

No.

IN THE
SUPREME COURT OF THE UNITED STATES

GLYNN T. MURPHY,
Petitioner,
v.
STATE OF FLORIDA,
Respondent.

**On Petition for Writ of Certiorari
to the Florida First District Court of Appeal**

**APPENDIX TO
PETITION FOR WRIT OF CERTIORARI**

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COUNSEL FOR THE PETITIONER

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

GLYNN T. MURPHY,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D14-5788

STATE OF FLORIDA,

Appellee.

Opinion filed October 11, 2017.

An appeal from an order of the Circuit Court for Leon County.
James O. Shelfer, Judge.

Michael Ufferman of Michael Ufferman Law Firm, P.A., Tallahassee, for
Appellant.

Pamela Jo Bondi, Attorney General, and Michael Schaub, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM.

Appellant challenges his convictions and sentences for burglary of a dwelling and grand theft. On the State's proper concession of error, we reverse solely as to the imposition of a discretionary fine and surcharge. The trial court imposed "\$1,522.50 court costs and fines." This lump sum included the felony fine pursuant to section 775.083, Florida Statutes, and the five percent surcharge

pursuant to section 938.04. This fine and surcharge must be individually and specifically pronounced at sentencing. *Nix v. State*, 84 So. 3d 424, 426 (Fla. 1st DCA 2012). We vacate the fine and surcharge. On remand, the court may reimpose the fine and surcharge after giving Appellant notice and following the proper procedure.

We affirm in all other respects, and reject, as we have before, the argument that a prison releasee reoffender sentence is unconstitutional if a jury did not make the finding that the defendant was released within the previous three years. *See Williams v. State*, 143 So. 3d 423, 424 (Fla. 1st DCA 2014).

AFFIRMED in part and REVERSED in part.

KELSEY, WINOKUR, and WINSOR, JJ., CONCUR.

In the Circuit Court, Second Judicial Circuit,
in and for Leon County, Florida

Division: **Felony**

State of Florida
v.

Filed In Open Court
Date: 11-19-14

GLYNN T. MURPHY
Defendant

Recorded in the Official Records
of Leon County

Case No. 2011 CF 1244 A

____ Probation
____ Community Control Violator
____ Retrial
____ Resentence

JUDGMENT

The Defendant, GLYNN T. MURPHY,
represented by, Matthew Casel, being personally before this court
represented by, Elizabeth Desloge, attorney of record, and the state
and having
☒ been tried and found guilty by jury by court of the following crime(s) Cts 1 + 2
☒ entered a plea of guilty to the following crime(s)
☒ entered a plea of nolo contendere to the following crime(s) Ct. 3

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Number
1	Burglary of Dwelling	810.02 3B	F2	11CF1244A	
2	Corameli Theft	812.01 2C1	F3	11CF1244A	
3	Failure to Appear	843.15 1A	F3	11CF1244A	

☒ and no cause being shown why the defendant should not be adjudicated guilty, **IT IS ORDERED** that the defendant is hereby **ADJUDICATED GUILTY** as to all counts or as to count(s) _____.

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

_____ and good cause being shown; **IT IS ORDERED** that **ADJUDICATION OF GUILT BE WITHHELD** as to all counts or as to count(s) _____.



v.

GLYNN T. MURPHY
Defendant

Case Number 2011 CF 1244 A

Address:

FINGERPRINTS OF DEFENDANT

1. Right Thumb	2. Right Index	3. Right Middle	4. Right Ring	5. Right Little
				
6. Left Thumb	7. Left Index	8. Left Middle	9. Left Ring	10. Left Little
				

Fingerprints taken by:

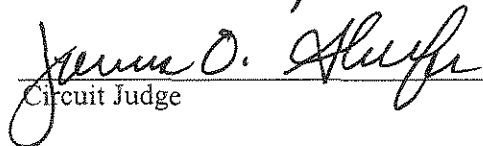

Name

1229

LCSD
Title

I CERTIFY that these are the fingerprints of the defendant, GLYNN T. MURPHY, and that they were placed hereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Leon County, Florida, on Nov. 19, 2014


Circuit Judge

SENTENCE(As to Count 1)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, M. Casey, and having been given an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law; and no cause being shown

(Check one if applicable)

- ☐ the Court places the defendant on probation / community control for a period of _____ months / years under the supervision of the Dept. of Corrections, the conditions of which are set forth in a separate order.
- ☐ the Court having previously on _____, deferred imposition of sentence until this date.
- ☐ the Court having previously entered a judgment in this case on _____ now resents the defendant
- ☐ the Court having placed the defendant on probation / community control and having subsequently revoked the defendant's probation/community control.

It Is The Sentence Of The Court that:

- ☐ The defendant pay a fine of \$ _____, pursuant to section 775.083, F.S., plus \$ _____ as the 5% surcharge required by section 938.04, F.S.
- ☒ The defendant is committed to the custody of the Department of Corrections.
- ☐ The defendant is directed to the custody of the Sheriff of _____ County, Florida.
- ☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, F.S..

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

- ☒ For a term of natural life.
- ☒ For a term of 15 ~~months~~ years.
- ☐ Said SENTENCE SUSPENDED for a period of _____ subject to the conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

- ☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions set forth in a separate order entered herein.
- ☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

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

SENTENCE(As to Count 2-3)

The defendant, being personally before this court, accompanied by the defendant's attorney of record, M. Casey, and having been given an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant should not be sentenced as provided by law; and no cause being shown

(Check one if applicable)

- ☐ the Court places the defendant on probation / community control for a period of _____ months / years under the supervision of the Dept. of Corrections, the conditions of which are set forth in a separate order.
- ☐ the Court having previously on _____, deferred imposition of sentence until this date.
- ☐ the Court having previously entered a judgment in this case on _____ now resentsences the defendant
- ☐ the Court having placed the defendant on probation / community control and having subsequently revoked the defendant's probation/community control.

It Is The Sentence Of The Court that:

- ☐ The defendant pay a fine of \$ _____, pursuant to section 775.083, F.S., plus \$ _____ as the 5% surcharge required by section 938.04, F.S.
- ☐ The defendant is committed to the custody of the Department of Corrections.
- ☒ The defendant is directed to the custody of the Sheriff of Leon County, Florida.
- ☐ The defendant is sentenced as a youthful offender in accordance with section 958.04, F.S..

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

- ☒ For a term of natural life.
- ☒ For a term of 249 Days months ~~years~~.
- ☐ Said SENTENCE SUSPENDED for a period of _____ subject to the conditions set forth in this order.

If "split" sentence, complete the appropriate paragraph.

- ☐ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions set forth in a separate order entered herein.
- ☐ However, after serving a period of _____ imprisonment in _____, the balance of the sentence shall be suspended and the defendant be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

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

SPECIAL PROVISIONS(As to Count 1)

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

Firearm	_____	It is further ordered that the _____ minimum imprisonment provision of section 775.087, F.S., is hereby imposed for the sentence specified in this count.
Drug Trafficking	_____	It is further ordered that the _____ years mandatory minimum imprisonment provision of section 893.135(1), F.S., and fine in the amount of \$ _____ is hereby imposed in this count.
Controlled Substance w/in 1,000' of School, Public Park, Comm.Center or Rec. Facility	_____	It is further ordered that the 3-year minimum imprisonment provision pursuant to 893.13(1)(c), F.S., is hereby imposed for the sentence specified in this count.
Habitual Felony Offender	_____	The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), F.S.. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
Controlled Substance, Manufacture of Metham-Phetamine/Phencyclidine	_____	It is further ordered that the _____ minimum mandatory provision of section 893.13(1)(g), F.S. is hereby imposed for the sentence specified in this count.
Habitual Violent Felony Offender	_____	The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), F.S.. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
Prison Releasee Reoffender	<u>✓</u> _____	The defendant is adjudicated a prison releasee reoffender and has been sentenced to serve 100 percent of the court-imposed sentence in accordance with section 775.082(8)(b).
Law Enforcement Protection Act	_____	It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, F.S..
Capital Offense	_____	It is further ordered that the defendant shall be ineligible for Parole in accordance with the provisions of section 775.082(1), F.S..
Short-Barreled Rifle, Shotgun, Machine Gun	_____	It is further ordered that the 5-year minimum provision of section 790.221(2), is hereby imposed for the sentence specified in this count.
Continuing Criminal Enterprise	_____	It is further ordered that the 25-year minimum sentence provision of section 893.20, F.S., is hereby imposed for the sentence specified in this count.

Dangerous Sexual Felony
Offender _____

It is further ordered that the minimum imprisonment provision of section 794.0115(2)(e), F.S. is hereby imposed for the sentence specified in this count. The defendant shall be imprisoned for a minimum of _____ years; or, _____ for a term of life.

Personal ID Information _____

It is further order that the _____ minimum mandatory provision of section 817.568 F.S., is hereby imposed for the sentence specified in this count.

Taking a Law Enforcement
Officer's Firearm _____

It is further ordered that the 3-year mandatory minimum imprisonment provision of section 775.0875 (1), F.S., is hereby imposed for the sentence specified in this Count. (Offenses committed before January 1, 1994).

Sexual Offender/Sexual Predator Determinations:

Sexual Predator _____

The defendant is adjudicated a sexual predator as set forth in section 775.21, F.S.

Sexual Offender _____

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

Age of Victim _____

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

Age of Defendant _____

The defendant was _____ years of age at the time of the offense

Relationship to Victim _____

The defendant is not the victim's parent or guardian

Sexual Activity [F.S. 800.04 (4)] _____

The offense _____ did _____ did not involve sexual activity.

Use of Force or Coercion
[F.S. 800.04 (4)] _____

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

Unclothed Genitals
[F.S. 800.04 (5)] _____

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

Other Provisions
(e.g., see Ch. 775, F.S.) _____

Other Provisions as to count(s) 1-3:

Retention of Jurisdiction _____

The court retains jurisdiction over the defendant pursuant to section 947.16(4), F.S. (2002).

Jail Credit _____

✓

It is further ordered that the defendant shall be allowed a total of 249 days as credit for time incarcerated before imposition of this sentence.

**CREDIT FOR TIME SERVED IN RESENTENCING AFTER
VIOLATION OF PROBATION OR COMMUNITY CONTROL**

(Check as applicable)

_____ **IT IS FURTHER ORDERED** that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on count(s) _____.
(Offenses committed before October 1, 1989).

_____ **IT IS FURTHER ORDERED** that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on count(s) _____.
(Offenses committed between October 1, 1989 and December 31, 1993).

_____ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(7).

_____ The Court allows unforfeited gain time previously awarded in this case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1)).

_____ **IT IS FURTHER ORDERED** that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on count(s) _____.
(Offenses committed between January 1, 1994 and May 29, 1997).

_____ **IT IS FURTHER ORDERED** that the defendant be allowed _____ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes on count(s) _____.
(Offenses committed after May 30, 1997).

Consecutive/Concurrent
as to Other Counts _____

It is further ordered that the sentence imposed as to count(s) _____
shall run (check one) _____ consecutive to _____ concurrent
with the sentence set forth in count _____ of this case.

Consecutive/Concurrent
as to Other Convictions _____

It is further ordered that the composite term of all sentences imposed for
the counts specified in this order shall run (check one)
_____ consecutive to _____ concurrent with the following

(check one)

_____ any active sentence being served

_____ specific sentences _____

In the event the above sentence is to the Department of Corrections, the Sheriff of Leon 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
Statutes.

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 _____

JUDGMENT FOR FINES, COSTS, FEES AND SURCHARGES

IT IS THE JUDGMENT AND ORDER OF THE COURT THAT DEFENDANT IS LIABLE FOR AND SHALL PAY THE FOLLOWING:

1. \$ 1650.00 as a fine pursuant to §775.083, F.S.
2. \$ 52.50 as the 5% surcharge required by §938.04, F.S.
3. **\$20.00** as a court cost pursuant to §938.06, F.S. (Crime Stopper Trust Fund).
4. **\$3.00** as a court cost pursuant to §938.01(1) F.S. (Criminal Justice Trust Fund).
5. **\$50.00** pursuant to §938.03, F.S. (Crimes Compensation Trust Fund).
6. **\$225.00 (felony)** / ~~\$60.00 (misd.)~~ pursuant to §938.05, F.S. (Local Government Criminal Justice Trust Fund).
7. **\$2.00** as a court cost pursuant to § 938.15, F.S. (County Criminal Justice Education).
8. **\$2.00** as a court cost pursuant to §938.15, F.S. (City Criminal Justice Education).
9. **\$50.00 (felony)** / ~~\$20.00 (misd.)~~ as a court cost pursuant to §775.083(2) F.S. (County Crime Prevention).
10. **\$65.00** as a court cost pursuant to § 939.185, F.S. (County Additional Court Cost).
11. **\$3.00** as a court costs pursuant to § 938.19 F.S. (Teen Court Assessment). **Leon County, FL, Code § 7-28**
12. ☒ **\$50.00** as an application fee pursuant to §27.52(1)(b), F.S. (Indigent Criminal Defense Trust Fund) if the Defendant applied for a Public Defender and the fee has not been paid in full. The first \$50.00 collected by the clerk shall be applied toward satisfaction of this fee.
13. ☐ If checked, the Defendant shall pay **\$135.00** as costs pursuant to §938.07, F.S. (Driving or Boating Under The Influence).
14. ☐ If checked, the Defendant shall pay **\$15.00** as costs pursuant to §938.13, F.S. (Misd. Drug Alcohol Assessment)
15. ☐ If checked, the Defendant shall pay **\$5.00** as an additional fine pursuant to §316.061(1) F.S. (Leaving the Scene)
16. If checked, the defendant shall pay the following as additional statutorily mandated surcharges:
 - ☐ **\$201.00** as a surcharge and condition of supervision pursuant to §938.08, F.S. (Domestic Violence Trust Fund).
 - ☐ **\$151.00** as a surcharge and condition of supervision pursuant to §938.085, F.S. (Rape Crisis Program Trust Fund).
 - ☐ **\$151.00** as costs pursuant to §938.10, F.S. (Children & Family Services Child Advocacy Trust Fund).
17. ☒ **\$100.00** (mandatory), or the higher of documented costs of \$_____ for prosecution pursuant to §938.27(8), F.S., payable to the Leon County Clerk's Office. To be paid pursuant to the terms of the Clerk's collection program. ☐ or **Reduced to a Civil Judgment.**
18. ☒ **IF CHECKED, \$100.00** (mandatory) or the higher costs of \$_____ for indigent legal assistance pursuant to §938.29(1), F.S.
☐ Or **Reduced to a Civil Judgment.**
 - ☐ **IF CHECKED, THE DEFENDANT IS ORDERED TO PAY THE FOLLOWING DISCRETIONARY COSTS:**
19. \$_____ as additional fine pursuant to §775.0835(1), F.S.. (Optional Fine for the Crimes Compensation Trust Fund).
20. ☐ **\$100.00** FDLE Operating Trust Fund fee, pursuant to §943.25. ☐ **If checked Reduced to a Civil Judgment**
21. ☐ If checked, the Defendant shall pay **\$7.00** as costs pursuant to §318.18(14) F.S. (Replacement of Fine Revenue Fund)
(Applies to Chapter 316 Violation only.)
22. ☐ If checked, the Defendant shall pay **\$30.00** as costs pursuant to §318.18 (13)(a) (Court Facilities Fund)
23. ☐ If checked, the Defendant shall pay **\$3.00** as costs pursuant to §318.18 (17) (State Law Enforcement Radio System)
24. ☐ A sum of \$_____ for the cost of collecting the DNA sample required by s. 943.325, Florida Statutes.
☐ **If checked, discretionary fines are reduced to judgment, for which let execution issue.**

\$ 1772.50 **TOTAL Fine, if any, and Statutorily Mandated Costs, Fees and Surcharges**

\$ _____	Court Costs Reduced to Civil Judgment	\$ _____	Application Fee Reduced to Civil Judgment
\$ _____	Court Costs/Fines Deferred	\$ _____	Fine Reduced to Civil Judgment

Payment of \$ _____ / month to start on _____

Set Payment Plan when released from DOC

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Rev. 10/29/2013

Defendant GLYNN T. MURPHY

Case Number 2011 CF 1244 A

IT IS FURTHER ORDERED AS FOLLOWS:

The defendant should follow the instruction sheet provided by the Clerk concerning the payment plans offered by the Leon County Clerk's Office.

DONE AND ORDERED in open court on: Nov. 19, 2014.

Jenna O. Shuford
CIRCUIT JUDGE

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Rev. 10/29/2013

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

STATE OF FLORIDA

CASE NO. 11CF01244
SPN 125765

vs.

Glynn T. Murphy
B/M, 03/14/1980
[REDACTED]

INFORMATION

AMENDED

Defendant(s).
_____ /

INFORMATION FOR:

Count I BURGLARY OF DWELLING (F2) (ref. #4166)
Count II GRAND THEFT (F3) (ref. #4088)
Count III FAILURE TO APPEAR (F3) (ref. #3162)

FILED
2014 OCT 15 PM 3:35
Clerk & Controller
Leon County, Florida

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

WILLIAM N. MEGGS, State Attorney for the Second Judicial Circuit of the State of Florida, charges that in Leon County, Florida, the above-named defendant(s):

COUNT I: Between February 20, 2011 and February 26, 2011, did unlawfully enter or remain in a structure located at 410 Victory Garden Drive, Apartment #207, the dwelling of William W. Brown, with intent to commit the offense of theft or some offense therein, contrary to Section 810.02(3)(b), Florida Statutes.

COUNT II: Between February 20, 2011 and February 26, 2011, did knowingly obtain, use, or did endeavor to obtain or to use televisions (2), microwave oven, printer, computer, hard drive, DVDs (30), CD player, South African currency valued at \$100.00 (US dollars) or more, the property of William W. Brown, with the intent to either temporarily or permanently deprive the other person of a right to the property or a benefit therefrom or to appropriate the property to his or her own use or to the use of any person not entitled thereto, contrary to Section 812.014(2)(c)1, Florida Statutes.

COUNT III: On or about July 17, 2013, did unlawfully and willfully fail to appear in court in connection with a felony charge or while awaiting sentencing after having been released pursuant to Chapter 903, contrary to Section 843.15(1)(a), Florida Statutes.

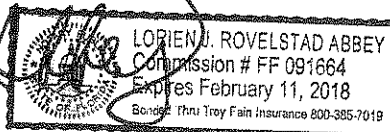
STATE OF FLORIDA
COUNTY OF LEON

WILLIAM N. MEGGS, STATE ATTORNEY
SECOND JUDICIAL CIRCUIT

Elizabeth W. Desloge
Designated Assistant State Attorney

The foregoing instrument was acknowledged before me on 15 October 2014, by Elizabeth W. Desloge, Designated Assistant State Attorney by William N. Meggs, State Attorney for the Second Judicial Circuit of the State of Florida, who is known to me and did take an oath stating good faith in instituting the prosecution and certifying that testimony was received under oath from the material witness or witnesses for the offense pursuant to F.R.Cr.P. 3.140(g).

NOTARY PUBLIC



A-13

TRIAL Thursday, 16 October 2014 in Courtroom 3D ASA Elizabeth W. Desloge

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