

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

THE STATE OF FLORIDA
Petitioner

-V-

CASE No. 2021 303222 CFDB

Nicole Jackson Maldonado
Defendant

**MOTION FOR RECONSIDERATION TO DISMISS DEFENSE COUNSEL AND
REQUEST FULL NELSON HEARING**

COMES NOW the Defendant Nicole Jackson Maldonado in pro se in the above styled cause and pursuant to pretrial motion Fla.R. Crim.P. 3.190 (a) respectfully request this Honorable Court to Re-Hear the above by ordering a full and complete NELSON HEARING and dismiss Defendants Public Defenders Lawrence Avallone and Jessica Roberts.

This motion is submitted due to the fact that Defendant was present before this Court on 01/05/2023 for a pretrial hearing in the above case. Defendant informed this Court about Defendants motions that were being submitted to dismiss her Public Defenders. However, this Court mistakenly believed those motions were the 'solitary confinement motions' that had been filed on behalf of Defendant. However, that was incorrect.

With that mistaken belief this Court proceeded to commence what the Court thought was Defendants actual motion and proceeded and went on to hold a

Nelson Hearing believing it had complete facts to make full informed decision. However, this instant motion was the actual motion to be presented to this Court. Defendant now requests that the issues be fully presented and resolved.

Defendant would like to begin by apologizing for the length of such motion but Defendant has taken the advice of this Court when it said be careful with what is said in court. (no doubt due to Defendants nervousness.) With that said, Defendant will allow her motion to speak for her and to preserve the issues:

Defendant cites Nelson v. State 274 So. 2d 256 (4th DCA 1973) "It follows from the foregoing that where a defendant, before the commencement of trial, makes it appear to the trial judge that he desires to discharge his court appointed counsel, the trial judge, in order to protect the indigent's right to effective counsel, should make an inquiry of the defendant as to the reason for the request to discharge".

Defendant hopes that these facts presented in this motion will show the Court that Defendant is correct, that counsel must be dismissed. Again citing Nelson, "If the defendant continues to demand a dismissal of his court appointed counsel, the trial judge may in his discretion discharge counsel and require the defendant to proceed to trial without representation by court appointed counsel".

Also, Faretta v. California 422 U.S. 806, 823 (1975) "A defendant cannot be denied the right to present his/her own defense and can not have an attorney forced upon them."

During the 01/05/2023 Hearing this Court focused on Defendants concerns regards counsels lack of explaining the full sentencing laws and counsels failures in the Flagler County case. This Court informed Defendant that Flager was not her

jurisdiction and Defendant acknowledges that. However, it is the issue of "conflict of interest" regarding the (4) individual Public Defenders Office who thus far have "represented" Defendant and who been incapable of a full representation required by the law. Such facts will be proved within this motion and will be addressed in the following Memorandum of Law.

The bottom line is, Defendant cannot move forward with Mr. Avallone or Ms. Roberts due to lack of substantial communication between the parties. Further, it is the hopes of this Defendant that this court will remove all possibilities of appointing any other Public Defender due to that 'conflict of interest' that has taken place in Defendants Flagler and Volusia County cases. Therefore, Defendant respectfully requests this Court either appoint private sector counsel under F.S. 27.5303 (*or*) allow Defendant to represent herself until such time that funds will be raised to hire private counsel. Once Defendants counsel is removed the raising of funds for a private attorney can begin. Defendant does have a support group that is ready to move in that direction now and do expect they expect to raise the required funds.

Therefore, the (3) ISSUES presented to this court are:

- 1. Conflict of interest within the Public Defender's Office regarding Defendants 3 separate cases where all four (4) Public Defenders have failed in the basic fundamental standards of representation.**
- 2. Ineffective counsel of Lawrence Avallone and Jessica Roberts in the above Volusia County case before this Court.**
- 3. The Plea offer by the State is an illegal sentence under the sentencing rules.**

FACTS LEADING TO FLAGLER (JUVENILE)

1. **04/09/2021** Defendant was originally arrested and charged as a juvenile in Flagler County. Public Defender Noble Bruton was assigned the case of Defendant. Case No. 2021-00041-CJJA
2. This incident stems from Defendant allegedly starting two small fires in a wooded area and spreading to (5) different wooded properties. One of those properties had (8) panels of vinyl fence burned. Defendant was released several hours later and was returned to her foster home;
3. Defendant never saw, spoke, met with or was given opportunity to confer with her juvenile P.D. Noble Bruton at anytime.
4. Defendant was never present during any Hearing's including any audio-video Zoom conference. Further Defendant was never advised or contacted by anyone of the State Attorney Office, Public Defenders Office or law enforcement regards her juvenile case leading Defendant to think the case was dropped.
5. The juvenile charges remained when transferred to adult status.

FACTS LEADING TO VOLUSIA / FLAGLER (adult)

1. **06/01/2021** Less then (2) month later the State of Florida alleges that Defendant and a fellow juvenile broke into a home and damaged some interior belongs and discovering several weapons where a shooting followed.. Defendant was shot (6) times including twice in back. (See EXHIBIT -A-) The medical report.
2. Defendant was charged as an adult in Volusia therefore such filing was elevated in the Flagler County case to adult status. When this happened Public Defender Nobel Bruton was removed and Public Defender Spencer O'Neal was assigned. O' Neal's boss in the Flagler case became Larry Avallone. (Case no. 2021 000722 CF)
3. **06/22/2021** in this instant case before this Court P.D. Lawrence Avallone filed a not guilty plea on behalf of Defendant. (Case No. 2021 303222 CFDB)
4. On **08/05 /2021** in the Flagler County Case Public Defender Spencer O'Neil

filed Notice of Appearance and Written Plea of Not Guilty on behalf on Defendant where Defendant was not present. Defendant did not waive her right to be present.

5. There were "originally" (5) Hearings before Judge Terrance Perkins where Defendant was not made aware of what was going on. The dates are below.

11/09/21

03/08/22

04/12/22

05/10/22

07/19/22

NOTE: Defendant has the audio-video DISC of all 5 Hearings.

Defendant will now present the issues without supporting case law reserving that for the Memorandum of Law:

ISSUE #1. Conflict of interest within the Public Defender's Office regarding Defendants 3 separate cases where all four (4) Public Defenders have failed in the basic fundamental standards of representation.

The failures by all (4) P.D.'s are based on their actions in both cases.

1. Mr. Avallone in conjunction with Spencer O'Neil failed to inform Defendant of those above (5) Hearings. Therefore, Defendant was never present at any of the critical stages guaranteed her under constitution of the United States and Florida state law.
2. Defendant did not waive any right to exclude herself from such hearings.
3. Defendant WAS NEVER told about these Flagler County hearings by either attorney Lawrence Avallone, Jessica Roberts nor Spencer O'Neil. Defendant was told of these hearings by one of her supporters that the Flagler court had already gone through (5) hearings without her. When Defendant was told this she questioned Mr. Avallone about them.
4. Mr. Avallone had the audacity to tell Defendant that "he was unaware of any hearings going on in Flagler County". This however goes against the recorded transcripts of those court Hearing's where Spencer O'Neil informs Judge Perkins that he had to clear things with his boss Mr. Avallone.
(Defendant will submit this DISC as evidence which lasts about 30 minutes)total)

5. Furthermore , Mr. Avallone and Ms. Roberts spoke very little of the Flagler case and simply informed Defendant that” not to worry about it, as the Volusia County case was more important and that the lesser case in Flagler could wait.” Defendant asks.... “wait for what”?
6. What is disturbing in the Flagler County case is the fact that Mr. Spencer O'Neil has **never conferred** with, nor has he **ever written or contacted** Defendant in any way. This includes the jails system inmates have access to called “Smart Communications “ & “smart jail mail”.
7. At this point in time Defendant has been charged in the Flagler County case for over 21 months. In that time Defendant has spent 19 of those 21 months locked in a maximum adult jail facility in Volusia County with a total of 10 months in solitary confinement, where Defendant is housed as of this motion.
8. Now just when you think this case does not get any more unprofessional and unethical on the part of Mr. Avallone, Mr O'Neil, & Jessica Roberts....it does.
9. **On July 31, 2022** (a Sunday) Defendant was awakened at 4:30 in the morning by Volusia County correction officers and placed in front of a weekend judge at 7 a. m. where Defendant was **ARRESTED** for failure to appear in the Flagler County charges above. **(SEE EXHIBIT - B-)**
10. Can it get worse? It did. This is because there were two (2) more Hearing's (the 6th and 7th in the Flagler case which was the continuance of the original hearings that Defendant was arrested for) **(Again EXHIBIT- B-)** Defendant informed Mr. Avallone she wanted to appear for those (2) Hearings. However, Lawrence Avallone told Defendant she did not need to attend. Did Mr. Avallone not realize what that arrest was for?
11. Sadly, it gets more disturbing. Defendant discovered these last (2) Hearings, not by Mr. Avallone, Jessica Roberts or Mr. O'Neal....it was her supporters.
12. In closing up these above facts Defendant states all (4) Public Defenders did not just ignore Defendant they abandoned her. Any dismissal of Defendants current counsel should not be replaced with another Public Defender. Thus the conflict of interest issue.

ISSUE # 2. Ineffective counsel of Lawrence Avallone and Jessica Roberts in the above Volusia County case before this Court.

**DEFENSE COUNSELS INEFFECTIVENESS RE:
DISCOVERY and SENTENCING SCORESHEET**

1. **05/02/2022** Assistant State Attorney submitted the Plea offer to Defendants counsel (**SEE EXHIBIT -C-**)
2. Defendants counsel Mr. Avallone and Ms. Roberts never requested of the assistant State Attorney to prepare a sentencing scoresheet per the rules.
3. **06/01/2022** several days before Defendants court Hearing the Defendant received in the mail a very disturbing letter submitted by Mr. Avallone in which he sends a very coercive 'at best' and threatening 'at worst' letter. (**See EXHIBIT- D-**) In this letter no where does Mr. Avallone explain to Defendants those rights under the sentencing laws and her right to be elected under those sentencing guidelines as an alternative. Therefore the error.
4. **06/06/2022** Defendant is in this Court and told in open court of the plea offer and it's sentencing and probation conditions. Defendant turns it down and informs Court and Counsel she wants to go to trial.
5. Soon afterwards one of Defendants supports tells Defendant that the discovery will give Defendant a better understanding as to where this case can lead. The supporter assumed Defendant had her discovery information Defendant in her possession. Defendant did not. It had now been over a year since Defendants arrest and Defendant has never seen this 'Discovery' as she was unaware she was even entitled to it.
6. Defendant requests such discovery from her Mr. Avallone and Ms. Roberts and is ignored. The above mentioned supporter e-mails Mr. Avallone and reminds him that such discovery and the sentencing guideline laws and scoresheet are mandatory for Defendants in our courts.
7. **06/23/2022** Defendant receives her Discovery and scoresheet (**SEE EXHIBIT -E-& -F-**) The scoresheet however is blank and is never explained to Defendant at any time by Mr. Avallon or Ms. Roberts even after several requests by Defendant to do so.

8. **12/29/2022** Mr. Avallone and Ms. Roberts visits Defendant in jail to discuss the possible sentence that Defendant can receive. Here Ms. Roberts verbally tells Defendant these words. "that she (Defendant) will very likely die in prison if found guilty at trial. But if Defendant takes the plea of 20 years at least Defendant will have a release date. Mr. Avallone agreed with her. (Defendant will testify to this in Court)
9. Such coercion and threats is an attempted by Defendant's counsel to frighten the Defendant into taking a plea deal are unethical, unprofessional and illegal and supported in the Defendant's Memorandum of Law that follows.
10. Just recently, on **01/18/2023** Mr. Avallone and Ms. Roberts visit Defendant and hand Defendant a case of a juvenile tried as an adult who was given life with mandatory 25 years before review. His name Deshaun Hurst. It is clear this is an attempt to scare the Defendant. Defendant is not scared by this case. However, Defendant is feed up and disgusted with her Counsel. This goes beyond unethical on the part of Counsel.

ISSUE #3. The Plea offer by the Sate is an illegal sentence under the guidelines.

Defendant states that the offer made by the State on 03/02/2022 (Again **EXHIBIT -C-**) is an incorrect sentence. This is because: (a) It was not accompanied by a scoresheet per the rules. And (b) The amended plea to the primary charge is not a 10, 20, life mandated sentence but a 1 st degree felony where a scoresheet must be prepared. It wasn't prepared, thus error occurred.

MEMORNADUM OF LAW

Defendants counsel behavior falls far below the ethical and professional standards set forth in **Strickland v. Washington**, 466 U.S. 668 (1984) (1) counsel's performance must be deficient; and (2) the deficient performance must have prejudiced the defense so as to deprive the defendant of a fair trial.

Having said that, Defendant does agree with this Court when on 01/05/2022 this Court explained to Defendant that her 'counsel was doing their job when

explaining the full exposure of any possible sentence' as well they should and it is error not to do so. However, there is a flip side to this coin. First there is a guideline sentence structure that needs to be discussed and secondly Mr. Avallone and Ms. Roberts are incorrect regards their explanation of exposure facing the Defendant. Such will be presented further in this motion.

Defendant will now present the issues in order as they were presented above.

Issue #1. Conflict of interest within the Public Defender's Office regarding Defendants 3 separate cases where four (4) Public Defenders who have failed in the basic fundamental standards of representation.

Defendant is well aware this Court knows the rules of law regards a Defendant Due Process rights at initial proceedings. However, for the purpose of preserving the issue on appeal if necessary Defendant will cite those rules of the state of Florida. Defendant will begin with Public Defenders failure to produce Defendant at her Hearings in the Flagler County case.

RULE 3.130. FIRST APPEARANCE (in part)

a) Prompt First Appearance. Except when previously released in a lawful manner, every arrested person must be taken before a judge, either in person or by electronic audiovisual device audio-video communication technology in the discretion of the court, within 24 hours of arrest. In the case of a child in the custody of juvenile authorities, against whom an information or indictment has been filed, the defendant must be taken for a first appearance hearing within 24 hours of the filing of the information or indictment.

b) Advice to Defendant.

(1) Notice of Charges and Rights. At the defendant's first appearance the judge shall immediately inform the defendant of the charge,

(c) **Counsel for Defendant.** (Defendant was appointed counsel)

(3) **Opportunity to Confer.**

No further steps in the proceedings should be taken until the defendant and counsel have had an adequate opportunity to confer, unless the defendant has intelligently waived the right to be represented by counsel.

Defendant was never given the opportunity to confer at all with her “attorney” Spencer O’Neil and there has been NO contact in anyway shape or form. Mr. Avallone on the other hand has ignored Defendants pleas to inform her and has told Defendant (to not worry about the Flagler case as the Volusia County case is more important?) Defendant is paraphrasing but these were the jest of Mr, Avallones words. Mr. Avallone went on to say that this is the policy and strategy of the Public Defenders Office. (What proves the above words true is Public Defenders Office stated that very same thing to WFTV Channel 9 Orlando reporter Mike Springer on 09/13/2022 who reported such. (Disc will be produced at the Nelson Hearing)

Defendant must ask this Court since when does policy and strategy over rule the Constitution of the U.S. Court and Florida case law and rules?

RULE 3.160. ARRAIGNMENT

(a) Nature of Arraignment. The arraignment must be conducted in open court or by audiovisual device audio-video communication technology in the discretion of the court and shall must consist of the judge or clerk or prosecuting attorney reading the indictment or information on which the defendant will be tried to the defendant or stating orally to the defendant the substance of the charge or charges and calling on the defendant to plead thereto. **The reading or statement as to the charge or**

charges may be waived by the defendant. If the defendant is represented by counsel, counsel may file a written plea of not guilty at or before arraignment and there upon arraignment **must be deemed waived.**

RULE 3.180. PRESENCE OF DEFENDANT

(a) Presence of Defendant. In all prosecutions for crime the defendant must be present:

(1) at first appearance;

(3) at any pretrial conference, unless waived by the defendant in writing;

(b) Presence; Definition.

A defendant is present for purposes of this rule if the defendant has a meaningful opportunity to be heard through counsel on the issues being discussed and the defendant:

(1) Is physically in attendance for the courtroom proceeding:

(2) Waives physical attendance in writing or on the record for a proceeding

(1) identified under subdivision (a) (2) or (a) (9), the court accepts the waiver and the defendant appears by audio-video communication technology or....

(3) Appears by audio-video communication technology for a first appearance hearing under rule 3.130.

Defendant as never been in front of any Flagler case other then her arrest
Hearing on 07/31/2022.....Justice demands we all step back and think about that.
Defendant is well aware that histrionically the term 'conflict of interest' often refers to multiple defendants represented by the public Defender's Office. In the instant case we have one Defendant and multiple Public Defenders all of whom failed in their duties . Those failures are now presented and that conflict of interest with this

Defendant's is exposed. Defendant wishes to dismiss counsel Mr. Avallone and Ms. Roberts, yet to appoint another Public Defender from the very office is indeed that conflict. Defendant has shown that all (4) above Public Defenders have excluded Defendant is critical sages as well as the necessary information for Defendant to assist in her defense.

Defendant states unequivocally that a adversarial relationship exists with her Mr. Avallone and Ms, Roberts based on misadvice, affirmative misrepresentations and coercion and lying that has led to Counsel attempting to force a plea on Defendant. In Sheppard v. State 17 So. 3d 275 (Fla. 2009) the Supreme Court of Florida as given the courts an depth analyst of adversarial relationships between defendants and their counsel and has ruled that an adversarial relationship between counsel and the defendant allegations if not conclusively refuted by the record, the court should either permit counsel to withdraw or discharge counsel and appoint conflict-free counsel to represent the defendant. Rouse v. State, 990So.2d. 1197 (Fla. 5th DCA 2008) also ;Scippio v. State, 855 So. 2d. 202,203 (Fla. 1st DCA 2003) And finally, Vasquez v. State, 956So.2d. (Fla 5th DCA 2007)

ISSUE #2. Ineffective counsel of Lawrence Avallone and Jessica Roberts in the above case both cases.

- (1.) Failure to properly advise the Defendant as to the full laws of sentencing.
- (2.) Failure to provide officer body cam footage
- (3.) Failure to provide discovery for over a year and never fully disusing it.
- (4.) Failure to provide scoresheet for over a year (was blank when it arrived)

- (5.) Failure to Depo Officer Maxwell main officer listed as State witness
- (6.) Failure to Depo Medical Doctor who submitted the medical record of Defendants multiple gunshot wounds showing Defendant shot twice in back.

So numerous are the failings that Defendant will hold up here as she has made her case.

**DEFENSE COUNSELS INEFFECTIVENESS RE:
DISCOVERY and SENTENCING SCORESHEET**

On 06/21/2021 the State filed their Discovery. However, as we now know Defendant did not see her Discovery until (12) plus months latter (Again, EXHIBIT -E-& -F-) When Mr. Avallone and Ms. Roberts submitted to Defendant a blank scoresheet and a large box of papers (the discovery) that were never fully explained to Defendant they committed error. Defendant has the right to confer with Counsel.

Counsel have refused to give Defendant the (Disc) of the body cams from law enforcement that shows the actions of all concerned in this shooting and is “ the most vital” element in this case. Mr. Avallone said to Defendant that she could not have the Disc because of jail policy. However, Defendant requested of Counsel to sit down and go over the Disc together. The Defendant has the right to confer with counsel regards all depositions and all witnesses against and film of the incident because Defendant has the right to develop knowledge such for strategic planing in Defendants upcoming trial.

Therefore the Court must hold an eventuality hearing regards that issue. See,

Wolfgang v. State 212 So. 3d 501 at 504 (5th DCA 2017) citing ground #9

Discovery rule 3.220 (In Part)

(a) Notice of Discovery. After the filing of the charging document, a defendant may elect to participate in the discovery process provided by these rules, including the taking of discovery depositions.....

In closing out this issue there is no deposition taken of the most important Officer of all Officer Don Maxwell or the Doctor who operated on Defendant and who submitted a very important medical report. Defendant states the these depositions are vital. Officer Maxwell was the main officer regards all film footage of the incident and has appeared twice if not more at the Defendants Hearings by request of the state. Officer Maxwell is the point man so to speak in this incident. Defendant has not received this deposition if there was one. Perhaps there was, but it is not in the discovery box.

The Doctor (a witness to Defendants wounds) on the other hand was first on emergency room scene. Defendant took 6 bullets. Two were in the back. However, what the photos' show (Defendant has such photo's)are (2) entry wounds that exit in a way that is not aligned with that entry shot. Defendants supporter has shown this medical report, (the photo's of the wounds, the weapons used that were in discovery and the medical report) to an Ex-Military person and expert on weapons. (However not officially qualified to be a court expert) This person after reviewing

all the photos and medical drawing stated..."it look like she was shot twice while down". Defendant must be honest and does not recall that happening but Defendant was hit multiple times and was clearly in shock. The Point...if in fact that did happen then that Doctor needs to be at least deposed.

ISSUE #3 The Plea offer by the Sate is an illegal sentence under the guidelines.

On 05/26/2022 Assistant State Attorney Mark Interlicchio presented to Defendant in writing a plea offer of 20 years' incarceration and consecutive 45 years' probation to follow. (Again EXHIBIT -C-) When Mr. Avallone and Ms. Roberts did not object to the State attorney's offer, they committed error because they should have requested the Assistant State Attorney to prepare an sentencing scoresheet .

In addition, when Mr. Avallone and Ms. Roberts failed to inform Defendant about the sentencing guidelines under Fla.R.Crim.P. 3.701 Fla.R.Crim.p. 3.702 and F.S. 921.0022 they committed another error.

Here is why. When the State presented that plea offer it became a sentence under the guideline scoresheet rules. That plea offer does not fall under the 10, 20, life mandatory sentencing which is what Defendant could possibly face upon guilty of all charges at trial. When Mr. Avallone and Ms. Roberts failed to inform Defendant that she has an alternative to a guideline sentience in their letter they submitted they demonstrated ineffectiveness at this stage. (Again EXHIBIT -D- the letter)

It is immaterial that the State may attempt to argue that the offer should not be subjected to a guideline sentence. What is very much material to the issue is the Defendants counsel should have requested a scoresheet and fought diligently regards such. Such scoresheet was finally prepared in open court 01/05/2023 by Sara Thomas Assistant state attorney. Here, Mr. Avallone in the presence of this Court simply walked over to the assistant state attorney Ms. Thomas, not to discuss the guidelines per the rules but to simply remind Ms. Thomas that Flagler County case was part of the plea offer and such became a global plea as this Court noted.

Mr. Avallone gave no input as to the correctness of the scoresheet nor conferred with Defendant regard such. Defendant has the absolute right to have access to that scoresheet because these scoresheets have points calculated for just about everything!! How did the State arrive at 12.7 month? Were priors arrests listed? Defendant has none. Did state list victim injury? There were none. It goes on and on yet Defendant never saw it so she could not contest it. Sadly, her Counsel never questioned it. What Mr. Avallone accomplished was complete ineffective counsel and there was Ms. Roberts right beside him.

RULE 3.704. THE CRIMINAL PUNISHMENT CODE (In part)

- (d) General Rules and Definitions."The office of the state attorney must prepare the scoresheets and present them to defense counsel for review as to accuracy".

Also F.S. 921. 0024

Defendant wonders if both parties (State/Defendants counsel) care about the sentencing rules or simply do not know the rules. Defendant however, contends that the actual charges the state offend is not a 10, 20 life felony charge as we will see. The top primary charges as written in the plea: (**Again EXHIBIT -C-**)

Count 1: (**Plea to amended Attempted 1 st Degree Attempted Murder, a first degree felony**) Nowhere in that offer is there a claim against a law enforcement officer OR use of a firearm. The State may respond and say “we will amend this” but they have had ample time to do such. On 01/05/2023 this Court acknowledged that the parties have gone over the plea offer half a dozen times.

The fact is, the amended charge is a guideline sentence under the law (SEE the following case law enclosed) Since the amended charges do no reflect the elements of law enforcement nor a firearm, then a guideline sentence is appropriate and only upon good cause can this Court depart from such and it must be in writing. The State in it's (11th) hour attempt by to suddenly inject the scoresheet into the record does not remedy the error. Defendant acknowledges that plea offers are a different animal than a trial and subsequent sentence based on a guilty verdict. However, the law is clear at all times a scoresheet must prepared even with regard to pleas and such sentences must be neutral and free of discrimination something that is not happening in Defendants case.

Rule 3.701 - SENTENCING GUIDELINES

- (1) Sentencing should be neutral with respect to race, gender, and social and economic status.

(d) General Rules and Definitions.

- (2) "Conviction" means a determination of guilt resulting from plea or trial, regardless of whether adjudication was withheld or whether imposition of sentence was suspended.

Defendant asked Mr. Avallone why her co-defendant received a juvenile sentence and Defendant is charged as an adult and faces (2) consecutive life sentences? And what could Mr. Avallone do about it? Sadly, there was no attempt by Mr. Avallone or Ms. Roberts to move Defendant into juvenile court. But the real question remains...Defendants co-defendant Travis O'Brien, an Irish American boy of 12 years of age goes to juvenile facility until 18 Defendant believes.. Nicole Marie Jackson Maldonado on the other hand, a girl, who is 14 years of age, born in Puerto Rico to a Puerto Rican mother faces (2) consecutive life sentences? Lets repeat that. Caucasian boy of 12 gets a juvenile sentence of a few years. Hispanic girl of 14 faces 2 life sentences back to back. Discrimination?

It is Certainly against the language of Rule 3.701 and apparently has landed on deaf ears of Defendants Counsel and the Sate of Florida. This above discrimination is not softened by the Defendants Counsels "advice" to take the plea placing Defendant in prison for 20 years and 45 consecutive years of probation.

Defendant will move on and ask this Court to look back on the 01/05/2023 Hearing and why a correct scoresheet is so important. This Court offered Defendant an "open plea" where a sentence anywhere of those 12. 7 years that was calculated by state was up to the maximum under the statutory language. The Defendant wonders, what actually is the correct calculated scoresheet when all the correct points are entered and reviewed? If Defendant were to know that actual sentence perhaps an open plea would have been given by Defendant and one that Defendant may still be open to. However, at this juncture such consideration by Defendant cannot be made so long as there is no final scoresheet and where current Counsel are present. Simply, Defendant does not trust Mr .Avallone nor Ms. Roberts as they have ignored and mislead Defendant far to often. Sadly, there is absolutely no trust.

In closing the Defendants argument supported in case law

Defendant is well aware that the Public Defenders job is probably the most overwhelming, over stressed, under appreciated under paid and thankless profession of ALL professions. However, it does not negate the basic necessary communication with their Defendant client regards application of the laws. Counsel treats Defendant like a child. Defendant is a child, yet is looked on as an adult by the law and may very well end up in an adult prison for many years to come. Sadly, Defendant is not treated like an adult by the state, not by the jail and not by her Counsel.....and she should. Lets be honest. The only people that have treated this

Defendant with respect are her supporters here in Florida . Defendant also recognizes this Court has shown respect and patience and Defendant is very much thankful.

So, where do we all stand regards Defendants rights and position within the law? That letter that was sent on 06/01/2022 is the foundation of this motion to dismiss. Counsel. Defendant received that letter written by Mr. Avallone by way of mail and without any explanation of the important alternative to the sentencing laws regards the Sentencing Guidelines and accompanying scoresheet. When this happened it left this Court no alternative but to remove Lawrence Avallone and Jessica Roberts from representation of the Defendant. Here are those rules and case law that gives this court no other choice. Beginning with our own 5th DCA who went on to state in the following in Heidrick v. State 553 So. 2D 795 (5th DCA 1989) "Even though the court was faced with sentencing defendant for a capital murder, a crime not subject to the guidelines, it erred when it sentenced defendant on a second charge of burglary without using a sentencing guidelines scoresheet."

Defendant would like her Counsel and the State attorney to think about that for a second. The scoresheet is of such importance to the sentencing system that even a lesser charge within a 1st degree murder case demands such. But for some reason Mr. Avallone and Ms. Roberts think otherwise. In continuing this point, our Florida Supreme Court said this about scoresheets. Lamb v State 532 So. 2D 1051 (Fla Sup. Ct. 1988) The court said the following in part:

Defendant with respect are her supporters here in Florida . Defendant also recognizes this Court has shown respect and patience and Defendant is very much thankful.

So, where do we all stand regards Defendants rights and position within the law? That letter that was sent on 06/01/2022 is the foundation of this motion to dismiss. Counsel. Defendant received that letter written by Mr. Avallone by way of mail and without any explanation of the important alternative to the sentencing laws regards the Sentencing Guidelines and accompanying scoresheet. When this happened it left this Court no alternative but to remove Lawrence Avallone and Jessica Roberts from representation of the Defendant. Here are those rules and case law that gives this court no other choice. Beginning with our own 5th DCA who went on to state in the following in Heidrick v. State 553 So. 2D 795 (5th DCA 1989) "Even though the court was faced with sentencing defendant for a capital murder, a crime not subject to the guidelines, it erred when it sentenced defendant on a second charge of burglary without using a sentencing guidelines scoresheet."

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"RE: Fla.R.Crim.P. 3.701(d) (13). As the sentencing guidelines the committee notes explain, "Ultimate responsibility for assuring that score sheets are accurately prepared rests with the sentencing court." The score sheet provides the recommended sentence. It is axiomatic that, without the score sheet, it is impossible to tell whether the sentence imposed is illegal as an unauthorized departure. The court's error in failing to utilize the sentencing score sheet in sentencing Lamb requires re-sentencing."

Defendant realizes this Court did not make such an error but the decision above defines the importance of the guideline rule and scoresheet. Though this Court addressed the scoresheet in the 01/05/2023 hearing, the Assistant State Attorney Sara Thomas quickly calculated it from what it appeared and where it was not thoroughly examined by the Defendants Counsel. The rule covering this issue is clear and the State nor Defendants Counsel can ignore it.

RULE 3.704. THE CRIMINAL PUNISHMENT CODE (In Part)

(d) General Rules and Definitions.

(1) One or more Criminal Punishment Code scoresheets must be prepared for each offender covering all offenses pending before the court for sentencing,**The office of the state attorney must prepare the scoresheets and present them to defense counsel for review as to accuracy.**

F.S. 921. 0024 Criminal Punishment Code; worksheet computations; scoresheets.

(In Part)

(3) The state attorney shall prepare the digitized scoresheet or scoresheets, which must be presented to the defense counsel for review for accuracy in all cases unless the judge directs otherwise. The defendant's scoresheet or scoresheets must be approved and signed by the sentencing judge.

Defendant now comes to the rules and laws that give this Court no alternative

but to remove Mr. Avallone and Ms. Roberts from this case. That error happened when Mr. Avallone sent that letter to the Defendant. And here is where Defendant proves her case complete.

In, Shaw v State 63 So. 3d 898 (5th DCA 2011) the court said this : "Failure of the defense counsel to advise defendant of his right to be sentenced under the guidelines constitutes ineffective counsel per se **and it is not necessary** for defendant to prove the criteria of *Strickland*." State v. Brown, 525 So. 2d. 454, (Fla. 1st DCA 1988); *see also* McLeod v. State, 523 So. 2d. 603 (Fla. 1st DCA 1987) (finding claim that counsel failed to advise defendant that he was entitled to guidelines sentence is a facially sufficient claim).

Defendant recognizes that these cases cited refer to defendants filing to review an already existing sentence yet it is clear by the 5th DCA 's intent in Shaw when it comes to the failures of defense counsel to inform defendants that they have the right to elect the sentencing guidelines. Here in the instant case this Defendant was never informed of this choice. At the very least Counsel should have informed Defendant that "they " Counsel will fight for her on this issue.

Defendant now closes her motion. Thank you.

WHEREFORE, the Defendant respectfully submits her claim of ineffectiveness of counsel and Hopes and Prays that this Court grants relief.

Respectfully, submitted,



Nicole Jackson Maldonado

An inmate at;
Volusia County Jail
1354 Indian Lake Rd,
Daytona Beach Fl 32124 Booking # 1087471

CERTIFICATION OF SERVICE

I Nicole Jackson Maldonado do hereby certify that a true and correct set of copies have been hand delivered to the Clerk of the court by Jean Baily and to the following:

Public Defenders office located at:

251 North Ridgewood Avenue
Daytona Beach, Florida 32114

Attn: Lawrence Avallone and Jessica Roberts

State Attorney's Office located at:

251 N Ridgewood Ave # 300,
Daytona Beach, FL 32114

Attn: Sara Thomas and Mark Interlicchio

On this 20th day of January 2023.



Nicole Jackson Maldonaldo

NOTARIZED OATH

Sworn to and subscribed before me on this 20th day of January 2023


Notary Public



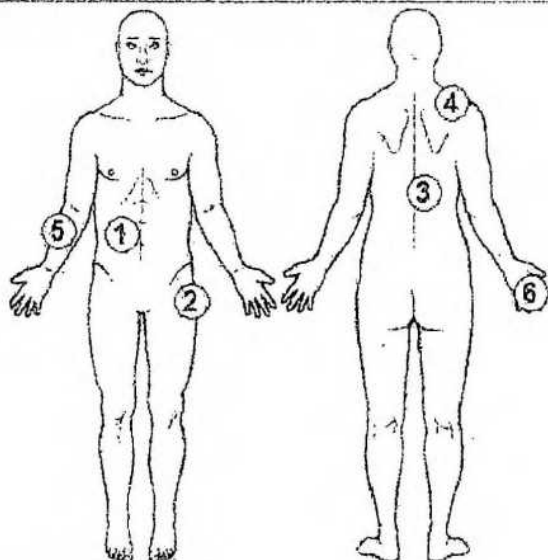
EXHIBIT -A-

OH ARNOLD PALMER HOSPITAL FOR CHILDREN
92 W MILLER ST
ORLANDO FL 32806-2032

Jackson, Nicole
MRN: [REDACTED] DOB: 2/8/2007, Sex: F
Adm: 6/2/2021, D/C: 6/7/2021

06/02/2021 - Admission (Discharged) in Orlando Health Arnold Palmer Hospital for Children (continued)

Abstract Clinical Notes (continued)



- 1: Open wound (GSW)
- 2: Open wound (GSW)
- 3: Open wound - venous bleeding, dark red, oozing. Surgical packed with overlying pressure dressing
- 4: Open wound (GSW)
- 5: Open wound (GSW)
- 6: Small abrasions/laceration (GSW graze injury)

Neurological:

Mental Status: She is alert.

New Findings (exam finding, date/time MD notified, action taken):

1. Right hand abrasion: dry gauze was attached to the site, this removed, recommended Bacitracin and xeroform gauze to all open wounds including this one. X ray obtained to rule out fracture. No osseous abnormalities identified.

Consultations:

Active: ICU Medical team, Orthopedics, Social Work, Physical Therapy

New: N/A

Updated Problem List:

Patient Active Problem List

Diagnosis

- Trauma, early complications of, initial encounter (CMS/HCC)
- GSW (gunshot wound)
- Hemorrhagic shock (CMS/HCC)
- Respiratory failure after trauma (CMS/HCC)
- Penetrating traumatic injury of forearm

Jackson, Nicole (MRN [REDACTED]) Printed at 6/29/2022 8:15 AM

Page 81

Firefox https://apps.flaglerclerk.com/Benchmark/CourtCase.aspx/Details/8...

	12/19/2022	COURT ACTION FORM	
	12/19/2022 1:30:00 PM - STATUS COURT RESULT: CONTINUED		← HEARING #7
1	11/8/2022	NOTICE RETURNED UNDELIVERED	
3	10/14/2022	NOTICE TO APPEAR	
	9/14/2022	STATUS SET FOR 12/19/2022 AT 1:30 PM IN 401/	
1	9/14/2022	COURT ACTION FORM	
	9/13/2022	9/13/2022 1:30:00 PM - PRE TRIAL COURT RESULT: CONTINUED	← HEARING #6
2	8/1/2022	NOTICE TO APPEAR	
	8/1/2022	PRE TRIAL SET FOR 09/13/2022 AT 1:30 PM IN 401/	
	8/1/2022	CASE UNSECURED	
	7/31/2022	REARRESTED ON 07/31/2022: OBTS #	← ARRESTED
	7/28/2022	CAPIAS STATUS CHANGED TO SENT TO SHERIFF	
	7/19/2022	CAPIAS NOTES: ADJACENT STATES	
1	7/19/2022	COURT ACTION FORM	
	7/19/2022	CAPIAS STATUS CHANGED TO PENDING SIGNATURE	
	7/19/2022	CAPIAS ISSUED: FAILED TO APPEAR	

EXHIBIT B

T

EXHIBIT C

OFFICE OF THE STATE ATTORNEY

SEVENTH JUDICIAL CIRCUIT OF FLORIDA
VOLUSIA, FLAGLER, PUTNAM & ST. JOHNS COUNTIES

R.J. LARIZZA
STATE ATTORNEY



251 NORTH RIDGEWOOD
AVENUE
DAYTONA BEACH, FL 32114
Phone: (386) 239-7710
Fax: (386) 239-7716

March 2, 2022

PLEA OFFER

Defendant: NICOLE MARIE JACKSON-MALDONADO
303222 CFDB

Clerk No. 2021

Charge(s):

- I. ATTEMPTED 1ST DEGREE MURDER OF LAW ENFORCEMENT OFFICER
- II. BURGLARY OF A DWELLING WHILE ARMED WITH A FIREARM
- III. CRIMINAL MISCHIEF (\$1000.00 OR MORE)

DEAR LAWRENCE AVALONE:

The State will extend the following plea offer to your client on the above listed case(s) as incentive to resolve these matters prior to trial:

- **Count I:** Plea to amended charge of Attempted 1st Degree Murder, a first-degree felony. Adjudication of Guilt - 20 years Florida Department of Corrections. Followed by 10 years' Probation.
- **Count II:** Plea as charged. Adjudication of Guilt - 30 years' probation to run consecutive to count I. -restitution to be ordered, but reserved as to amount for 60 days.
- **Count III:** Plea as charged. Adjudication of Guilt - 5 years' probation to run consecutive to Count I. - restitution to be ordered, but reserved as to amount for 60 days.
- Special Conditions of Probation to include:
 - No drugs or alcohol.
 - Random Urinalysis at discretion of probation.
 - Do not possess firearms and/or weapons.
 - Do not reside at any home or location where firearms and/or weapons are present.
 - Undergo Mental Health Evaluation within 60 days upon release from Department of Corrections - must follow any recommended treatment and/or take medication as prescribed.
 - Subject to warrantless searches of person or property for term of probation.
 - Upon release from DOC - must show proof to probation that Defendant is either seeking gainful employment or enrolled in academic/trade program.



LAW OFFICES OF
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT
FLAGLER, PUTNAM, ST. JOHNS & VOLUSIA COUNTIES

MATTHEW J. METZ
PUBLIC DEFENDER

June 1, 2022

Nicole Jackson Maldonado
Volusia County Branch Jail

Dear Nicole,

The purpose of this letter is to explain each of the charges, the possible penalties of those charges, and the plea offer. I know that you talk to many people about the decisions that you have ahead of you, but my hope is that this letter might help you understand exactly where you stand in terms of your legal predicament.

You are charged in two cases with nine crimes. I have included a copy of the information(s) (the charging documents) for your review. Let's talk about each charge individually.

The Charges in this case

- 1) Attempted first degree murder of a law enforcement officer, a life felony. In order to prove this crime the prosecutor would need to prove these elements:
 - a. You did some act intended to cause the death of a law enforcement officer.
 - b. You acted with a premeditated design to kill. Premeditated mean a conscious decision to kill.
 - c. The act would have resulted in the death of (the law enforcement officer) except something, or someone, prevented the killing (of the officer).

Count 1 is a life felony. This means that if convicted of this count, the Judge must sentence you to life in prison without the possibility of parole. There is a mandatory minimum sentence that is applied to this count as well. This is known at 10/20/life and it establishes certain mandatory sentences for crimes that involve the use of firearms. In your case a 20 year minimum mandatory sentence would apply due to the possession and discharge of the firearm.

- 2) Burglary of a dwelling while armed with a firearm, a first degree felony punishable by life.

In order to prove this crime, the prosecutor would have to prove these elements:

- a. You entered and remained in a dwelling that was not yours with the intent to commit a crime therein.

- 2
- b. While in the home you became armed with a firearm. Note that it is not required that they prove that you were armed *before* you entered the home. Arming yourself once you are in the home is proof enough to satisfy this element.

Count 2 is a first degree felony punishable by life. The maximum sentence for a first degree felony is typically 30 years, but this is a special first degree felony that has been designated to have up to a life sentence as the possible punishment. In short, this means that the judge can sentence you up to a life sentence on this count alone.

- 3) Criminal Mischief over \$1,000 dollars. A third degree felony.

In order to prove this crime the prosecutor would need to prove these elements:

- a. You damaged the property of another person.
b. The damage was done intentionally and it caused more than \$1,000 of damage.

Count 3 is a third degree felony. The maximum sentence on a third degree felony is 5 years in prison.

The Charges in the Flagler County Case

As you know, you have a separate case in Flagler County. Any negotiation of a resolution of the Volusia case would need to resolve the Flagler case as well. In the Flagler County case, you are charged with:

- 1) Willfully burning of land (5 counts). Each of these counts is a 3rd degree felony punishable by up to 5 years in prison.

In order to prove these counts the prosecutor will have to prove these elements:

- a. You willfully and intentionally burned or set fire to land or property which,
b. Was not your property.

- 2) Criminal Mischief over \$1,000 dollars. A third degree felony.

In order to prove this crime the prosecutor would need to prove these elements:

- a. You damaged the property of another person (a fence).
b. The damage was done intentionally and it caused more than \$1,000 of damage.

Count 2 is a third degree felony. The maximum sentence on a third degree felony is 5 years in prison.

Your age

As you know, you have been charged as an adult. Unless the prosecutor agrees to change your charges, we cannot change this fact. We have asked if they would consider changing your charges and they are unwilling to do that. This means that your case will be handled as an adult case for both trial and sentencing.

There is a sentencing scheme that would be very helpful to you. It is called youthful offender. Youthful offender applies to people who are 21 years of age or younger at the time the crime is committed. The Florida Statue specifically excludes any life felony from a youthful offender sentence. In short, this is not available to you because you are charged with a life felony in Count 1.

EXHIBIT D p. 3

Your age does allow the Judge to sentence you to juvenile sanctions. Juvenile sanctions means that you would serve out your sentence in a juvenile commitment program until you reach the age of 21 years. Only the Judge can choose that option. As an example, if you were convicted at trial, or if you pled, the Judge would only have two options:

1. A life sentence or
2. Juvenile sanctions

There is no in-between in your Volusia case. It would have to be one or the other. This is a huge risk and you should be very cautious with that prospect.

Because you are under 18 years of age, if you were given a life sentence, you would be entitled to a review after 25 years. This means that a Judge would review your life sentence (after 25 years had passed) and decide if you should remain in prison, or if your sentence should be changed. There is no guarantee in how that future court would rule.

The Plea offer

The plea offer has been discussed with you, but I would like to repeat it here. The current offer, should you accept it, is for you to serve 20 years in the prison followed by 10 years of probation. There are other details of the probation, but those are the main components. Allison and I have been working hard at trying to get a better offer for you to consider. As of today, the Office of the State Attorney has declined to change the offer. If that changes we would let you know right away.

It is not a good idea for you to continue sending letters to Mr. Larizza, the State Attorney. As we have mentioned before, you should only be discussing your case with us.

A Trial

Some of the people that you have spoken to have suggested that you will be found not guilty at trial. This is not only bad advice, it is reckless. No one knows what a jury will do. Not the Judge, not the prosecutor, and not us. No one knows what a jury will do. If you are convicted you will face the punishments outlined above, including the possibility of spending the rest of your life in prison.

There is another aspect of the trial that you have mentioned before and it is the mistaken belief that the jurors will feel bad for you. It is not a defense to a crime to ask a jury to feel bad for you. As I mentioned in the past, the judge will instruct the jury to not decide the case based on feelings of sympathy or because they feel bad for anyone. You should remove that thought from your consideration because I do not believe that a jury will find you not guilty because they feel badly for you.

Defense attorneys often think of cases in terms of exposure. Exposure means the maximum sentence that a client can receive. When you think of exposure it is important to think of the possibility that a judge could run the sentences consecutively which means one after the other, rather than concurrently which means they run at the same time. Your total exposure if you were convicted of all the charges is two life sentences plus 35 years.

Regardless of what other people may tell you, it is a real possibility that you could receive

EXHIBIT D

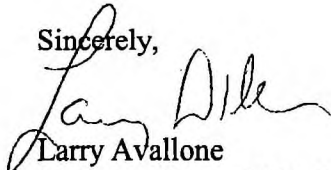
p. 4

a life sentence, or more, in these cases. I know that people have told you that a juvenile cannot receive a life sentence and that oversimplifies the truth. It is possible for a juvenile to receive a life sentence; all that is guaranteed is a sentence review after 25 years.

Conclusion

Allison and I have your best interests in mind. We are still gathering information which we expect will be helpful to your case. We know that you have been in jail for almost a year now, and we understand that you are impatient. We need more time to prepare your case. There are decisions in life which should not be rushed. This is one of them.

Sincerely,



Larry Avallone
Chief Assistant Public Defender



LAW OFFICES OF
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT
FLAGLER, PUTNAM, ST. JOHNS & VOLUSIA COUNTIES

MATTHEW J. METZ
PUBLIC DEFENDER

June 24, 2022

Nicole Marie Jackson Maldonado
Booking Number: 1087471

RE: Copy of Discovery
Case Number 2021 303222 CFDB

Dear Nicole Marie Jackson Maldonado:

Per your request, I enclose a copy of the discovery in your case consisting of:

Information, Charging Affidavit, Narrative Supplement(s), Supplemental Discovery/Witness List, Suggestion of Mental Incompetence to Proceed, Notice of Filing of Report, North Florida Psychological Services (Louis Legum) evaluation, State Attorney Notice of Filing Correspondence received, Notice of Intent to Rely Upon Business Record Certification, Affidavit of Custodian of Records, State's Objection to Defendant's Notice of Intent to Rely Upon Business Record Certification, Witness Statement, Property Report(s), Additional Persons Report(s), Incident Report(s), Victim's Right to Confidentiality Form(s), CAD Report, Vehicle/Tow Report, FDLE Laboratory Report Form(s), Volusia County Corrections Facility Inmate Calling Solutions, Department of Children and Families Investigative Summary/Assessment Summary/Special Conditions Assessment Summary Forms, Notice of Intent to Rely Upon Business Record Certification/Records of Community Partnership for Children Initial Suitability Assessment Form, Notice of Filing, North Florida Psychological Services Evaluation (Louis Legum), Evaluation (William Meadows), Request for Medical Records-Halifax Behavioral Services, HIPAA Form, Florida United Methodist Children's Home Receipt of Medication, Flagler County School Student Educational Plan, Motion for Authorization for Continued Administer Psychotropic Medication, DCF Out of Home Care Medical Report, Psychotropic Medication Treatment Plan Review, Stipulated Motion for Continuance, Notice of Acceptance of Electronic Service/Notice of Appearance, Notice of Confidential Information Within Court Filing, Notice of Hearing, Notice of Taking Deposition(s), Order on Stipulated Motion for Continuance, Order Setting Case Management Conference, Stipulated Order for

EXHIBIT-F

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 total sentence points are greater than or equal to 363, a life sentence may be imposed.

maximum sentence in years

TOTAL SENTENCE IMPOSED

Years Months Days

- ☐ State Prison ☐ Life
☐ County Jail ☐ Time Served
☐ Community Control
☐ Probation ☐ Modified

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

☐ Mitigated Departure ☐ Plea Bargain ☐ Prison Diversion Program

Other Reason _____

JUDGE'S SIGNATURE _____

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

RULE 3.992(b) Supplemental Criminal Punishment Code Scoresheet

NAME (LAST, FIRST, MI.)	DOCKET #	DATE OF SENTENCE
-------------------------	----------	------------------

II. ADDITIONAL OFFENSES(S):

DOCKET#	FEL/MM DEGREE	F.S#	OFFENSE LEVEL	QUALIFY A S C R	COUNTS	POINTS	TOTAL
_____/	_____/	_____/	_____	☐ ☐ ☐ ☐	_____ x	_____ = _____	
DESCRIPTION _____							
_____/	_____/	_____/	_____	☐ ☐ ☐ ☐	_____ x	_____ = _____	
DESCRIPTION _____							
_____/	_____/	_____/	_____	☐ ☐ ☐ ☐	_____ x	_____ = _____	
DESCRIPTION _____							
_____/	_____/	_____/	_____	☐ ☐ ☐ ☐	_____ x	_____ = _____	
DESCRIPTION _____							
_____/	_____/	_____/	_____	☐ ☐ ☐ ☐	_____ x	_____ = _____	
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. _____

IV. PRIOR RECORD

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
_____/	_____/	_____/	☐ ☐ ☐ ☐	_____	_____ X	_____ = _____	
_____/	_____/	_____/	☐ ☐ ☐ ☐	_____	_____ X	_____ = _____	
_____/	_____/	_____/	☐ ☐ ☐ ☐	_____	_____ X	_____ = _____	

C