERS
HILLSBOROUGH COUNTY, FLORIDA

1 || PROCEEDINGS

2 (PROCEEDINGS HELD IN OPEN COURT)

3. THE COURT: Lolita Barthel.

4 MS. GOINS: Does the Court have any objections
5 to Miss Barthel being seated beside me, Your Honor?

6 THE COURT: I defer to the bailiffs.

7 BAILIFF: We'll just have to sit on her over
8 there because I got the other one over here. So
9 it's up to you, Judge.

10 THE COURT: What's the need for that? Simply
11 announcing --

12 MS. GOINS: I don't know what's going to
13 happen, Your Honor. I just want the opportunity to
14 confer with her.

15 THE COURT: I'll allow it. I think that's a
16 legitimate request to confer with your client so
17 absolutely.

18 Good morning to everyone else in the courtroom
19 today. As I said, now Miss Barthel is seated next
20 to her attorney, Miss Goins, and we are here this
21 morning on the Barthel matter for resentencing. We
22 had several days of testimony in the resentencing
23 hearing. I prepared a written order that I will
24 sign momentarily. But I'm going to pronounce the
25 decision of the Court and just let you know that I

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1 have considered everything in this case, including
2 the transcript that I read of the original trial,
3 the testimony in this courtroom over the number of
4 days related to the sentencing hearing, the
5 documents that were submitted as argument on behalf
6 of the State and the defense.

7 The defense was titled sentencing memorandum
8 and then subsequently there was a number of
9 filings -- two filings, one that I just reviewed
10 this morning. One was the -- I believe it was --
11 it was regarding the remorse. It was an amendment
12 to defendant's sentencing memorandum.

13 Then this morning I received the correction to
14 factual matters in defendant's sentencing
15 memorandum. There were some corrections to Page
16 15, Miss Goins. And I accept that and looked at
17 it. There -- there were a number of other issues
18 in the memorandum that were not addressed as far as
19 misspellings, the victim's name in this case was
20 spelled at least three -- or spelled three
21 different ways in the memorandum. Not attempting
22 to embarrass -- I'm not sure what happened with
23 that document. But in any case, I certainly am
24 not -- that's not affecting my decision in this
25 case.

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HILLSBOROUGH COUNTY, FLORIDA

1 I previously, just by way of history, had
2 decided after previous motion and hearings that
3 this resentencing on Count One was to occur under
4 Section 775.082(1)(b)(2). And the reason for that
5 was that the State had charged Miss Barthel
6 including the principal theory on that. And there
7 was no specific finding in the verdict for the jury
8 to let us know that they found that she was the
9 actual shooter. So I simply could not make that
10 conclusion.

11 I will let you know, though, that I have read
12 the testimony of the codefendants who testified.
13 And I think it was very compelling testimony, and
14 had the jury been given that opportunity, they may
15 have -- probably would have made that finding. But
16 they did not and so, therefore, I couldn't go the
17 other route that the State had asked me to go. And
18 the resentencing on Count One is specifically
19 pursuant to 775.082(1)(b)(2) because of those
20 specific two reasons, which requires then the Court
21 to analyze the factors in 921.1402(2), and that is
22 Factors A through J, which I have done and I have
23 thoroughly considered each and every one of the
24 factors.

25 Now, Miss Barthel is also being resentenced on

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1 Counts Two and Three pursuant to the order sending
2 it back. And that is -- sentence is pursuant to
3 section 775.082(3)(c).

4 So after considering everything, including the
5 relevant factors and each of the factors set forth
6 in Section 921.1401(2), the testimony and evidence
7 presented during the May 20th, 21st and 22nd of
8 2019 resentencing hearing, the sentencing memoranda
9 and exhibits submitted by counsel, as well as the
10 court file and the record, the Court finds that
11 based on the facts of this case, that life
12 imprisonment is an appropriate sentence on Counts
13 One, Two and Three and, therefore, I sentence
14 Miss Barthel to life imprisonment on Counts One,
15 Two and Three concurrently with each other.

16 And the sentence on Counts Four and Seven,
17 which remained the same but consecutively to the
18 sentence in Case No. 95-CF-011398. Because this
19 sentence is pursuant to 775.0821(1)(b)(2) on
20 Count One, I further find that defendant is
21 entitled to a sentence review after 15 years in
22 accordance with Section 921.1402(2)(c) on
23 Count One. And additionally because the defendant
24 is sentenced pursuant to 775.082(3)(c) on Counts
25 two and Three, the defendant is entitled to a

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1 sentence review after 20 years in accordance with
2 section 921.1402(2)(d) on Counts Two and Three.

3 That is the sentence of the Court. I'm going
4 to sign an order. We have copies to be conformed
5 and given to everyone.

6 Is there anything from the State?

7 MR. COY: No, Judge.

8 THE COURT: And anything from the defense?

9 I will sign an order appointing the Public
10 Defender for purposes of appeal.

11 MS. GOINS: Yes, Your Honor, from the defense.

12 THE COURT: You just need to submit that to
13 me.

14 MS. GOINS: Yes. The order for counsel?

15 THE COURT: For appointment for purposes of
16 appeal.

17 MS. GOINS: I will send that to the Court
18 today.

19 With regards to the State, also I personally
20 emailed to Mr. Coy's email the factual amendments,
21 Page 15. And what that was was changing the
22 statute to 944 instead of 999 -- 994. And I also
23 put -- corrected the date that she was arrested,
24 which was actually August 26th of 1995.

25 As to the Court's comments, I was going ask

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1 the Court, you said you considered the factors
2 under 1402 which relate to a resentencing hearing.
3 And I'm assuming on that, the Court considered the
4 factors under 1401, also --

5 THE COURT: Absolutely.

6 MS. GOINS: -- which were actually addressed.
7 So I wanted to make sure that that wasn't a
8 misstatement or that the Court had considered both.

9 THE COURT: No, I did. I thought I said I --
10 if I did not specifically say. But I said all of
11 those factors in both of those sections,
12 absolutely.

13 MS. GOINS: Okay. Thank you, sir.

14 THE COURT: You're welcome.

15 All right. Well, that's it on the Barthel
16 matter.

17 Thank you very much.

18 MR. COY: Thank you, Judge.

19 THE COURT: You're welcome.

20

21

22

23

24

25

AOC CIRCUIT COURT REPORTERS
HILLSBOROUGH COUNTY, FLORIDA

CERTIFICATE OF REPORTER

3 STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

5 I, Nicole R. Schultz, AOC Circuit Court
6 Reporter, hereby certify that I was authorized to and
7 did report the foregoing proceedings had in the
previously-styled cause; and that the preceding
transcript attached is a true, accurate, and correct
computerized transcription of said proceedings.

8 I further certify that I am not employed by or
9 related to any of the parties in this matter, nor am I
financially or otherwise interested in this action.

10 In witness whereof, I have hereunto set my
11 hand in Tampa, Hillsborough County, Florida.

unic. behuht

Nicole R. Schultz,
AOC Circuit Court Reporter

AOC CIRCUIT COURT REPORTERS
HILLSBOROUGH COUNTY, FLORIDA

APPENDIX G

LIST OF APPENDICES - GROUND FOUR:

(1) TRIAL TRANSCRIPTS STATEMENTS OF THE DETECTIVE ROBERT BOSS:

Q: "She had previously been interviewed by your department on August the 23rd?"
A: "Yes" (See TT page 82, L15).

Q: "Okay, on the way to the police station, did you and the detective Fulmer take any particular route?

A: "We also drove past there and Mrs. Menendez's house... to see what kind of reaction there would be from the defendant" (TT page 74, L-5).

(2) TRIAL TRANSCRIPTS STATEMENTS PROSECUTION'S CLOSING ARGUMENTS:

"You see, that didn't happen so she didn't testify to it Common sense" (TT pg 332-L 23)

(3) TRIAL TRANSCRIPTS STATEMENTS JURY INSTRUCTIONS:

"Not take the stand to give testimony during the trial" (TT page 369-L22

(4) JURY INSTRUCTION "DEFENDANT NOT TESTYING"

1 A. Yes, and anyone who would go inside to make
2 note of who was inside that area.

3 Q. And how long does tape like that normally stay
4 up to secure the place before people normally begin going
5 there again?

6 A. Until the team that's processing for physical
7 evidence has completed their investigation.

8 Q. In this case, are you personally aware of when
9 that was?

10 A. No, I'm not.

11 Q. I believe you mentioned earlier that August
12 the 24th was the date that you took Lolita Barthel by the
13 Menendez's residence; is that correct?

14 A. Yes, it is.

15 Q. She had previously been interviewed by your
16 department on August the 23rd?

17 A. Yes.

18 MR. TRAINA: I've got no further questions,
19 Judge.

20 THE COURT: Mr. Cox, anything else?

21 MR. COX: Just a couple quick questions, Your
22 Honor.

REDIRECT EXAMINATION

24 BY MR. COX:

25 O. In regards to the picture that the defendant

1 Q. And what was done with her after you got her
2 at Tampa Bay Tech?

3 A. We drove her back to -- myself and Detective
4 Fulmer drove her back to the police station.

5 Q. Okay. On the way back to the police station,
6 did you or Detective Fulmer take any particular route?

7 A. Yes, we did.

8 Q. Could you tell the jury, please, what you did?

9 A. We drove past the area where we had
10 indications that the briefcase was thrown out into the
11 field, and we also drove past there and Mrs. Menendez's
12 house.

13 Q. In driving by Mr. Menendez's home, did you and
14 Detective Fulmer do that on purpose?

15 A. Yes.

16 Q. And why did you do that?

17 A. To see what kind of reaction there would be
18 from the defendant.

19 Q. Up until the point that you were leaving Tampa
20 Bay Tech and up until the point you arrived by the
21 Menendez home, could you describe the defendant's demeanor
22 and what was happening in the car?

23 A. Yes, she was quite talkative and we were
24 discussing her future in basketball career and her
25 athletics and how she would play basketball and she was

1 looking forward to playing basketball in college. She was
2 looking around, admiring the houses in the city and she
3 would like a big house like that.

4 Q. What happened when you drove by the Menendez's
5 home?

6 A. When we drove by the Menendez's home, she
7 immediately stopped talking, looked straight ahead and
8 looked down and didn't start talking again until we had
9 driven around the block.

10 Q. Is it fair to say at this point you were all
11 specifically watching her to see what, if any, reaction
12 occurred?

13 A. That's correct.

14 Q. And I would like to show you finally what's
15 been marked for identification purposes as State's Exhibit
16 Number 1 and ask if you can identify this small
17 photograph.

18 A. Yes, I can.

19 Q. And what is that?

20 A. That's a photograph of Mr. Menendez.

21 Q. Okay.

22 MR. COX: Your Honor, at this time I would
23 move State's Exhibit Number 1 into evidence.

24 THE COURT: Received into evidence.

25 [State's Exhibit No. 1 received in evidence.]

1 You know, how smart is she? You know, she's
2 so smart, she's so good at this that when you
3 consider the other evidence, the similar fact
4 evidence to show like the modus operandi of how this
5 worked, wow, it really worked out good for her
6 because it just so happens Ms Timmons and
7 Ms Bowman pick out this person as having the gun.
8 She's so smart and so brilliant that she puts
9 herself in the house I mean like I said, why
10 doesn't she put herself out in the car where Chris
11 Ellis is? It's a lot easier You're farther away
12 from it You don't have to see the sorted details
13 It doesn't sound as bad You know, you went into
14 someone's house, their home, their bedroom She
15 didn't do that She told you she went in She told
16 everybody that from the very beginning

17 You know, if you're going to lie, make it a
18 good lie I mean if she wants to come in here and
19 help us like we're getting some kind of joy being
20 here prosecuting the defendant, okay? That's not
21 true, but if she's here to help us, to make us happy
22 with her testimony, then why wouldn't she think
23 that, hey, I'll tell them that she planned it, that
24 she laughed about it after it happened, that she
25 bragged about smoking the man You see, that didn't

1 happen so she didn't testify to it Common sense
2 You know, if she's going to lie about it, like
3 I said, why doesn't she make herself doing something
4 less than when Mr Menendez is lying on the ground
5 in his underwear with a gun being held on him, she
6 said she's in there searching his room She gets
7 into some pretty bad things she did in there Why
8 didn't she say, like she did in Ms Bowman's case,
9 she just stood there She didn't do it
10 She did more She told you she did more
11 Lying, no, not at all See, the fact is Quontesha
12 Worlds is telling you the truth about what happened
13 on August 18th She's telling you the absolute
14 truth
15 You see, you've heard about all these
16 statements that Quontesha Worlds has given I mean,
17 folks, you could weigh the statements Quontesha
18 Worlds has given We know that she has talked to
19 police a couple of times, to prosecutors, she's
20 talked She's talked in deposition with the defense
21 lawyers She's been interviewed by so many people
22 it's incredible There are so many statements from
23 her, and you can weigh it, and how many times was
24 she impeached in here with them?
25 His Honor is going to tell you one of the

1 conclusion about a witness A juror may believe or
2 disbelieve all or any part of the testimony of any
3 witness or the evidence

4 And expert witnesses are like other witnesses
5 with one exception -- the law permits an expert
6 witness to express an expert opinion However, this
7 opinion is only reliable when given on a subject you
8 believe a person to be an expert And like any
9 other witness, you may believe all or any part of
10 the expert witness's testimony

11 The constitution requires the State to prove
12 its accusations against the defendant, and it is not
13 necessary for her to disprove anything, nor is she
14 required to prove her innocence It is up to the
15 State to prove the defendant's guilt by the
16 evidence

17 So in this case the defendant exercised a
18 fundamental right by choosing not to be a witness
19 You must not view this as an admission of guilt or
20 be influenced in any way by her decision No juror
21 should ever be concerned that a defendant did or did
22 not take the stand to give testimony during a trial

23 You should use great caution in relying on the
24 testimony of a witness who claims to have helped a
25 defendant commit a crime This is particularly true

2.04 (d) DEFENDANT NOT TESTIFYING

The constitution requires the State to prove its accusations against the defendant. It is not necessary for the defendant to disprove anything. Nor is the defendant required to prove his innocence. It is up to the State to prove the defendant's guilt by evidence.

The defendant exercised a fundamental right by choosing not to be a witness in this case. You must not view this as an admission of guilt or be influenced in any way by her decision. No juror should ever be concerned that the defendant did or did not take the witness stand to give testimony in the case.

FILED

DEC 18 1996

RICHARD AKE, CLERK

25

253

APPENDIX H

LIST OF APPENDICES - GROUND FIVE:

- (1) Court of Appeal of Florida, Reversed and remanded the petitioner's case
See Barthel v. State, 882 So. 2d 1054; 2004 Fla. App. LEXIS 12513; 29 Fla. L. Weekly D 1952 Case No. 2D03-1625. "appellant was entitled to the benefit of the controlling law in effect at the time of appeal... that her trial counsel provided ineffective assistance because he did not call a potential alibi witness to testify at trial"
- (2) Trial court order, adopting "Written finding for Departure Sentence"
- (3) TRIAL TRANSCRIPTS STATEMENTS PROSECUTION'S CLOSING ARGUMENTS:
"This woman is so smart and so conniving she confesses she confesses" (See TT, Pa 331, L10) Regarding to Statement gave by the Co-Defendant Quontesha Worlds.
"Ms. Bowman pick out this person as having the gun". (TT page 332- L,7). The trial did not allow Ms Bowman to testify...which was a sustained objection:
Q: "This is Ms Bowman's Testimony, I guess?"
A: " I'm inclined to sustain the objection Let's shut it down"(TT page 235,L 15)
"The other thing they ever brought up with all these statements is whether or not the defendant got the gun from Chris Ellis Well, number one, who cares? She said before that Chris gave it to her" (TT page 334, L20)... "She 's telling you the absolute truth" (TT page 333, L13)
- (4) TRIAL TRANSCRIPTS STATE'S WITNESS, BETTY TIMMONS:
"The police came and talked to you...and tried to link your case with another case?
A: Yes , sir" (TT. Page 227-L,2)"... "the person that was holding the gun was a male?
A: Yes, sir, at the beginning" (TT. Page 226 ·L.3)
- (5) TRIAL TRANSCRIPTS STATE'S WITNESS, ANNIE COCHRAN:
"You Could Identify anyone? A: That's what I said, I couldn't identify anybody. (TT.234, L13)... Did One of them have a weapon? A: Yes, ma'am, one of them did (TT. Page 233·L21)
- (6) TRIAL TRANSCRIPTS STATE'S WITNESS, EFRAIN CUEVAS:
Quontesha Worlds... Q:"She began telling Chris where to go? A: "Yes"
"Quontesha told Chris to drive" (TT. Pa. 241, L-18).

(7) STATEMENT TRIAL COURT ORDER RENDERED ON FEBRUARY 27, 2020:

“ There was no specific finding in the verdict for the jury to let us know that they found that she was the actual shooter. So I simply could not make that conclusion... They may have – probably would have made that finding. But they did not and, so. Therefore, I couldn't go the other route that the State asked me to go”.(See Transcripts Re-sentencing page 4- L6).

LOLITA BARTHEL, Appellant, v. STATE OF FLORIDA, Appellee.
COURT OF APPEAL OF FLORIDA, SECOND DISTRICT
882 So. 2d 1054; 2004 Fla. App. LEXIS 12513; 29 Fla. L. Weekly D 1952
Case No. 2D03-1625
August 25, 2004, Opinion Filed

Editorial Information: Prior History

Appeal from the Circuit Court for Hillsborough County; Jack Espinosa, Jr., Judge. Barthel v. State, 2004 Fla. App. LEXIS 6966 (Fla. Dist. Ct. App. 2d Dist., May 19, 2004)

Disposition:

Reversed and remanded in part, otherwise affirmed.

Counsel James Marion Moorman, Public Defender, and Julius J. Aulizio, Assistant Public Defender, Bartow, for Appellant.
Charles J. Crist, Jr., Attorney General, Tallahassee, and Susan D. Dunlevy, Assistant Attorney General, Tampa, for Appellee.

Judges: WALLACE, Judge. CASANUEVA and COVINGTON, JJ., Concur.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant filed a postconviction motion for relief pursuant to Fla. R. Crim. P. 3.850. The Circuit Court for Hillsborough County (Florida) summarily denied in part and finally denied the motion in total after an evidentiary hearing. Appellant sought review of the judgment. Trial court erred in summarily denying a claim of ineffective assistance of counsel in appellant's postconviction petition; a new test was formulated while the appeal was pending, and appellant was entitled to the benefit of the change.

OVERVIEW: In ground 16, appellant alleged that her trial counsel provided ineffective assistance because he did not call a potential alibi witness to testify at trial. During the proceedings in the case, the state supreme court ruled that in order to allege an ineffective assistance of counsel claim for failing to call a witness, a movant had to set forth four requirements, (1) the identity of the prospective witness, (2) the substance of the witness's testimony, (3) an explanation as to how the omission of this evidence prejudiced the outcome of the trial, and (4) an assertion that the witness was available to testify. The appellate court held that because the appeal before it was in the "pipeline" at the time the new requirement became final, appellant was entitled to the benefit of the controlling law in effect at the time of appeal. Therefore, a remand was required for further proceedings consistent with the new precedent.

OUTCOME: The summary denial of ground 16 was reversed and remanded for further proceedings, including granting appellant leave to amend ground 16 within a specified time.

In Florida, in order to allege an ineffective assistance of counsel claim for failing to call a witness, the movant must set forth four requirements: (1) the identity of the prospective witness, (2) the substance of the witness's testimony, (3) an explanation as to how the omission of this evidence prejudiced the outcome of the trial, and (4) an assertion that the witness was available to testify.

Opinion

Opinion by: WALLACE

Opinion

{882 So. 2d 1054} WALLACE, Judge.

Lolita Barthel appeals a final order denying her postconviction motion for relief filed pursuant to Florida Rule of Criminal Procedure 3.850. Asserting twenty grounds for relief, the motion was summarily denied in part and finally denied after an evidentiary hearing. We affirm without comment the trial court's denial of Barthel's postconviction motion in all respects except for the summary denial of ground sixteen, which must be reversed and remanded in light of a change in controlling precedent during pendency of this appeal.

In ground sixteen, Barthel alleged that her trial counsel provided ineffective assistance because he did not call a potential alibi witness to testify at Barthel's trial. In our original opinion, we reversed the postconviction court because it applied an incorrect formulation of the law to determine if Barthel presented a facially sufficient claim for relief. In doing so, we relied on our prior opinions in *Neal v. State*, 854 So. 2d 666, 669 (Fla. 2d DCA2003), *Odom v. State*, 770 So. 2d 195, 197 (Fla. 2d DCA2000), and *Prieto v. State*, 573 So. 2d 398, 399-400 (Fla. 2d DCA1991).

After our original opinion issued but before issuance of the mandate pending the State's motion for rehearing, our supreme court's decision in *Nelson v. State*, 875 So. 2d 579 (Fla. 2004), issued and became final. The Nelson court disapproved {882 So. 2d 1055} *Odom* and held that in order to allege an ineffective assistance of counsel claim for failing to call a witness, the movant must set forth four requirements: (1) the identity of the prospective witness; (2) the substance of the witness's testimony; (3) an explanation as to how the omission of this evidence prejudiced the outcome of the trial; and (4) an assertion that the witness was available to testify. *Id.* at 582-83. Obviously, without the benefit of *Nelson*, the trial court did not apply this formulation of the law to analyze Barthel's claim.

Because this appeal was in the "pipeline" at the time *Nelson* became final, Barthel is entitled to the benefit of the controlling law in *Nelson* in effect at the time of appeal. See *Reed v. State*, 565 So. 2d 708, 709 (Fla. 5th DCA1990) (observing that the principle that the law in effect at the time of appeal should be applied extends to the pendency of motions for rehearing before issuance of the mandate); see also *Winfield v. State*, 503 So. 2d 333, 334 (Fla. 2d DCA1986)). Accordingly, we reverse the summary denial of ground sixteen and remand for further proceedings consistent with *Nelson*, including granting Barthel leave to amend ground sixteen within a specified time. See *Nelson*, 875 So. 2d at 583-84. If Barthel's claim is facially insufficient or if the motion, files, and records in the case conclusively show that she is entitled to no relief, the claim may be summarily denied. Fla. R. Crim. P. 3.850(d).

We commend the State for promptly informing us of controlling precedent.

Reversed and remanded.

CASANUEVA and COVINGTON, JJ., Concur.

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO: 95-CF-011397-C

v.

LOLITA BARTHEL,
Defendant.

DIVISION: TR-2

WRITTEN FINDINGS FOR DEPARTURE SENTENCE

THIS MATTER is before the Court on Defendant's resentencing pursuant to the Second District Court of Appeal's order in *Barthel v. State*, 163 So. 3d 1224 (Fla. 2d DCA 2015), and this Court's December 1, 2016, and December 12, 2018, orders. A jury previously found Defendant guilty of Murder in the First Degree (count one); Armed Burglary of a Dwelling with a Battery, with the specific finding that in the course of committing the crime, Defendant carried or possessed a firearm (count two); Robbery with a Firearm, with the specific finding that in the course of committing the crime, Defendant carried or possessed a firearm (count three); Burglary of a Conveyance (count four); and Organized Fraud (count five). Due to Defendant's age at the time of the offenses, she was entitled to a resentencing hearing on counts one, two, and three.

Ordinarily, Defendant would be entitled to a guidelines sentence on counts two and three.¹ However, after hearing the testimony, evidence, and argument presented at the resentencing hearing and reviewing the trial transcript and court file, the Court reiterates its finding that an upward departure sentence on counts two and three is appropriate. In making this finding, the Court hereby adopts the order rendered by the original sentencing court justifying the upward departure sentence. See December 19, 1996, Order, attached.

1
PUBLIC DEFENDER

2020 FEB 28 PM 4:1

¹ The Court notes Defendant was not entitled to resentencing on counts four and five. Further, the sentences on counts four and five have already expired.

RECEIVED

SCANNED

DONE AND ORDERED in Chambers in Hillsborough County, Florida this _____ day
of February, 2020.

CONFORMED COPY
ORIGINAL SIGNED

FEB 25 2020

CHRISTOPHER SABELLA
CIRCUIT JUDGE

CHRISTOPHER C. SABELLA, Circuit Judge

Attachments:

December 19, 1996, Order

Send copies to:

Pamela Izakowitz, Esquire
Assistant Public Defender
P.O. Box 9000 – Drawer PD
Bartow, FL 33831

Travis Coy, Esquire
Assistant State Attorney

Deborah Goins, Esquire
Assistant Public Defender

1 sure you get the shooter

2 You see, in order to buy the defendant's
3 theory of Quantesha Worlds, you have to really kind
4 of believe that she's brilliant, she's got to be the
5 smartest, most conniving person I have ever met in
6 my entire life because she has taken everybody, the
7 police, the prosecutor, everybody on a ride for a
8 year and-a-half That is one bright woman, but, you
9 know, let's think, look at how bright she is

10 How smart is she? The police pick her up,
11 Detective Boss from the Temple Terrace Police pick
12 her up on the 23rd, and they got nothing on her
13 They just learned about her name that day, and this
14 woman is so smart and so conniving she confesses
15 She confesses She puts herself right there in that
16 house, real brilliant woman

17 And she does it even -- they want to keep
18 putting her in bed with us, hey, the State
19 commissioned her and all that Well, when she first
20 gave her statement saying the exact same thing she
21 said in here this week, she didn't have a deal then
22 The police just picked her up I mean how smart is
23 she? Let's get your deal first and then lie I
24 mean think about it As His Honor tells you, use
25 your common sense, please

1 You know, how smart is she? You know, she's
2 so smart, she's so good at this that when you
3 consider the other evidence, the similar fact
4 evidence to show like the modus operandi of how this
5 worked, wow, it really worked out good for her
6 because it just so happens Ms Timmons and
7 Ms Bowman pick out this person as having the gun.
8 She's so smart and so brilliant that she puts
9 herself in the house I mean like I said, why
10 doesn't she put herself out in the car where Chris
11 Ellis is? It's a lot easier You're farther away
12 from it You don't have to see the sorted details
13 It doesn't sound as bad You know, you went into
14 someone's house, their home, their bedroom She
15 didn't do that She told you she went in She told
16 everybody that from the very beginning
17 You know, if you're going to lie, make it a
18 good lie I mean if she wants to come in here and
19 help us like we're getting some kind of joy being
20 here prosecuting the defendant, okay? That's not
21 true, but if she's here to help us, to make us happy
22 with her testimony, then why wouldn't she think
23 that, hey, I'll tell them that she planned it, that
24 she laughed about it after it happened, that she
25 bragged about smoking the man You see, that didn't

1 happen so she didn't testify to it Common sense
2 You know, if she's going to lie about it, like
3 I said, why doesn't she make herself doing something
4 less than when Mr Menendez is lying on the ground
5 in his underwear with a gun being held on him, she
6 said she's in there searching his room She gets
7 into some pretty bad things she did in there Why
8 didn't she say, like she did in Ms Bowman's case,
9 she just stood there She didn't do it

10 She did more She told you she did more
11 Lying, no, not at all See, the fact is Quontesha
12 Worlds is telling you the truth about what happened
13 on August 18th She's telling you the absolute
14 truth

15 You see, you've heard about all these
16 statements that Quontesha Worlds has given I mean,
17 folks, you could weigh the statements Quontesha
18 Worlds has given We know that she has talked to
19 police a couple of times, to prosecutors, she's
20 talked She's talked in deposition with the defense
21 lawyers She's been interviewed by so many people
22 it's incredible There are so many statements from
23 her, and you can weigh it, and how many times was
24 she impeached in here with them?

25 His Honor is going to tell you one of the

1 things you can consider in weighing the credibility
2 of the witnesses is did they ever make an
3 inconsistent statement before? All of this, all of
4 this, and she wasn't impeached with it once You
5 know why? Because she's given the same statement
6 every time

7 I mean Mr Traina tried to I mean he's a
8 good lawyer He's a very good lawyer, and he tried
9 to, and he tried to bring up the idea about blaming
10 Chris Ellis, that at some point Quontesha Worlds
11 blamed Chris Ellis

12 Folks, that wasn't what happened The
13 testimony he was trying to bring in there was where
14 she said he was pulling in the driveway and they had
15 their plan to rob That's what was going on She
16 didn't blame Chris Ellis at all So do not be
17 misled by that for a minute

18 When she talked -- I think they brought up one
19 other time There's two things they ever brought up
20 in here The other thing they brought up with all
21 these statements is whether or not the defendant got
22 the gun from Chris Ellis Well, number one, who
23 cares? Who cares? But she told you in here, I
24 don't remember She said before that Chris gave it
25 to her, but I mean is she lying? I mean she says "I

1 reading in some testimony

2 MR TRAINA Judge, I would renew my objection

3 regarding this testimony that's forthcoming

4 THE COURT Okay This is Ms Bowman's

5 testimony, I guess?

6 MR COX Yes, sir

7 MR TRAINA Yes, Judge That's correct,

8 Judge

9 THE COURT Okay Let the record so reflect

10 MR TRAINA Judge, does the Court wish me to

11 restate my --

12 THE COURT No, I'll tell you what Approach

13 the bench, please

14 [Following proceedings had at bar]

15 THE COURT I'm inclined to sustain the

16 objection Let's shut it down Get Mr Cuevas in

17 here

18 MR COX Okay, Judge

19 THE COURT I don't think you're so far into

20 it all the damage has been done, even though there's

21 some statements that no one probably recalls or

22 maybe on opening statements or something like that,

23 let's just shut it down

24 MR COX Just call Mr Cuevas and after that,

25 all we intend on doing is putting on Corporal

1 A Yes, sir

2 Q Okay At some point in time, Mrs Timmons,
3 did the -- the police came and talked to you, and is it
4 true they came and talked to you and tried to link your
5 case with another case?

6 A Yes, sir I don't know if they were trying to
7 link it, but there had been another case and they were
8 just -- I don't know how you would describe it as far as
9 linking

10 Q Are you familiar with the name of that case?

11 A Yes, sir, I've read about it in the paper

12 Q And what case would that be?

13 A Menendez

14 Q Is it safe to say you started following that
15 case from that point forward in terms of articles and
16 whatever would appear on television and whatever?

17 A Yes, sir

18 Q Safe to say that you took notice of any
19 pictures that were included in that?

20 A It was pictures that I had already identified
21 before they were in the paper They were the same
22 pictures that I had looked at and identified

23 Q Now, ultimately, you were approached -- I
24 think Ms Bondi started to question you about this
25 earlier Ultimately you were approached by police

1 saw pictures later, I tried to just identify just strictly
2 face because I know changes can be made

3 Q And you did think that the person that was
4 holding the gun was a male?

5 A Yes, sir, at the beginning

6 Q Now --

7 A I also told them at that time that if it was a
8 male, he was very soft spoken He didn't have a rough,
9 gruff voice So it was doubts, I guess in a way at that
10 time in my mind, you know I can't say positive, you
11 know, that I knew definitely that it was a guy, but I
12 thought it was

13 Q By the same token, you can't say positively
14 that it was a girl either?

15 A Later on looking through pictures I could just
16 visualize a face at the time I was laying on the floor
17 with the threats, and I was looking up laying like this
18 trying to pull off my rings, and I did look at the face
19 I mean when I just tried to look at pictures, whenever I
20 looked at them, I tried to just look at the face

21 Q Isn't it true that you never actually looked
22 at that person in the face because you were scared at the
23 time?

24 A I glanced but I didn't stare

25 Q Okay And that was to protect yourself?

REDIRECT EXAMINATION

2 | BY MS. BONDI:

3 Q. Corporal Phillipi, who was the person
4 Mrs. Bowman identified as the one who held the gun on her?

5 A. She was adamant. She said she was the one who
6 held the gun to her face.

7 Q. Did she ever identify anyone else as holding a
8 gun to her?

9 A. No, ma'am.

10 THE COURT: Mr. Traina, anything else?

11 MR. TRAINA: I have nothing further, Judge.

12 THE COURT: Thank you, Corporal Phillipi; you
13 may step down and be excused.

14 State may call its next witness.

15 MR. COX: Your Honor, at this time the people
16 of the State of Florida announce rest.

17 THE COURT: Okay. The State rests. Approach
18 the bench, please.

19 [Following proceedings had at bar]:

20 THE COURT: Okay. Go ahead.

21 MR. TRAINA: Judge, as to all counts, I ask
22 the Court to note that they have a responsibility to
23 consider the evidence in the light most favorable to
24 the State. At this time I ask the Court to grant a
25 directed verdict or motion for acquittal, judgment

1 of acquittal, excuse me, as to all counts.
2 Particularly I want -- I don't see evidence of
3 organized fraud at this point at all, but certainly
4 as to all the other counts as well, I would make
5 that motion, but I don't have argument as to them.

6 THE COURT: Okay. I'll deny your motion as to
7 all counts except Count VII. I'll keep that under
8 advisement and think about it.

9 Do you have any testimony to put on today?

10 MR. TRAINA: Judge, I do not because Latasha
11 Jerry apparently is not back yet.

12 THE COURT: We'll start in the morning then.

13 MR. TRAINA: I think Vandolyn Kanon, your
14 judicial assistant told her to come back tomorrow.
15 She was very ill today.

16 THE COURT: No problem.

17 MR. TRAINA: Thank you, Judge.

18 [Following proceedings had in open court]:

19 THE COURT: And you are going to do that,
20 right, there's no question about that tomorrow
21 morning at nine o'clock?

22 MR. TRAINA: Is that those people?

23 THE COURT: Right.

24 MR. TRAINA: Assuming they're here, yes.

25 THE COURT: That's it for today. We're going

1 A Yes, ma'am She said to lie on the floor
2 Q And what did you do?
3 A Well, I sit down on a chair
4 Q And was some property taken from you?
5 A Yes, ma'am She took a -- jerked a chain off
6 of my neck, and she asked me where my pocketbook was, and
7 I told her it was on the kitchen table, and she went in
8 there and got it
9 Q And were there two people in the house at that
10 time?
11 A Yes, ma'am There was two girls, two girls
12 that had come in that had --
13 Q Later did you tell the police you could
14 identify anyone?
15 A That's what I said, I couldn't identify
16 anybody
17 MS BONDI No further questions
18 THE COURT Mr Traina, any questions?
19 MR TRAINA No, Judge, I have no further
20 questions
21 THE COURT Thank you, Ms Cochran, you may
22 step down and be excused
23 State may call its next witness
24 MS BONDI Judge, we would ask Ms Debbie
25 Guerra to take the witness stand for purposes of

1 A Oh, we had just arrived home at my house
2 Q And where did you go when you got home?
3 A I had a plate of food, and I walked in the
4 house to put that in the refrigerator, is that what you
5 mean?
6 Q Did some people come over at some point?
7 A Yes, a car drove up, and it was kind of parked
8 in the middle of the street, and one of the girls got up
9 and come up on my porch
10 Q Did she ask you for something?
11 A Yes, she asked -- I think she asked directions
12 to Plant City And in the meantime, I walked in the
13 house, put my dish in the refrigerator and my daughter
14 stayed there and talked to her
15 Q Did they eventually come into your house?
16 A Yes, ma'am When I got back to the door, my
17 daughter says, can they use the telephone, and I said,
18 yes, they can use the telephone, and that's when they come
19 in
20 Q Did one of them have a weapon?
21 A Yes, ma'am, one of them did
22 Q And what was that weapon?
23 A It was a small gun
24 Q And was your daughter told to get in any
25 certain position?

1 MR TRAINA Thank you, Judge

2 **CROSS-EXAMINATION**

3 BY MR TRAINA

4 Q Mr Cuebas, was Chris Ellis alone when he
5 picked you up that afternoon?

6 A Yes

7 Q How long did you drive around before you went
8 to pick up anybody else?

9 A We went to the basketball court and while we
10 were in the basketball court, Chris said he wanted to pick
11 somebody else So probably between 15 minutes

12 Q And that turned out to be Quontesha Worlds?

13 A Yes

14 Q Once Quontesha Worlds joined the group, where
15 did she sit in the car?

16 A In the passenger of -- in the front on the
17 side of Chris They moved me to the back

18 Q Okay Now, isn't it true that she began
19 telling Chris where to go?

20 A Yes

21 Q Did you at any time tell him where to go?

22 A No

23 Q Now, once Lolita Barthel joined the group,
24 where did she sit?

25 A She jumped in the car and started talking to

1 Quontesha, and Quontesha told Chris to drive

2 Q And did the seating stay the same?

3 A No Lolita sat in the back with me I sat

4 behind Chris and she sat behind Quontesha

5 Q Quontesha is still in the front?

6 A Yes

7 Q Quontesha is still telling Chris where to go?

8 A Yes

9 Q You never saw the gun until after the incident

10 was over?

11 A Yes

12 MR TRAINA I've got nothing further, Judge

13 THE COURT Mr Cox?

14 MR COX Nothing further, Judge

15 THE COURT Thank you, Mr Cuebas, you may

16 step down and be excused

17 State may call its next witness

18 MR TRAINA Judge, I'm going to request that

19 instruction again for that witness

20 THE COURT Oh, okay Let me get the list of

21 issues out here The testimony you just heard from

22 Mr Cuebas was offered not to prove that Ms Barthel

23 committed the crime that he described was committed

24 but was offered for the limited purpose of proving

25 either opportunity or intent or preparation or plan

1 Phillippi and the photopak he identified of the
2 defendant

3 MR TRAINA I renew my objection with regard
4 to Cuebas as well because I think he more than
5 Bowman, I think this Williams' Rule evidence is a
6 feature of the trial It's your call, Judge,
7 whatever you wish to do about it, but I want to
8 renew my objection, ask for the same instruction, of
9 course, that you've been giving

10 THE COURT. I'll sustain the objection as to
11 Bowman's because you've got other problems with
12 regard to that testimony

13 [Following proceedings had in open court]

14 THE COURT Okay Thanks, Debbie, we're not
15 going to need you

16 Okay You may call your next witness

17 MR COX Efrain Cuebas

18 THE CLERK Do you solemnly swear or affirm
19 the testimony you're about to give in this cause
20 will be the truth, the whole truth and nothing but
21 the truth, so help you God?

22 THE WITNESS I swear

23 EFRAIN CUEBAS

24 being duly sworn, was examined and testified as follows

25 DIRECT EXAMINATION

1 I previously, just by way of history, had
2 decided after previous motion and hearings that
3 this resentencing on Count One was to occur under
4 Section 775.082(1)(b)(2). And the reason for that
5 was that the State had charged Miss Barthel
6 including the principal theory on that. And there
7 was no specific finding in the verdict for the jury
8 to let us know that they found that she was the
9 actual shooter. So I simply could not make that
10 conclusion.

11 I will let you know, though, that I have read
12 the testimony of the codefendants who testified.
13 And I think it was very compelling testimony, and
14 had the jury been given that opportunity, they may
15 have -- probably would have made that finding. But
16 they did not and so, therefore, I couldn't go the
17 other route that the State had asked me to go. And
18 the resentencing on Count One is specifically
19 pursuant to 775.082(1)(b)(2) because of those
20 specific two reasons, which requires then the Court
21 to analyze the factors in 921.1402(2), and that is
22 Factors A through J, which I have done and I have
23 thoroughly considered each and every one of the
24 factors.

25 Now, Miss Barthel is also being resentenced on

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HILLSBOROUGH COUNTY, FLORIDA

1 Counts Two and Three pursuant to the order sending
2 it back. And that is -- sentence is pursuant to
3 section 775.082(3)(c).

4 So after considering everything, including the
5 relevant factors and each of the factors set forth
6 in Section 921.1401(2), the testimony and evidence
7 presented during the May 20th, 21st and 22nd of
8 2019 resentencing hearing, the sentencing memoranda
9 and exhibits submitted by counsel, as well as the
10 court file and the record, the Court finds that
11 based on the facts of this case, that life
12 imprisonment is an appropriate sentence on Counts
13 One, Two and Three and, therefore, I sentence
14 Miss Barthel to life imprisonment on Counts One,
15 Two and Three concurrently with each other.

16 And the sentence on Counts Four and Seven,
17 which remained the same but consecutively to the
18 sentence in Case No. 95-CF-011398. Because this
19 sentence is pursuant to 775.0821(1)(b)(2) on
20 Count One, I further find that defendant is
21 entitled to a sentence review after 15 years in
22 accordance with Section 921.1402(2)(c) on
23 Count One. And additionally because the defendant
24 is sentenced pursuant to 775.082(3)(c) on Counts
25 two and Three, the defendant is entitled to a

AOC CIRCUIT COURT REPORTERS
HILLSBOROUGH COUNTY, FLORIDA

APPENDIX I

LIST OF APPENDICES - GROUND SIX:

- (1) TRIAL TRANSCRIPTS STATEMENTS OF THE DETECTIVE ROBERT BOSS:
"Lieutenant Mishler found out that Mrs. Menendez cleaned the rug. So Lieutenant Mishler did impound the rug and he took all the lint from the dryer"
- (2) TRIAL TRANSCRIPTS STATEMENTS STATE WITNESS EXPERT GARY MC CULLOUNG:
Q: "Okay , And with respect to all of those submissions, gun, house, car, receipts from the mall, isn't true that my client, Lolita Barthel fingerprints appear on zero, none of them?
A: "That's correct" (See page 146, L21)
- (3) TRIAL TRANSCRIPTS STATEMENT STATE WITNESS EXPERT THEODORE YESHION:
"There was fingernail scrapings that were performed and hair analysis" (See TT. Page 72 L-11).
- (4) AFFIDAVIT FOR ARREST WARRANT'S STATEMENT:
"On October 2 1995, which the senior analyst Theodore Yeshion submitted a lab report"

1 A. Lieutenant Mishler found out that
2 Mrs. Menendez cleaned the rug. So Lieutenant Mishler did
3 impound the rug and he took all the lint from the dryer.

4 Q. The lint from the dryer?

5 A. Because it would have contained items that
6 were on the rug.

7 Q. Okay. And were those items as well sent to
8 Florida Department of Law Enforcement lab?

9 A. Yes, they were.

10 MR. COX: Your Honor, could I have just a
11 moment, please?

12 THE COURT: Yes.

13 [The attorneys confer at counsel table.]

14 MR. COX: Thank you, Your Honor.

15 THE COURT: Mr. Traina, you may inquire.

16 MR. COX: I'm sorry. I had a couple more
17 questions. I was thanking you for the time.

18 BY MR. COX:

19 Q. Directing your attention to August 24th of
20 1995, did you and any other members of the Temple Terrace
21 Police Department again come into contact with
22 Ms. Barthel?

23 A. Yes, we did.

24 Q. And where did you find Ms. Barthel?

25 A. At Tampa Bay Tech.

5 A. Yes, sir.

6 MR. COX: Your Honor, could I have just a
7 moment, please?

8 [The attorneys confer at counsel table.]

9 MR. COX: Your Honor, I have no further
10 questions of Mr. McCullough; thank you.

11 THE COURT: Mr. Traina, you may inquire.

12 **CROSS-EXAMINATION**

13 9 BY MR. TRAINA:

14 10 Q. Mr. McCullough, do you off the top of your
15 head recall the total number of submissions that were
16 given to you for study?

17 13 A. I personally have a total of submissions
18 number 2 through 5. So I have a total of four submissions
19 that I worked.

20 16 Q. And did you ever total the number of items
21 that you actually looked at, total numbers of pieces of
22 paper, gun surfaces that you were asked to look at?

23 19 A. I mean I don't have a total off the top of my
24 head right now, but I imagine it's 50 or 60.

25 21 Q. Okay. And with respect to all of those
26 submissions, gun, house, car, receipts from the mall,
27 isn't it true that my client, Lolita Barthel's
28 fingerprints appear on zero, none of them?

29 A. That's correct.

1 A The area he indicated was flooded at that time
2 and there was no luck

3 Q Okay Pursuant to the investigation, also,
4 did you determine whether or not any of Mr Menendez's or
5 Mrs Menendez's property was located anywhere?

6 A Yes, we did

7 Q And what was that?

8 A There was some gold bangle type bracelets that
9 were recovered in Christopher Ellis' car

10 Q What else did you find? What other property
11 did Temple Terrace police find?

12 A There was two rings belonging to Mr Menendez
13 that had been pawned

14 Q By who?

15 A They were pawned by Shalanda Roberts

16 Q Anything else that you located in the pawnng?

17 A There was also a charm bracelet with a Gator
18 charm on it from Florida Gators recovered in a pawn shop

19 Q And who had pawned that?

20 A It was pawned by Christopher Ellis

21 Q Okay The gun that was recovered with the
22 assistance of Mr Ellis, what was done with that gun? Was
23 it delivered or forwarded anywhere?

24 A The gun was sent off to Florida Department of
25 Law Enforcement labs for processing

1 Q And as far as the clothing and any -- and
2 several of the items that were located around
3 Mr Menendez, were those items as well sent to or taken by
4 the Florida Department of Law Enforcement?

5 A Yes, they were

6 Q To have lab work done on them?

7 A That's correct

8 Q When Mr Menendez's body was taken to the
9 medical examiner's office, was there anything done to
10 collect any evidence from his body?

11 A There was fingernail scrapings that were
12 performed and hair analysis

13 Q Okay And were the pieces of evidence, the
14 scrapings and the things of that sort as well forwarded to
15 the Florida Department of Law Enforcement?

16 A Yes, they were

17 Q I believe it was several days later, one or
18 two days after Mr Menendez was found, but was anything
19 done in regards to a carpet or a rug that was found
20 beneath Mr Menendez?

21 A That's correct We discovered that one of the
22 carpets in the room had not been impounded by Florida
23 Department of Law Enforcement and Lieutenant Mishler went
24 to attempt to recover that item

25 Q And what happened then?

1 A Lieutenant Mishler found out that
2 Mrs Menendez cleaned the rug So Lieutenant Mishler did
3 impound the rug and he took all the lint from the dryer
4 Q The lint from the dryer?
5 A Because it would have contained items that
6 were on the rug
7 Q Okay And were those items as well sent to
8 Florida Department of Law Enforcement lab?
9 A Yes, they were
10 MR COX Your Honor, could I have just a
11 moment, please?
12 THE COURT Yes
13 [The attorneys confer at counsel table]
14 MR COX Thank you, Your Honor
15 THE COURT Mr Traina, you may inquire
16 MR COX I'm sorry I had a couple more
17 questions I was thanking you for the time
18 BY MR COX
19 Q Directing your attention to August 24th of
20 1995, did you and any other members of the Temple Terrace
21 Police Department again come into contact with
22 Ms Barthel?
23 A Yes, we did
24 Q And where did you find Ms Barthel?
25 A At Tampa Bay Tech

1 Identification is much more difficult in this system with
2 the 6 markers.

3 Q. So if it matches, there's a possibility, and
4 it's a statistical number that you can attach to that,
5 correct?

6 A. Yes.

7 Q. But if they do not match, then you can say
8 then that is not so, they do not match, they do not belong
9 to the same person?

10 A. Exactly.

11 Q. Okay. In looking at the known samples of
12 Lolita Barthel, Chris Ellis, Quontesha Worlds and Richard
13 Menendez and comparing them to the unknown samples that
14 you obtained from the fingernails of Richard Menendez, can
15 you tell the jury what your results were?

16 A. Yes. The examination of the fingernails, both
17 left and right fingernail clippings from Mr. Menendez
18 matched up to Mr. Menendez himself, that being I did not
19 find anything foreign to Mr. Menendez on his fingernails.

20 Q. Okay. And is it fair to say that based on
21 your examination of those fingernails that any tissue or
22 fluids that were retrieved from those fingernails, all of
23 it matched up to or was consistent with Richard
24 Menendez's?

25 A. Yes. Everything that was found by way of

1 DQ-Alpha and polymarker typing was consistent with only
2 Mr. Menendez.

3 Q. And as far as this typing goes, what
4 statistical probabilities are you talking about in regards
5 to this typing?

6 A. Over the 6 different markers I calculated the
7 frequencies in which these markers do appear in the
8 population for both the caucasian and African American
9 populations, and the profile for those markers would occur
10 in approximately one out of 11,600 whites and
11 approximately one out of 1,100,000 blacks.

12 Q. So just to wrap up as to this, is it fair to
13 say then that Lolita Barthel's, Chris Ellis' and Quontesha
14 Worlds' DNA was not found under the fingernails of Richard
15 Menendez?

16 A. That's correct, it was not found.

17 Q. As a matter of fact, the DNA found under his
18 fingernails was, in fact, consistent with his own?

19 A. That's correct, yes, sir.

20 Q. In regards to this investigation, did you also
21 receive a Lorcim 380 caliber automatic firearm, serial
22 number 253844 and a loaded magazine along with it?

23 A. Yes, I did.

24 Q. And what were you asked to do with that?

25 A. I was asked to examine both the weapon and the

THE POLICE INTERVIEW WITH QUONTESHA WORLDS CONDUCTED ON 08-23-95, PROVIDED A CONFESSION OF GUILT AND NAMED CHRISTOPHER ELLIS AS THE DRIVER OF THE VEHICLE AND **LOLITA BARTHEL** AS HER ACCOMPLIS THAT WENT INTO THE HOUSE. WORLDS NAMES **LOLITA BARTHEL** AS THE PERSON THAT SHOT VICTIM RICHARD MENENDEZ.

DURING A SWORN INTERVIEW CONDUCTED BY STATES ATTORNEY KAREN COX ON 10-31-95 QUONTESHA WORLDS ADMITTED TO BEING ONE OF TWO PERSONS THAT ENTERED THE MENENDEZ HOME WITH THE INTENTION OF ROBBERY. QUONTESHA WORLDS STATED THAT SHE LOOKED FOR JEWELRY AND MONEY WHILE **LOLITA BARTHEL** HELD THE VICTIM ON THE GROUND AT GUN POINT. QUONTESHA WORLDS STATED SHE OBSERVED **LOLITA BARTHEL** STANDING OVER THE VICTIM AND FIRE ONE SHOT FROM THE HAND GUN INTO THE VICTIM'S CHEST.

THE CRIME SCENE INDICATED THAT A STRUGGLE OCCURRED BEFORE THE VICTIM WAS SHOT TO DEATH WITH A 380 CALIBER HAND GUN. THE AUTOPSY INDICATED THAT VICTIM MENENDEZ WAS STRUCK ON THE RIGHT TEMPLE AREA BEFORE BEING SHOT TO DEATH. DURING THE AUTOPSY FINGER NAIL SAMPLES WERE COLLECTED AND SENT TO THE F.D.L.E. CRIME LAB.

ON 08-23-95 AND 08-24-95 INTERVIEWS WERE CONDUCTED WITH **LOLITA BARTHEL** WHO DENIED ALL KNOWLEDGE OF THE HOMICIDE. IT WAS NOTED AT THAT TIME **LOLITA BARTHEL** DID HAVE A FRESH SCRATCH ON HER NECK. WHEN ASKED ABOUT THE SCRATCH SHE ADVISED SOMEBODY HIT HER WITH A TELEPHONE.

ON OCTOBER 2, 1995 F.D.L.E. SENIOR CRIME LAB ANALYST THEODORE YESHION SUBMITTED A LAB REPORT THAT INDICATED THAT TISSUE WAS PRESENT ON THE VICTIM'S FINGER NAIL SAMPLES THAT WERE SUBMITTED FROM THE AUTOPSY. YESHION INDICATED LIQUID BLOOD SAMPLES FROM THE SUSPECTS BE SUBMITTED FOR COMPARISON.

BASED ON THE FOREGOING EVIDENCE AND THE TOTALITY OF THE CIRCUMSTANCES, YOUR AFFIANT BELIEVES AND HAS REASON TO BELIEVE THE TISSUE SAMPLES FOUND UPON THE FINGER NAIL SAMPLES SUBMITTED TO THE CRIME LAB WILL MATCH THAT OF SUSPECT **LOLITA BARTHEL**.

YOUR AFFIANT IS REQUESTING THE COLLECTION OF KNOWN SAMPLES OF BLOOD AND HEAD HAIR OF SUSPECT **LOLITA BARTHEL**, TO BE COMPARED TO THE EVIDENCE COLLECTED FROM VICTIM MENENDEZ'S BODY AND THE CRIME SCENE. THESE ITEMS WILL BE TRANSPORTED TO THE F.D.L.E. CRIME LAB FOR COMPARISON. YOUR AFFIANT IS ALSO REQUESTING PHOTOGRAPHS OF ALL INJURIES, OLD AND NEW, TO INCLUDE THE HEAD, NECK, SHOULDERS AND ARMS.