

**IN THE SIXTH DISTRICT COURT OF APPEALS
LAKELAND, FLORIDA**

STATE OF FLORIDA,
RESPONDENT

v.

LOWER TRIBUNAL CASE NO: 16-CF-371

ADAM COSTELLO,
PETITIONER

PETITION FOR WRIT OF MANDAMUS

COMES NOW, the Petitioner, ADAM MURRAY COSTELLO, pro se, and humbly requests that this Court grant the instant petition, and issue a writ of mandamus pursuant to Fla.R.App.P. Rule 9.100(e). This petition seeks to ensure that a required legal duty is executed so that the illegal sentence currently imposed may be corrected. In support thereof Costello would state the following:

JURISDICTION

This Court has jurisdiction pursuant to Article V Section 4(b)(3) of the Florida Constitution and Florida Rules of Appellate Procedure Rule 9.030(b)(3) to issue a writ of mandamus. This writ is returnable before the circuit court Judge Andrew P. Marcus of the Twentieth Judicial Circuit, a formal party to the instant action.

RELEVANT FACTS

1. On June 30th, 2025, a post-conviction motion to correct an illegal sentence was filed pursuant to Fla.R.Crim.P. Rule 3.800(a). The motion was amended on August 8th, 2025. (see EXHIBIT A)
2. The grounds indicated in the motion are objective and demonstrated on the face of the record, requiring no factual evidentiary determinations.
3. A notice of inquiry was submitted September 18th, 2025, requesting the status of review by the court. (see EXHIBIT B)
4. A motion to hear and rule was submitted on January 2nd, 2026, as the last available procedural remedy remaining. (see EXHIBIT C)
5. A notice of supplemental authority was submitted on January 2nd, 2026.
(see EXHIBIT D)
6. A Notice to Set Action for Hearing was submitted on May 27th, 2026.
(see EXHIBIT E)
7. Another notice of supplemental authority was submitted on May 27th, 2026 with the Notice to Set Action for Hearing. (see EXHIBIT F)
8. A letter to the lower court judge was submitted on May 27th, 2026, indicating that Costello has been attempting to seek a ruling on his Motion to Correct Illegal Sentence. (see EXHIBIT G)

9. The Motion to Correct Illegal Sentence has now been pending for approximately a year. No ruling has been made on any submission regarding the illegal sentence. Therefore, the only adequate remedy available is to seek relief from this Court by way of petition for a writ of mandamus.

RELIEF SOUGHT

Costello seeks the issuance of a writ of mandamus, ordering the lower tribunal to execute its legal duty to rule on the merits of the motion to correct illegal sentence pursuant to Fla.R.Crim.P. 3.800(a).

ARGUMENT

The motion to correct illegal sentence has been pending to be ruled on by the lower tribunal for approximately a year.

Moreover, for a timely and meaningful review by the appellate court of the motion to correct illegal sentence, an order addressing the merits of the motion must be determined and rendered in the lower tribunal.

Fla.R.Jud.Admin. Rule 2.215(f) provides in pertinent part:

“Every judge has a duty to rule upon and announce an order or judgment on every matter submitted to that judge within a reasonable time.”

A failure to abide by this rule constitutes a neglect of duty pursuant to subsection (h) of the same rule. Further, subsection (g) indicates that all non-capital post-conviction cases are to be given priority status. Fla.R.Jud.Admin. Rule 2.215(g) provides in pertinent part:

“As part of an effort to make capital post-conviction cases a priority, the chief judge shall have the discretion to create a post-conviction division to handle capital post-conviction, **as well as non-capital post-conviction cases**, and may assign one or more judges to that division.”

Fla.R.Jud.Admin. Rule 2.545(b)(2) provides that the trial judge shall identify priority cases as assigned by the aforementioned rule of procedure and then conclude its litigation as reasonably and just as is possible to do so as a professional obligation pursuant to subsection (a) of the same rule.

The judge of the lower tribunal has a ministerial duty to rule on the submitted Rule 3.800(a) motion. The current delay of approximately a year is unreasonable in light of the apparentness of the issues raised in the motion that are clearly reflected on the face of the record.

The following authorities granted the writ and issued mandamus to the lower tribunal, compelling rulings on pending post-conviction motions:

Cunniff v. State, 950 So.2d 1255 (Fla. 2nd DCA 2007)

Rosado v. State, 696 So. 2d 1325 (Fla. 4th DCA 1997)

Lang v. State, 931 So. 2d 922 (Fla. 2nd DCA 2005)

Costello has a legal right to a timely ruling on the merits of his post-conviction motion to correct illegal sentence, and the judge has a clear legal ministerial duty to provide that ruling. That ruling should include findings of fact and conclusions of law so that this court can make a meaningful determination using those findings of fact and conclusions of law.

WHEREFORE, in light of the foregoing argument, authorities, and supporting documents in the appendix, Costello humbly requests that this Court grant his petition and issue a writ to the lower tribunal, compelling a ruling in accordance with law as a priority status post-conviction case. Or in the alternative, issue an order to show cause why the writ should not be granted.

Respectfully Submitted,

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY CRC
2609 W. Highway 390
PANAMA CITY, FL 32404

OATH AND CERTIFICATION

I certify and declare, under penalty of perjury, that the foregoing is true and correct and that this Petition for Writ of Mandamus with attached Appendix was delivered to prison officials for mailing on the 2nd day of August, 2026.

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY CRC
3609 W. Highway 330
PANAMA CITY, FL 32404

CERTIFICATE OF SERVICE

I certify that on August 2, 2026 I mailed a correct copy of the foregoing Petition for Writ of Mandamus with attached Appendix to:

Sixth District Court of Appeals
Clerk of the Court
811 East Main Street
Lakeland, FL 33801

And

Office of the Attorney General
3507 E. Frontage Road, Suite 200
Tampa, FL 33607

Honorable Judge Andrew P Marcus – Twentieth Judicial Circuit Judge
PO Box 2507
Fort Myers, FL 33902-2507

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY CRC
2609 W. Highway 390
PANAMA CITY, FL 32404

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Petition for Writ of Mandamus and Appendix is
in compliance with the font requirements under Fla.R.App.P. Rule 9.210(a)(2).

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY CRC
3603 W. Highway 390
PANAMA CITY, FL 32404

IN THE SIXTH DISTRICT COURT OF APPEALS
LAKELAND, FLORIDA

STATE OF FLORIDA,
RESPONDENT

v.

LOWER TRIBUNAL CASE NO: 16-CF-371

ADAM COSTELLO,
PETITIONER

_____ /

APPENDIX

(PURSUANT TO FLA.R.APP.P. RULE 9.100 PROCEDURE)

Adam Murray Costello DC# B16188

PANAMA CITY CAL

3609 W. Highway 390

Panama City, FL 32404

APPENDIX

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7. Letter to Lower Court Judge Regarding Hearing.....	EXHIBIT G

PROVIDED TO CHARLOTTE
CORRECTIONAL INSTITUTION
ON 9/11/25 FOR MAILING
BY DA AUC

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

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 following¹:

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.

¹ 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. 1st 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).²
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.

² Costello v. State, 330 So.3d 1052, 1053 n.1 (Fla. 2nd 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 5th, 6th, and 14th 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 (2nd 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. 2nd 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.³

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,

³ 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. 1st 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 11th 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

vs.

ADAM MURRAY COSTELLO

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

(MWM)

DCM TRACK: COMPLEX

Race: White Sex: Male

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

SS #: [REDACTED]

AMENDED (4TH) INFORMATION)

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 239-216-4928 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

3/22/2025 4:10 PM
**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA**

STATE OF FLORIDA,
PLAINTIFF

vs.

PROVIDED TO CHARLOTTE
CORRECTIONAL INSTITUTION
ON 9/18/25 FOR MAILING
BY AMC-DK

CASE NO: 16-CF-371

ADAM COSTELLO,
DEFENDANT

_____ /

NOTICE OF INQUIRY

COMES NOW, ADAM MURRAY COSTELLO, pro se, and respectfully inquires concerning the current status of his previously filed Motion to Correct Illegal Sentence pursuant to Fla. R. Crim. P. 3.800(a). The motion was filed on June 30, 2025, and Defendant asserts that due to the nature of the issue raised, this matter is indeed pertinent which requires the prompt attention of the Court in order to make a proper and expeditious determination of the claim.

WHEREFORE, Defendant respectfully requests that the clerk of the court please assist the Defendant in ensuring that the motion submitted is timely heard.

Respectfully Submitted,

Adam Costello

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

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

STATE OF FLORIDA,
PLAINTIFF

vs.

CASE NO: 16-CF-371

ADAM MURRAY COSTELLO,
DEFENDANT

MOTION TO HEAR AND RULE

COMES NOW, ADAM MURRAY COSTELLO, pro se, and pursuant to Fla.R.Jud.Admin. Rule 2.215(f), respectfully moves this Honorable Court to hear and rule on his Rule 3.800(a) Motion to Correct Illegal Sentence filed June 30, 2025. In support thereof the defendant would state the following:

SUPPORTING ARGUMENT AND RELEVANT FACTS

On June 30, 2025, a post-conviction motion to correct an illegal sentence was filed pursuant to Fla.R.Crim.P. Rule 3.800(a). The motion was amended on August 8, 2025.

A notice of inquiry was submitted requesting the status of review by the court. The response to the notice of inquiry indicated that "*the status of the pro se motions that was filed on the Petition for Writ filed 7/28/25*". Beneath this bolded

statement follows, *"The court file does not reflect the Court has ruled upon the motion filed"*.

As an initial matter, the motion to correct illegal sentence is not filed on the petition for writ of habeas corpus. The grounds raised in the petition for writ of habeas corpus in no way relate to the grounds set forth in the motion to correct illegal sentence. The habeas petition is a collateral attack on the constitutional validity of conviction. The motion to correct illegal sentence is a post-conviction proceeding governed by Rule 3.800(a) of Florida Rules of Criminal Procedure challenging the legality of the sentence.

Fla.R.Jud.Admin. Rule 2.215(f) indicates that every judge has a ministerial duty to rule upon and announce an order or judgment on every matter submitted to that judge within a reasonable amount of time, to maintain a log of cases under advisement, and to inform the chief judge at the end of each calendar month of each case that has been held under advisement for more than 60 days.

Fla.R.App.P. Rule 9.600(d) recognizes the jurisdiction of the trial court during appellate review to rule on motions pursuant to Fla.R.Crim.P. Rule 3.800(a). This is demonstrated under the authority of Barber v. State, 590 So.2d 527 (2nd DCA 1991).

Fla.R.Jud.Admin. Rule 2.215(g) provides in pertinent part:

"As part of an effort to make capital post-conviction cases a priority, the chief judge shall have the discretion

to create a post-conviction division to handle capital post-conviction, *as well as non-capital post-conviction cases*, and may assign one or more judges to that division.”

Therefore, the motion to correct illegal sentence qualifies to be given priority status.

Fla.R.Jud.Admin. Rule 2.545(b)(2) provides that the trial judge shall identify priority cases as assigned by the aforementioned rule of procedure [Fla.R.Jud.Admin. Rule 2.215(g)] and then conclude its litigation as reasonably and just as is possible to do so as a professional obligation pursuant to subsection (a) of the same rule.

The presiding judge in this court has a ministerial duty to rule on the submitted Rule 3.800(a) motion. The current length of delay is unreasonable in light of the simplicity of the issue raised and the direct method in which the determination must be made. It is a matter of law that is clearly and simply demonstrated on the face of the record.

Moreover, the ruling is controlled by current controlling case law from the Sixth District Court of Appeals just decided in Ramos v. State, case number 6D2024-0171.

The issues raised present pertinent legal matters requiring prompt resolution in the interests of justice. Defendant has a clear legal right to a just and timely ruling from this court.

The instant motion is submitted to ensure clarity in the record and to avoid any appearance that the defendant has abandoned the motion.

WHEREFORE, in light of the foregoing, defendant respectfully requests that this court rule on the Rule 3.800(a) motion or in the alternative, issue an order clarifying the status of the motion.

Respectfully Submitted,


Adam Murray Costello DC# B16188
400 Southwest 2nd Street
Turning Point C.R.C
Pompano Beach, FL. 33060

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

STATE OF FLORIDA,
PLAINTIFF

vs.

CASE NO: 16-CF-371

ADAM COSTELLO,
DEFENDANT

NOTICE OF SUPPLEMENTAL AUTHORITY

COMES NOW, ADAM MURRAY COSTELLO, pro se and pursuant to Fla.R.App.P. Rule 9.225, respectfully submits this Notice of Supplemental Authority corresponding to the grounds raised in the previously filed Motion to Correct Illegal Sentence pursuant to Fla.R.Crim. P. 3.800(a). (EXHIBIT A)

The attached controlling authority of Ramos v. State, 6d2024-0171, affirms that the lowest permissible sentence is both the maximum and *minimum* sentence the trial court may impose *for each offense*. *Id.* at 1249 (Page 3 of Supplemental Attachment)

Defendant requests that this court take judicial notice of the attached supplemental authority under Fla. Stat. §90.201, a matter that must be judicially noticed.

This decision from the Sixth District Court of Appeals controls the application of law to defendant's argument set forth in the Rule 3.800(a) motion.

WHEREFORE, defendant seeks that this Notice of Supplemental Authority be taken into consideration by this court for a proper determination of the Rule 3.800(a) motion.

Respectfully Submitted,

Adam Costello
Adam Murray Costello DC#: B16188
400 Southwest 2nd Street
Fort Lauderdale, FL 33301
POMEREA BEACH, FL 33060

OATH AND CERTIFICATION

I certify and declare, under penalty of perjury, that the foregoing is true and correct and that this Notice of Supplemental Authority was delivered to prison officials for mailing on the 2nd day of JANUARY, 2026.

Adam Costello
Adam Murray Costello DC#: B16188
400 Southwest 2nd Street
Fort Lauderdale, FL 33301
POMEREA BEACH, FL 33060

CERTIFICATE OF SERVICE

I certify that on 1-2-2026 I mailed a true and correct copy of
the foregoing Notice of Supplemental Authority 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 DC#: B16188
400 Southwest 2nd Street
Turkey Point, C.R.C.
Pompano Beach, FL 33060

**SIXTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 6D2024-0171
Lower Tribunal No. 22-CF-1904

PETER RAMOS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

**Appeal from the Circuit Court for Charlotte County.
Thomas Reese, Judge.**

November 14, 2025

NARDELLA, J.

Peter Ramos raises two issues on appeal, only one of which has merit. As conceded by the State in response to this appeal, and to the Rule 3.800(b)(2) motion Ramos filed pending appeal, Ramos' sentence is an illegal sentence subject to correction. Accordingly, we vacate Ramos' sentence and remand for resentencing.

In May 2024, a jury convicted Ramos of two counts of Lewd and Lascivious Battery on a Person 12 Years of Age or Older but Less than 16 Years of Age, both of which are second-degree felonies and carry a maximum of fifteen years'

EXHIBIT A

incarceration, § 800.04(4)(a)(1) and (4)(b), Fla. Stat. (2024). At sentencing, the State advised the trial court the Criminal Punishment Code Scoresheet reflected a point total of 305.4, with a lowest permissible sentence of 208.05 months prison, which equates to 17.3375 years. Despite this information, the trial court imposed a sentence greater than both the statutory maximum and lowest permissible sentence when it sentenced Ramos to 25-years imprisonment with the Department of Corrections, followed by 5 years sex offender probation, on each count to run concurrently. This was error.

Section 921.0024(2), Florida Statutes (2024), provides direction for a sentencing court's imposition of the lowest permissible sentence. Section 921.0024(2) states:

The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure. The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate. When the total sentence points exceeds 44 points, the lowest permissible sentence in prison months shall be calculated by subtracting 28 points from the total sentence points and decreasing the remaining total by 25 percent. The total sentence points shall be calculated only as a means of determining the lowest permissible sentence. The permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum, as defined in s. 775.082, for the primary offense and any additional offenses before the court for sentencing. The sentencing court may impose such sentences concurrently or consecutively. However, any sentence to state prison must exceed 1 year. If the lowest permissible sentence under the code exceeds the statutory maximum sentence as

provided in s. 775.082, the sentence required by the code must be imposed.

The Florida Supreme Court's decision in *State v. Gabriel*, 314 So. 3d 1243 (Fla. 2021), guides our decision here. In *Gabriel*, the supreme court addressed the circumstance in which the lowest permissible sentence calculated on the defendant's scoresheet exceeded the statutory maximum sentence for two of the three offenses for which the defendant was convicted. *Id.* at 1246–47. The supreme court discussed section 921.0024(2)'s requirement that “[t]he permissible range for sentencing shall be the lowest permissible sentence up to and including the statutory maximum” and the exception that “[i]f the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed.” *Id.* at 1247–48. The Florida Supreme Court found the trial court did not err when it imposed the lowest permissible sentence for *each* of the offenses although the lowest permissible sentence exceeded the statutory maximum under section 775.082, Florida Statutes. *Id.* at 1248–49. It further held that because “each individual offense has its own maximum sentence” under section 775.082, when the lowest permissible sentence exceeds the statutory maximum, the lowest permissible sentence becomes the maximum. *Id.* at 1249–50 (quoting *Moore v. State*, 882 So. 2d 977, 985 (Fla. 2004)). Thus, in this circumstance, the lowest permissible sentence is both the minimum sentence and the maximum sentence the trial court may impose for each individual offense. *Id.* at 1249.

Here, Ramos' lowest permissible sentence under the Criminal Punishment Code guidelines *exceeds* the statutory maximum of fifteen years for a second-degree felony. Thus, the lowest permissible sentence of 17.3375 years is both the minimum and maximum sentencing exposure on each count. *Gabriel*, 314 So. 3d at 1249; *Butler v. State*, 838 So. 2d 554, 556 (Fla. 2003) (holding that when the statutory maximum sentence is exceeded by the lowest permissible sentence under the CPC, the lowest permissible sentence under the CPC becomes the maximum sentence the court can impose). Accordingly, we vacate Ramos' sentence and remand for resentencing.

AFFIRMED in part; REVERSED in part; and REMANDED for resentencing.

STARGEL and MIZE, JJ., concur.

Blair Allen, Public Defender, and Andrea M. Norgard, Assistant Public Defender, Bartow, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Alicia M. Winterkorn, Assistant Attorney General, Tampa, for Appellee.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING
AND DISPOSITION THEREOF IF TIMELY FILED

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

STATE OF FLORIDA,
PLAINTIFF

vs.

CASE NO: 16-CF-371

ADAM COSTELLO,
DEFENDANT

NOTICE TO SET ACTION FOR HEARING

NOTICE IS GIVEN that ADAM MURRAY COSTELLO, pro se, seeks this Honorable Court to schedule a hearing to determine the merits of his previously filed Motion to Correct Illegal sentence.

Defendant's Motion to Correct Illegal Sentence was entered on the docket July 14, 2025. A Notice of Inquiry was entered on August 22, 2025. A Motion to Hear and Rule was entered on January 05, 2026.

There has been no response regarding the Motion to Correct Illegal Sentence for approximately nine months, as well as the Motion to Hear and Rule for approximately ninety days. The delay in ruling on the previous pleadings is unreasonable in light of the fact that the claims only require a simple determination relating to a matter of law on the face of the record.

The defendant's attempts to seek redress for the illegal sentence imposed have been continuously delayed and ignored. The claims and information at issue

for a determination of the Motion to Correct Illegal Sentence are ripe and ready to be set for hearing. Any further delay in the resolution of these simple claims is unreasonable.

Defendant seeks for this Honorable Court to set the action for hearing as soon as possible in the interests of justice.

Respectfully Submitted,

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY WORK RELEASE
3609 W. Highway 390
PANAMA CITY, FL 32404

OATH AND CERTIFICATION

I certify and declare, under penalty of perjury, that the foregoing is true and correct and that this Notice to Set Action for Hearing was delivered to prison officials for mailing on the 27th day of APRIL, 2026.

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY WORK RELEASE
3609 W. Highway 390
PANAMA CITY, FL 32404

CERTIFICATE OF SERVICE

I certify that on 4-27-20 I mailed a true and correct copy of
the foregoing Notice to Set Action for Hearing to:

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

Chambers of Honorable Andrew P. Marcus
P.O. Box 2507
Ft. Myers, FL. 33902-2507

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

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY WORK ADDRESS
3609 W. Highway 390
PANAMA CITY, FL 32404

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

STATE OF FLORIDA,
PLAINTIFF

v.

CASE NO: 16-CF-371

ADAM COSTELLO,
DEFENDANT

NOTICE OF SUPPLEMENTAL AUTHORITY

COMES NOW, ADAM MURRAY COSTELLO, pro se and pursuant to Fla.R.App.P. Rule 9.225, respectfully submits this Notice of Supplemental Authority corresponding to the grounds presented in the previously filed Motion to Correct Illegal Sentence pursuant to Fla.R.Crim. P. 3.800(a).

Attached hereto is the opinion of the Fifth District Court of Appeal in Harris v. State. Appellate Case Number 5D2024-1179. (EXHIBIT A)

The attached authority is considered persuasive authority because the opinion from the Fifth District does not control defendant's case. However, the Sixth District Court of Appeals came to the same conclusion on the same point of law as it relates to the LPS in Ramos v. State, 6d2024-0171. The Sixth District and Fifth District both use *Gabriel* and *Butler* from the Florida Supreme Court to reach their holdings.

The Florida Supreme Court held in State v. Gabriel, 314 So. 3d 1243, 1252 (Fla. 2021) when the LPS exceeds the statutory cap for the individual offense, the LPS must be imposed. Also, when the statutory maximum is exceeded by the LPS, the LPS becomes the maximum sentence that can be imposed under Butler v. State, 838 So. 2d 554, 556 (Fla. 2003).

A similar case controlling in the Sixth District *Ramos* was also submitted as a Notice of Supplemental Authority by defendant on January 5, 2026.

Defendant requests that this court take judicial notice of the attached supplemental authority under Fla. Stat. §90.201, a matter that must be judicially noticed.

This decision from the Fifth District Court of Appeal is the same application of law set forth in the *Ramos* case, which controls the Sixth District's application of law to defendant's argument in the Rule 3.800(a) motion.

WHEREFORE, defendant seeks that this Notice of Supplemental Authority be taken into consideration for a proper determination of the Rule 3.800(a) motion.

Respectfully Submitted,

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY WORK RELEASE
3607 W. Highway 390
PANAMA CITY, FL 32404

OATH AND CERTIFICATION

I certify and declare, under penalty of perjury, that the foregoing is true and correct and that this Notice of Supplemental Authority was delivered to prison officials for mailing on the 27th day of APRIL, 2026.

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY WORK RELEASE
3609 W. HIGHWAY 390
PANAMA CITY, FL 32404

CERTIFICATE OF SERVICE

I certify that on 4-27-26 I mailed a true and correct copy of the foregoing Notice of Supplemental Authority to:

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

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

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY WORK RELEASE
3609 W. Highway 390
PANAMA CITY, FL 32404

**FIFTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA**

Case No. 5D2024-1179
LT Case No. 2022-305804-CFDB

ARTHUR PRESTON HARRIS, III,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Volusia County.
Richard B. Orfinger, Senior Judge.

Matthew J. Metz, Public Defender, and Judson Searcy, Assistant
Public Defender, Daytona Beach, for Appellant.

James Uthmeier, Attorney General, Tallahassee, and Allison
Leigh Morris, Assistant Attorney General, Daytona Beach, for
Appellee.

November 21, 2025

PER CURIAM.

Arthur Preston Harris, III, was convicted after trial of numerous and mostly drug-related criminal offenses. The trial court sentenced Harris to serve varying concurrent terms of imprisonment, but to be served consecutively to a thirty-five year prison sentence previously imposed on Harris in a separate case.

Harris's sole challenge in this direct appeal is to the fifteen-year prison sentences imposed on him for his conviction in count three for attempted sale of fentanyl and his conviction in count four for attempted sale of cocaine. Each are third-degree felonies under sections 893.13(1)(a)1. and 777.04(4)(d)1., Florida Statutes (2022), punishable by up to five years in prison. See § 775.082(3)(e), Fla. Stat. Harris argues that his current prison sentences on these two counts are thus fundamentally erroneous. We agree, albeit for a different reason.¹

Harris's Criminal Punishment Code Scoresheet at the time of sentencing showed a lowest permissible prison sentence of 154.950 months. When the lowest permissible prison sentence under the Criminal Punishment Code exceeds the statutory cap for the individual offense, the lowest permissible prison sentence must be imposed. See *State v. Gabriel*, 314 So. 3d 1243, 1252 (Fla. 2021). Moreover, when "the statutory maximum sentence as provided in section 775.082, Florida Statutes, is exceeded by the lowest permissible sentence under the code, the lowest permissible sentence under the code becomes the maximum sentence which the trial judge can impose." *Butler v. State*, 838 So. 2d 554, 556 (Fla. 2003).

Accordingly, under these circumstances, Harris's fifteen-year prison sentences on counts three and four exceed that permitted by law. We vacate Harris's sentences on these two counts and remand with directions that Harris be resentenced on counts three and four consistent with this opinion. The amended judgment and sentences on counts three and four shall also include the statutory citation to section 777.04(4)(d), Florida Statutes.

Sentences on counts three and four VACATED; REMANDED for resentencing consistent with this opinion.

MAKAR, LAMBERT, and MACIVER, JJ., concur.

¹ The State has conceded error.

To: Honorable Judge Andrew P. Marcus
(Chambers)
P.O. Box 2507
Ft. Myers, FL. 33902-2507

Date: April 30, 2026

RE: Notice To Set Action for Hearing

Case No: 16-CF-371

Honorable Judge Marcus,

This correspondence, intended to be sent directly to your chambers, is regarding the delay in hearing and ruling on the Rule 3.800(a) motion to correct illegal sentence entered on July 14, 2025. ***The content herein is in no way related to the merits of the motion and does not constitute ex parte communication.***

The instant letter is to ensure that you have personally received notice that I am seeking redress for an illegal sentence by lawful means. I have previously submitted a notice of inquiry, a motion to hear and rule, and have now filed a Notice to Set Action for Hearing, filed with this letter addressed to your chambers. This Court has continued to delay in the resolution of the motion to correct an illegal sentence for approximately nine months.

This is an easily determined issue that can be quickly ruled upon. There exists an entitlement to a speedy determination of the motion to correct an illegal

sentence. An illegal sentence is manifestly unjust and must be corrected in the interests of justice as soon as is reasonable.

The claims are demonstrable and supported on the face of the record, requiring no evidentiary hearing or investigation of fact. Such delay in a ruling on a facially sufficient motion regarding an illegal sentence is unreasonable, and such inaction perpetuates a manifest injustice. As there is no need to gather evidence or determine facts outside of the face of the record, this action is at issue, ripe, and should be set for a hearing. The motion is only regarding whether the sentence is illegal as a matter of law. The two Notices of Supplemental Authority provide guidance in the application of law to the claims.

Therefore, I request that Your Honor set a hearing as soon as possible to determine the merits of the claims set forth in the motion to correct illegal sentence. Your acknowledgement of this extremely important matter is appreciated.

Respectfully Submitted,

Adam Costello
Adam Murray Costello DC#: B16188
PANAMA CITY CRC
3609 W. Highway 390
PANAMA CITY, FL 32404

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

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