

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

STATE OF FLORIDA,

Plaintiff/Appellee,

CIRCUIT CASE NO. 14-CF-000270
DIVISION: M. FOXMAN

vs.

DCA Case No. 5D17-965

MICHAEL G. STAVRIS, II,

Defendant/Appellant.

SECOND MOTION TO CORRECT SENTENCING DOCUMENTS

COMES NOW, the Defendant MICHAEL G. STAVRIS, II, by and through his undersigned appellate counsel, and pursuant to Rule 3.800(b)(2), Florida Rules of Criminal Procedure, respectfully requests that this Honorable Court correct the Order of Probation imposed in this case on November 4, 2016, corrected on November 8, 2017, and in support thereof the Defendant would show that:

JURISDICTION & BACKGROUND

Mr. Stavris has appealed the judgment and sentence entered by this Honorable Court on July 26, 2016. He has not yet filed an initial brief in the appeal, and has filed a Notice of Pending Motion to Correct Sentence with the Appellate Court. Therefore, this Court has jurisdiction. *See* Fla. R. Crim. P. 3.800(b)(2); Fla. R. App. P. 9.600(d).

The Defendant entered a plea of nolo contendere to two amended charges of child abuse, and one charge of fraudulent use of personal identification information, each a third degree felony offense. At Sentencing, Mr. Stavris was adjudicated guilty on each count and sentenced to 36 months in state prison (DOC) on Count I, followed by concurrent five-year terms of probation for Counts II and III. (*See* Excerpt of Sentencing Hearing, attached as Exhibit A).

On August 30, 2017, Appellant moved to correct his written sentence, to exclude special conditions of probation not orally pronounced at sentencing. The Court subsequently entered a corrected Order of Probation omitting the erroneous special conditions. (*See* Order on Defendant's first Motion to Correct, and corrected Order of Probation, attached as Exhibits B and C, respectively). It appears, however, that this amended Order indicates that the probationary terms imposed for Counts II and III are to run consecutively to each other, rather than concurrently.

LEGAL ARGUMENT

The written Sentence should be corrected to conform to the Court's oral pronouncement.

"Florida has long recognized a court's inherent power to correct clerical errors." *Migdal v. State*, 970 So. 2d 445, 448 (Fla. 4th DCA 2007)(citation omitted). A clerical or scrivener's error involves a mistake in the written sentence that is at variance with the oral pronouncement of the sentence or the record. *See, Id.* at 448-49 (citation omitted). In general, the written order must conform to and accurately reflect the Court's oral pronouncement, as the written sentence is usually simply a record of the actual sentence required to be pronounce in open court. *Justice v. State* 674 So. 2d 123, 125 (Fla. 1996) (citation omitted). Where the written sentencing order conflicts with the oral pronouncement of the Court, the oral pronouncement controls. *Id.*; *Chrystie v. State*, 95 So. 3d 1027, 1028 (Fla. 5th DCA 2012) (citation omitted).

Here, this Honorable Court orally imposed two terms of probation to run concurrently with each other on Counts II and III, to consecutively follow the incarcerative portion of Mr. Stavris' sentence imposed for Count I. The corrected written Order of Probation entered following Mr. Stavris' first Motion to Correct Sentence, however, indicates that the two terms of probation are to run *consecutively* to each other, which would effectively increase the overall length of the sentence imposed by this Court. As such, the Order of Probation does not comport with the oral

pronouncement of this Honorable Court, and the clerical error should, therefore, be corrected in order for the written sentencing order to come into clear conformity with the sentence orally imposed. . See *Williams v. State*, 957 So. 2d 600, 603 (Fla. 2007); *Duncan v. State*, 59 So. 3d 1197, 1199 (Fla. 5th DCA 2011).

Appointment of Counsel

In the event this Honorable Court determines that further proceedings are necessary to determine the matter discussed herein, Mr. Stavris will, for the purposes of such proceedings before this Honorable Court, be represented by trial counsel, pursuant to Florida Rule of Criminal Procedure 3.800(b)(2)(A), and Florida Rule of Appellate Procedure 9.140(d)(2).

CONCLUSION

WHEREFORE, the Defendant respectfully requests that this Court enter an order granting the instant Motion, and correct the Order of Probation to conform to its oral pronouncement with regard to the concurrent terms of probation imposed.

Respectfully submitted,

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

/s/ Ali L. Hansen

Ali L. Hansen
Assistant Public Defender
Florida Bar No. 0111522
444 Seabreeze Boulevard, Suite 210
Daytona Beach, Florida 32118
(386) 254-3758
Hansen.Ali@pd7.org
COUNSEL FOR APPELLANT

DESIGNATION OF E-MAIL ADDRESS

I HEREBY DESIGNATE the following e-mail addresses for purposes of service of all documents, pursuant to Rule 2.516, Florida Rules of Judicial Administration, in this proceeding: appellate.efile@pd7.org (primary) and Hansen.Ali@pd7.org (secondary).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed electronically to the Criminal Appeals Clerk, Flagler County, Seventh Judicial Circuit, Kim C. Hammond Justice Center, 1769 East Moody Boulevard, Building # 1, Bunnell, Florida 32110, at www.myflcourtagency.com; delivered electronically to the Office of the Attorney General, 444 Seabreeze Boulevard, fifth floor, Daytona Beach, Florida 32118, at crimappdab@myfloridalegal.com; Aaron D. Delgado, Esquire, Damore, Delgado, Romanik & Rawlins, 227 Seabreeze Blvd., Daytona Beach, Florida 32118, at adelgado@communitylawfirm.com; Jennifer Dunton, Esquire, Office of the State Attorney, 2446 Dobbs Road, St. Augustine, Florida 32086, at eserviceflagler@sao7.org and duntonj@sao7.org; and a true and correct copy thereof delivered by mail to the Honorable Matthew Foxman, Circuit Judge, S. James Foxman Justice Center, 251 North Ridgewood Avenue, Daytona Beach, Florida 32118; and Mr. Michael G. Stavris, II, DC# V50447, Columbia Correctional Institution, 216 S.E. Corrections Way, Lake City, Florida 32025-2013, on this 12th day of December, 2017.

/s/ Ali L. Hansen

Ali L. Hansen
Assistant Public Defender

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

STATE OF FLORIDA,

Plaintiff/Appellee,

CIRCUIT CASE NO. 14-CF-000270

DIVISION: M. FOXMAN

vs.

DCA Case No. 5D17-965

MICHAEL G. STAVRIS, II,

Defendant/Appellant.

_____ /

**EXHIBITS TO DEFENDANT/APPELLANT'S
SECOND MOTION TO CORRECT SENTENCE**

<u>Exhibit</u>	<u>Title</u>	<u>Page No.</u>
Exhibit A	Excerpt of Sentencing Hearing	6
Exhibit B	Order on Defendant's first Motion to Correct	9
Exhibit C	Corrected Order of Probation.....	11

* * * EXCERPT * * *

1 need to announce for the record the conditions that were
2 agreed upon, so I've got to get through this and it's
3 going to take awhile. But, Mr. Stavris, let me tell you
4 this, bottom line there is no place for this behavior in
5 decent society. It's that simple. There's no place for
6 it.

7 I'm going to adjudicate you guilty after accepting
8 your plea to the charge of child abuse. I'm going to
9 sentence you to 36 months in the Department of
10 Corrections Florida State Prison.

11 Counts II and III I'm also going to adjudicate you
12 guilty, but I'm going to run five years probation
13 concurrent on those charges but consecutive to the three
14 years on probation. So you got three years in, five
15 years probation.

16 As a condition of probation you're not to have any
17 contact with Shonna Foster or, using initials but
18 they're a part of the record, D.B.; no contact with M.M.
19 and M.R.; no unsupervised contact with a minor child
20 without prior court approval. I'm going to order you
21 undergo a psychosexual evaluation per the Department of
22 Corrections referral, and any recommended treatment must
23 be followed successfully. Going to order you to have
24 independently a mental health evaluation per the
25 Department of Corrections referral and successfully

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1 complete any recommended treatment. You also shall
2 disclose any and all email addresses to your probation
3 officer.

4 The Defendant, meaning you, sir, will not create or
5 maintain any online social media dating accounts to
6 include but not limited to Facebook, Myspace, Twitter,
7 Instagram, Reddit, Tinder, MeetMe, Snapchat, Plenty of
8 Fish, Match.com, et cetera. If the Defendant has any
9 questions about his online activity, he needs to seek
10 permission of his probation officer before creating the
11 account.

12 You're also to complete the FDLE affidavit of
13 relinquishment of criminal justice certification. I
14 think that's been accomplished today. If not, I'll
15 order it be done in 24 hours.

16 Also I'm ordering you to forfeit any electronic
17 devices that were used as a part of this.

18 I'm also going to order statutory fines and costs
19 but reduced to a civil judgment. That's the best I can
20 do for you in that regard.

21 Sir, you have 30 days to appeal what I just did,
22 both the judgment and sentence. If you need an attorney
23 in that process, I'd gladly give you one.

24 You're young enough to get through this. Get
25 through it, live an honorable life, understood?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Yes, ma'am?

3 MS. DUNTON: Just logistically did you do 36 on
4 Count I and then probation on the other two, or 36 on
5 all three?

6 THE COURT: 36 on Count I, consecutive five years
7 probation but concurrent on II and III for the
8 probation.

9 MS. DUNTON: Got you. Three followed by five
10 overall?

11 THE COURT: Yes.

12 MS. DUNTON: Thank you.

13 THE COURT: Thank you. All right. Thank you very
14 much.

15 (Audio ends at 3:00 p.m.)

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

CASE NO.: 2014-CF-000270

STATE OF FLORIDA,

v.

MICHAEL GERARD STAVRIS,
Defendant.

_____ /

ORDER ON DEFENDANT'S MOTION TO CORRECT SENTENCING ERROR;
ORDER DIRECTING D.O.C. PROBATION AND PAROLE TO CORRECT
DEFENDANT'S ORDER OF PROBATION

THIS MATTER came before the Court upon Defendant's "Motion to Correct Sentencing Error," filed by and through counsel pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) on August 30, 2017. The Court, having considered the motion, and the court file, and being otherwise apprised of the premises, finds as follows:

In the instant motion, Defendant alleges that the "Order of Probation" lists two special conditions that were not orally pronounced at the time of sentencing. Defendant argues that, because these two conditions were not orally pronounced, they must be stricken from the Order. The State concedes to the aforementioned errors. "When a written order of probation deviates from the oral pronouncement of probation at the sentencing hearing, the oral pronouncement controls." *McNally v. State*, 685 So. 2d 98, 99 (Fla. 4th DCA 1997) (citing *Williamson v. State*, 569 So. 2d 1368 (Fla. 4th DCA 1990)). Because the "Order of Probation" conflicts with the oral pronouncement, the Order will be amended. *See Velez-Pizzini v. State*, 58 So. 3d 278 (Fla. 5th DCA 2011)

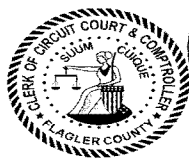
(citing *Justice v. State*, 674 So. 2d 123 (Fla. 1996)); *see also Spitalieri v. State*, 72 So. 3d 154 (Fla. 5th DCA 2011) (citing *State v. Williams*, 712 So. 2d 762 (Fla. 1998)).

Accordingly it is hereby **ORDERED AND ADJUDGED** that:

- 1) Defendant's "Motion to Correct Sentencing Error" is **GRANTED**.
- 2) The Department of Corrections, Probation and Parole is **DIRECTED** to **AMEND** the "Order of Probation" in case number 2014-CF-000270 by **STRIKING** the following conditions:
 - a. Special Condition 3. You will be required to pay for drug testing unless exempt by the court; and
 - b. Special Condition 23. You will be assessed an amount of \$1.00 per month during the term of supervision to supplement rehabilitative efforts through First Step Funds, pursuant to s. 948.039(2), F. S.
- 3) The Clerk of the Court shall supplement the appellate record with the instant motion, the Court's Order directing the State to respond, the State's response, the instant Order, and the corrected "Order of Probation" pursuant to Florida Rule of Appellate Procedure 9.140(f)(6)(A).

DONE AND ORDERED in Chambers, in Flagler County, Bunnell, Florida, this

13th day of October 2017.



[Handwritten Signature]
DENNIS CRAIG
CIRCUIT COURT JUDGE

cc: Michael Gerard Stavris, Defendant, V50447, Columbia Correctional Institution,
216 S.E. Corrections Way, Lake City, Florida 32025-2013
Ali L. Hansen, Attorney for Defendant, hansen.ali@pd7.org;
appellate.efile@pd7.org
Aaron D. Delgado, Attorney for Defendant, adelgado@communitylawfirm.com
The Office of the State Attorney, eserviceflagler@soa7.org
The Office of the Attorney General, crimappdab@myfloridalegal.com
The Florida Department of Corrections, Division of Probation and Parole,
sharon.davis@fdc.myflorida.com
The Office of the Clerk of Court

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RECORDED IN THE OFFICIAL RECORDS OF Tom Bexley, Clerk of the Circuit Court & Comptroller Flagler, FL

STATE OF FLORIDA

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

-VS-

CASE NUMBER 14-00270 CFFA

MICHAEL GERARD STAVRIS II
Defendant

DC NUMBER V50447

ORDER OF PROBATION

This cause coming before the Court to be heard, and you, the defendant, being now present before the court, and you having

- entered a plea of guilty to
- been found guilty by jury verdict of
- entered a plea of nolo contendere to
- been found guilty by the court trying the case without a jury of

Count I	<u>CHILD ABUSE, (F3)</u>	Count III	<u>FRAUDULENT USE OF PERSONAL ID INFORMATION, (F3)</u>
Count II	<u>CHILD ABUSE, (F3)</u>	Count ____	_____

SECTION 1: JUDGMENT OF GUILT

- The court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on Probation for a period of SEE SECTION 3 under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: ORDER WITHHOLDING ADJUDICATION

- Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on Probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: INCARCERATION DURING PORTION OF SUPERVISION SENTENCE

- It is hereby ordered and adjudged that you be:
- committed to the Department of Corrections for a term of Ct. I Thirty-Six (36) Months prison with credit for Two (2) Days jail time, followed by Probation for a period of Cts. II & III Five (5) Years under the supervision of the Department of Corrections, subject to Florida law. Cts. II & III to run consecutive to Ct. I, and Cts. II & III to run consecutive to each another.

IT IS FURTHER ORDERED that you shall comply with the following standard conditions of supervision as provided by Florida law:

- (1) You will report to the probation office as directed.
- (2) You will pay the State of Florida the amount of \$50.00 per month, as well as 4% surcharge, toward the cost of your supervision in accordance with s. 948.09, F.S., unless otherwise exempted in compliance with Florida Statutes.
- (3) You will remain in a specified place. You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
- (4) You will not possess, carry or own any firearm. You will not possess, carry, or own any weapon without first procuring the consent of your officer.
- (5) You will live without violating any law. A conviction in a court of law is not necessary for such a violation of law to constitute a violation of your probation, community control, or any other form of court ordered supervision.

c/c Prob

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MICHAEL GERARD STAVRIS II
V50447
14-00270 CFFA

- (6) You will not associate with any person engaged in any criminal activity.
- (7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.
- (8) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.
- (9) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.
- (10) You will pay restitution, court costs, and/or fees in accordance with special conditions imposed or in accordance with the attached orders.
- (11) You will submit to random testing as directed by your officer or the professional staff of the treatment center where you are receiving treatment to determine the presence or use of alcohol or controlled substances.
- (12) You will submit a DNA sample, as directed by your officer, for DNA analysis as prescribed in ss. 943.325 and 948.014, F.S.
- (13) You will submit to the taking of a digitized photograph by the department. This photograph may be displayed on the department's website while you are on supervision, unless exempt from disclosure due to requirements of s. 119.07, F.S.
- (14) You will report in person within 72 hours of your release from incarceration to the probation office in Flagler County, Florida, unless otherwise instructed by the court or department. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at 2405 East Moody Blvd., Suite 301, Bunnell, FL 32110.

Tolling for violations of community supervision will not be imposed unless otherwise pronounced by the court.

SPECIAL CONDITIONS

1. You must undergo a Mental Health evaluation and, if treatment is deemed necessary, you must successfully complete the treatment, and be responsible for the payment of any costs incurred while receiving said evaluation and treatment, unless waived by the court.
Additional instructions ordered: _____
13. You will have no contact (direct or indirect) with victims, S.F., D.B., M.M. and M.R., during the period of supervision.
27. Other: You must undergo a Psycho-sexual evaluation and, if treatment is deemed necessary, you must successfully complete the treatment, and be responsible for the payment of any costs incurred while receiving said evaluation and treatment, unless waived by the court.
Additional instructions ordered: _____
28. Other: You will disclose all email addresses to your officer.
29. Other: You will not create or maintain any online social media accounts.
30. Other: You will relinquish your Criminal Justice Certification.
31. Other: All court costs/fines are ordered to a Judgment/Lien; therefore, all court costs will be transferred to a payment plan with the Flagler Clerk of Court. Contact the Flagler Clerk of Court office to make payment arrangements immediately on the 2nd floor of the Kim C. Hammond Courthouse. If incarcerated, you have 5 days from release to report to the Clerk's Office to fill out the payment plan application.

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MICHAEL GERARD STAVRIS II
V50447
14-00270 CFFA

Effective for offenders whose crime was committed on or after September 1, 2005, there is hereby imposed, in addition to any other provision in this section, mandatory electronic monitoring as a condition of supervision for those who:

- Are placed on supervision for a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older; or
- Are designated as a sexual predator pursuant to s. 775.21; or
- Has previously been convicted of a violation of chapter 794, s. 800.04(4), (5), or (6), s. 827.071, or s. 847.0145 and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.

You are hereby placed on notice that should you violate your probation or community control, and the conditions set forth in s. 948.063(1) or (2) are satisfied, whether your probation or community control is revoked or not revoked, you shall be placed on electronic monitoring in accordance with F.S. 948.063.

Effective for offenders who are subject to supervision for a crime that was committed on or after May 26, 2010, and who has been convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s. 943.0435(1)(a)1.a.(I), or a similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense; the following conditions are imposed in addition to all other conditions:

(a) A prohibition on visiting schools, child care facilities, parks, and playgrounds, without prior approval from the offender's supervising officer. The court may also designate additional locations to protect a victim. The prohibition ordered under this paragraph does not prohibit the offender from visiting a school, child care facility, park, or playground for the sole purpose of attending a religious service as defined in s. 775.0861 or picking up or dropping off the offender's children or grandchildren at a child care facility or school.

(b) A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court.

Effective for offenders whose crime was committed on or after October 1, 2014, and who is placed on probation or community control for a violation of chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, in addition to all other conditions imposed, is prohibited from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.

YOU ARE HEREBY PLACED ON NOTICE that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

IT IS FURTHER ORDERED that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

IT IS FURTHER ORDERED that you pay:

Court Costs, Fees, and Fines, as imposed at sentencing, in the total amount of: \$ 1,171.00

Payments processed through the Department of Corrections will be assessed a 4% surcharge pursuant to s. 945.31, F.S.
Pursuant to s. 948.09, F.S., you will be assessed an amount of \$2.00 per month for each month of supervision for the Training Trust Fund Surcharge.

ALL PAYMENTS ARE TO BE MADE THROUGH AND PAYABLE TO: JPay.

IF COURT COSTS/FINES ARE ORDERED TO A JUDGMENT/LIEN, THEY WILL BE TRANSFERRED TO A PAYMENT PLAN:
You must contact the Flagler Clerk of Court office to make payment arrangements immediately on the 2nd floor of the Kim C. Hammond Courthouse. If incarcerated, you have 5 days from release to report to the Clerk's Office to fill out the payment plan application.
DEPARTMENT OF CORRECTIONS COSTS ARE STILL TO BE MADE THROUGH AND PAYABLE TO JPay.

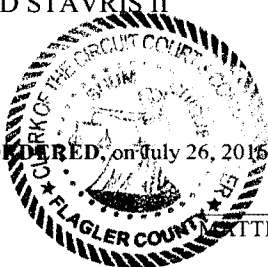
IT IS FURTHER ORDERED that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

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Revised 07-01-16

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MICHAEL GERARD STAVRIS II
V50447
14-00270 CFFA



DONE AND ORDERED, on July 26, 2016

Matthew M. Foxman

MATTHEW M. FOXMAN, Circuit Judge

I acknowledge receipt of a copy of this order and that the conditions have been explained to me and I agree to abide by them.

Date: _____

Defendant

Instructed by: _____
Supervising Officer

DG/sl