

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA

CASE NO.: 2012-CF-000129
DIVISION 50: Judge J. David Walsh

v.

WILLIAM CARSON MERRILL,

Defendant.

INTERIM ORDER ON DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

THIS MATTER came before the Court for consideration of the Defendant's Motion for Postconviction Relief filed by counsel on July 2, 2015, pursuant to Florida Rule of Criminal Procedure 3.850. The Court, having reviewed the motion, the State's Response, Defendant's Reply, the court file, and being fully advised in the premises, hereby finds as follows:

Procedural History

On February 21, 2012, Defendant accidentally shot and killed his wife. On March 2, 2012, Defendant was charged by Information with one count of manslaughter with a firearm and one count of felon in possession of a firearm, in violation of sections 775.087, 782.07(1), and 790.23(1), (2), Florida Statutes (2012). Exhibit A. Defendant entered an open plea of no contest to the charge of manslaughter with a firearm, a first degree felony, on October 1, 2012. Exhibit B. The State dismissed the second count by *nolle prosequi*. On October 29, 2012, the Court sentenced Defendant to twenty-five years in prison. Exhibit C. Defendant filed a Motion for Reduction/Modification of Sentence, which was denied by the Court on November 20, 2012. Defendant was represented by Assistant Public Defender James Valerino, until Assistant Regional Conflict Counsel Brett C. Kocijan was appointed on June 7, 2012.

Defendant appealed to the Fifth District Court of Appeal, case number 5D13-1150, requesting review of the sentence imposed by the trial court, the failure for a valid factual basis for the plea, the voluntariness of the plea, and any other errors in the case. Exhibit D. Defendant's judgment and sentence were *per curiam* affirmed, with Mandate issued on October 10, 2014. Exhibit E.

On July 2, 2015, Defendant timely filed the present Motion for Postconviction Relief, requesting that the Court vacate his judgment, conviction, and sentence. The State filed a Response on October 6, 2015. Exhibit F. Defendant moved for leave to file a reply on October 7, 2015, and filed a reply on December 2, 2015.

Legal Analysis

In the present motion, Defendant alleges seven grounds, all premised on allegations of ineffective assistance of counsel. The Court addresses each of these claims separately below.

To succeed on a claim of ineffective assistance of counsel, a defendant must demonstrate (1) that counsel's performance fell below that of reasonably competent counsel, and (2) that there is a reasonable probability that, but for counsel's deficient performance, the outcome of the proceedings would have been different. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). When considering claims for ineffective assistance of counsel, courts must adhere to a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *Id.* at 689. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* To show prejudice, the *Strickland* standard requires, "a demonstration that the result of the proceeding has been rendered unreliable, and our confidence in the outcome of a

proceeding has been undermined by counsel's deficiency.” *Thompson v. State*, 990 So. 2d 482, 490 (Fla. 2008).

When dealing with a negotiated plea agreement, the *Strickland* standard still applies: counsel’s advice must be within the range of competence of criminal attorneys, and there must be a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty or no contest and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Stano v. State*, 520 So. 2d 278, 280 n. 2 (Fla. 1988).

A defendant must prove both prongs of the analysis and overcome the strong presumption that counsel’s conduct was not deficient. *Strickland*, 466 U.S. at 689-90. Because defendants must satisfy both prongs of the *Strickland* standard, when a defendant fails to satisfy one prong, it is not necessary to determine whether he or she has satisfied the other prong. *Stewart v. State*, 801 So. 2d 59, 65 (Fla. 2001). A claim warrants an evidentiary hearing only where the defendant alleges specific facts, not conclusively rebutted by the record, that demonstrate deficient performance by counsel that resulted in prejudice. *Mendyk v. State*, 592 So. 2d 1076, 1079 (Fla. 1992); *see also, Turner v. State*, 570 So. 2d 1114, 1114-15 (Fla. 5th DCA 1990). “[W]hen *the record* establishes that the allegations that support a motion for postconviction relief are untrue, then it is proper to deny the motion without a hearing.” *Mullins v. State*, 850 So. 2d 676, 677 (Fla. 4th DCA 2003), *citing Davis v. State*, 257 So. 2d 79, 80 (Fla. 2d DCA 1972).

Ground One

In Ground One, Defendant alleges that his plea was involuntary because of his counsel’s misadvice, and but for that advice, he would not have entered his plea of no contest. He cites five instances where he alleges that his counsel provided erroneous advice.

First, Defendant states that, based upon his counsel's advice, he believed that he would receive a probationary sentence if he pled guilty to the charge of manslaughter. Second, Defendant alleges that counsel advised Defendant to plea to the charges he "would most likely be unsuccessful at trial." Third, Defendant alleges that counsel failed to inform him about the photographs that the State obtained from his phone. Fourth, Defendant alleges that counsel failed to go over the elements of either of his charges. The Court orders an evidentiary hearing on these allegations.

Finally, Defendant alleges that counsel failed to advise him of the penalties he would be facing on each charge. This allegation is conclusively refuted by the record. *State v. Leroux*, 689 So. 2d 235, 236 (Fla. 1996). During the plea colloquy, the Court questioned both Defendant and his counsel regarding the two plea offers by the State: (1) Defendant would plea guilty to manslaughter as a second-degree felony and possession of a firearm by a convicted felon, or (2) Defendant would plea guilty to only the first charge of manslaughter as a first degree felony, which is the plea agreement that Defendant chose. Exhibit B at 9-10. Defendant's counsel stated that he and Defendant discussed scoresheets for both scenarios, and Defendant was given a copy of both scoresheets. *Id.*; Exhibit G. Therefore, the Court finds this portion of Ground One to be summarily denied.

Ground Two

In Ground Two, Defendant alleges that he received ineffective assistance of counsel because counsel failed to address Defendant's conflict with the presiding judge. Defendant avers that he had a well-founded fear that he would not receive a fair and impartial trial in his criminal case because Judge Raul Zambrano had presided over Defendant's termination of parental rights

case. Defendant asserts that his counsel should have filed a motion to disqualify Judge Zambrano.

The Court adopts and incorporates the State's Response to Ground Two. Exhibit F. The Court finds that Defendant has not demonstrated that Judge Zambrano showed *personal* bias or prejudice against Defendant or that Defendant had an *objectively reasonable* fear of judicial bias. *Santisteban v. State*, 72 So. 3d 187, 193-94 (Fla. 4th DCA 2011) (“[t]he fact that the judge has made adverse rulings against the defendant in the past is not an adequate ground for recusal, nor is the mere fact that the judge has previously heard the evidence.”); *accord*, *State v. Shaw*, 643 So. 3d 1163, 1164-65 (Fla. 4th DCA 1994) (finding a motion to disqualify legally insufficient where a defendant alleged bias from a county judge who had previously sentenced her in a different case to the maximum sentence). Therefore, trial counsel cannot be found deficient for failing to file a meritless motion. Ground Two is summarily denied.

Ground Three

In Ground Three, Defendant alleges that he received ineffective assistance of counsel for counsel's failure to file a motion to suppress Defendant's phone and the photographs that the Florida Department of Law Enforcement discovered on his phone. Defendant alleges that the phone was taken without his consent, despite his written consent to a search of his home for any evidence that has a bearing on the investigation. Defendant's Motion, Appendix A. Ground Three shall be set for an evidentiary hearing.

Ground Four

In Ground Four, Defendant alleges that he received ineffective assistance of counsel for counsel's failure to object to prosecutorial misconduct during the sentencing hearing. Defendant points to one instance where the State allegedly made unreasonable conclusions that were not

substantiated by any evidence; that is, the State claimed that photographs obtained from Defendant's phone showed Defendant pointing at his wife's head the same weapon that Defendant used to kill her. Defendant cites to *Reese v. State*, 639 So. 2d 1067 (Fla. 4th DCA 1994), for the proposition that "unsubstantiated allegations of wrongdoing" were improperly introduced and swayed the Court to sentence Defendant to an unreasonable sentence.

The Court first notes that Defendant's sentence was not "unreasonable" by law. Defendant was advised during his plea hearing that he was entering into an open plea. See *Wagner v. State*, 895 So. 2d 453, 457 (Fla. 5th DCA 2005) (explaining, "[w]hen a defendant enters an open plea, he or she indicates a willingness to accept anything up to and including the maximum possible sentence") (internal citations omitted). Defendant's scoresheet, which was explained to him during his plea hearing, recommends a minimum of 128 months, with a statutory maximum of thirty years. Exhibit G; Exhibit B at 10-11; see also, Exhibit H at 5-6. Defendant was sentenced to a term of twenty-five years. Exhibit C.

The Court also disputes Defendant's statement that, "without the State's inappropriate allegations, the Court *would have been obligated* to sentence [Defendant] to either a guidelines sentence or grant trial counsel's request of a downward departure," due to the numerous defense character witnesses. Defendant's Motion at 16 (emphasis added). The Court was not *obligated* to give Defendant any sentence nor was it *obligated* to depart from the recommended sentence. *Wagner*, 895 So. 2d at 457.

Prosecutorial misconduct in the penalty phase must be egregious to warrant vacating the sentence and remanding for a new penalty phase proceeding. *Garron v. State*, 528 So. 2d 353, 359 (Fla. 1988). In *Reese v. State*, the Fourth District of Appeal remanded for resentencing when, during the prior sentencing, the State raised instances where the defendant was implicated

in drug sting operations but not arrested. *Reese*, 639 So. 2d 1067, 1068 (Fla. 4th DCA 1994). However, “[t]he United States Supreme Court has held that it is not a violation of a defendant's constitutional rights to consider other relevant factors when determining an appropriate sentence.” *Dowling v. State*, 829 So. 2d 368, 371 (Fla. 4th DCA 2002), citing *Roberts v. United States*, 445 U.S. 552 (1980).

In the present case, Defendant admitted to owning a gun, pointing it at his wife, and pulling the trigger. Exhibit H at 75; Exhibit B at 11. The Court finds no prejudice because Defendant alleges only one instance during the State’s argument where it may have exaggerated the evidence by stating that the gun in the photograph was the one that was used to kill the victim. Further, there is no evidence that the Court relied on such evidence or argument in its sentencing. See Exhibit H at 78-79 (finding that Defendant “violated probable one of the most basic tenets of firearm ownership; that is whether loaded or unloaded, a firearm, it’s a dangerous thing. And you pointed it at the person you claim to love the most, and then you pulled the trigger, and then you took her life.”). Because the Court finds no prejudice, Ground Four is summarily denied.

Ground Five

In Ground Five, Defendant alleges that he received ineffective assistance of counsel because his counsel allowed him to plea to a charge where no factual basis existed. This allegation is refuted by the record. During Defendant’s plea hearing, the Court twice asked counsel whether there was a factual basis for the plea, and both times, counsel stipulated to a factual basis. Exhibit B at 8, 11. The Court found a factual basis in the record: “And I have reviewed the court file. I’m going to find there is a factual basis for the plea as well, based upon

the documents contained within the court file, including the complaint affidavit and arrest affidavit in this case.” Id. at 11; Exhibit I. Ground Five is summarily denied.

Ground Six

In Ground Six, Defendant alleges that he received ineffective assistance of counsel for counsel’s failure to object to the admission and in-court reading of a statement by the victim’s mother, Marilyn Canady. Defendant asserts that the Victim Advocate Ms. Rebstini, who read the statement, was not sworn under oath, and there is no evidence in the transcript that the Ms. Canady transmitted her statement to the State Attorney under oath. Also, Ms. Canady’s statement included the information that Defendant was a convicted felon and had prior allegations of domestic violence against the victim, and counsel should have objected.

In Florida, victims are entitled to a voice during a defendant’s sentencing. Section 921.143(1), Florida Statutes (2012), states that:

At the sentencing hearing, and prior to the imposition of sentence upon any defendant ... who has pled guilty ... to any crime, ... the sentencing court shall permit ... the victim’s parent or guardian... if the victim has died from causes related to the crime, to: (a) Appear before the sentencing court for the purpose of making a statement under oath for the record; and (b) Submit a written statement under oath to the office of the state attorney, which statement shall be filed with the sentencing court.

See also, Art. I, § 16(b), Fla. Const. (“Victims of crime ... are entitled to the right to be informed, to be present, and to be heard when relevant, at all crucial stages of criminal proceedings...”).

The Court finds no prejudice from the failure to place either Ms. Rebstini or Ms. Canady under oath. If Ms. Canady had been sworn prior to giving her statement to the State Attorney, the Court is not persuaded that her statement would have been any different. Further, there is no evidence that the Court relied on Ms. Canady’s statement. Ms. Canady requested that

the Court sentence Defendant to the maximum sentence available at law, and the Court declined to do so. Exhibit H at 5-6, 63, 78-79.

The Court also finds no prejudice from information in Ms. Canady's statement regarding Defendant's prior record: the Court was cognizant of Defendant's status as a felon due to the Information and cognizant of Defendant's prior record due to the scoresheet. Exhibits A, G. The allegations of gun possession were admitted by Defendant. See Exhibit H at 75. This evidence was properly considered by the Court during sentencing. *Norvil v. State*, 162 So. 3d 3, 8 (Fla. 4th DCA 2014), *rev. granted*, 168 So. 3d 227 (Fla. 2014); *Dowling v. State*, 829 So. 2d 368, 371 (Fla. 4th DCA 2002); *see, e.g.*, § 921.231, Fla. Stat. (2012); Exhibit B at 12 (ordering a presentence investigation report); Exhibit G; Exhibit H at 75.

The case *Reese v. State* cited by Defendant is distinguishable because, in that case, the State raised unsubstantiated allegations of arrests and attempted arrests without evidence in the record to support those allegations. *Reese*, 639 So. 2d 1067 (Fla. 4th DCA 1994). Here, the Court could consider Defendant's prior *convictions* and Defendant's admissions. Therefore, Ground Six is summarily denied.

Ground Seven

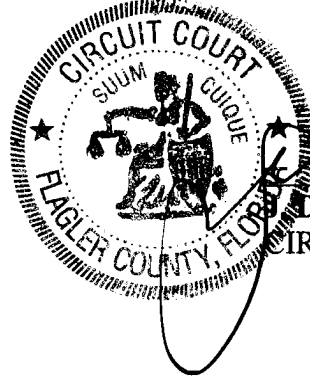
In Ground Seven, Defendant alleges that the errors by defense counsel combined to be considered as "cumulative error," and counsel's performance, when reviewed as a whole, resulted in a fundamentally unfair trial. The Court will reserve its ruling on this Ground until after the evidentiary hearing.

Therefore, it is **ORDERED AND ADJUDGED** that:

1. Grounds Two, Four, Five, and Six are DENIED;
2. Grounds One and Three shall be set for an Evidentiary Hearing by separate order; and
3. The Court reserves its ruling on Ground Seven until after the Evidentiary Hearing.

This is a nonfinal, nonappealable order. The Defendant has no right to file an appeal of the order until the entry of the final order. Fla. R. Crim. P. 3.850(k).

DONE and ORDERED in Chambers, Kim C. Hammond Justice Center, Bunnell, Florida
this 22 day of January, 2016.



DAVID WALSH
CIRCUIT COURT JUDGE

Copies To:

Chris Miller, Assistant State Attorney, Office of the State Attorney, 2446 Dobbs Road, St. Augustine, Florida 32086

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Exhibit A

CLASSIFICATION: FELONY

STATE OF FLORIDA

VS.

IN THE CIRCUIT COURT OF THE SEVENTH
JUDICIAL CIRCUIT, IN AND FOR FLAGLER
COUNTY, FLORIDA, IN THE YEAR TWO
THOUSAND TWELVE

CASE NO: 12-00129-CFFA

AGENCY: FCSO/12010-12

WILLIAM CARSON MERRILL

W/M; DOB: 03/22/1979 SS# [REDACTED]

INFORMATION

CHARGE(S):

MANSLAUGHTER WITH A FIREARM

POSSESSION OF FIREARM BY CONVICTED IN STATE FELON

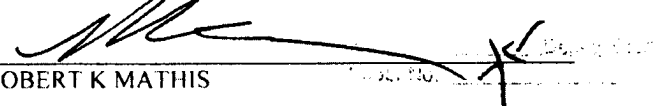
R.J. LARIZZA, State Attorney for the Seventh Judicial Circuit of the State of Florida and as such prosecuting attorney for this Court, in the name of and by the authority of the State of Florida charges that:

COUNT I: IN THAT WILLIAM CARSON MERRILL on or about February 21, 2012, in the County of FLAGLER and State of Florida, did then and there unlawfully and by own act, procurement or culpable negligence, kill STEFANIE L MERRILL by shooting her with a firearm, without lawful justification and under circumstances not constituting excusable homicide or murder, and in the course of commission of said offense did use a firearm, contrary to Florida Statute 782.07.1 & 775.087 (1 DEG FEL)

COUNT II: IN THAT WILLIAM CARSON MERRILL on or about February 21, 2012, in the County of FLAGLER and State of Florida, did, after having been convicted of a felony, knowingly own or be in the care, custody, possession, or control of a firearm, contrary to Florida Statute 790.23(1), (2 DEG FEL) (5)

MAR 05 2012

FOR THE STATE ATTORNEY



ROBERT K MATHIS
ASSISTANT STATE ATTORNEY
SEVENTH JUDICIAL CIRCUIT OF THE
STATE OF FLORIDA
BAR NUMBER 0174828

COUNTY OF FLAGLER

STATE OF FLORIDA

Personally appeared before me ROBERT K MATHIS Assistant State Attorney, for the Seventh Judicial Circuit of the State of Florida, known to me to be the foregoing prosecuting officer, who being duly sworn, says that the allegations set forth in the foregoing information are based upon facts that have been sworn to as true, and which, if true, would constitute the offense therein charged. Subscribed in good faith. Said facts based on testimony of material witnesses.

SWORN to and subscribed before me this 2nd day of March, 2012.

Submitted to the Clerk of the CIRCUIT Court, Seventh Judicial Circuit, in and For FLAGLER County, Florida, on the _____ day of March, 2012.


NOTARY PUBLIC AT LARGE
STATE OF FLORIDA



Exhibit B

ORIGINAL

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT, IN AND FOR FLAGLER COUNTY, FLORIDA

CASE NO.: 2012-CF-129

STATE OF FLORIDA

vs.

APPEAL - PLEA

WILLIAM MERRILL,
Defendant.

Paper No. 12 By CM Deputy Clerk

SEP 12 2013

FILED IN THE OFFICE OF THE CLERK OF CIRCUIT COURT Flagler County, Florida

* * * * *

**TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RAUL A. ZAMBRANO,
CIRCUIT COURT JUDGE**

(STENOGRAPHICALLY TRANSCRIBED VIA DIGITAL RECORDING)

* * * * *

DATE TAKEN: OCTOBER 1, 2012
TIME: COMMENCED AT 1:37:26 P.M.
CONCLUDED AT 1:46:51 P.M.
PLACE: KIM C. HAMMOND JUSTICE CENTER
1769 EAST MOODY BOULEVARD5
BUNNELL, FLORIDA
**STENOGRAPHICALLY
TRANSCRIBED BY:** LESLIE STILWELL
COURT REPORTER and NOTARY PUBLIC

* * * * *

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 Attorney for Defendant

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P R O C E E D I N G S

(Audio begins at 1:37:26 p.m.)

THE COURT: Are you here in the William Merrill case?

MR. MATHIS: I am, Judge. And I'm also --

THE COURT: Okay. Why don't we call that case first.

MR. KOCIJAN: Judge, subject to negotiations with the State, and this Court's approval, my client would like to enter a plea of no contest to manslaughter with a firearm.

And in discussing this with the State, what we'd like to do is order a PSI in this matter and set it for a sentencing date. But we do anticipate we probably would need a --

THE COURT: Okay.

MR. KOCIJAN: -- some time for the --

THE COURT: And it would be an open plea?

MR. MATHIS: Yes, sir.

THE COURT: All right. Let's have him sworn in.

THE CLERK: Please raise your right hand.
Do you swear or affirm that the testimony you're about to give is the truth, the whole truth,

1 and nothing but the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you.

4 THE COURT: Just give me one second until my
5 computer boots up.

6 Could you print me the information? I think
7 it's going to take me a little brief time to --

8 THE CLERK: Yes, sir.

9 THE COURT: -- get this computer working.

10 MR. MATHIS: I've got a copy, Judge.

11 THEREUPON,

12 WILLIAM MERRILL,

13 having been duly sworn by the clerk, testified upon his
14 oath as follows:

15 THE COURT: Okay. Can I get your full name,
16 sir?

17 THE DEFENDANT: William Carson Merrill.

18 THE COURT: And how old are you?

19 THE DEFENDANT: Thirty-three.

20 THE COURT: And the highest grade in school
21 that you have completed?

22 THE DEFENDANT: Senior.

23 THE COURT: Okay. I notice the information
24 has two offenses. One is Count I, manslaughter
25 with a firearm. Count II is possession of firearm

1 by a convicted felon.

2 MR. MATHIS: Judge, as part of the plea
3 agreement in this case, we've agreed to dismiss
4 that charge and not to file any other charge of
5 possession of firearm by a convicted felon, because
6 there were other incidents.

7 THE COURT: Okay. And then manslaughter with
8 a firearm, as far as I recall, does not carry a
9 minimum mandatory.

10 MR. KOCIJAN: Right.

11 MR. MATHIS: It does not, Judge.

12 THE COURT: Okay.

13 MR. MATHIS: (Indiscernible) felon not --
14 without minimum mandatory.

15 THE COURT: And it's not subject to the
16 10-20-life, either.

17 MR. MATHIS: No, sir, it's not.

18 THE COURT: Okay. All right. Again, tell me
19 the highest grade in school that you completed.

20 THE DEFENDANT: High school. Twelfth grade.

21 THE COURT: Okay. To Count I of the
22 information, as filed, is -- charge is manslaughter
23 with a firearm. That would be a first-degree
24 felony, pushable by up to 30 years in state prison
25 and/or a \$15,000 fine.

1 To that charge, how do you want to plea?

2 THE DEFENDANT: No contest.

3 THE COURT: Are you entering the plea of no
4 contest freely and voluntarily?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Did anyone threaten you, force you
7 or coerce you into entering the plea?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Did anyone promise you anything in
10 exchange for your plea?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Are you now under the influence of
13 any alcoholic beverages or controlled substances?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Are you under the care of a
16 psychiatrist, psychologist, or taking any
17 psychotropic medication at this time?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: By entering the plea of no
20 contest, you give up some very important rights,
21 chief among them is the right to maintain and
22 persist upon your plea of not guilty and to require
23 a trial in this case; to have an attorney appointed
24 to represent you during that trial; the right to
25 have the State prove you guilty beyond a reasonable

1 doubt at that trial; the right to testify in your
2 own defense, or the right to remain silent, if you
3 don't want to testify during your trial. Also, the
4 right to confront and cross-examine the State's
5 witnesses; to bring in your own witnesses and
6 compel their attendance at trial or hearing, if
7 necessary, if they're uncooperative. Also, you
8 give the right to appeal.

9 You give up all those rights because you're
10 pleaing no contest.

11 You understand that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: If you are not a United States
14 citizen, you could be subject to deportation,
15 Highway Safety and Motor Vehicle could suspended
16 your driving privileges based upon the plea. And
17 you also probably would lose your right to -- well,
18 you lose your driving privileges.

19 You understand that?

20 THE DEFENDANT: I didn't know that, no.

21 THE COURT: It's a possibility. I'm not
22 saying --

23 THE DEFENDANT: Okay.

24 THE COURT: -- that that's going to happen,
25 but that's a possibility.

1 Knowing all those things, you still want to
2 maintain your plea of no contest?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Is there a factual basis for the
5 plea?

6 MR. KOCIJAN: We'd stipulate to such as
7 contained in the court file, Your Honor.

8 THE COURT: Okay. I want to make sure that --
9 that there's a clear understanding before he --
10 before I accept the plea.

11 Number one, was there ever a plea offer made
12 to him?

13 MR. MATHIS: This was the plea offer, Judge.

14 THE COURT: There wasn't -- this is the plea
15 offer?

16 MR. MATHIS: This is the plea offer.

17 MR. KOCIJAN: Yes, sir.

18 THE COURT: Okay. All right. And then you
19 conveyed that plea offer to him?

20 MR. KOCIJAN: Yes, Your Honor. Just for the
21 record, there was two offers that were actually
22 made to my client. We've discussed both of those,
23 and that was essentially what it came down to
24 today, and that was negotiated with the State.

25 THE COURT: Okay. Were the plea offers made

1 in writing?

2 MR. MATHIS: I sent -- I did send an e-mail to
3 Mr. Kocijan, which contained both. It was an
4 alternative plea. He could either plea to
5 manslaughter in Count I as a second-degree felony,
6 and possession of a firearm by a convicted felon in
7 Count II. Or he could plea to the case as charged
8 in Count I.

9 THE COURT: No --

10 MR. MATHIS: He would have a 30-year exposure.

11 THE COURT: No -- no terms of years was
12 offered?

13 MR. MATHIS: No terms of years. No, sir.

14 THE COURT: Okay. All right. I just want to
15 make sure that he -- he -- this was conveyed to him
16 is that...

17 MR. KOCIJAN: Yes, Your Honor.

18 And what was stated is correct. I received an
19 e-mail. We discussed both scoresheets and looked
20 that over.

21 THE COURT: Okay. And then I want Mr. Merrill
22 to also be aware that because you're entering a
23 plea open to the Court -- it's almost always unwise
24 to do that, but it is your right -- and then your
25 exposure is anywheres from whatever the -- do we

1 have a scoresheet?

2 MR. MATHIS: I do, Judge.

3 THE COURT: Could you show it to him, please.

4 MR. MATHIS: I have --

5 THE COURT: Have he seen that?

6 MR. KOCIJAN: Yes, Your Honor.

7 And I believe he has a copy of both of the
8 proposed scoresheets with -- with -- depending on
9 the plea. They are a little bit different than the
10 two, but not by much.

11 THE COURT: Okay. Well, so long as he has
12 seen it.

13 Do you understand that -- let me take a look
14 at the scoresheet.

15 MR. MATHIS: We've got some -- we've got some
16 corrections on here, Judge.

17 MR. KOCIJAN: Yeah. We've --

18 MR. MATHIS: I believe it's 128 months is the
19 max -- is the minimum.

20 THE COURT: And you're aware of that? That
21 the scoresheet has a recommendation of 125 months.

22 MR. KOCIJAN: Point one. Yeah.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Which, in essence, is ten and a
25 half years on the minimum mand.

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And your exposure is anywhere
3 between zero and the maximum of 30 years.

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And that's what you want to do?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I will accept your plea, finding
8 that it's freely and voluntarily made. That
9 there's a...

10 Is there a factual basis for the plea?

11 MR. KOCIJAN: Yes, Your Honor. We'd
12 stipulate to such as contained in the court file
13 for the plea.

14 THE COURT: Okay. And I have reviewed the
15 court file. I'm going to find there is a factual
16 basis for the plea as well, based upon the
17 documents contained within the court file,
18 including the complaint affidavit and arrest
19 affidavit in this case.

20 I'm going to schedule a sentencing and order a
21 presentence investigation.

22 How much time do you need to prepare for
23 sentencing?

24 Well, how much time are you going to need for
25 the actual sentencing? Let's start with that.

1 MR. KOCIJAN: I would say at least a couple of
2 hours. I'd say, maybe, three hours, Judge.

3 THE COURT: Okay. And how about the State?

4 MR. MATHIS: I don't have that much, Judge.
5 I'll have some victim impact information from the
6 family, and perhaps law enforcement. But it
7 shouldn't take very long for the State's side.

8 MR. KOCIJAN: I -- I'd say two hours, just for
9 our side, Judge, to be fair. I think that'd be --

10 MR. MATHIS: That should be sufficient.

11 THE COURT: Okay.

12 THE CLERK: Because I was going to schedule it
13 for Mr. Kocijan's next pretrial, which is the
14 29th. I'm hoping that gives everybody enough
15 time, and then do it, like, at -- because the
16 docket shouldn't be very big, so either 2:00 or
17 2:30.

18 MR. MATHIS: That'd be fine with me.

19 MR. KOCIJAN: That'd be great.

20 THE COURT: All right. So --

21 THE CLERK: You want to set it --

22 THE COURT: -- presentence investigation is
23 ordered.

24 We need a PSI before October 29th, which is
25 exactly four weeks from today, so you can let the

1 Department of Corrections know.

2 THE CLERK: I've sent them an e-mail already.

3 MR. KOCIJAN: Thank you.

4 THE COURT: We will need the PSI done at least
5 by the 22nd.

6 Okay. So -- and then we'll see him back then.

7 MR. KOCIJAN: Thank you.

8 THE COURT: Thank you.

9 THE DEFENDANT: Thank you, Your Honor.

10 MR. MATHIS: I'm also filling in for Jenny
11 Dunton on another one of Mr. Kocijan's cases.

12 THE COURT: Okay. Give me one second.

13 MR. MATHIS: Yes, sir.

14 Judge, do you wants me to hold onto that
15 scoresheet and --

16 THE COURT: It's right here.

17 Yeah. You may want to -- it would help me if
18 you include it with the PSI. Usually --

19 MR. MATHIS: I'll make sure that you get it.

20 THE CLERK: I'm setting it for two o'clock,
21 but it may not actually start until 2:30.

22 MR. MATHIS: I understand.

23 THE CLERK: Just to let everybody know.

24 MR. MATHIS: I'll be here.

25 THE CLERK: Okay.

1 THE COURT: Okay.

2 (Audio ends at 1:46:51 p.m.)

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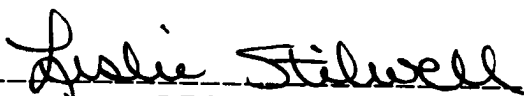
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STATE OF FLORIDA)
COUNTY OF VOLUSIA)

I, LESLIE STILWELL, Court Reporter, certify that the foregoing pages constitute a true and complete transcript of the proceedings stenographically transcribed via digital recording by me to the best of my ability in the aforementioned case at the time and place herein set forth.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 8th day of September, 2013.



LESLIE STILWELL
Court Reporter and Notary Public

Exhibit C

GAIL WADSWORTH, FLAGLER Co.

IN THE CIRCUIT COURT OF THE 7TH JUDICIAL CIRCUIT
 FLAGLER COUNTY, FLORIDA

Division: 50 - ZAMBRANO,
 Case Number: 2012 CF 000129

JUDGMENT

PLAINTIFF STATE OF FLORIDA VS. DEFENDANT WILLIAM CARSON MERRILL

- Probation Violator Community Control Violator Retrial Resentence

The defendant, being personally before this court represented by BRETT C KOCIJAN the attorney of record, and the state represented by Robert Mathis and having:

- (Check applicable provision)
1. Been tried and found GUILTY by jury/by court of the following crime(s).
 2. Enter a plea of GUILTY to the following crime(s).
 3. entered a plea of NOLO CONTENDERE to the following crime(s)

Count	Crime	Offense State Number(s)	Degree of Crime	Case Number	OBTS Number
1	MANSLAUGHTER	782.071	2F	2012 CF 000129	1801035291

(Check if Applicable)

- 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).
- and having been convicted or found guilty of, or having entered a plea of NOLO CONTENDERE or GUILTY, regardless of adjudication, to attempts or offenses relating to sexual battery (Ch. 794) or lewd or lascivious conduct (Ch. 800), or murder (§782.04), aggravated battery (§784.045), car jacking (§812.133), or home invasion robbery (§812.135), or any other offense specified in section 943.325, the defendant shall be required to submit blood specimens.
- and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

FILED IN THE OFFICE OF THE
 CLERK OF CIRCUIT COURT
 Flagler County, Florida

OCT 29 2012











By CN Deputy Clerk
 Paper No. 57.13

IN THE CIRCUIT COURT OF THE 7th JUDICIAL CIRCUIT
FLAGLER COUNTY, FLORIDA

FLAGLER COUNTY, FLORIDA

DEFENDANT: MERRILL, WILLIAM CARSON

CASE NUMBER: 2012 CF 000129

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:

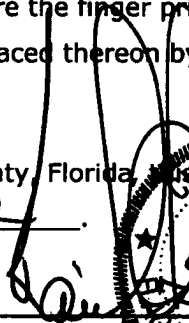
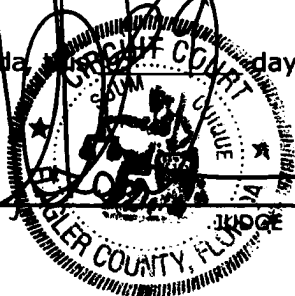
Andy G. Burt
NAME

FCSO Detective Deputy Key
TITLE

I HEREBY CERTIFY that the above and foregoing are the finger prints of the defendant, WILLIAM CARSON MERRILL, and that they were placed thereon by the defendant in my presence in open court this date.

DONE AND ORDERED in open court in Flagler County, Florida, October day of

2012

As to Count 1 - MANSLAUGHTER

The defendant, being personally before this court, accompanied by the defendant's attorney of record, BRETT C KOIJAN, 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.

___ and the Court having on _____ deferred imposition of sentence until _____.

___ and the Court having previously entered a judgment in this case on _____ now resentences the defendant.

___ and 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, Florida Statutes, plus \$ _____ As the 5% surcharge required by section 960.25 Florida Statutes.

X The defendant is hereby committed to the custody of the Department of Corrections.

___ The defendant is hereby committed to the custody of the Sheriff of Flagler County, Florida.

___ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

TO BE IMPRISONED (MARK ONE, UNMARKED SECTIONS ARE INAPPLICABLE):

___ For a term of natural life.

X For a term of 25.00 Years _____ Months _____ Days.

___ Said SENTENCE SUSPENDED for a period _____ Years _____ Months _____ Days Subject to conditions set forth in this order.

IF "SPLIT" SENTENCE, COMPLETE THE APPROPRIATE PARAGRAPH

___ Followed by a period of _____ Years _____ Months _____ Days On probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

___ However, after serving a period of _____ Years, _____ Months, _____ Days Imprisonment in _____, the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ Years, _____ Months, _____ Days 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.

DEFENDANT
WILLIAM CARSON MERRILL
OBTS NO 1801035291

OTHER PROVISIONS

CASE NUMBER
2012CF00129

AS TO COUNTS (1)

RETENTION OF
JURISDICTION

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

ORIGINAL
JAIL CREDIT

It is further ordered that the defendant shall be allowed a total of 250 days as credit for time incarcerated before imposition of this sentence.

Consecutive/
Concurrent
AS TO OTHER
COUNTS

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

Consecutive/
Concurrent
AS TO OTHER
CASES

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run consecutive concurrent with any active sentence being served specific sentences:

CREDIT FOR
TIME SERVED
(To be used for
Resentencing and
After VOP and
VOCC.)

The Department of Corrections shall apply the original jail time credit and to compute and apply credit for time served and the gain time awarded pursuant to Section 944.275 Florida Statutes (Pre October 1, 1989).

The Department of Corrections shall apply the original jail time credit and to compute and apply credit for time served and unfortified gain time awarded during prior service of incarceration of the split sentence pursuant to Section 948.06 (6) Florida Statutes. (Post October 1, 1989).

Defendant is allowed credit for _____ days credit county jail served between date of arrest as a violator and date of resentencing. The Department of Corrections shall apply original jail credit awarded and shall compute and apply credit for actual time served in prison and any earned and unfortified gain-time awarded during prior service on:

Pursuant to Section 944.276 Florida Statute

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

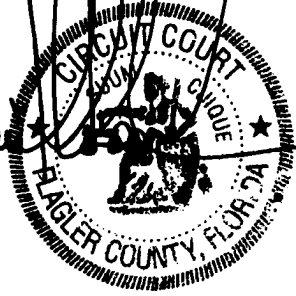
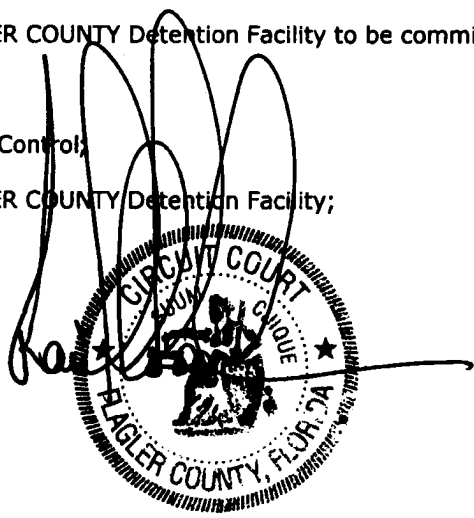
The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

In imposing the above sentence, the court further recommends:

THE COURT HEREBY ORDERS THE DEFENDANT:

- Remanded to the FLAGLER COUNTY Detention Facility to be committed to the Department of Corrections;
- Released on Probation;
- Released on Community Control;
- Remanded to the FLAGLER COUNTY Detention Facility;
- Discharged/released.

DONE AND ORDERED
FLAGLER COUNTY , FL



JUDGE

DATE
10/29/2012

Exhibit D

IN THE SEVENTH JUDICIAL CIRCUIT COURT
IN AND FOR FLAGLER COUNTY, STATE OF FLORIDA

STATE OF FLORIDA,

Plaintiff.

v.

Case No.: 2012CF000129

WILLIAM MERRILL,

Defendant.

_____ /

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10/10/12
11:18 AM

STATEMENT OF JUDICIAL ACTS TO BE REVIEWED

Comes Now the Defendant/Appellant William Merrill and pursuant to Florida Rules of Appellate Procedure 9.140 (d) designates as Judicial Acts to be reviewed the following:

1. The sentence imposed by the trial court.
2. The failure for a valid factual basis for the plea.
3. The voluntariness of the plea.
4. Any and all other errors committed during the proceedings in this case.



William Merrill D.C. # V26422
Defendant/Appellant
Avon Park Correctional Institution
P.O. Box 1100
Avon Park, Florida 33826-1100

PROVIDED TO AVON PARK
CORRECTIONAL INSTITUTION
09-26-1354 FOR MAILING.
CM

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was handed to prison officials at Avon Park Correctional Institution to be mailed to the Office of the State Attorney, of Flagler County, on this 26 day of March, 2013.



William Merrill # V26422
Avon Park Correctional Institution
P.O. Box 1100
Avon Park, Florida 33826-1100

Exhibit E

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL OR BY PETITION, AND
AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION OR DECISION;

YOU ARE HEREBY COMMANDED THAT FURTHER PROCEEDINGS AS MAY BE REQUIRED
BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE RULING OF THIS COURT ATTACHED HERE
TO AND INCORPORATED AS PART OF THIS ORDER, AND WITH THE RULES OF PROCEDURE
AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE VINCENT G. TORPY JR., CHIEF JUDGE OF THE DISTRICT
COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, AND THE SEAL OF THE SAID
COURT AT DAYTONA BEACH, FLORIDA ON THIS DAY.

DATE: October 10, 2014

FIFTH DCA CASE NO.: 5D 13-1150

CASE STYLE: WILLIAM MERRILL v. STATE OF FLORIDA

COUNTY OF ORIGIN: Flagler

TRIAL COURT CASE NO.: 2012-000129-CFA

I hereby certify that the foregoing is
(a true copy of) the original Court mandate.

Pamela R. Masters
PAMELA R. MASTERS, CLERK



cc:

Office Of Attorney General
Clerk Flagler

Rebecca Roark Wall

Victoria E. Hatfield

Exhibit F

**IN THE CIRCUIT COURT SEVENTH
JUDICIAL CIRCUIT IN AND FOR
FLAGLER COUNTY, FLORIDA**

STATE OF FLORIDA,

Respondent,

Case No.: 2012-129-CFFA

v.

WILLIAM CARSON MERRILL,

Petitioner.

STATE'S RESPONSE TO MOTION FOR POSTCONVICTION RELIEF

On July 2, 2015, the Petitioner, William Carson Merrill, filed a Motion for Post-Conviction Relief pursuant to Florida Rule of Criminal Procedure 3.850. In his Motion, the Petitioner raises seven claims for relief. Respondent, the State of Florida, responds to these claims as indicated hereinafter, requesting the Court summarily deny those claims which can be conclusively rebutted by the record and requesting an evidentiary hearing on those claims that cannot.

Procedural History

On October 1, 2012, the Petitioner entered a no contest plea to the charge of Manslaughter with a Firearm. On October 29, 2012, the trial court sentenced the Petitioner to twenty-five years in prison, and the State dismissed the second count, which was for Possession of a Firearm by a Convicted Felon. On November 9, 2012, the Petitioner filed a Motion for Reduction/Modification of Sentence, which the trial court denied on November 20, 2012.

On April 1, 2013, the Petitioner filed a belated Notice of Appeal to the Fifth District Court of Appeal. On or about September 16, 2013, the Fifth District Court of Appeal affirmed

the Petitioner's judgment and sentence in this case. Thereafter, on July 2, 2015, the Petitioner filed this Motion for Postconviction Relief. No other motions for postconviction relief have been filed by the Petitioner, and no evidentiary hearings have been granted or conducted on the issues raised by the instant pleading.

Memorandum of Law

Claim One: Misadvice of Trial Counsel

Petitioner claims the trial counsel was ineffective for misadvising him on several matters, and thus, his plea was unknowingly and involuntarily entered. See Pet'r's Mot. 9. First, Petitioner claims trial counsel misadvised him that he would receive a probationary sentence. Pet'r's Mot. 9. This claim is rebutted by the record of the plea taken from the Petitioner on October 1, 2012. At that time, the trial court directly asked the Petitioner whether he had been promised anything in exchange for entering a plea to the charge. Tr. Proc. 6:9-10, Oct. 1, 2012. In response, the Petitioner stated "No, your honor." Tr. Proc. 6:11, Oct. 1, 2012. Respondent concedes that if the plea colloquy had not continued past this simple exchange, an evidentiary hearing would be required. See Pylant v. State, 134 So.3d 533, 534 (Fla. 5th DCA 2014) (holding a defendant's general acknowledgment that no one had made any promises to induce the plea is insufficient to conclusively rebut a misadvice claim.)

However, in Petitioner's case, prior to accepting the open plea, the trial court engaged in additional dialog excerpted below related to any plea offers in the case. This continued dialog, which went beyond the *pro forma* questions of most plea colloquies, conclusively rebuts the Petitioner's claim that he was promised a probationary sentence, thus distinguishing this case from Pylant.

THE COURT: Okay, I want to make sure that – that there's a clear understanding before he – before I accept the plea. Number one, was there ever a plea offer made to him?

MR. MATHIS: This was the plea offer, Judge.

THE COURT: There wasn't – this is the plea offer?

MR. MATHIS: This is the plea offer.

MR. KOCIJAN: Yes, sir.

THE COURT: Okay, All right. And then you conveyed that plea offer to him?

MR. KOCIJAN: Yes, Your Honor. Just for the record, there was [sic] two offers that were actually made to my client. We've discussed both of those, and that was essentially what it came down to today, and that was negotiated with the State.

THE COURT: Okay. Were the plea offers made in writing?

MR. MATHIS: I sent – I did send an e-mail to Mr. Kocijan, which contained both. It was an alternative plea. He could either plea to manslaughter in Count I as a second-degree felony, and possession of a firearm by a convicted felon in Count II. Or he could plea to the case as charged in Count I.

THE COURT: No –

MR. MATHIS: He would have a 30-year exposure.

THE COURT: No – no terms of years was offered?

MR. MATHIS: No terms of years. No, sir.

THE COURT: Okay. All right. I just want to make sure that he – he – this was conveyed to him is that...

MR. KOCIJAN: Yes, Your Honor. And what was stated is correct. I received an e-mail. We discussed both scoresheets and looked that over.

THE COURT: Okay. And then I want Mr. Merrill to also be aware that because you're entering a plea open to the Court – it's almost always unwise to do that, but it is your right – and

then your exposure is anywhere [sic] from whatever the – do we have a scoresheet?

MR. MATHIS: I do, Judge.

THE COURT: Could you show it to him, please.

MR. MATHIS: I have –

THE COURT: Have [sic] he seen that?

MR. KOCIJAN: Yes, Your Honor. And I believe he has a copy of both of the proposed scoresheets with – with – depending on the plea. They are a little bit different than the two, but not by much.

THE COURT: Okay. Well, so long as he has seen it. Do you understand that – let me take a look at the scoresheet.

MR. MATHIS: We've got some – we've got some corrections on here, Judge.

MR. KOCIJAN: Yeah. We've –

MR. MATHIS: I believe it's 128 months is the max – is the minimum.

THE COURT: And you're aware of that? That the scoresheet has a recommendation of 125 [sic] months?

MR. KOCIJAN: Point one. Yeah.

THE DEFENDANT: Yes, Your Honor.

THE COURT: Which, in essence, is ten and a half years on the minimum mand. [sic]

THE DEFENDANT: Yes, Your Honor.

THE COURT: And your exposure is anywhere between zero and the maximum of 30 years.

THE DEFENDANT: Yes, Your Honor.

THE COURT: And that's what you want to do?

THE DEFENDANT: Yes, Your Honor.

Tr. Proc. 6-11, Oct. 1, 2012. Thereafter, the trial court accepted the Petitioner's open plea to Manslaughter with a Firearm as a first degree felony. Additionally, trial counsel denies that he promised the Petitioner that he would receive probation; therefore Respondent requests an evidentiary hearing on this issue if the Court determines this claim is not conclusively rebutted by the record.

Second, Petitioner claims trial counsel misadvised him that he needed to enter a plea because he would most likely be unsuccessful at trial. Pet'r's Mot. 10. Respondent asserts that this was not ineffective assistance, but rather tough advice given to a client in a difficult position based upon the lawyer's experience in the field. In State v. Leroux, the Florida Supreme Court noted that there is a difference between a lawyer promising a client a particular outcome, and giving that client advice based upon the lawyer's training and expertise. 689 So.2d 235, 237 (1996). The Leroux court noted that "providing such advice is a legitimate and essential part of the lawyer's professional responsibility to his client in most plea negotiations." Id. Furthermore, trial counsel's advice to plea rather than go to trial was reasonable in light of the Petitioner's video-taped confession to shooting the victim.

Third, Petitioner claims trial counsel failed to inform him of the pictures taken from Petitioner's cellular telephone. Pet'r's Mot. 10. As this issue was never conclusively addressed on the record, Respondent requests an evidentiary hearing on this issue. However, the Respondent notes that the trial counsel did acknowledge receipt of the photographs during the discovery process. Tr. Proc. 63:19-25, 64:1-2, Oct. 29, 2012.

Fourth, Petitioner claims trial counsel failed to inform him of the elements and required proof for Manslaughter and Possession of a Firearm by a Convicted Felon. Pet'r's Mot. 10. As

this issue was never addressed on the record, Respondent requests an evidentiary hearing on this issue.

Fifth, Petitioner claims trial counsel failed to inform him of the types of penalties he would be facing if he was convicted on the various charges. Pet'r's Mot. 10. This claim is conclusively rebutted by the record of the plea colloquy, as extensively quoted *supra*. The Petitioner was specifically advised on three occasions during the plea colloquy that he faced a maximum of thirty years in prison on a charge of Manslaughter with a Firearm. Tr. Proc. 5:21-25, 9:10, 11:2-3, Oct. 1, 2012. Furthermore, whether or not his trial counsel informed the Petitioner of the possible penalties for Possession of a Firearm by a Convicted Felon is irrelevant because that charge was dismissed pursuant to the plea agreement, therefore the Petitioner was not prejudiced by this alleged failure. Tr. Proc. 5:2-6, Oct. 1, 2012.

Claim Two: Failure to Seek Recusal of Presiding Judge

Petitioner claims the trial counsel was ineffective for failing to recuse the presiding trial court judge based upon a perceived conflict of interest. Pet'r's Mot. 11. The perceived conflict arose from the judge's concurrent roles as the presiding judge in the Petitioner's criminal case, as well as the Petitioner's family law case arising from the same incident. Respondent agrees with the Petitioner's statement of the law as quoted in his Motion, "[w]hen considering a disqualification issue in the context of an ineffective assistance claim, the finding of prejudice turns on whether disqualification would have been required, not on whether the outcome of a new trial would have been different." Cox v. State, 974 So.2d 474, 476 (Fla. 2d DCA 2008).

However, Respondent disagrees that disqualification would have been required in Petitioner's case. In Hope v. State, the Second District Court of Appeal held that disqualification

of a trial judge was not required where the judge presided over related civil and criminal matters of the defendant. 449 So.2d 1315, 1317 (Fla. 2d DCA 1984). In Hope, the defendant refused to answer questions before a grand jury, which led to an order to show cause and eventually, indirect criminal contempt charges. Id. at 1316. The same judge presided over both proceedings, thus Hope felt there was a conflict of interest and requested the judge recuse himself. Id. However, the Second District Court of Appeal affirmed the denial of the motion to recuse, reasoning that the grounds were not “legally or reasonably sufficient to support a well-grounded fear in [defendant] that he would not receive a fair trial at the hands of the trial judge.” Id. at 1317.

Other courts have similarly held that the same judge presiding over different cases of the same litigant, even when the cases are factually related, does not support a legally sufficient motion to recuse that judge. In Santisteban vs. State, the Fourth District Court of Appeal held:

[t]he fact that the judge has made adverse rulings against the defendant in the past is not an adequate ground for recusal, nor is the mere fact that the judge has previously heard the evidence...Moreover, a judge is not disqualified from presiding over a criminal trial because the judge presided over civil proceedings involving the defendant, *even where the civil proceedings arise out of the same incident as the criminal proceedings.*

72 So.3d 187, 194 (2011) (internal citations omitted) (emphasis added).

Lastly, in Scott v. State, the Fifth District Court of Appeal affirmed the denial of a motion to recuse the trial judge who was presiding over a violation of probation matter as well as the same defendant’s family law (termination of parental rights) matter. 909 So.2d 364, 367-68 (2005). The Scott court noted that “the subjective fear of a party seeking the disqualification of a judge is not sufficient. The fear of judicial bias must be *objectively* reasonable.” Id. at 368 (emphasis in original).

Petitioner cites Clayton v. State in support of his argument on this issue. 12 So.3d 1259 (Fla 2d DCA 2009). However, Clayton is factually distinguishable from Petitioner's case. In Clayton, the judge had previously prosecuted the defendant in another case when he/she had been an assistant state attorney. Id. The roles of a prosecutor and judge are fundamentally different. The prosecutor is an advocate who is responsible for presenting and arguing a case on behalf of the State of Florida *against* a defendant, whereas a judge does not advocate for either side. In the case at bar, although the trial judge was previously an assistant state attorney, there is no evidence that he ever prosecuted a case involving the Petitioner. Thus, the only context in which the trial judge here had any previous contact with the Petitioner was in his role as a judge presiding over the Petitioner's family law matter.

Here, Petitioner is similarly situated to the defendants in Hope, Santisteban, and Scott. All he possessed, at best, was a subjective fear of judicial bias. This was a legally insufficient basis to recuse the trial judge in Petitioner's case, thus his trial counsel was not ineffective for failing to raise this issue. Even if trial counsel should have raised the issue, no prejudice occurred in this context, for as stated in Cox supra, the disqualification would not have been required.

Claim Three: Failure to Seek Suppression of Cell Phone Evidence

Petitioner claims trial counsel was ineffective for failing to move to suppress the search and seizure of his cell phone, which contained photographs of the Petitioner in possession of multiple firearms and pointing a firearm at the victim. Pet'r's Mot. 13. Petitioner alleges this phone, and the photographs contained therein, were outside the scope of the written consent Petitioner gave to police on the date of the incident, and thus they were essentially taken without

his consent. Pet'r's Mot. 13-15. However, the police had an objectively reasonable basis to conclude that the cell phone was included within the scope of the Petitioner's written consent given at the time. See Pet'r's Mot. App. A. Furthermore, the trial court did not rely upon this evidence at the sentencing hearing, and thus Petitioner was not prejudiced by any potential error. See Tr. Proc. 78-79, Oct. 29, 2012.

As with other issues above, Respondent agrees with the Petitioner's general statements of law regarding consent and the scope of consent. Key to the resolution of this issue is one such statement of law from State v. Martin, 635 So.2d 1036 (Fla. 3d DCA 1994). Concerning the scope of consent given, Martin stated, *inter alia*, that, "in conducting the reasonableness inquiry, the court must consider what the parties knew to be the object of the search at the time." Id. at 1038. In Martin, the defendant's wife consented to a search of their home for evidence of property stolen during a home invasion robbery. Id. at 1037. Police found evidence of that robbery in a jewelry bag located within the defendant's home, which the trial court suppressed at trial based upon an argument similar to Petitioner's here. Id. In reversing the suppression of the consent search, the Martin court reasoned, "[t]he jewelry bag was within the scope of Mrs. Martin's consent because it was in the area authorized by her to be searched, and it was reasonably capable of containing the stolen property." Id. at 1038. The Martin court also noted that the wife had been told what the police were searching for prior to her providing them with consent. Id. at 1037.

In Petitioner's case, the object of the consent search was any and all evidence of the homicide. Similar to Martin, the Petitioner gave broad consent to search his home, and the cell phone containing the contested photographs was found within the area authorized to be searched. Like the jewelry bag to a robbery in Martin, a cell phone is an item reasonably capable of

containing evidence of a homicide. It is certainly reasonable to expect that the police will conduct thorough and exhaustive searches for all types of evidence at the scene of a homicide. The police often search for trace or very small quantity evidence such as nanograms of touch DNA or blood splatter at a homicide scene. As technology and social media continue to become more interwoven with daily life, police in homicide investigations are frequently searching for social media and other digital evidence that may supply evidence of motive, intent, or otherwise illuminate the background between the suspect and victim. In this case, because the cell phone was located within the area authorized to be searched, and because it was reasonable for the police to conclude that cell phone found at the scene of the crime may contain evidence of the homicide they were investigating, the cell phone would have been included within the reasonable scope of consent given under Martin. Therefore, trial counsel was not ineffective for failing to seek suppression of this evidence.

Assuming *arguendo* that the evidence was subject to suppression, and trial counsel was ineffective for failing to seek suppression, the Petitioner was not prejudiced by this failure as the trial court did not rely on this evidence at the sentencing hearing. In his comments prior to imposing the sentence in this case, the trial court made no reference whatsoever to the cell phone or the contested photographs. The trial court only commented on the admitted conduct of the Petitioner in the instant offense, his proffered excuse for such conduct, and the resulting harm. See Tr. Proc. 78-79, Oct. 29, 2012. Thus, Petitioner suffered no prejudice.

Claim Four: Failure to Object to Prosecutorial Misconduct

Petitioner claims that his trial counsel provided ineffective assistance for failing to object to several instances of prosecutorial misconduct at sentencing. Pet'r's Mot. 15. First, Petitioner

claims that the prosecutor's introduction of and comments regarding the photographs of the Petitioner holding numerous firearms and pointing a scope at the victim's head were improper because the Respondent did not establish that the Petitioner specifically was the photographer, nor that it was the same weapon used in the victim's killing. Pet'r's Mot. 16. In the context of this issue, it is important to note that the limited issues raised in mitigation by the Petitioner at his sentencing were that this shooting was accidental and out of character. The Petitioner presented numerous witnesses to attempt to establish these points. Tr. Proc. 9:9-12, 10:23-25, 11:1, 13:4-5, 13:15-17, 14:24, 17:18-19, 17:22-23, 23:6-8, 27:14-17, 29:13-14, 31:14-15, 33:1, 37:12-16, 41: 20-22, 43:7, Oct. 29, 2012. In that context, these photographs became entirely relevant to demonstrate that the Petitioner was not a cautious gun owner as he portrayed himself. Rather, these photographs demonstrated that he was reckless with his firearms in the past, just as he was at the time of victim's death.

“Evidence may be authenticated by appearance, content, substance, internal patterns, or other distinctive characteristics taken in conjunction with the circumstances. In addition, the evidence may be authenticated either by using extrinsic evidence, or by showing that it meets the requirements for self-authentication.” Symonette v. State, 100 So. 3d 180, 183 (Fla. 4th DCA 2012). The Petitioner ignores that the Respondent would have been able to circumstantially authenticate these photographs. The photographs were located on the Petitioner's cell phone, they depicted areas inside his home (which several officers had access to and would have recognized from the search of the home), and the Petitioner was shown in most of the photographs himself. These facts would have been sufficient to authenticate the evidence. Even if the photograph depicting the rifle scope focusing on the victim's head was not the same weapon used in her killing, it would still have been relevant, admissible evidence to demonstrate

the Petitioner's pattern of recklessness leading up to the killing. The State would concede that it would be difficult to conclusively establish that the Petitioner took the particular photograph of the rifle scope focusing its crosshairs on the victim's head. However, given the other facts pointed out above that would tend to authenticate the other photographs found on the same cellular phone, and in light of the preponderance of evidence standard for authentication of evidence, the Respondent submits that this particular objection would go toward the weight and not the admissibility of the evidence. Thus, trial counsel was not ineffective for failing to object to these photographs, nor the related comments by the prosecutor.

Respondent also notes that the Reese case cited by the Petitioner is factually distinguishable. In Reese, the unsubstantiated allegations of prior misconduct consisted of the prosecutor's comments at sentencing that the defendant had appeared in other undercover drug sting videos coupled with the allegation that he was involved as a principal in those other uncharged cases. 639 So.2d at 1068. None of the videos were presented to the trial court. Id. However, in the Petitioner's case, the trial court was actually shown photographic evidence of his prior misconduct: possessing numerous firearms despite his status as a convicted felon and pointing a gun at the victim's head previously. These were not unsubstantiated claims of a prosecutor at a sentencing as in Reese, rather they were relevant evidence of the Petitioner's prior conduct directly contradicting the Petitioner's proffered mitigation at sentencing.

The Petitioner also argues that but for this challenged photographic evidence and the related comments, the trial court would have been "obligated to sentence the [Petitioner] to either a guidelines sentence or grant trial counsel's request for a downward departure." See Pet'r's Mot. 16. This argument misunderstands the Criminal Punishment Code. The trial court is never "obligated" to sentence a defendant to the "guidelines sentence." Rather, as stated in Florida

Statute § 921.0024(2), “[t]he lowest permissible sentence is the minimum sentence that *may* be imposed by the trial court, absent a valid reason for departure.” Hall v. State, 773 So.2d 99, 100-01 (Fla. 1st DCA 2000) (emphasis supplied) (noting that “the CPC provides for the establishment of the lowest permissible sentence and permits the judge to sentence within its discretion from the lowest permissible sentence up to the statutory maximum without written explanation. The lowest permissible sentence is not a presumptive sentence.”). Moreover, the Petitioner also misunderstands the state of the law regarding downward departures. The trial court similarly would never have been “obligated” to downward depart in the Petitioner’s case. See State v. Robinson, 149 So.3d 1199, 1203 (Fla. 1st DCA 2014) (noting “[a] trial court’s decision to depart from the lowest permissible sentence is a two-step process: the trial court must first determine whether it *can* depart (step one) and then it must determine whether it *should* depart (step two).”) (emphasis in original).

Lastly, the Respondent submits that even if the trial counsel was ineffective for failing to object to the photographs or the comments by the prosecutor, the Petitioner still suffered no prejudice from this failure. It is evident from the transcript of the trial judge’s comments at sentencing that he did not rely upon the photographs or the prosecutor’s related comments in determining his sentence in this case. See Tr. Proc. 78-79, Oct. 29, 2012. Thus, even if there was ineffective assistance, Petitioner was not prejudiced thereby.

Claim Five: No Factual Basis to Support Plea to Charge

Petitioner argues that the trial counsel was ineffective for allowing him to plea to a charge where no factual basis existed. Pet’r’s Mot. 17. Petitioner cites the case of Colding v. State in support of his argument on this claim. 638 So.2d 1008 (Fla. 2d DCA 1994). However,

Colding is distinguishable. Unlike in Colding, Petitioner's trial counsel twice stipulated to a factual basis for the charge of Manslaughter by Firearm at the plea hearing. Tr. Proc. 8:4-7, 11:10-13, Oct. 1, 2012. Furthermore, unlike in Colding, the trial court here inquired and independently found that a factual basis existed for the Petitioner's plea. Tr. Proc. 11:14-19, Oct. 1, 2012. Thus, Petitioner's reliance on Colding is misplaced.

Claim Six: Failure to Object to Victim Advocate Reading Next of Kin's Statement

Petitioner claims his trial counsel was ineffective for failing to object to the victim advocate reading an unsworn victim impact statement to the court at the sentencing hearing. Pet'r's Mot. 20. In support of this claim, Petitioner cites Patterson v. State, 994 So.2d 428 (Fla 1st DCA 2008). However, part of the rationale of the Patterson decision was that the sentencing judge there relied upon the erroneously admitted evidence when imposing the sentence on Patterson. Id. at 429. Unlike in Patterson, here there is no evidence from the trial court's comments suggesting that it relied upon anything stated by the victim advocate. See Tr. Proc. 78-79, Oct. 29, 2012. Thus, even assuming counsel was ineffective for failing to object to this evidence, Petitioner cannot prove prejudice because the trial court did not rely upon this evidence.

Furthermore, it was not error for the trial court to receive the contested evidence in this fashion, thus trial counsel was not ineffective for failing to object to its admission. In Smith v. State, the defendant alleged that the sentencing court erred when it allowed the state to present testimony from witnesses not listed in the approved list under Florida Statute § 921.143. 982 So.2d 69, 70 (Fla. 1st DCA 2008). In rejecting her claim, the Smith court reasoned that Florida Rule of Criminal Procedure 3.720(b) provides an "unqualified directive" to sentencing courts to

“entertain submissions and evidence by the parties that are relevant to the sentence.” Id. at 71. The Smith court then noted that Florida Statute § 921.143 should be viewed as a vindication of victim’s rights, not as a restriction of the court’s “unqualified directive” under Rule 3.720(b). Id. at 71-72. To view the statute and rule in conflict with each other, rather than as compatible, would create separation of powers and due process issues. Id. Just as in Smith, Petitioner’s claim that the victim advocate could not read a letter from the victim’s mother because it violated the requirements of F.S. § 921.143 is not legally sound. Florida Rule of Criminal Procedure 3.720(b) requires the trial court to receive submissions and evidence from the parties that are relevant to the issues at sentencing. Therefore, Petitioner’s trial counsel was not ineffective for failing to object to this evidence as it was lawfully received by the trial court despite noncompliance with the victims’ rights statute.

Petitioner also claims that it was error for his trial counsel to fail to object to the victim’s mother’s claim that he was a convicted felon. Pet’r’s Mot. 21. Petitioner disingenuously claims this was unsubstantiated because the charge of Possession of a Convicted Felon was dismissed by the State, but he neglects to recall that the charge was dropped under a *plea agreement*, rather than as a result of a factual deficiency. Tr. Proc. 5:2-6, Oct. 1, 2012. Moreover, the trial court would have been aware of the Petitioner’s status as a convicted felon because the Petitioner’s prior felony conviction was reflected on the “Prior Record” section of his scoresheet submitted to the court at the time of sentencing.

Petitioner also claims it was error for his trial counsel to fail to object to the victim’s mother’s claim that there was a prior allegation of domestic violence between the Petitioner and the victim. Pet’r’s Mot. 21. The Petitioner relies on Epprecht v. State to show error, however Epprecht is distinguishable. 488 So.2d 129 (Fla. 3d DCA 1986). In Epprecht, the court reversed

the defendant's sentence because it was clear from the record that the sentencing judge had based his sentencing decision, at least partially, on the unsubstantiated claims of prior misconduct. Id. at 130. In Petitioner's case however, as argued *supra*, the trial court did not rely upon anything the victim's mother communicated in its rationale as expressed in the court's comments preceding the imposition of sentence. See Tr. Proc. 78-79, Oct. 29, 2012.

Petitioner also claims it was error for his trial counsel to fail to object to the victim's mother's request for a maximum sentence. Pet'r's Mot. 21. Respondent fails to see how a victim's mother expressing her desire for an otherwise legal sentence is error.

Claim Seven: Cumulative Errors of Trial Counsel Rendered Him Ineffective

Petitioner lastly claims the cumulative errors of his trial counsel culminated in ineffective assistance, which he was prejudiced thereby. Pet'r's Mot. 22. As argued above under the individual claims, Respondent submits that Petitioner's trial counsel rendered effective assistance in most instances, and that Petitioner was not prejudiced by any alleged instances of ineffective assistance. Therefore, Respondent requests that this Honorable Court deny this claim.

Conclusion

Petitioner raises seven claims of error by his trial counsel. However, numerous of these claims are meritless and conclusively rebuttable by the record or otherwise legally insufficient. As to those claims, the Respondent requests that this Honorable Court summarily deny Petitioner's claims. The remaining claims that are legally sufficient, and not rebuttable by the record, the Respondent requests that this Honorable Court conduct an evidentiary hearing to adjudicate.

Certificate of Service

I HEREBY CERTIFY that true and correct copies of the above were sent by U.S. Mail and e-mail to Rachael E. Bushey, Esq., O'Brien Hatfield P.A., Bayshore Center, 511 West Bay Street, Third Floor – Suite 330, Tampa, Florida 33606 and reb@markjobrien.com on this 6th day of October, 2015.

/s Chris Miller
Chris Miller
Assistant State Attorney
Florida Bar No. 0023211
2446 Dobbs Road
St. Augustine, Florida 32086

Exhibit G

Rule 3.992(a) Criminal Punishment Code Scoresheet

The Criminal Punishment Code Scoresheet Preparation Manual is available at: http://www.dc.state.fl.us/pub/sen_cpcm/index.html

1. DATE OF SENTENCE 10/29/2012	2. PREPARER'S NAME Mathis	3. COUNTY FLAGLER	4. SENTENCING JUDGE Zambrano
5. NAME (LAST, FIRST, MI.I.) Merrill, William C	6. DOB 03/22/1979	8. RACE WHITE	10. PRIMARY OFF. DATE 02/21/2012
	7. DC #	9. GENDER Male	11. PRIMARY DOCKET # 12-00129-CFFA
			12. PLEA <input checked="" type="checkbox"/> TRIAL <input type="checkbox"/>

I. PRIMARY OFFENSE:

FELONY DEGREE	F.S.#	DESCRIPTION	OFFENSE LEVEL	POINTS
1	782.071 (1)	Manslaughter with a firearm	7	
(Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)				
Prior capital felony triples Primary Offense points <input type="checkbox"/>				I. <u>56</u>

II. ADDITIONAL OFFENSE(S): Supplemental page attached

DOCKET #	FELMM 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=28, 8=37, 9=46, 10=56)							
Prior capital felony triples Additional Offense points <input type="checkbox"/>							Supplemental page points <u>0</u>
							II. <u>0</u>

FILED IN THE OFFICE OF THE
 CLERK OF CIRCUIT COURT
 Flagler County, Florida

 OCT 23 2012

 By _____ Deputy Clerk
 Paper No. _____

III. VICTIM INJURY:

	Number	Total		Number	Total
2nd Degree Murder	240 X	= 0	Slight	4 X	= 0
Death	120 X	= 120	Sex Penetration	80 X	= 0
Severe	40 X	= 0	Sex Contact	40 X	= 0
Moderate	18 X	= 0			
III. <u>120</u>					

IV. PRIOR RECORD: Supplemental page attached

FELMM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A/S/C/R	DESCRIPTION	NUMBER	POINTS	TOTAL
3	812.14	2			2	X 0.8	= 1.6
M	316.192	M			1	X 0.2	= 0.2
						X	=
						X	=
						X	=
						X	=
						X	=
						X	=
						X	=
(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 <u>0</u>							
							IV. <u>1.8</u>

Page 1 Subtotal: 177.8

NAME (LAST, FIRST, MI) Merrill, William C	DOCKET # 12-00129-CFFA
---	----------------------------------

Page 1 Subtotal: 177.8

V. Legal Status Violation = 4 Points
 Escape Fleeing Failure to Appear Supersedeas bond Incarceration 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 VI. _____
 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

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 points VII. 18
 VIII. Prior Serious Felony = 30 points VIII. _____

Subtotal Sentence Points 195.8

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

Law Enf. Protect.	Drug Trafficker	Motor Vehicle Theft	Criminal Gang Offense	Domestic Violence in the Presence of Related Child <small>(offenses committed on or after 03-12-07)</small>
<input type="checkbox"/> x 1.5 <input type="checkbox"/> x 2.0 <input type="checkbox"/> x 2.5	<input type="checkbox"/> x 1.5	<input type="checkbox"/> x 1.5	<input type="checkbox"/> x 1.5	<input type="checkbox"/> x 1.5

Enhanced Subtotal Sentence Points IX. 0

TOTAL SENTENCE POINTS 195.8

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:

$$\frac{195.8}{\text{total sentence points}} \text{ minus } 28 = 168 \times .75 = \underline{125.85}$$
 lowest permissible prison sentence in months

If total sentence points are 60 points or less than 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.
30
maximum sentence in years

TOTAL SENTENCE IMPOSED

	Years	Months	Days
<input checked="" type="checkbox"/> State Prison	<u>25</u>	_____	_____
<input type="checkbox"/> County Jail	_____	_____	_____
<input type="checkbox"/> Community Control	_____	_____	_____
<input type="checkbox"/> Probation <input type="checkbox"/> Modified	_____	_____	_____

Please check if sentenced as habitual offender, habitual violent offender, violent career offender, prison releasee reoffender, or a mandatory minimum applies.

Mitigated Departure Plea Bargain Prison Diversion Program
 Other Reason _____

JUDGE'S SIGNATURE	
--------------------------	--

Rule 3.992(b) Supplemental Criminal Punishment Code Scoresheet

NAME (LAST, FIRST, MI) Merrill, William C	DOCKET # 12-00129-CFFA	Date of Sentence 10/29/2012
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II. ADDITIONAL OFFENSE(S):

DOCKET #	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY	COUNTS	POINTS	TOTAL
----------	---------------	-------	---------------	---------	--------	--------	-------

DESCRIPTION: _____

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

II. 0

IV. PRIOR RECORD:

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A/S/C/R	DESCRIPTION	NUMBER	POINTS	TOTAL
---------------	-------	---------------	------------------	-------------	--------	--------	-------

(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)

X _____ = _____

IV. 0

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 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.
- 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.

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

Exhibit H

ORIGINAL

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IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT, IN AND FOR
FLAGLER COUNTY, FLORIDA

CASE NO.: 2012-CF-129

STATE OF FLORIDA

vs.

APPEAL - SENTENCING

WILLIAM MERRILL,

Defendant.

* * * * *

**TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RAUL A. ZAMBRANO
CIRCUIT COURT JUDGE**

(STENOGRAPHICALLY TRANSCRIBED VIA DIGITAL RECORDING)

* * * * *

DATE TAKEN: OCTOBER 29, 2012
TIME: COMMENCED AT 2:17:57 P.M.
CONCLUDED AT 3:47:21 P.M.
PLACE: KIM C. HAMMOND JUSTICE CENTER
1769 EAST MOODY BOULEVARD
BUNNELL, FLORIDA
**STENOGRAPHICALLY
TRANSCRIBED BY:** LESLIE STILWELL
COURT REPORTER and NOTARY PUBLIC

* * * * *

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CLERK OF CIRCUIT COURT
Flagler County, Florida
SEP 12 2013
By [Signature] Deputy Clerk
Paper No. [Signature]

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P R O C E E D I N G S

(Audio begins 2:17:57 p.m.)

THE COURT: All right. And then we have a sentencing scheduled for today, as well. And that's State of Florida versus William Merrill: 2012-129. Page 12 of the docket.

Is there a scoresheet?

MR. MATHIS: Yes, sir.

MR. KOCIJAN: That's fine.

MR. MATHIS: Your copy's over there. The victim impact statements.

MR. KOCIJAN: Did you get a copy of the PSI in this case?

MR. MATHIS: Yes.

MR. KOCIJAN: I haven't received it.

MR. MATHIS: You guys don't have one?

MR. KOCIJAN: No.

MR. MATHIS: Do you have another copy of the PSI?

UNIDENTIFIED FEMALE SPEAKER: You can have it.

MR. KOCIJAN: Thank you.

THE COURT: Okay. I have received a scoresheet handed over to me. Total sentence points of 195.8 points. Lowest permissible sentence is roughly about ten and a half years. It

1 says maximum sentence: Thirty years. I think it's
2 forty-five, according to the presentence
3 investigation.

4 MR. MATHIS: I believe that's wrong, Judge.
5 It's -- it's been --

6 THE COURT: I'm sorry?

7 MR. MATHIS: It's 30 years.

8 It was ma- -- it was manslaughter with a
9 firearm, which is a first-degree felony.

10 THE COURT: He also pled to possession of
11 firearm by convicted felon.

12 MR. MATHIS: No, sir.

13 MR. KOCIJAN: It was --

14 MR. MATHIS: No, sir. We dismissed that
15 count.

16 THE COURT: Oh, that was dismissed?

17 MR. MATHIS: Yes, sir.

18 MR. KOCIJAN: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. MATHIS: It's all right. You didn't --

21 THE COURT: So it is 30 years.

22 The -- so that -- that correction needs to be
23 made to the presentence investigation --

24 MR. MATHIS: Yes, sir.

25 THE COURT: -- because the presentence

1 For what has been done to Stefanie's children,
2 there's no punishment severe enough. I hope and
3 pray that the defendant says [verbatim] the maximum
4 sentence that you can impose by law.

5 Thank you for allowing this opportunity to
6 speak. Sincerely, Stefanie's mom and dad.

7 THE COURT: Thank you.

8 MR. MATHIS: Okay. That's fine.

9 Judge, we've submitted a letter from the
10 children's counselor and I --

11 THE COURT: I'm reading it.

12 MR. MATHIS: -- I've provided a copy to Mr.
13 Kocijan.

14 THE COURT: Okay. And you have read the
15 letter, correct, Mr. Kocijan?

16 MR. KOCIJAN: Yes, sir. (Indiscernible)
17 today.

18 THE COURT: Okay. Thank you.

19 MR. MATHIS: Your Honor, the only other
20 evidence that I'd like to present to the Court are
21 a group of photographs that were downloaded from
22 the cell phone and house and I think illustrate the
23 activities at that house prior to this accident.

24 THE COURT: Has Mr. Kocijan seen the
25 photographs?

1 without Stef. Mr. and Mrs. Canady, I'm sorry.

2 Judge Zambrano, I'm sorry. This is not the
3 happy ending Stef and I both wanted. I just ask
4 that the Court have mercy on me for my kids' sake,
5 for Stef's sake.

6 She would not want me taken away from our
7 kids. She would tell you that they need their dad
8 now more than ever; that this was an accident.

9 I'm sorry. Please have mercy on us.

10 That's it.

11 THE COURT: Mr. Kocijan.

12 MR. KOCIJAN: Judge, I think it's fair to say
13 this has been a terrible accident that happened.

14 First and foremost, Carson is -- admitted his
15 responsibility for his actions, silly actions. But
16 from day one, when it came to the investigation,
17 he's been cooperative with them with that --
18 throughout the investigation.

19 He elected to resolve this case with -- I know
20 it's not a normal situation, but we had a couple of
21 choices and he did elect one of those options to
22 resolve this matter before Your Honor.

23 I've had the opportunity to -- to only know
24 him for a few months while representing him. I
25 don't know if I've ever crossed anyone that has

1 involved, and to make something of his life for him
2 and his family, and we'd ask the Court to take that
3 into consideration today.

4 THE COURT: Thank you.

5 Mr. Carson, you having pled guilty to the
6 offense of manslaughter with a firearm, the Court
7 will adjudge you guilty of manslaughter with a
8 firearm.

9 Clearly, this is a preventable and avoidable
10 accident, if that's what you want to call it.
11 Your -- your conduct is tantamount to nothing less
12 than reckless behavior.

13 When you were a convicted felon, you were not
14 supposed to have a firearm, but you had quite an
15 arsenal in your home. But as if that wasn't
16 enough, you violated probably one of the most basic
17 tenets of firearm ownership; that is whether loaded
18 or unloaded, a firearm, it's a dangerous thing.
19 And you pointed it at the person you claim to love
20 the most, and then you pulled the trigger, and then
21 you took her life.

22 That conduct, however you want to describe it,
23 whether it be an accident, mistake, or whatever it
24 may be, carries a tremendous amount of
25 ramifications.

1 We don't blame people here for their mistakes;
2 we just expect for them to pay for them, and today
3 you will begin paying for your mistake.

4 I'm going to adjudicate you guilty, sentence
5 you to 25 years in the custody of the Florida
6 Department of Corrections state prison system, with
7 credit for the time you have already served.

8 You'll have 30 days to appeal the judgment of
9 the Court.

10 You'll need to provide a set of fingerprints
11 and a DNA sample.

12 MR. MATHIS: Your Honor, I have a restitution
13 order, I believe up there, for the crime
14 compensation --

15 THE COURT: Your restitution order is signed.
16 We need a written nolle pros.

17 MR. MATHIS: Yes, sir. I'll provide that.

18 THE COURT: Okay. We'll be in recess for 15
19 minutes.

20 (Audio ends at 3:47:21 p.m.)

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CERTIFICATE OF REPORTER1
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STATE OF FLORIDA)
COUNTY OF VOLUSIA)

I, LESLIE STILWELL, Court Reporter, certify that the foregoing pages constitute a true and complete transcript of the proceedings stenographically transcribed via digital recording by me to the best of my ability in the aforementioned case at the time and place herein set forth.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 8th day of September, 2013.



LESLIE STILWELL
Court Reporter and Notary Public

Exhibit I

**7th. Judicial Circuit 707
Charging Affidavit - Flagler**

Arrest # _____ Bk # _____

Pg #1 of 2

ARREST <input type="checkbox"/> NOTICE TO APPEAR <input type="checkbox"/> AFFIDAVIT <input checked="" type="checkbox"/> C.C. <input type="checkbox"/>		ADULT <input checked="" type="checkbox"/> JUVENILE <input type="checkbox"/>		Court Case Number: 12-129-CFFA	
(OR) FL: 0	0	8	0	0	0
Agency Name: FLAGLER COUNTY SHERIFF'S OFFICE				Agency Case Number: 12010-2012	
FCIC/NCIC Check? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		OBTS#		UCR:	Date Arrested:
ADDRESS OF ARREST:				Arrested By:	ID Number:
DEFENDANT		Name (L,F,M): MERRILL, WILLIAM, CARSON		A.K.A.: MERRILL, CARSON	
DOB: 3/22/79		Age: 32		Sex: M	
Height: 510		Weight: 160		Race: W	
Driver's Lic/ID No.: M640-923-79-102-0		State: FL		Year Expires: 2020	
Hair: BROWN		Eyes: BLUE		POB (City, St, Country): TENN.	
Scars, Marks, Tattoos: TAT: CHEST, RARM, LSHLDR, BACK		Business & Occupation: PARTS DEPARTMENT		Statement: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Citizenship: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Probation: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Sexual Predator: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
English: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Deaf/Mute: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Address-Mailing/Permanent (STREET, APT. NUMBER) (CITY) (STATE) ZIPCODE RESIDENCE PHONE	
94 COVINGTON LANE		PALM COAST		FL 32137	
Address-Local (STREET, APT. NUMBER) (CITY) (STATE) ZIPCODE RESIDENCE PHONE		SAME AS ABOVE			
Address-Other(Employer/School) (STREET, APT. NUMBER) (CITY) (STATE) ZIPCODE BUS/SCHOOL PHONE		DAYTONA TOYOTA 451 N. NOVA ROAD		DAYTONA BEACH FL 32114 386-255-7475	
CHARGES		DOMESTIC VIOLENCE? YES <input type="checkbox"/>		Attachments: Affidavit(s) <input checked="" type="checkbox"/> Statement(s) <input type="checkbox"/> NTA Schedule <input type="checkbox"/> Report <input type="checkbox"/> Traffic Infraction(s) <input type="checkbox"/> DUI <input type="checkbox"/> Total Charges: 2	
#1	Charge: MANSLAUGHTER WITH A FIREARM	FEL <input checked="" type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>		FS/ORD: 782.07	Citation No.:
#2	Charge: POSSESSION OF FIREARM BY CONVICTED FELON	FEL <input checked="" type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>		FS/ORD: 790.23	Citation No.:
#3	Charge:	FEL <input type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>		FS/ORD:	Citation No.:
CO-DEFENDANT		Co-Def #1. Arrested? Y <input type="checkbox"/> N <input type="checkbox"/> Fel <input type="checkbox"/> Misd <input type="checkbox"/> Traf <input type="checkbox"/> Ord <input type="checkbox"/> NTA <input type="checkbox"/>		Co-Def #2. Arrested? Y <input type="checkbox"/> N <input type="checkbox"/> Fel <input type="checkbox"/> Misd <input type="checkbox"/> Traf <input type="checkbox"/> Ord <input type="checkbox"/> NTA <input type="checkbox"/>	
#1 NAME(L,F,M):	Race:	Sex:	DOB:	Age:	
#2 NAME(L,F,M):	Race:	Sex:	DOB:	Age:	
NARRATIVE					
The undersigned certifies and swears that there is probable cause to believe the above named defendant, on the 21st day of FEBRUARY , 2012, at approximately 0917 HOURS <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m. at 94 COVINGTON LANE, PALM COAST, FL within FLAGLER County, violated the law and did then and there:					
unlawfully cause the death of Stefanie Merrill, a human being, by his unlawful and intentional act or through his culpable negligence, by shooting her with a firearm, and in the commission of said act, the defendant actually used and possessed a firearm as described in F.S. 790.001,					
Count 2. William Merrill unlawfully possessed a firearm as defined in F.S. 790.001 and said William Merrill has previously been convicted of a felony and has not had his civil rights restored.					
On February 21st, 2012 at approximately 9:17 am the Flagler County Sheriff's Office responded to 94 Covington Pl. Palm Coast in reference to a shooting. While law enforcement was enroute Flagler County 911 dispatch remained on the phone with the caller who identified himself as Carson, later identified as the defendant. The defendant advised the 911 dispatcher that he had just shot his wife. Upon arrival the deputies made contact with the defendant in front of the residence. Upon entry of the residence by law enforcement they located a female lying in the master bathroom with an apparent gunshot wound to the chest. The victim was pronounced deceased by paramedics on scene.					
NOTICE TO APPEAR		MANDATORY APPEARANCE <input type="checkbox"/>		YOU NEED NOT APPEAR IN COURT BUT MUST COMPLY WITH INSTRUCTIONS ON THE REVERSE SIDE OF YOUR COPY <input type="checkbox"/>	
FINE, AND COSTS AMOUNT:					
I AGREE TO APPEAR IN COURT HEREIN TO ANSWER THE OFFENSE CHARGED OR TO PAY THE FINE INDICATED. I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED, OR PAY THE LISTED FINE, I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST WILL BE ISSUED.					
SIGNATURE OF DEFENDANT		DATE		RELATIONSHIP TO JUVENILE	
SIGNATURE OF JUVENILE PARENT OR CUSTODIAN		DATE		CITATION No.	
Sworn to and subscribed before me, the undersigned		I swear/affirm the above statements are correct and true.		Rt Thumb	
This 21st day of Feb , 2012		DET. E. CONRAD		61-289	
Name: DET. KIM DAVIS ID# 61501		OFFICER'S/COMPLAINANT'S SIGNATURE			
Notary Public <input type="checkbox"/> Law Enforcement or Corrections Officer <input checked="" type="checkbox"/>		NAME(PRINTED)		ID NUMBER	
Personally Known <input checked="" type="checkbox"/> Produced Identification <input type="checkbox"/>		DET. E. CONRAD		61-289	
Type of Identification:		Inmate Number & facility:			

AFF-61-21

PAPER FILED BY FEB 23 PM 1:47

CLERK OF COURT COUNTY, FLA.

Narrative 707-B Supplement

Arrest
 Affidavit
 Notice to Appear
 Adult
 Juvenile

Court Case Number:

Pg # 2 of 2

Defendant Name: MERRILL, WILLIAM, CARSON	Agency Case Number: 12010-2012
--	--

CHARGES	DOMESTIC VIOLENCE? YES <input type="checkbox"/>	Attachments: Affidavit(s) <input type="checkbox"/> Statement(s) <input type="checkbox"/> NTA Schedule <input type="checkbox"/> Report <input type="checkbox"/> Traffic Infraction(s) <input type="checkbox"/>	FS/ORD:	Citation No:	Bond:
#	Charge:	FEL <input type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>			
#	Charge:	FEL <input type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>			
#	Charge:	FEL <input type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>			

An autopsy was performed by the District 23 Medical Examiner's Office. The death occurred from a single gunshot wound to the chest and exiting in the back. The death was ruled a homicide.

The defendant was interviewed at the Flagler County Sheriff's Office Criminal Investigations Division. During the interview the defendant stated he obtained his rifle located in the bathroom closet and activated its laser, pointing it on the chest of his wife. The defendant further stated while the laser was activated he pulled the trigger resulting in the discharge of his firearm and the injury and death of his wife.

It should also be noted the defendant admitted to owning several firearms located inside the residence, twenty firearms were later removed from the residence by crime scene technicians. A criminal history was obtained on the defendant which revealed a Felony conviction in 2007. The conviction was verified through Flagler County Clerk of Courts.

Sworn to and subscribed before me, the undersigned this <u>23rd</u> day of <u>Jul</u> 2012	I swear/affirm the above statements are correct and true.	Right thumb
Name: <u>Cpl. Y. Minsky</u>	<u>Det. E. Conrad</u> 61-289	
Notary Public <input type="checkbox"/> Law Enforcement Officer <input checked="" type="checkbox"/>	OFFICER'S/COMPLAINANT'S SIGNATURE	
Personally Known <input checked="" type="checkbox"/> Produced Identification <input type="checkbox"/>	<u>Det. E. Conrad</u>	
Type of Identification:	NAME(PRINTED)	ID NUMBER

**7th. Judicial Circuit 707
Charging Affidavit - Flagler**

Arrest # _____

Bk # 12-0480

Pg #1 of 1

ARREST <input checked="" type="checkbox"/> NOTICE TO APPEAR <input type="checkbox"/> AFFIDAVIT <input type="checkbox"/> C.C. <input type="checkbox"/>		ADULT <input checked="" type="checkbox"/> JUVENILE <input type="checkbox"/>		Court Case Number: <u>12-129-CFA</u>	
(ORI) FL: _____		Agency Name: <u>Flagler County Sheriffs Office</u>		Agency Case Number: <u>12010-12</u>	
FCIC/NCIC Check? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		OBTS# <u>1801035291</u>		Date Arrested: <u>02/23/12</u>	
ADDRESS OF ARREST: <u>4721 E. Moody Blvd. Bunnell, FL 32110</u>		Arrested By: <u>E. Conrad</u>		Time of Arrest: <u>1800</u>	
DEFENDANT Name (L,F,M): <u>Merrill, William Carson</u>		A.K.A.: <u>Carson</u>		ID Number: <u>289</u>	
DOB: <u>03/22/79</u>		Age: <u>32</u>		Sex: <u>Male</u>	
Driver's Lic/ID No.: <u>M640-923-79-102-0</u>		State: <u>FL</u>		Year Expires: <u>03/20</u>	
Height: <u>5'10</u>		Weight: <u>160</u>		S.S. #: _____	
Hair: <u>brown</u>		Eyes: <u>bluc</u>		POB (City, St, Country): <u>TN, USA</u>	
Scars, Marks, Tattoos: _____		Business & Occupation: <u>Daytona Toyota</u>		Statement: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Citizenship: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Probation: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		Sexual Predator: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
English: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		Deaf/Mute: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		RESIDENCE PHONE	
Address-Mailing/Permanent (STREET, APT. NUMBER): <u>94 Covington Ln.</u>		(CITY): <u>Palm Coast</u>		(STATE): <u>FL</u>	
Address-Local (STREET, APT. NUMBER): _____		(CITY): _____		(STATE): _____	
Address-Other(Employer/School) (STREET, APT. NUMBER): _____		(CITY): _____		(STATE): _____	
CHARGES		DOMESTIC VIOLENCE? YES <input type="checkbox"/>		Attachments: Affidavit(s) <input type="checkbox"/> Statement(s) <input type="checkbox"/> NTA Schedule <input type="checkbox"/> Report <input checked="" type="checkbox"/> Traffic Infraction(s) <input type="checkbox"/> DUI <input type="checkbox"/>	
Total Charges: <u>2</u>		Bond: <u>150,000.00</u>		Bond: <u>50,000.00</u>	
#1	Charge: <u>Manslaughter with a firearm</u>	FEL <input checked="" type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>	FS/ORD: <u>782.07</u>	Citation No.:	Bond: <u>150,000.00</u>
#2	Charge: <u>Possession of firearm by a convicted Felon</u>	FEL <input type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>	FS/ORD: <u>790.23</u>	Citation No.:	Bond: <u>50,000.00</u>
#3	Charge: _____	FEL <input type="checkbox"/> MISD <input type="checkbox"/> ORD <input type="checkbox"/>	FS/ORD: _____	Citation No.:	Bond: _____
CO-DEFENDANT		Co-Def #1. Arrested? Y <input type="checkbox"/> N <input type="checkbox"/> Fel <input type="checkbox"/> Misd. <input type="checkbox"/> Traf. <input type="checkbox"/> Ord. <input type="checkbox"/> NTA <input type="checkbox"/>		Co-Def #2. Arrested? Y <input type="checkbox"/> N <input type="checkbox"/> Fel. <input type="checkbox"/> Misd. <input type="checkbox"/> Traf. <input type="checkbox"/> Ord. <input type="checkbox"/> NTA <input type="checkbox"/>	
#1 NAME(L,F,M): _____		Race: _____		Sex: _____	
#2 NAME(L,F,M): _____		Race: _____		Sex: _____	
NARRATIVE		<p>The undersigned certifies and swears that there is probable cause to believe the above named defendant, on the <u>23rd</u> day of <u>Feb</u>, <u>2012</u>, at approximately <u>1:00</u> <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m. at <u>4721 E. Moody Blvd. Bunnell</u> within <u>Flagler</u> County, violated the law and did then and there: Detective Conrad made contact with the above listed defendant at the Flagler County Sheriff's Office Investigations Division. The above defendant did then and there have an active Flagler County warrant issued by Circuit court Judge R. Zambrano on February 23, 2012 (Warrant # 129-<u>129</u> CFFA) for the charges of;</p> <p>1) Manslaughter with a firearm (FS 782.07) \$150,000.00 Bond 2) Possession of a firearm by a convicted Felon (FS 790.23) \$50,000.00 Bond</p> <p>The defendant was taken into custody and transported to the Flagler County Inmate Facility without incident.</p>			
NOTICE TO APPEAR		MANDATORY APPEARANCE <input type="checkbox"/>		YOU NEED NOT APPEAR IN COURT BUT MUST COMPLY WITH INSTRUCTIONS ON THE REVERSE SIDE OF YOUR COPY <input type="checkbox"/>	
I AGREE TO APPEAR IN COURT HEREIN TO ANSWER THE OFFENSE CHARGED OR TO PAY THE FINE INDICATED. I UNDERSTAND THAT SHOULD I WILLFULLY FAIL TO APPEAR BEFORE THE COURT AS REQUIRED, OR PAY THE LISTED FINE, I MAY BE HELD IN CONTEMPT OF COURT AND A WARRANT FOR MY ARREST WILL BE ISSUED.		FINE, AND COSTS AMOUNT: _____		Juve Disp. CITATION No. _____	
SIGNATURE OF DEFENDANT _____		DATE _____		RELATIONSHIP TO JUVENILE _____	
Sworn to and subscribed before me, the undersigned This <u>23rd</u> day of <u>Feb</u> , <u>2012</u> .		I swear/affirm the above statements are correct and true.			
Name: <u>[Signature]</u>		Name: <u>Elizabeth Conrad</u> #289			
Notary Public <input type="checkbox"/> Law Enforcement or Corrections Officer <input checked="" type="checkbox"/>		NAME(PRINTED)		ID NUMBER	
Personally Known <input type="checkbox"/> Produced Identification <input type="checkbox"/>		Type of Identification: _____		Elizabeth Conrad	
OFFICIAL USE ONLY		Inmate Number & facility: _____			

BY [Signature]
 2012 FEB 24 PM 3:27
 CLERK OF COURT
 FLAGLER COUNTY, FLA.

STATE VS. Merrill, William Carson 3/22/79
NAME (Last) (First) (Middle) DOB: Court Case Number:

FIRST APPEARANCE DATE: 2/24/12

The defendant was advised of his/her rights and furnished a copy of the complaint.
 Defendant () requested and was appointed a Public Defender after being found indigent.
 Defendant () not indigent, has or will retain _____ as counsel.
 The Court has examined the sworn complaint and finds:

CHARGE	<i>Manslaughter</i>	<i>for Felony</i>			
Probable Cause Found	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
PC Undet. - 72 hours					
PC Undet. - 96 hours					
Insufficient PC					
BOND SET AT	<u>150,000</u>	<u>50,000</u>			
ROR					
PTR					
Other					

ASA: _____ PD _____
 Plea: _____
 Sentence: _____
 Notes: _____

CONDITIONS OF RELEASE

- Type of Supervision:
 Supervised Release
 Electronic Monitoring - May require defendant to pay for use of monitoring equipment
- Special Conditions:
 No contact with the alleged victim(s), witness(es), & co-defendant(s)

 No violent contact with the alleged victim(s) _____
 Do not consume illegal drugs
 Do not consume alcohol
 Submit to urinalysis tests for illegal drugs and/or alcohol
 Substance abuse assessment
 Participation in appropriate substance abuse treatment
 Turn in all firearms/weapons to FCSO

APB [Signature]
 Judge