

20 - 8460
No. _____

THE SUPREME COURT OF THE UNITED STATES

MARCUS ADAM SNIPES – Petitioner

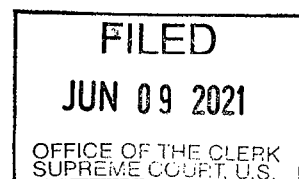
v.

STATE OF FLORIDA – Respondent

ORIGINAL

On Petition for writ of Certiorari to
The District Court of Appeal of the State of Florida – Second District

APPENDIX TO PETITION FOR WRIT OF CERTIORARI



PETITIONER:

Marcus Snipes, DC# 528259
Mayo Correctional Institution Annex
8784 U.S. Highway 27 West
Mayo, FL 32066-3458

INDEX TO APPENDICES

- Appendix A. Decision of the state appeals court.
- Appendix B. Decision of the state trial court.
- Appendix C. Order of the state appeals court denying rehearing.
- Appendix D. Petitioner's motion for rehearing to the state appeals court.
- Appendix E. Petitioner's motion to correct illegal sentence to the
state trial court.
- Appendix F. Petitioner's sentencing scoresheet.

Appendix A. – Decision of the state appeals court.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

Case No. 2D20-1760

CASANUEVA, ROTHSTEIN-YOUAKIM, and LABRIT, JJ., Concur.

Appendix B. – Decision of the state trial court.

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

STATE OF FLORIDA

CASE NO: 12-CF-009056

v.

**MARCUS SNIPES,
Defendant.**

DIVISION: D

ORDER DENYING DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE

THIS MATTER is before the Court on Defendant's "Motion to Correct Illegal Sentence," filed on September 16, 2019. After reviewing Defendant's motion, the court file, and the record, the Court finds as follows:

In case 12-CF-009056, a jury found Defendant guilty of Felon in Possession of a Firearm, with the specific findings that Defendant "did own or have in his care, custody or possession or control the ammunition found on" May 25, 2012, May 26, 2012, and May 30, 2012, and "did own or have in his care, custody or possession or control the firearm found on May 30, 2012" and that Defendant did actually possess the firearm. *See* Verdict Form, attached. Defendant was sentenced as a Habitual Felony Offender and a Violent Career Criminal to thirty-two years' prison with a thirty-year minimum mandatory. *See* Judgment and Sentence, attached. Defendant's sentence was ordered to run concurrently with the sentence imposed in case 12-CF-007174. *Id.* Defendant's conviction and sentence were affirmed on appeal. *See* Mandate, attached.

Following the filing of his "Motion to Correct Illegal, Unlawful and Unconstitutional Sentence," Defendant's sentence was amended to strike the Habitual Felony Offender Designation. *See* Amended Sentence, attached. The Court's order denying the postconviction motion and amending Defendant's sentence was affirmed on appeal. *See* Mandate, attached.

In his motion, Defendant alleges his sentence is illegal because “the [Violent Career Criminal] statute placed the burden on [him] to prove that it was not necessary for the protection of the public to exceed the statutory maximum for his crime.” *See Motion to Correct Illegal Sentence*, attached. Defendant cites to *Brown v. State*, 260 So. 3d 147 (Fla. 2018), and argues the “fact of ‘necessary for public protection’ – whether stated in the negative or in the positive – is a ‘fact that increase[s] the penalty for a crime beyond the prescribed statutory amount.’” *Id.* Defendant states the “prescribed statutory amount for [his] crime ... was 15 years [sic] prison” but the “violent career criminal statute ... increased that penalty to 40 years prison with the requirement that this Court impose a minimum mandatory term of 30 years prison ... [unless he] proved that it was not necessary for the protection of the public ...” *Id.* Defendant concludes by requesting “this Court to declare the violent career criminal statute unconstitutional to the extent that the statute shifted the burden on him to prove that it was not necessary for the protection of the public to exceed the prescribed statutory maximum for his crime.” *Id.*

After reviewing the motion, the court file, and the record, the Court finds that Florida Rule of Criminal Procedure 3.800(a) is “reserved for a narrow category of cases in which the sentence can be described as truly ‘illegal’ as a matter of law.” *Judge v. State*, 596 So. 2d 73, 77 (Fla. 2d DCA 1991). Rule 3.800(a) is “concerned primarily with whether the terms and conditions of the punishment for a particular offense are permissible as a matter of law.” *Id.* A “sentence is only ‘illegal’ for 3.800(a) purposes if it is outside the maximum prescribed by law.” *Lee v. State*, 679 So. 2d 1158, 1160 (Fla. 1996).

Here, Defendant is not arguing that his sentence is illegal. Rather, he is arguing that Section 775.084 is unconstitutional because it includes a provision, Section 775.084(3)(c)5., which allows the Court to determine that “it is not necessary for the protection of the public to sentence the

defendant as a violent career criminal.” The Court does not find that this allegation is cognizable under Rule 3.800(a). See *Thomas v. State*, 778 So. 2d 429, 430 (Fla. 5th DCA 2001) (“Whether a sentencing statute is constitutional cannot be raised for the first time in a Rule 3.800(a) motion. This type of issue, which seeks a change in the law, must be raised at sentencing and then on direct appeal. Rule 3.800(a) is limited to correcting sentences which are patently illegal on the face of the record.”).

Further, the Court finds Defendant is not entitled to relief because “the question of whether a habitual offender sentence is necessary for the protection of the public is a discretionary sentencing judgment, not an adjudicatory fact within the meaning of *Apprendi*.” *Robinson v. State*, 784 So. 2d 1246, 1247 (Fla. 3d DCA 2001). In *Robinson*, the Third District held that even if it is a “fact” for purposes of *Apprendi*, *Apprendi* “still does not apply” because *Apprendi* is only “triggered by a ‘fact that increases the penalty for a crime beyond the prescribed statutory maximum ...’” whereas this subsection provides the court the option “to stay within the ordinary statutory maximum, not to increase it.” *Id.* (emphasis included) (internal citations omitted).

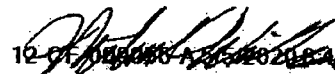
The Court recognizes Defendant’s citation to *Brown*, but does not find that it applies to Defendant’s case. Specifically, the Court finds *Brown* held that Section 775.082(10) was unconstitutional because it allowed the court, rather than a jury, to determine whether the defendant presented a danger to the public. See *Brown*, 260 So. 3d at 150. Under Section 775.082(10), if the court determined that the defendant did present a danger to the public, it could increase the statutory maximum nonstate prison sanction. *Id.* The Supreme Court determined this violated *Apprendi* and *Blakley*. *Id.* However, unlike Section 775.082(10), the violent career criminal statute does not allow for the Court to increase a defendant’s maximum sentence based on a “dangerousness” finding; rather, it only allows the Court to refrain from sentencing the defendant

as a violent career criminal if the Court determines "that it is not necessary for the protection of the public to sentence the defendant as a violent career criminal." § 775.084(3)(c)5., Fla. Stat. (2012). Accordingly, *Brown* does not entitle Defendant to the relief he seeks. Therefore, Defendant's motion must be denied.

It is therefore **ORDERED AND ADJUDGED** that Defendant's "Motion to Correct Illegal Sentence" is hereby **DENIED**.

Defendant has thirty days within which to appeal.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this ____ day of May, 2020.


12-CF-009056-A 5/5/2020 8:48:07 PM
12-CF-009056-A 5/5/2020 8:48:07 PM

MICHAEL WILLIAMS, Circuit Judge

Attachments:

Verdict Form
Judgment and Sentence
Mandates
Amended Sentence
Motion to Correct Illegal Sentence

Copies to:

Marcus Snipes, DC#: 528259
Mayo Correctional Institution – Annex
8784 US Highway 27 West
Mayo, Florida 32066-3458

Assistant State Attorney, Division D

Appendix C. – Order of the state appeals court denying rehearing.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT, POST OFFICE BOX 327, LAKELAND, FL 33802-0327

March 11, 2021

CASE NO.: 2D20-1760

L.T. No.: 12-CF-9056

MARCUS SNIPES

v.

STATE OF FLORIDA

Appellant / Petitioner(s),

Appellee / Respondent(s).

BY ORDER OF THE COURT:

Appellant's motion for rehearing and motion for written opinion are denied.

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

Served:

ATTORNEY GENERAL, TAMPA
CAROLYN MARIE SNURKOWSKI, A. D.
A. G.
CINDY STUART, CLERK

C. SUZANNE BECHARD, A.A.G.
MARCUS SNIPES

ag

Mary Elizabeth Kuenzel

Mary Elizabeth Kuenzel
Clerk



Appendix D. – Petitioner’s motion for rehearing to the state appeals court.

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT

MARCUS SNIPES,
Appellant,

v.

Case No. 2D20-1760

STATE OF FLORIDA,
Appellee.

MOTION FOR REHEARING
and
MOTION FOR WRITTEN OPINION

The Appellant, Marcus Snipes, respectfully moves this Honorable Court for rehearing and for a written opinion of its decision to per curiam affirm the circuit court's denial of his motion to correct illegal sentence filed under Florida Rule of Criminal Procedure 3.800(a).

1. Mr. Snipes first points out that, contrary to the trial court's ruling, his claim of an illegal sentence is cognizable in a motion to correct illegal sentence. See *Plott v. State*, 148 So.3d 90, 91 (Fla. 2014) ("We conclude that a claim of error under Apprendi¹ and Blakely² is cognizable in a rule 3.800(a) motion.").

¹ *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

² *Blakely v. Washington*, 542 U.S. 296 (2004).

2. As ground for rehearing, Mr. Snipes calls this Court's attention to the argument in his 3.800(a) motion that there is no difference for *Apprendi* purposes between an adjudicative fact stated in the positive versus the same fact stated in the negative. The only difference is who bears the burden for proving or disproving the fact. Simply adding "not" in front of an adjudicative fact does not take the fact out of the purview of *Apprendi*.

3. To illustrate with propositional logic: If the proof of fact "A" is necessary for an increased sentence "B", then the positive finding of A means an increased sentence B. Stated as a logical proposition: If A, then B. The converse of this proposition is: If not A, then not B. So if fact A is disproved, that is, negated, then there is not an increased sentence B. These two propositions are logical equivalents.

4. With this illustration, Mr. Snipes submits that the negative fact of "not necessary for the protection of the public" is the same as the positive fact of "necessary for the protection of the public."

5. The point here is that the legislature cannot duck the requirements of *Apprendi* and family by framing an adjudicative fact in the negative, that is, by adding the word "not" in front of the fact.

6. In Mr. Snipes' case, the trial court sentenced him under the violent career criminal statute to 32 years imprisonment with a 30 year minimum mandatory for possession of a firearm by a convicted felon, a second degree felony with a statutory maximum of 15 years prison. However, if Mr. Snipes proved and the trial court found under the opt-out clause, section 775.084(4)(e), Florida Statutes (2012), that it was not necessary for the protection of the public to sentence him to extended imprisonment, then he would only be subject to the 15 year statutory maximum for a second degree felony. Mr. Snipes claim is that this section is unconstitutional because it placed the burden on him to prove the fact of "not necessary for the protection of the public." He argued that framing the fact in the negative did not take it out of *Apprendi*.

7. Mr. Snipes has not been able to find any decisions that have addressed the question raised by his argument: whether framing a fact necessary to an increased sentence in the negative cures any *Apprendi* infirmity.

8. The supreme court in *Brown v. State*, 260 So.3d 147 (Fla. 2018) suggested, without deciding or analysis, that the legislature could avoid any constitutional problems by framing an adjudicative fact in the negative. In *Brown* the supreme court held that section 775.082(10),

Florida Statutes (2015), was unconstitutional because it “requires the court, not the jury, to find the fact of dangerousness to the public that is necessary to increase the statutory nonstate prison sanction.” *Id.*, 148. The supreme court, however, suggested in dicta that “it would have been possible for the legislature to have written the statute as a ‘mitigation statute’ giving the court discretion to impose up to five years unless the defendant proved non-dangerousness, the legislature did not do so. *Id.*, 150.

9. The problem with the supreme court’s suggestion is that it placed the burden on the defendant to disprove the adjudicatory fact of dangerousness to the public. This is not allowed. The legislature cannot duck *Apprendi* by framing an adjudicative fact in the negative and switching the burden of proving that negative fact to the defendant.

10. In *Robbinson v. State*, 784 So.2d 1246 (Fla. 3rd DCA 2001), the Third District held that “the fact of not necessary for the protection of the public” was not an adjudicative fact within the meaning of *Apprendi* because the finding of that fact allowed the court to stay within the ordinary statutory maximum—not exceed it. There was no discussion in the opinion, however, of whether framing that fact in the negative was permissible under *Apprendi*.

11. Neither of these decisions discussed the question raised by Mr. Snipes of whether the legislature could frame a fact necessary to an increased sentence in the negative, such as by adding "not" in front of "necessary for the protection of the public", so as to take it out of Apprendi's compass.

12. With no cases directly addressing this question, Mr. Snipes submits that it would be an opportune time for this Court to consider the question in a written opinion.

ACCORDINGLY, Mr. Snipes would ask this Court to grant his motion for rehearing and grant his motion for a written opinion.

Respectfully submitted,

Marcus Snipes, DC# 528259
Mayo Correctional Institution Annex
8784 U.S. Highway 27 West
Mayo, FL 32066-3458

CERTIFICATE OF MAILING

I certify I placed this MOTION FOR REHEARING and MOTION FOR WRITTEN OPINION_in the hands of an institution legal mail official for mailing to:

The Honorable Mary Elizabeth Kuenzel, Clerk
Second District Court of Appeal
P. O. Box 327
Lakeland, FL 33802-0327

Attorney General
3507 E. Frontage Road, Suite 200
Tampa, FL 33607-7013

on this _____ day of February 2021.

Marcus Snipes, DC# 528259
Mayo Correctional Institution Annex
8784 U.S. Highway 27 West
Mayo, FL 32066-3458

Appendix E. – Petitioner’s motion to correct illegal sentence

PROVIDED TO MAYO CORRECTIONAL INSTITUTION
ON 9-12-19 (DATE) FOR MAILING
(STAFF INITIAL) PP (STAFF INITIAL) SS

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

STATE OF FLORIDA
Plaintiff

v.

Case No. 12-CF-009056

MARCUS ADAM SNIPES
Defendant.

CLERK OF
CIRCUIT COURT
2019 SEP 16 AM 9:21
COURTS

MOTION TO CORRECT ILLEGAL SENTENCE

The Defendant, Marcus Adam Snipes, respectfully moves this Court under
Florida Rule of Criminal Procedure 3.800(a) to correct his illegal sentence.

As ground for granting the motion:

Mr. Snipes' 32 year prison sentence with a 30 year mandatory minimum term under the violent career criminal statute is illegal because the statute placed the burden on Mr. Snipes to prove that it was not necessary for the protection of the public to exceed the statutory maximum for his crime.

1. The State of Florida filed an information charging Mr. Snipes under section 790.23(1), Florida Statutes (2012) with the offense of being a felon in possession of a firearm. The State alleged the offense occurred on May 25, 2012.
2. The State served notice of its intent to seek enhanced sentence under the habitual felony offender and violent career criminal statutes.
3. Mr. Snipes was convicted of the offense following a jury trial.

4. At the sentencing hearing, this Court determined that Mr. Snipes qualified for designation as a violent career criminal. He was sentenced to 32 years prison with a minimum mandatory of 30 years.

5. This Court stated that “for the necessary protection of the public you do qualify for sentencing as a violent career criminal.”

6. The Second District affirmed. *Snipes v. State*, 166 So.3d 784 (Fla. 2nd DCA 2014) (Case No. 2D13-15). The mandate issued July 29, 2014.

ARGUMENT

Mr. Snipes’ 32 year prison sentence with a 30 year mandatory minimum term under the violent career criminal statute is illegal because the statute placed the burden on Mr. Snipes to prove that it was not necessary for the protection of the public to exceed the statutory maximum for his crime.

Mr. Snipes’ 32 year prison sentence with a 30 year mandatory minimum term under the violent career criminal statute is illegal because it violated the Jury Trial guarantee of the Sixth and Fourteenth Amendments and the Due Process clause of the Fourteenth Amendment to the United States Constitution.

A jury convicted Mr. Snipes for the crime of being a felon in possession of a firearm. That crime is a second degree felony, § 790.23(1), Fla. Stat. (2012), carrying a maximum sentence of 15 years imprisonment. § 775.082(3)(c), Fla. Stat. (2012).

This Court, however, found that Mr. Snipes qualified for sentencing as a violent career criminal. Under the violent career criminal statute, § 775.084(4)(d)2, Fla. Stat. (2012), this Court was authorized to exceed the 15 year statutory maximum for second degree felonies and sentence Mr. Snipes “for a term of years not exceeding 40, with a mandatory minimum term of 30 years imprisonment,” This Court sentenced Mr. Snipes to 32 years prison with a mandatory minimum term of 30 years.

This Court, however, had the option under the exemption clause to exempt Mr. Snipes from extended imprisonment as a violent career criminal. The exemption clause, section 775.084(4)(e), Fla. Stat. (2012) provided:

If the court finds, pursuant to paragraph (3)(a) or paragraph (3)(c), that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender, a habitual violent felony offender, or a violent career criminal, with respect to an offense committed on or after October 1, 1995, sentence shall be imposed without regard to this section.

Thus, had this Court found under the exemption clause that it was not necessary for the protection of the public to sentence Mr. Snipes to an extended term of imprisonment, this Court would have had to sentence Mr. Snipes within the statutory maximum for second degree felonies, which is 15 years prison. The finding of necessity for public protection is a fact that kept this Court from exceeding the statutory maximum sentence for his crime.

The Supreme Court of the United States in *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000), held that “other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond reasonable doubt.” In *Robbinson v. State*, 784 So.2d 1246 (Fla. 3rd DCA 2001), the district court considered whether the fact of “not necessary for the protection of the public” was “an adjudicatory fact within the meaning of *Apprendi*.” The district court held it was not because

Apprendi is triggered by a “fact that increases the penalty for a crime beyond the prescribed statutory maximum” The trial court’s option under subsection 775.084(4)(c) to impose a non-habitual offender sentence is an option to stay within the ordinary statutory maximum, not to increase it.

Id., 1247.

In *Brown v. State*, 260 So.3d 2018 (Fla. 2018), the state supreme court held that section 775.082(10), Florida Statutes, violated the jury trial guarantee of the Sixth Amendment to the United States Constitution, as interpreted by *Apprendi* and *Blakely*¹, where the statute required the court—and not the jury—to make the finding of dangerousness to the public. Section 775.082(10), Florida Statutes states:

If a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony as defined in 776.08, and excluding

¹ *Blakely v. Washington*, 542 U.S. 296 (2004)

any third degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.

The supreme court determined that this section “unambiguously sets the statutory maximum penalty, for *Apprendi* purposes as defined by *Blakely*, as a ‘nonstate prison sanction’.” *Id.*, 150. The supreme court added “it would have been possible for the Legislature to have written this statute as a ‘mitigation statute,’ giving the court discretion to impose up to five years unless the defendant proves non-dangerousness...” *Id.*

The legislature cannot avoid *Apprendi*, however, by writing a statute as a “mitigation statute” so that a fact that increases a sentence beyond the statutory maximum is framed in the negative. The decision of the United States Supreme Court in *Mullaney v. Wilbur*, 421 U.S. 684 (1975), supports this proposition.

In *Mullaney*, the habeas Petitioner Wilbur had been convicted of murder in Maine and sentenced to a mandatory term of life imprisonment. *Id.*, 685. Under Maine law at the time, a defendant charged with the crime of murder is presumed to have acted with malice aforethought. *Id.*, 686. However, if the defendant proves by the preponderance of the evidence that he had acted in the heat of passion upon sudden provocation, then the crime of murder is reduced to

manslaughter with a maximum sentence of 20 years prison. *Id.*, 686-88. The Court held this scheme violated due process. *Id.*, 703-04. *Mullaney*, thus, illustrates that the negative fact of the absence of malice was a fact that could be proved by showing heat of passion.

In Mr. Snipes' case, the violent career criminal statute effectively placed the burden on Mr. Snipes to prove that it was not necessary for the protection of the public to sentence him to an extended term of confinement. By analogy to *Mullaney*, this statutory scheme, in which the burden of proof is shifted to Mr. Snipes, is unconstitutional.

The fact of "not necessary for the protection of the public" stated in the negative is, in effect, no different from the fact of "necessary for the protection of the public" stated in the positive. The legislature cannot avoid the twin pillars of jury factfinding and proof beyond reasonable doubt by simply adding the word "not" in front of a fact that would otherwise increase the penalty for a crime beyond the statutory maximum. The fact of "necessary for public protection"—whether stated in the negative or in the positive—is "a fact that increase the penalty for a crime beyond the prescribed statutory maximum." *Apprendi*, above.

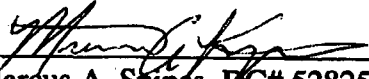
Here, the prescribed statutory maximum for Mr. Snipes's crime of being a felon in possession of a firearm was 15 years prison. The violent career criminal statute, however, increased that penalty to 40 years prison with the requirement

that this Court impose a minimum mandatory term of 30 years prison. However, if Mr. Snipes proved that it was not necessary for the protection of the public to exceed the prescribed statutory maximum for his crime, then his sentence would have been no more than 15 years prison. Mr. Snipes's sentence of 30 years prison with a 30 year minimum mandatory violates *Apprendi*.

CONCLUSION

Mr. Snipes asks this Court to declare the violent career criminal statute unconstitutional to the extent that the statute shifted the burden on him to prove that it was not necessary for the protection of the public to exceed the prescribed statutory maximum for his crime.

Respectfully submitted,



Marcus A. Shipes, DC# 528259
Mayo Correctional Institution Annex
8784 U.S. Highway 27 West
Mayo, FL 32066-3458

CERTIFICATE OF SERVICE

I certify I placed this MOTION TO CORRECT ILLEGAL SENTENCE in
the hands of an institution legal mail official for mailing to:

Clerk of Court
Thirteenth Judicial Circuit Court - Hillsborough County
P. O. Box 1110
Tampa, FL 33601-1110

State Attorney
419 North Pierce Street
Tampa, FL 33602-4022

on this 12TH day of September 2019.



Marcus Adam Snipes, DC# T528259
Mayo Correctional Institution Annex
8784 U.S. Highway 27 West
Mayo, FL 32066-3458

Appendix F. – Petitioner’s sentencing scoresheet.

Rule 3.992(a) Criminal Punishment Code Scoresheet

The Criminal Punishment Code Scoresheet Preparation Manual is available at: <http://www.dc.state.fl.us/pd/psc/cpcmanual.html>

1. DATE OF SENTENCE	2. PREPARER'S NAME J. L. WRIGHT	3. COUNTY HILLSBOROUGH	4. SENTENCING JUDGE	
5. NAME (LAST, FIRST, MIDDLE) SNIPES, MARCUS, A.	6. DOB 03/16/1978	8. RACE WHITE	10. PRIMARY OFF. DATE 05/25/2012	12. PLEA ☒ PLEA ☐ TRIAL
	7. DC #	9. GENDER Male	11. PRIMARY DOCKET # 12 CF-9056	

FILED

DEC 13 2012

I. PRIMARY OFFENSE:

FELONY DEGREE	F.S.#	DESCRIPTION	OFFENSE LEVEL	POINTS
2	790	Felon in possession of firearm (Felon in possession)	5	28

(Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=112)
Prior capital felony types Primary Offense points ☐

**PAT FRANK
CLERK OF CIRCUIT COURT**

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

DOCKET #	FELONY DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY A/S/C/R	COUNTS	POINTS	TOTAL
----------	---------------	-------	---------------	-----------------	--------	--------	-------

DESCRIPTION

DESCRIPTION

DESCRIPTION

DESCRIPTION

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=26, 8=37, 9=48, 10=58)

Prior capital felony types Additional Offense points ☐

Supplemental page points

II. 0

III. VICTIM INJURY:

	Number	Total		Number	Total
2nd Degree Murder	240 X	0	Slight	4 X	0
Death	120 X	0	Sex Penetration	50 X	0
Severe	40 X	0	Sex Contact	40 X	0
Moderate	18 X	0			

III. 0

IV. PRIOR RECORD: Supplemental page attached ☒

FELONY DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY A/S/C/R	DESCRIPTION	NUMBER	POINTS	TOTAL
1 PBL	812	9		Robbery with firearm	1	X 23	= 23
2	944	6		Sexual Battery	1	X 9	= 9
3	790	5		Carrying weapon for felon	1	X 3.6	= 3.6
3	843	5		Resist or Obstruct	1	X 3.6	= 3.6
3	784	4		INTOXICATED	2	X 2.4	= 4.8
3	810	4		Unlawful carrying	2	X 2.4	= 4.8
3	810	4		Possession of a Firearm	1	X 2.4	= 2.4
3	812	4		SEXUAL BATTERY	1	X 2.4	= 2.4
3	787	4		False Imprisonment	1	X 2.4	= 2.4

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

Supplemental page points

IV. 60.7

Page 1 Subtotal:

88.7

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after



12-CF-009006 F17-0170002246-037

SHIPES MARCUS ADAM 3 PAGES

S.D. P1222A 12/13/2012 P600F

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Page 14

NAME (LAST, FIRST, MI)
SNIPES, MARCUS A

DOCKET #
12-CF-9058

Page 1 Subtotal **88.7**

V. Legal Status Violation = 4 Points

- ☐ Escape ☐ Fleeing ☐ Failure to Appear ☐ Supervised bond ☐ Recarceration ☐ Pretrial intervention or diversion program
☐ Court imposed post prison release community supervision resulting in a conviction

V. _____

VI. Community Sanction violation before the court for sentencing

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

VI. _____

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 points

VII. _____

VIII. Prior Serious Felony = 30 points

VIII. _____

Subtotal Sentence Points **88.7**

IX. Enhancements (only if the primary offense qualifies for enhancement)

Life and Death	Drug Trafficker	Motor Vehicle Theft	Control of Firearm	Domestic Violence as the Predicate for Related Offense
☐ x 1.5 ☐ x 2.0 ☐ x 2.5	☐ x 1.5	☐ x 1.5	☐ x 1.5	☐ x 1.5

Enhanced Subtotal Sentence Points IX. **0**

TOTAL SENTENCE POINTS **88.7**

SENTENCE COMPUTATION

If total sentence points are less than or equal to 44, the lowest permissible sentence is any non-state prison sanction. If the total sentence points are 22 points or less, see Section 775.082(10) Florida Statutes, to determine if the court must sentence the offender to a non-state prison sanction.

If total sentence points are greater than 44:

88.7 minus 26 = 61 x .75 = 45.525
total sentence points lowest permissible prison sentence in months

If total sentence points are 60 points or less (and court makes findings pursuant to both Florida Statutes 948.20 and 397.334(3)) the court may place the defendant into a treatment-based drug court program.

The maximum sentence is up to the statutory maximum for the primary and any additional offenses as provided in s 775.082, F.S., unless the lowest permissible sentence under the code exceeds the statutory maximum. Such sentences may be imposed concurrently or consecutively if the total sentence points are greater than or equal to 363, a life sentence may be imposed.

15
maximum sentence in years

TOTAL SENTENCE IMPOSED

☒ State Prison ☐ Life 32 years
☐ County Jail ☐ Time Served
☐ Community Control
☐ Probation ☐ Modified

Please check if sentenced as ☐ habitual offender ☐ habitual violent offender ☐ violent career offender ☐ prison releasee reoffender, or a ☒ mandatory minimum applies 30 years

☐ Mitigated Departure ☒ Plea Bargain ☐ Prison Diversion Program
Other Reason _____

JUDGE'S SIGNATURE

John Mordy

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

Rule 3.992(b) Supplemental Criminal Punishment Code Scoresheet

NAME (LAST, FIRST, MI) SNIPES, MARCUS A	DOCKET # 12-CF 9056	Date of Sentence
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II. ADDITIONAL OFFENSE(S):

DOCKET #	FEL/MIN DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY	COUNTS	POINTS	TOTAL
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DESCRIPTION:

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=16, 7=20, 8=37, 9=46, 10=58)

IV. PRIOR RECORD:

II. 0

FEL/MIN DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A/S/C/R	DESCRIPTION	NUMBER	POINTS	TOTAL
3	B12	2		GI 3rd	1	X 0.8	= 0.8
3	B43	2		2ndly impersonating an officer	1	X 0.8	= 0.8
3	B12	1		2ndly PT	1	X 0.5	= 0.5
M	Various	M		Various	13	X 0.2	= 2.6

(Level - Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=28)

IV. 4.7

Reasons for Departure - Mitigating Circumstances

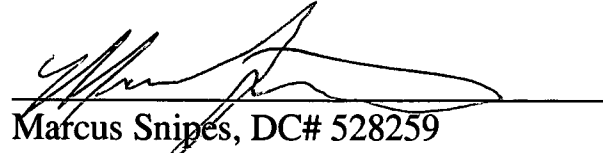
(reasons may be checked here or written on the scoresheet)

- ☐ Legitimate, uncoerced plea bargain
- ☐ The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- ☐ The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- ☐ The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction, or for a physical disability, and the defendant is amenable to treatment.
- ☐ The need for payment of restitution to the victim outweighs the need for a prison sentence.
- ☐ The victim was an intimate, willing participant, oppressor, or provoker of the incident.
- ☐ The defendant acted under extreme duress or under the domination of another person.
- ☐ Before the identity of the defendant was determined, the victim was substantially compensated.
- ☐ The defendant cooperated with the State to resolve the current offense or any other offense.
- ☐ The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.
- ☐ At the time of the offense the defendant was too young to appreciate the consequences of the offense.
- ☐ The defendant is to be sentenced as a youthful offender.
- ☐ The defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program.
- ☐ The defendant was making a good faith effort to obtain or provide essential assistance for an individual experiencing a drug-related overdose.

Pursuant to 921.0026(3) the defendant's substance abuse or addiction does not justify a downward departure from the lowest possible sentence, except for the provision of 921.0026(2)(m).

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after October 1, 1989, and subsequent versions.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Marcus Snipes', is written over a horizontal line.

Marcus Snipes, DC# 528259
Mayo Correctional Institution Annex
8784 U.S. Highway 27 West
Mayo, FL 32066-3458