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By: LO 09/18/2025

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA**

PROVIDED TO CHARLOTTE  
CORRECTIONAL INSTITUTION  
ON 9/11/25 FOR MAILING  
BY DM Amc

STATE OF FLORIDA,  
PLAINTIFF

vs.

CASE NO: 16-CF-371

ADAM COSTELLO,  
DEFENDANT

\_\_\_\_\_ /

**SECOND AMENDED MOTION FOR CORRECTION OF ILLEGAL  
SENTENCE PURSUANT TO FLA. R. CRIM. P. 3.800(a)**

COMES NOW, ADAM MURRAY COSTELLO, pro se, and respectfully submits this second amended motion and moves this Honorable Court to correct his illegal sentences pursuant to Fla. R. Crim. P. 3.800(a). In support thereof the Defendant would state the following<sup>1</sup>:

**RELEVANT FACTS AND STATEMENT OF THE CASE**

1. Defendant was charged by fourth amended information filed March 12, 2018. Count one alleged a violation of Fla. Stat. 316.027(2)(c), Leaving the Scene of a Crash Involving Death . Count two alleged a violation of Fla. Stat. 918.13(1)(a), Tampering with Evidence. (See Exhibit A)
2. Defendant ultimately entered a plea of nolo contendere and was convicted of both charges.

<sup>1</sup> The Defendant’s claim is facially sufficient and the sentencing error is apparent from the face of the record. *See Franklin v. State*, 825 So. 2d 1030, 1032 (Fla. 1<sup>st</sup> DCA 2002) (“This claim is, as the appellant alleged, cognizable under Rule 3.800(a) because the illegality is apparent on the face of the record, and the claim is also facially sufficient.”)

3. Judgment and Sentence were rendered on March 19, 2018 by Judge Steinbeck.
4. Judge Margaret Steinbeck orally pronounced a term of 10 ½ years in the custody of the Department of Corrections for Count One. (*See Exhibit B*)
5. Judge Margaret Steinbeck orally pronounced a term of 5 years in the custody of the Department of Corrections for Count Two to run concurrent with Count One. (*See Exhibit B*)
6. Defendant retained post-conviction counsel Christopher Cosden who filed a Rule 3.850 motion on behalf of the Defendant raising one claim that the assessment of victim injury points on the CPC scoresheet was erroneous.
7. Judge Steinbeck summarily denied the motion for post-conviction relief.
8. The Second DCA reversed the Order of Denial and the trial court held an evidentiary hearing on remand to determine if the assessment of victim injury points was appropriate pursuant to Section 921.0021(7)(e), Fla. Stat. (2016).<sup>2</sup>
9. Judge Margaret Steinbeck denied the Defendant's post-conviction motion after the hearing.
10. Defendant appealed that ruling and the Sixth District Court of Appeals affirmed the trial court's ruling that the victim injury points were accurately assessed. Thus, law of the case doctrine holds that the victim injury points are accurately assessed pursuant to §921.0021(7)(e).
11. A motion for rehearing was denied and the mandate issued on December 2, 2024.
12. Defendant now submits the instant Second Amended Rule 3.800(a) Motion to Correct Illegal Sentence.

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<sup>2</sup> Costello v. State, 330 So.3d 1052, 1053 n.1 (Fla. 2<sup>nd</sup> DCA 2021). *See* Footnote 1.

The Defendant affirmatively alleges that the court records demonstrate on their face an entitlement to relief under Rule 3.800(a) to correct his illegal sentences. Under Rule 3.800(a), an illegal sentence may be corrected by a court that imposed such a sentence *at any time*.

The State is hereby put on notice that the grounds raised herein caused violations of Defendant's 5<sup>th</sup>, 6<sup>th</sup>, and 14<sup>th</sup> amendment rights guaranteed by the United States Constitution. The following are the grounds for which the Defendant seeks relief:

### **GROUND ONE**

#### **THE SENTENCE ON COUNT ONE IS ILLEGAL AND MUST BE CORRECTED AS A MATTER OF LAW BECAUSE IT WAS IMPOSED UNDER A REPEALED STATUTE**

By oral pronouncement, Defendant was sentenced to 10.5 years on count one, Leaving the Scene of a Crash – Death. (*See Exhibit B*) Count one, by fourth amended information, charged the following:

**“On or about **June 19, 2016**, in Lee County, Florida, was the driver of a motor vehicle involved in a crash resulting in death to Adam Roger King, a human being, a vulnerable road user, and **Defendant knew or should have known a crash occurred**, but failed to stop or remain at the scene of the crash, or as close thereto as possible, until he/she gave personal information and rendered aid as required by Florida Statutes 316.062, contrary to 316.027(2)(c).”** (*See Exhibit A*)

As the above information demonstrates, the version of the statute the sentence was imposed under was repealed in **2015**, prior to the alleged act, as a

result of the decision by the Supreme Court of Florida in **State V. Dorsett, 158 So. 3d 557 (Fla. 2015)**. As a consequence of the *Dorsett* ruling, our legislature revised Section 316.027(2)(c), Fla. Stat., by amending standard essential element #2, from “Defendant **knew or should have known** that he was involved in a crash” to “Defendant **knew** that he was involved in a crash.” The *Dorsett* court ruling and subsequent revision of the statute in 2015 was further supported by the Middle District of Florida in **Pringle v. Secretary, FDOC, 3:20-CV-35-HES-PDB (2021)**. In the instant case, the Defendant was sentenced under the repealed version of the statute that no longer existed at the time the act was allegedly committed.

“To be illegal within the meaning of Fla. R. Crim. P. 3.800(a), the sentence must impose a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of circumstances.” *See Maddox v. State*, 760 So. 2d 89, 96 n.6 (Fla. 2000)

The Fifth and Fourteenth Amendments guarantee that no one can be punished for an act that was not a crime at the time it was alleged. Moreover, under Florida law, the version of the statute that exists at the time of the alleged act is the statute that applies. As such, no judge under the entire body of sentencing statutes could possibly inflict, under any set of circumstances, a 10.5 year sentence under a repealed statute because the law defining the crime no longer exists.

Consequently, the sentence imposed on count one is illegal and *must be corrected as a matter of law*. (See *King v. State, infra*)

## GROUND TWO

### **FLORIDA STATUTES SECTION 921.0021(7)(e), AS APPLIED TO DEFENDANT, CAUSES THE SENTENCE ON COUNT TWO TO BE ILLEGAL AND MUST BE CORRECTED AS A MATTER OF LAW**

By oral pronouncement, Defendant was sentenced to 5 years on count two of tampering with evidence. (See Exhibit B)

Pursuant to §921.0021(7)(e), the lowest permissible sentence for the charge of tampering with evidence was increased to 10.5 years. [See *Ching-Cheng Chang v. State, 2D2023-2090 (2<sup>nd</sup> DCA 2025) Footnote #3*] (“The lowest permissible sentence for the charge of tampering with evidence exceeded the statutory maximum sentence, and consequently, the lowest permissible sentence replaced the statutory maximum sentence”). The *Ching-Cheng Chang* court even cites Defendant’s own case, *Costello v. State, 330 So.3d 1052, 1053 n.1 (Fla. 2<sup>nd</sup> DCA 2021)* (Noting that there was no evidence in the record as to the cause of death of the victim).

Fla. R. Crim. P. 3.704(26), in pertinent-part, provides:

“If the lowest permissible sentence under the Code (Criminal Punishment Code) exceeds the statutory maximum sentence as provided in section §775.082, the sentence required by the Code *must* be imposed.”

Without the enhancement of the 120 victim injury points, the maximum sentence the court could impose for count two was the prescribed statutory maximum of 5 years, which was orally pronounced by the trial court. However, *with* the enhancement of the 120 victim injury points, the lowest permissible sentence was increased *above* the prescribed statutory maximum sentence of 5 years to 10.5 years, violating the Defendant’s guaranteed Sixth Amendment right.<sup>3</sup>

Section 921.002(1)(h), Fla. Stat. provides:

“A sentence may be appealed on the basis that it departs from the Criminal Punishment Code *only if the sentence is below the lowest permissible sentence* as enumerated in §924.06(1).”

And Section 924.051(6)(c), Fla. Stat., in pertinent-part, provides that post-conviction relief may not be considered from two years after the judgment and sentence becomes final unless the petition or motion alleges:

“The sentence imposed was illegal because it either exceeded the maximum *or fell below the minimum authorized by statute.*”

Section 921.002(1)(h), Fla. Stat. and Section 924.051(6)(c), Fla. Stat. clearly defines when a sentence is illegal and may be appealed or collaterally attacked.

The trial court’s oral pronouncement of 5 years for tampering with evidence fell below the minimum authorized by statute (the lowest permissible sentence according to the CPC). Absent a downward departure, such as in the instant case,

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<sup>3</sup> See Ching- Cheng Chang citing Apprendi v. New Jersey, 530 U.S. 466 (2000)

this constitutes an illegal sentence as demonstrated above. *See Jackson v. State, 64 So. 3d 90, 92 (Fla. 2011)* (Explaining that trial courts “**must impose, at a minimum, the lowest permissible sentence calculated according to the CPC unless there is a valid reason to impose a downward departure sentence.**”) Here, there was no legal basis for a downward departure sentence to be imposed by the court. There was no oral pronouncement or written findings of valid reasons for the imposition of a downward departure.

Because of the enhancement of the victim injury points pursuant to §921.0021(7)(e), **the lowest permissible sentence for count two is 10.5 years.** Thus, the trial court was ***bound*** to impose a 10.5 sentence. As such, no judge under the entire body of sentencing statutes could have imposed the sentence of 5 years. Consequently, such an imposition constitutes an illegal sentence.

The Defendant in this case entered into a plea agreement. However, “*a court cannot impose an illegal sentence pursuant to a plea bargain, nor may a defendant agree to an illegal sentence as part of a plea bargain*”. *See King v. State, 681 So. 2d 1136, 1140 (Fla. 1996); Williams v. State, 500 So. 2d 501, 503 (Fla. 1986)*

“When a sentence is illegal, and such a sentence was the product of a negotiated plea agreement, the State has the option of either agreeing to the defendant’s resentencing, or withdrawing from the plea agreement and proceeding

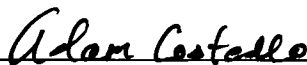
to trial on the original charges.” ***See White v. State, 828 So. 2d 491 (Fla. 1<sup>st</sup> DCA 2002)***

In light of the foregoing information, on authority of Florida Rules of Criminal Procedure, Florida Statutes and controlling case law, the sentence of 5 years imposed by the trial court is illegal and ***must be corrected as a matter of law in a Rule 3.800(a) proceeding. See State v. Mancino, 714 So. 2d 429 (Fla. 1998)***

### **CONCLUSION**

WHEREFORE, in light of the foregoing, as the record clearly reflects, the Defendant has been detained for 7.5 years under a plea that imposed an illegal sentence for each count of the plea agreement. Such a plea must be invalidated and **the illegal sentences negotiated therein must be corrected as a matter of law.**

Respectfully Submitted,

  
\_\_\_\_\_  
Adam Murray Costello DC#: B16188  
Charlotte Correctional Institution  
33123 Oil Well Rd.  
Punta Gorda, FL 33955

**OATH AND CERTIFICATION**

I certify and declare, under penalty of perjury, that the foregoing is true and correct and that this Second Amended Motion to Correct Illegal Sentence was delivered to prison officials for mailing on the 11<sup>th</sup> day of September, 2025.

PROVIDED TO CHARLOTTE  
CORRECTIONAL INSTITUTION  
ON 9/11/25 FOR MAILING  
BY DM KM

Adam Costello  
Adam Murray Costello DC#: B16188  
Charlotte Correctional Institution  
33123 Oil Well Rd.  
Punta Gorda, FL 33955

**CERTIFICATE OF SERVICE**

I certify that on 9/11/25 I mailed a true and correct copy of the foregoing Second Amended Motion to Correct Illegal Sentence to:

Criminal Clerk  
P.O. Box 2507  
Ft. Myers, FL 33902-2507

And

Office of the State Attorney  
P.O. Box 399  
Ft. Myers, FL 33902-0399

Adam Costello  
Adam Murray Costello – B16188  
Charlotte Correctional Institution  
33123 Oil Well Road  
Punta Gorda, FL. 33955

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA** **CRIMINAL ACTION**

STATE OF FLORIDA

CASE NO: 16-CF-000371 - (MOS)  
(MWM)

vs.

DCM TRACK: COMPLEX

ADAM MURRAY COSTELLO

Race: White Sex: Male

AMENDED (4<sup>TH</sup> INFORMATION)

D.O.B.: 11/12/1974

SS #: XXXXXXXXXX

**INFORMATION FOR:**

- 1) Leaving the Scene of a Crash - Death, F.S. 316.027(2)(c),(2)(f) First Degree Felony
- 2) Tampering With or Fabricating Physical Evidence, F.S. 918.13, Third Degree Felony

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

STEPHEN B. RUSSELL, State Attorney of the Twentieth Judicial Circuit of the STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, prosecuting for the STATE OF FLORIDA, in the County of Lee under oath information makes that Adam Murray Costello,

**Count(s):**

1. On or about June 19, 2016 in Lee County, Florida, was the driver of a motor vehicle involved in a crash resulting in death to Adam Roger King, a human being, a vulnerable road user, and Defendant knew or should have known a crash occurred, but failed to stop or remain at the scene of the crash, or as close thereto as possible, until he/she gave personal information and rendered aid as required by Florida Statutes 316.062, contrary to Florida Statute 316.027(2)(c),

2. Between June 19, 2016 and July 31, 2016 in Lee County, Florida, did ~~unlawfully and knowingly alter, destroy, conceal, or remove any record, document, or thing, to-wit:~~ deletion of facebook information or account, ~~cellular phone utilizing number 239 218-4928~~ or DVR from a surveillance camera, with the purpose to impair its verity or availability in a proceeding or investigation knowing that a criminal trial or proceeding or investigation by a duly constituted prosecuting authority, law enforcement agency, grand jury or legislative committee of this state is pending or is about to be instituted contrary to Florida Statute 918.13(1)(a),

against the peace and dignity of the STATE OF FLORIDA,

STEPHEN B. RUSSELL  
STATE ATTORNEY

**Exhibit A**

1 not be pronounced at this time?

2 MR. McFEE: No, Your Honor.

3 THE COURT: Mr. Costello, based on your plea  
4 to the fourth amended information of no contest,  
5 I adjudicate you guilty of both of those counts.

6 With regard to Count I, I sentence you as  
7 agreed to ten-and-a-half years of prison or  
8 otherwise stated, ten years, six months. I will  
9 apply whatever credit you have, and I do wanna  
10 talk about that so that we can resolve any  
11 discrepancies in that regard today.

12 The first four years of that sentence are  
13 imposed as a minimum mandatory sentence pursuant  
14 to Florida law and your plea agreement.

15 With regard to Count II, I adjudicate you and  
16 sentence you as agreed to five years in prison to  
17 run concurrent with the sentence I've just  
18 announced as to Count I.

19 I assess the monetary obligations that have  
20 already been described, and they shall be due and  
21 payable in full 90 days after your release from  
22 Department of Corrections.

23 I order a three year driver's license  
24 suspension pursuant to Florida law and require  
25 you to app. r plea -- plea

**Exhibit B**

ADAM M. COSTELLO #B16188

CHARLOTTE C.I.

33123 Oil Well Rd.

Punta Gorda, FL 33955



Criminal Clerk

P.O. Box 2507

Ft. MYERS, FL 33902-2507

**RECEIVED**

SEP 18 2025

KEVIN G. KARNES, CLERK  
CIRCUIT/COUNTY COURTS  
BY \_\_\_\_\_ D.C.

