

Filing # 216377688 E-Filed 02/10/2025 08:37:04 AM

**IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN AND
FOR BREVARD COUNTY, FLORIDA**

CASE NO: 05-2007-CF-048580-AXXX-XX

STATE OF FLORIDA,

Plaintiff,

vs.

LARRY DONELL GOODMAN,

Defendant.

_____ /

**ORDER ON DEFENDANT'S
MOTION TO CORRECT ILLEGAL SENTENCE**

THIS CAUSE came before the Court upon the Defendant's Motion to Correct Illegal Sentence, filed on January 16, 2025, pursuant to Rule 3.800, Florida Rules of Criminal Procedure. Based upon a review of the Defendant's Motion, the official Court file, and being otherwise fully advised in the premises, the Court makes the following findings of fact and conclusions of law:

1. On July 16, 2007, the Defendant was charged by Information with Home Invasion Robbery (Reclassified) (LF) (Exhibit A, Information).
2. A jury found the Defendant guilty of Home Invasion Robbery but that the Defendant did not possess a firearm during the commission of the crime (Exhibit B, Verdict).
3. The Court adjudicated the Defendant to be a Habitual Violent Felony Offender (Exhibit C, Order). On August 4, 2008, the Defendant was sentenced to life imprisonment. Appellate counsel filed a Motion to Correct Sentencing Error and the Defendant was resentenced on March 19, 2009 to a 30-year term of imprisonment which included a 10 year mandatory minimum term based upon Defendant's status as a Habitual Violent Felony Offender (Composite

Exhibit D, Judgment and Sentencing Transcript). The Judgment was affirmed on appeal. *Goodman v. State*, 19 So. 3d 328 (Fla. 5th DCA 2009).

4. The Defendant has since filed numerous attacks upon his sentence, each of which has been either denied or dismissed.

5. In his current Motion, the Defendant argues that his sentence is illegal for two reasons. In Ground One of his Motion the Defendant argues that his “ten (10) year minimum mandatory term of imprisonment under the Habitual Violent Felony Offender (HVFO) Designation is Illegal.” In Ground Two of his Motion, the Defendant argues that “the Court’s designation of Defendant as a Habitual Violent Felony Offender (HVFO) is illegal where Defendant does not meet the requirements for this sentencing enhancement.”

6. As to Ground One, the Defendant is correct, in part. Pursuant to subsection 755.084(4)(b)(1), Florida Statutes, the mandatory minimum portion of a sentence imposed for a first-degree felony is 15 years. Thus, the 10 year mandatory minimum imposed as part of the Defendant’s sentence is illegal. *State v. Valera*, 75 So. 3d 330 (Fla. 4th DCA 2011). However, the Defendant’s reliance upon *Poitier v. State*, 844 So. 2d 707 (Fla. 2d DCA 2003) regarding double jeopardy is misplaced. *Poitier* addressed the potential increase of a previously legally imposed sentence. Pursuant to *Dunbar v. State*, 89 So. 3d 901, 907 (Fla. 2012), the correction of the Defendant’s sentence to increase the mandatory minimum term will not violate double jeopardy principles as the Defendant had no “legitimate expectation of finality in the initial sentence as orally pronounced because it did not include the nondiscretionary mandatory minimum term.” The fact that Defendant has been serving his sentence for some time does not alter the result. “[T]he passage

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of time does not alter the calculus. An illegal sentence was, is, and remains illegal until it is corrected.” *Miles v. State*, 343 So. 3d 131, 135 (Fla. 2d DCA 2022). Thus, the mandatory minimum portion of the Defendant’s sentence shall be corrected.

7. As to Ground Two, this ground has previously been raised and addressed by this Court in its August 2, 2012 Order Denying Motion to Correct Illegal Sentence (Composite Exhibit E, Motion and Order with Exhibits). The denial of Defendant’s Motion was affirmed on appeal (Composite Exhibit F, Opinion and Mandate). Thus, this ground is procedurally barred. *Hines v. State*, 949 So. 2d 1086 (Fla. 4th DCA 2007).

Based upon the foregoing, it is,

ORDERED AND ADJUDGED:

1. Ground One of the Defendant’s Motion to Correct Illegal Sentence is **GRANTED** to the extent that the Defendant shall appear before the Court for resentencing to correct the mandatory minimum portion of his sentence.

2. Ground Two of the Defendant’s Motion to Correct Illegal Sentence is **DENIED**.

3. The Defendant has the right to appeal this Order within thirty (30) days of its rendition.

DONE AND ORDERED at Viera, Brevard County, Florida, this 7th day of January, 2025.


AARON J. MACOCK
ACTING CIRCUIT JUDGE

State v. Goodman

05-2007-CF-048580-XXXX-XX

CERTIFICATE OF SERVICE

I do certify that copies hereof have been furnished electronically to the Office of the State Attorney and Dan Ripley, Esquire this ~~xxxx day of January, 2025~~
10TH day of February, 2025

Tina Derwitsch, JA
Judicial Assistant

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA

NO CAPIAS

VS.

LARRY DONELL GOODMAN**CASE NUMBER: 052007CF048580AXXX****KWESI KAYODE PHILPOT****CASE NUMBER: 052007CF048580BXXX****INFORMATION**

HOME-INVASION ROBBERY (RECLASSIFIED) (LF) 812.135

IN THE NAME AND BY AUTHORITY OF THE STATE OF FLORIDA, NORMAN R. WOLFINGER, STATE ATTORNEY, THROUGH THE UNDERSIGNED DESIGNATED ASSISTANT STATE ATTORNEY, CHARGES THAT:

IN THE COUNTY OF BREVARD, STATE OF FLORIDA, on May 18, 2007, **LARRY DONELL GOODMAN**, KWESI KAYODE PHILPOT, did commit a home-invasion robbery by entering a dwelling, located at 4555 HELENA DRIVE, TITUSVILLE, with the intent to commit a robbery, and did commit a robbery of the occupants therein, JUSTIN THIBEAU, by taking money or other property, from the person or custody of another, with the intent to permanently or temporarily deprive said person of said property, and in the course of the taking did use force, violence, assault or putting in fear, contrary to Sections 812.13(1), 812.135(2), Florida Statutes, and did carry, display, use, threaten, or attempt to use a weapon or firearm, to wit: HANDGUN, during the commission of the offense, within the meaning of Section 775.087(1), Florida Statutes,

AND against the peace and dignity of the State of Florida.

I hereby state under oath that I am instituting this prosecution in good faith, and I certify that I have received testimony under oath from the material witness or witnesses for the offense(s).

[Signature]
Designated Assistant State Attorney
Eighteenth Judicial Circuit
Florida Bar No. 0182052

Personally appeared before me, Designated Assistant State Attorney GARY F. LARGE, who is personally known to me, who being first duly sworn, says that this prosecution is instituted in good faith, and certifies that testimony under oath has been received from the material witness or witnesses for the offense(s), and says that the allegations as set forth in the foregoing information are based upon facts that have been sworn to as true and which, if true, would constitute the offense(s) therein charged. Sworn to and subscribed before me in Brevard County, Florida, this 10th day of July, 2007.

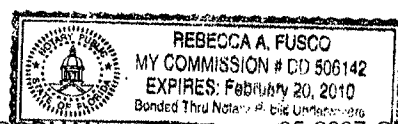
[Signature]
Signature of Notary

Case # 05-2007-CF-048580-AXXX-XX
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010550420

Exhibit "A"

STATE OF FLORIDA v. LARRY D GOODMAN



NVB

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

CASE NUMBER 052007CF048580AXXX

STATE OF FLORIDA,
Plaintiff,

vs

LARRY DONELL GOODMAN,
Defendant

FILED IN OPEN COURT
Date 3-31-08 Time 2:33 PM
CLERK CIRCUIT AND COUNTY COURT
By [Signature] DC

VERDICT

We, the jury, find as follows, as to the defendant, in this case (check only one)

☒ A) The defendant, Larry Donell Goodman, is guilty of Home Invasion Robbery

Special Interrogatory

If you find the defendant guilty of Home Invasion Robbery, you must answer the following (check only one)

☐ 1) Beyond a reasonable doubt, the defendant, Larry Donell Goodman, actually possessed a firearm during the commission of this crime

or

☒ 2) The Defendant, Larry Donell Goodman, did not possess a firearm during the commission of this crime

☐ B) The defendant, Larry Donell Goodman, is guilty of Robbery With a Weapon

☐ C) The defendant, Larry Donell Goodman, is guilty of Robbery

☐ D) The defendant, Larry Donell Goodman, is guilty of Burglary

☐ E) The defendant, Larry Donell Goodman, is guilty of Aggravated Assault

☐ F) The defendant, Larry Donell Goodman, is guilty of Assault

☐ G) The defendant, Larry Donell Goodman, is guilty of Trespass

☐ J) The defendant, Larry Donell Goodman, is guilty of Petit Theft

☐ K) The defendant, Larry Donell Goodman, is not guilty

So say we all this 31 day of MARCH, 2008, in Titusville, Brevard County, Florida

[Signature]
FOREPERSON

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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO 052007CF048580AXXX

Plaintiff,

vs
LARRY DONELL GOODMAN,Defendant
_____ /

FILED IN OPEN COURT

Date 8-4-08 Time 9:50AM

CLERK CIRCUIT AND COUNTY COURT

By J Roberts DC

ORDER ADJUDICATING DEFENDANT
AS VIOLENT HABITUAL FELONY OFFENDER

THIS CAUSE came before the Court upon the State's Motion to Declare the Defendant to be a Violent Habitual Felony Offender under s775 084, Fla Stat Based upon the evidence presented, this Court finds by a preponderance of the evidence as follows

- 1 The Defendant has previously been convicted of Robbery, a qualifying offense under §775 084(b)1(n), Florida Statutes
- 2 The felony for which the Defendant is to be sentenced was committed within five (5) years of the date of the conviction for the predicate qualifying offense set forth above
- 3 The Defendant has not received a pardon for this qualifying felony conviction
- 4 This conviction necessary to the operation of §775 084 has not been set aside in any post-conviction proceeding,

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Document Page # 81



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Order Adjudicating Defendant As Habitual Felony Offender
State of Florida v LARRY DONELL GOODMAN
Case No 052007CF048580AXXX
Page 2

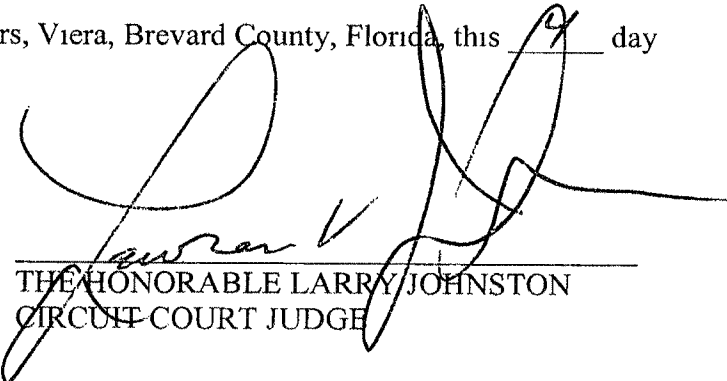
- 5 The Court has considered the content of the Presentence Investigation Report,
- 6 That proper written notice has been timely served upon the Defendant and his attorney setting forth the State's intent to seek a Violent Habitual Offender declaration and sentence in this cause,
- 7 Imposition of a sentence under §775 084 is necessary for the protection of the public, and the Court being otherwise fully advised in the premises, it is thereupon

ORDERED and ADJUDGED

1 That the Defendant, LARRY DONELL GOODMAN, is hereby declared to be a "Violent Habitual Felony Offender," as defined in §775 084, Fla Stat

2 That sentence shall be imposed against the Defendant in accordance with §775 084(4)(b), Fla Stat

DONE AND ORDERED in Chambers, Viera, Brevard County, Florida, this 9 day of AUGUST, 2008



THE HONORABLE LARRY JOHNSTON
CIRCUIT COURT JUDGE

Copies furnished to

State Attorney's Office - Viera
TODD DERATANY, ESQUIRE

Ellis, Clerk of Courts, Brevard County

e-recording 1/5

Reserved for Recording

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

 Probation Violator Community Control Violator Retrial XX Resentence

STATE OF FLORIDA

Case Number 05-2007-CF-048580-AXXX-XX

vs

Filed in Open Court, on March 12, 2009 2 27 pm

LARRY D GOODMAN

E Williams, Deputy Clerk

JUDGMENT

Court was opened with the Honorable LAWRENCE V JOHNSTON (2008-09) presiding, and in attendance State Attorney GREGORY J KONIECZKA, Trial Clerk E Williams, Court Reporter RYAN REPORTING SCHOLLENBARGER, K The Defendant, LARRY D GOODMAN, being personally before this Court represented by TODD DERATANY, the attorney of record, and said Defendant having the following crime(s)

OBTS Number(s) 0501162078			
Count	Crime	Offense Statute Number	Degree
1	(LIO) HOME INVASION ROBBERY NO FIREARM OR OTHER WEAPON	812 135(2c)	F1
<u>X</u>	and no cause being shown why the Defendant should not be adjudicated guilty, it is ordered that the Defendant is hereby ADJUDICATED GUILTY of the above crime(s)		
<u>X</u>	And having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, the defendant shall be required to submit blood or other biological specimens		

DONE AND ORDERED in open court at Brevard County, Florida, on March 12, 2009

LAWRENCE V JOHNSTON (2008-09), Circuit Judge

Case # 05-2007-CF-048580-AXXX-XX
Document Page # 123

Composite Exhibit

Reserved for Recording

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

STATE OF FLORIDA

Case Number 05-2007-CF-048580-XXXX-XX

vs

OBTS Number(s) 0501162078

LARRY D GOODMAN

SENTENCE

The Defendant, LARRY D GOODMAN, being personally before this Court, accompanied by the Defendant's attorney of record, TODD DERATANY, and having been adjudicated guilty herein, and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence, and to show cause why the Defendant should not be sentenced as provided by law, and no cause being shown

It is the sentence of the Court that

(as to Count 1)

- X and the Court having previously entered a judgment in this case on August 4, 2008, now resentsences the Defendant
- X The Defendant is hereby committed to the custody of the Department of Corrections
- X And having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, the defendant shall be required to submit blood or other biological specimens

To be imprisoned (Check one, unmarked sections are inapplicable)

- X For a term of thirty (30) years

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

STATE OF FLORIDA
vs
LARRY D GOODMAN

Case Number 05-2007-CF-048580-XXXX-XX
OBTS Number(s) 0501162078

SPECIAL PROVISIONS

By appropriate notation, the following provisions apply to the sentence imposed

(as to Count 1)

Other Provisions

Original Jail Credit	<u>X</u>	It is further ordered that the defendant be allowed a total of 418 days as credit for time incarcerated before imposition of this sentence
DOC Credit	<u>X</u>	The defendant is to receive credit for any time previously served in the Department of Corrections as to this case
Related Sentences	<u>X</u>	Sentence shall run concurrent with any active sentence

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**CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

STATE OF FLORIDA

Case Number 05-2007-CF-048580-XXXX-XX

vs

LARRY D GOODMAN

SIGNATURE PAGE

In the event the above sentence is to the Department of Corrections, the Sheriff of Brevard County, Florida, is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute

The Defendant was advised in open court of the right to appeal from this sentence by filing a notice of appeal within thirty (30) days from this date with the clerk of this court and the Defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency

In imposing the above sentence, the Court further recommends

*(Items marked with *(COP) *(COC) and *(COS) are Conditions of Probation Community Control and Conduion of Suspension)*

(as to Count 1)

General

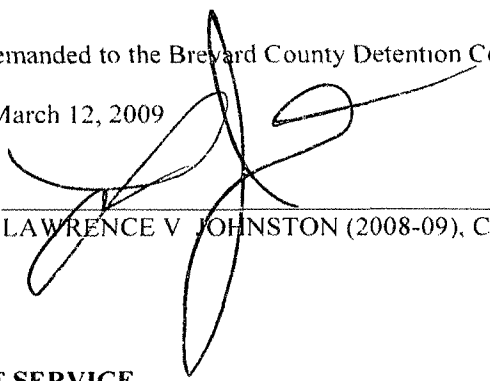
THE COURT HEREBY VACATES IT'S PREVIOUS SENTENCE (8-4-08) DEFENDANT RESENTENCED
Court granted motion to correct sentence
DEFENDANT PREVIOUSLY FOUND GUILTY BY JURY ON MARCH 31, 2008 OF HOME INVASION
ROBBERY NO FIREARM OR OTHER WEAPON (FS 812 135 2 C)

Special Provisions

Def Adj Hbtul Violent Fel Off

THE COURT HEREBY ORDERS THE DEFENDANT remanded to the Brevard County Detention Center

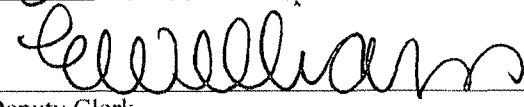
DONE AND ORDERED at Brevard County, Florida, on March 12, 2009



LAWRENCE V JOHNSTON (2008-09), Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail /hand delivery to TODD DERATANY, 503 5TH AVE STE 105, INDIALANTIC, FL 32903-4275 on 3.12.09



Deputy Clerk

I acknowledge receipt of a certified copy of this Order, and the conditions have been explained to me I will immediately report to the Probation and Parole Office for further instructions

Date

Probationer/Community Controllee

Case # 05-2007-CF-048580-XXXX-XX
Document Page # 137

C O I N C L U D E D

March 12, 2009

State of Florida v Larry Donell Goodman

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IN THE CIRCUIT COURT OF THE 18TH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

Case No 05-2007-CF-48580

LARRY D GOODMAN,
Defendant/Appellant,

ORIGINAL

vs

STATE OF FLORIDA,
Plaintiff/AppelleeTRANSCRIPT OF PROCEEDINGS
SENTENCINGSCOTT ELLIS
2009 JUN 16 A 9 49
CLERK OF CIR
BREVARD CO FLDATE TAKEN
TIME
PLACEMarch 12, 2009
2 44 p m
Brevard County Courthouse
2725 Judge Fran Jamieson Way
Viera, Florida 32940

BEFORE

LAWRENCE V JOHNSTON, III
Circuit Court Judge

This cause came on to be heard at the time and place
aforesaid, when and where the following proceedings were
reported by

KIM KAY SHOLLENBARGER
RYAN REPORTING
REGISTERED PROFESSIONAL REPORTERS

1670 S FISKE BLVD
ROCKLEDGE, FLORIDA 32955
(321) 636-4450
FAX (321) 633-0972

100 RIALTO PLACE, SUITE 700
MELBOURNE, FLORIDA 32901
(321) 723-8538
FAX (321) 725-6315

March 12, 2009

State of Florida v Larry Donell Goodman

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A P P E A R A N C E S

For the Defendant/Appellant

DERATANY, GOLDFARB, RIEHL & REID
ATTORNEYS AT LAW503 5th Avenue, Suite 105
Indialantic, Florida 32903BY TODD C DERATANY, ESQUIRE
Attorney at Law

For the Plaintiff/Appellee

NORMAN R WOLFINGER, ESQUIRE
STATE ATTORNEY2725 Judge Fran Jamieson Way, Bldg D
Viera, Florida 32940BY GREGORY J KONIECZKA, ESQUIRE
Assistant State Attorney

Reporter's Certificate

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March 12, 2009

State of Florida v Larry Donell Goodman

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1 THE COURT I received a memorandum from
2 the staff attorney on this, make sure that she's on the
3 same page that everybody else is She recommends that we
4 have a calendar call and at that point we can then
5 determine the need whether to schedule a re-sentencing or
6 not And I must rule on the motion no later than 60 days
7 from the filing of the motion, however, if both sides
8 agree that we do it all at one time, I assume we can
9 accomplish that, but I don't know want that to fly in the
10 face of her recommendation and what the law is, so maybe
11 you all can help me through this

12 MR KONIECZKA Judge, I believe the
13 reason, and I researched the issue, and I believe the
14 current state of the law is, that since he was charged
15 with home invasion, robbery, it was reclassified to a
16 life felony and since the jury did not make a specific
17 finding that he actually possessed a firearm, the case
18 law as I understand it now is, and I apologize, I didn't
19 know it then, is that because I argued, as a principal to
20 it, he had been charged with robbery with a firearm, PBL,
21 you could have gave him life, but the State chose to file
22 it as a home invasion robbery, since he was not found to
23 actually possess the firearm The law is that the
24 maximum that the Court can impose is a 30 year sentence,
25 and I agree with that So I believe we do have to have

March 12, 2009

State of Florida v Larry Donell Goodman

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1 re-sentencing and the State is prepared to go ahead
2 today I believe Mr Deratany is going to agree that the
3 habitual felony offender predicate that was laid before,
4 is still appropriate with the 10 year minimum mandatory,
5 and the State is just going to ask you to take judicial
6 notice of all the testimony from the victims you heard
7 and ask you to sentence him to the 30 years, based on all
8 that testimony and evidence

9 THE COURT Of that 30 years, sorry, I
10 don't have -- it's just the one count

11 MR KONIECZKA Yes, sir

12 THE COURT So of that 30 year sentence,
13 from the State's point of view, it would be a 10 year
14 mandatory minimum within the 30 years

15 MR KONIECZKA Correct

16 THE COURT As a --

17 MR KONIECZKA I believe it's a violent
18 habitual felony offender

19 THE COURT Violent

20 MR KONIECZKA Habitual felony offender

21 THE COURT Habitual felony offender

22 MR KONIECZKA And I believe you signed
23 an order last time for us, and I would ask you just to
24 incorporate that same order that's in the file

25 THE COURT All right Anything from your

March 12, 2009

State of Florida v Larry Donell Goodman

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1 point of view?

2 MR DERATANY Is this before we get to
3 the sentencing hearing?

4 THE COURT I'm not sure

5 MR DERATANY Let me address the first
6 part first

7 THE COURT All right

8 Mr DERATANY And only for clarification
9 purposes, because I'm assuming that after you correct the
10 sentence, the appeal is still going to go forward This
11 was just done, from what I understand from the Public
12 Defender's office in Daytona, to correct this first, then
13 they are going to review the trial I want to be clear,
14 because I wasn't at the original sentencing hearing, they
15 specifically found, they checked the box that he did not
16 possess a firearm It wasn't that they didn't make a
17 finding of that he possessed it, but they actually
18 affirmatively determined that he didn't possess a firearm
19 in the case And I am in agreement with Mr Konieczka,
20 we stipulated to this, you know, that the maximum
21 sentence that he could receive is 30 years versus life in
22 prison, and of course I still want to make a few
23 arguments regarding what I believe the sentence should
24 be, especially in light of the fact that you heard the
25 co-defendant's trial in this case And I do stipulate

March 12, 2009

State of Florida v Larry Donell Goodman

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1 that everything else is still accurate

2 THE COURT Go ahead, if you want to go
3 ahead and pull that into the argument for some lesser
4 sentence, I'm happy to --

5 MR DERATANY I understand, Judge, that
6 in all likelihood you're going to sentence Mr Goodman to
7 30 years in prison And quite frankly, it's a relief off
8 my mind that we have agreed, because Mr Goodman out of
9 the 9,000 plus criminal cases that I have handled, is the
10 only client I've ever had be sentenced to life And this
11 case kind of troubled me, given the facts, but it
12 certainly was at the time what we believed to be a legal
13 sentence And I appreciate all of your -- you listened
14 to him and me at sentencing, but I think now that you
15 have seen Mr Filpot's jury trial, I think it becomes
16 more evident, it should become more evident to the Court
17 that Mr Filpot pot was the person that broke into house
18 with the padded firearm, committed the crime You know,
19 he was, you know, the leader That Mr Goodman, while
20 I'm certainly not minimizing his participation in the
21 crime, was more of a go-along, and he cooperated with law
22 enforcement, he fully confessed, he took them to where
23 the gun was And of course the troubling aspect of this
24 is, that he didn't take the plea offer initially in the
25 case, and that shouldn't be held against him, but I

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State of Florida v Larry Donell Goodman

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1 believe that because he does have a prior -- he qualifies
2 as a habitual violent felony offender only because -- he
3 only has one prior, it just so happens that prior is a
4 robbery charge So when you take into consideration the
5 fact that while he does only have one prior offense,
6 which he didn't go to prison for, all he got was
7 probation, which he successfully completed, it's still,
8 at 30 years, despite the great trauma that the victim
9 went through in this case, it still seems a tad steep
10 And of course I respect whatever the Court does, but I
11 would request that the Court sentence Mr Goodman to ten
12 years in prison I'm sorry, yes, ten years in prison,
13 the minimum mandatory for HVFO

14 THE COURT Mr Goodman, is there anything
15 you want to share with me before I impose sentence?

16 A No, sir

17 THE COURT There's no legal reason why
18 sentence should not be imposed?

19 MR DERATANY No

20 THE COURT I would propose and adjudicate
21 him guilty of the offense, sentence him to 30 years in
22 the Department of Corrections with credit for any time
23 served, as a violent habitual felony offender with a 10
24 year mandatory minimum sentence concurrent within that 30
25 years Incorporate the previously signed orders with

March 12, 2009

State of Florida v Larry Donell Goodman

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1 respect to this particular case into this final judgment
2 Anything else I need to articulate?

3 MR KONIECZKA No, Judge, I think that
4 covers it

5 THE COURT You have 30 days to appeal my
6 judgment and sentence I will appoint the Public
7 Defender's office to represent you for purposes of the
8 appeal, not only on this sentence, but also on the
9 continuing appeal that you have on the trial itself

10 MR DERATANY Yes, I'm not going to be
11 filing a new Notice of Appeal, I think we got leave to
12 file

13 THE COURT Right

14 MR KONIECZKA The original appeal is
15 still pending

16 MR DERATANY Very good
17 (End of proceedings at 2 51)

March 12, 2009

State of Florida v Larry Donell Goodman

Page 9 *9*

1 CERTIFICATE OF REPORTER

2 I, KIM KAY SHOLLENBARGER, Certified Court Reporter, do
3 hereby certify that I was authorized to and did report
4 the foregoing proceedings, and that the transcript, Pages
5 1 to 9, is a true and correct record of my stenographic
6 notes

7 Dated this 15th day of June, 2009, Brevard County,
8 Florida
9

10 KIM KAY SHOLLENBARGER, CCR
11 and Notary Public

Kim Shollenbarger

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PROVIDED TO
MADISON CI

MAY 03 2012

IN THE CIRCUIT COURT EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA

~~FOR MAILING~~

STATE OF FLORIDA,
Plaintiff/Appellee,

v

Case No 07-CF-48580

LARRY DONELI GOODMAN,
Defendant/Appellant

MITCH NEEDELMAN
2012 MAY -7 A 11 07
FILED IN TVL01
CLERK OF CIR CT
BREVARD COUNTY

MOTION TO CORRECT SENTENCING ORDER

Comes now the Defendant/Appellant, Larry Goodman, *pro se*, pursuant to Rule 3.80(b)(2), Florida Rules of Criminal Procedure, and moves this court for an order correcting the sentencing orders filed in this case. As grounds for this motion the defendant alleges:

- 1 The Honorable Lawrence V. Johnston, Circuit Judge, adjudicated and sentenced Defendant/Appellant in this case after a jury trial.
- 2 The charge at trial was home invasion robbery, reclassified for-use of a firearm.
- 3 The jury's verdict did not support the reclassification.
- 4 The sentence imposed was life in prison, as a habitual violent offender.
- 5 Nancy Ryan, Assistant Public Defender, filed a 3.800 Motion to Correct Sentencing Order and was granted.

Composite Exhibit

"E"

Case # 05-2007-CF-048580-AXXX-XX

6 Defendant was resentenced to 30 years, as a habitual violent felony offender

7 The Defendant again challenges the sentencing order

Defendant was charged as a Habitual Violent Felony Offender

According to the Criminal Punishment Code Scoresheet (Exhibit #A), the State chose a "F2 Robbery" charge that is present on Defendant's prior record out of New York State

The State did not establish that defendant's prior conviction was committed in any specific way, where the defendant's Robbery charge from New York could have been committed in various ways as shown in (Exhibits #B, C, D), which is insufficient evidence for the trial court to find that defendant qualified for the H V F O designation

Under the New York Statute No 160 10, the elements do not require "Intent" as does Fla Stat 812 13 for Robbery

An out of state offense must be substantially similar in elements and penalties to a qualifying offense in this state

New York Statutes only require the use of force necessary to prevent or overcome resistance by the victim. It cannot be determined as would be required in Florida's Robbery Statute, if the amount of force used was beyond that effort necessary to obtain possession of the money or other property

Likewise the New York Statute does not require that the victim be placed in fear so as to resist as does Florida

The extent of force to overcome resistance varies under Florida law concerning robbery offenses

The offense of Robbery by sudden snatching only requires that the amount of force is that which is necessary to obtain possession of the money or other property, resistance or injury does not have to be proven

New York's Article 160- Robbery defines Robbery as "Robbery is forcible stealing A person forcibly steals property and commits robbery when, in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of

1 Preventing or overcoming resistance to the taking of property or to the retention thereof immediately after the taking

2 Compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny "

The defendant's prior robbery conviction in New York was classified as a strong-arm robbery and a Strong-arm robbery offense may not serve as a predicate to qualify defendant as a Habitual offender section 775.084(2)

The closest similarity to the elements of the defendant's New York State Robbery charge 160, is Florida's Robbery charge 812 131(2)(b)

Robbery by sudden snatching, while considered as a robbery offense, is not an enumerated offense under the H V F O statute so as to allow that enhancement

The defendant asserts that the New York State prior predicate conviction of Robbery in the second degree Class-C, is not an enumerated offense under Fla Stat 775 084 that qualifies as a prior violent felony for imposition of the Habitual Violent Felony Offender sentencing enhancement and remand is necessary to correct a manifest injustice

The information contained in the exhibits #B, C, D were obtained on computer using the search engine "GOOGLE" with the directive to seek N Y Statutes, Criminal offense of Robbery in the second degree, (Stat No 160 10- Class C Felony) classification, sentencing, and jury instructions, and is readily attainable by all parties with access to a computer and the internet. This court probably has a more direct and efficient route that will verify the validity of the extra record exhibits

The defendant is requesting a guideline sentence that is defined in Exhibit #E

Moreover, the Out of State Felony is classified as a "non-violent felony" thereby making the habitual violent felony offender sentence illegal (See Exhibit #F)

The Defendant was prejudiced by these errors by being sentenced past his guideline numbers based on the imposition of the H V F O sanction and has subsequently been sentenced to 30 years in prison

WHEREFORE, the Defendant/Appellant requests this court to enter orders correcting the judgement issued, and resentencing him in light of the reduction in degree of the illegal enhancement

Respectfully submitted,

/s/

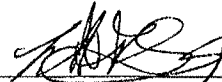


Larry Donell Goodman E34526
Madison Correctional Institution
382 SW MCI Way
Madison, FL 32340

UNNOTARIZED OATH

Under penalties of perjury, I declare that I have read the foregoing Motion To Correct Sentencing Order and that the facts stated in it are true

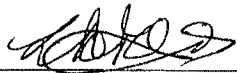
/s/



Larry Donell Goodman E34526
Madison Correctional Institution
382 SW MCI Way
Madison, FL 32340

CERTIFICATE OF SERVICE

I certify that this pleading was placed in the hands of prison or jail officials
for mailing on 3 day of May, 2012 pursuant to Thompson v State 761
So 2d 324, 326 (Fla, 2000)

/s/ 
Larry Donell Goodman E34526
Madison Correctional Institution
382 SW MCI Way
Madison, FL 32340

1/9

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA**

CASE NO 05-2007-CF-48580

STATE OF FLORIDA,

Plaintiff,

v

LARRY DONNELL GOODMAN,

Defendant

FILED IN TVI - 01
CLERK OF CIR CT
BREVARD CO FL

2012 AUG -3 A 9 44

MITCH NEEDELMAN

ORDER DENYING MOTION TO CORRECT ILLEGAL SENTENCE

THIS MATTER comes before the Court upon a Motion to Correct Illegal Sentence filed pursuant to Rule 3 800(a), Fl R Crim P on May 7, 2012 Upon a review of the Motion, the Court file, and the State's Response, and being otherwise advised therein, the Court makes the following findings of fact and conclusions of law

Following a trial by jury, the Defendant was convicted of one count of home invasion robbery, no firearm, and sentenced as a habitual violent felony offender (HVFO) to a term of 30 years of incarceration (Exhibit A, Judgment) He now contends that the HVFO designation is illegal because it rests on an underlying robbery conviction from the State of New York which does not satisfy the criteria for HVFO status

A defendant may be habitualized on the basis of a conviction from another jurisdiction if the elements of the statute under which he was convicted are substantially identical to a corresponding Florida statute for which he could be habitualized *Clark v State*, 823 So 2d 809 (Fla 1st DCA 2002) The equivalency of an out-of-state statute with a Florida statute is a purely a legal question that may be addressed within the context of a Rule 3 800(a) motion *Hankins v State*, 42 So 3d 871, 874 (Fla 2d DCA 2010)

Case # 05-2007-CF-048580-AXXX-XX
Document Page # 160

State v Goodman Case No 05-2007-CF-48580
Order Denying Motion to Correct Illegal Sentence

The State introduced evidence at sentencing that the Defendant had been convicted in the State of New York for a third degree felony robbery, a violation of New York Penal Law § 160.05 (Exhibit B, NY conviction). Robbery is a crime which may be used as a predicate for HVFO § 775.084(1)(b)1 c , Florida Statutes (2007). The Defendant asserts, however, that his New York Penal Code offense is not substantially identical to the Florida robbery statutes so as to allow it to be used for habitualization.

To be convicted under the Florida robbery statute, there must be proof of the following elements: (1) the unlawful taking of property (2) from or in the presence of another (3) against that person's will (4) by the use of force or putting in fear. *Clark*, 823 So. 2d at 812. New York Penal Code § 160.05 simply states:

§ 160.05 Robbery in the third degree

A person is guilty of robbery in the third degree when he forcibly steals property.
 Robbery in the third degree is a class D felony.

The Defendant's contention is that this statute is more akin to Florida's robbery by sudden snatching, § 812.131, Florida Statutes (2007), an offense which may not be the basis for a HVFO designation. *Thomas v State*, 983 So. 2d 746 (Fla. 4th DCA 2008). His argument is bolstered by the fact that the State of New York specifically classifies § 160.05 as a Class D non-violent felony. See, e.g., *People v Gasperd*, 33 Misc. 3d 1228(A), 939 N.Y.S.2d 742 (N.Y. Sup. Ct. 2011); *People v McKay*, 10 A.D.3d 734, 735, 782 N.Y.S.2d 128, 129 (N.Y. App. Div. 2004).

It would seem somewhat problematic to classify an offender as habitually violent on the basis of a conviction which the convicting jurisdiction specifically qualifies as non-violent. However, § 160.05 is part of the larger New York robbery statute. New York Penal Code § 160.00 defines the overall term of "robbery."

State v Goodman Case No 05-2007-CF-48580
Order Denying Motion to Correct Illegal Sentence

Robbery is forcible stealing. A person forcibly steals property and commits robbery when, in the course of committing a larceny, he uses or threatens the immediate use of physical force upon another person for the purpose of

- 1 Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking, or
- 2 Compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny

N Y Penal Law § 160 00 Since § 160 05 is classified as “robbery,” then it must contain all of the elements of “robbery” described in § 160 00 These two statutes combined, § 160 00 and § 160 05, contain the essential elements of robbery under Florida law as stated in *Clark* above (1) stealing property (unlawful taking of property), (2) and (3) by overcoming the resistance of or compelling the owner (from the presence of the owner against that’s person’s will), and (4) forcible (by the use of force or putting in fear) While § 160 05 may not require great force or great fear, as would higher felony degrees of robbery, it is still robbery, a forcible felony The New York statute is sufficiently similar to allow its use for designating the Defendant as a habitual violent felony offender

THEREFORE IT IS ORDERED AND ADJUDGED that

The Motion to Correct Illegal Sentence is DENIED

The Defendant has thirty (30) days to appeal this Order

DONE AND ORDERED this 2nd day of August 2012 at

Titusville, Brevard County, Florida



JOHN M GRIESBAUM
CIRCUIT COURT JUDGE

Copies

Office of the State Attorney, Titusville, FL

Larry Donnell Goodman, DC # E 34526, Madison Correctional Institution, 382 SW MCI Way,
Madison, FL 32340

By Amy George Judicial Asst Date August 2, 2012
3

CEN 2009043089, OR BK 3313 Page 3774, RECORDED 03/10/2009 AT 03:10 PM, SCOTT
Ellis, Clerk of Courts, Brevard County

e-recording 1/5

Reserved for Recording

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

____ Probation Violator ____ Community Control Violator ____ Retrial XX Resentence

STATE OF FLORIDA

Case Number 05-2007-CF-048580-AXXX-XX

vs

Filed in Open Court on March 12, 2009 2:27 pm

LARRY D GOODMAN

E Williams, Deputy Clerk

JUDGMENT

Court was opened with the Honorable LAWRENCE V JOHNSTON (2008-09) presiding and in attendance State Attorney GREGORY J KONIECZKA, Trial Clerk E Williams, Court Reporter RYAN REPORTING SCHOLLENBARGER, K The Defendant LARRY D GOODMAN being personally before this Court represented by TODD DERATANY, the attorney of record, and said Defendant having the following crime(s)

OBTS Number(s) 0501162078			
Count	Crime	Offense Statute Number	Degree
1	(LIO) HOME INVASION ROBBERY NO FIREARM OR OTHER WEAPON	812.135(2c)	F1
<u>X</u> and no cause being shown why the Defendant should not be adjudicated guilty it is ordered that the Defendant is hereby ADJUDICATED GUILTY of the above crime(s)			
<u>X</u> And having been convicted or found guilty of or having entered a plea of nolo contendere or guilty, regardless of adjudication, the defendant shall be required to submit blood or other biological specimens			

DONE AND ORDERED in open court at Brevard County Florida, on March 12, 2009

LAWRENCE V JOHNSTON (2008-09) Circuit Judge

Exhibit "A"

Case # 05-2007-CF-048580-AXXX-XX
Document Page 123

013/04589

DISTRIBUTION ORIGINAL-COURT FILE ☐ DEFENDANT ☐ PROBATION & PAROLE ☐ SHERIFF
☐ DEFENSE ATTORNEY/PD ☐ STATE ATTORNEY ☐ DEPT OF CORRECTIONS(2)

OR BK 0010 PG 0770

Reserved for Recording

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

STATE OF FLORIDA
vs
LARRY D GOODMAN

Case Number 05-2007-CF-048580-AXXX-XX
OBTS Number(s) 0501162078

SENTENCE

The Defendant LARRY D GOODMAN, being personally before this Court, accompanied by the Defendant's attorney of record TODD DEFATANY and having been adjudicated guilty herein and the Court having given the Defendant an opportunity to be heard and to offer matters in mitigation of sentence and to show cause why the Defendant should not be sentenced as provided by law, and no cause being shown

It is the sentence of the Court that

(as to Count 1)

- ☒ and the Court having previously entered a judgment in this case on August 4 2008 now resentsences the Defendant
- ☒ The Defendant is hereby committed to the custody of the Department of Corrections
- ☒ And having been convicted or found guilty of or having entered a plea of nolo contendere or guilty regardless of adjudication the defendant shall be required to submit blood or other biological specimens

To be imprisoned (Check one, unmarked sections are inapplicable)

- ☒ For a term of thirty (30) years

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

STATE OF FLORIDA
vs
LARRY D GOODMAN

Case Number 05-2007-CF-048580-XXXX-XX
OBTS Number(s) 0501162078

SPECIAL PROVISIONS

By appropriate notation the following provisions apply to the sentence imposed

(as to Count 1)

Other Provisions

Original Jail Credit	<u>X</u>	It is further ordered that the defendant be allowed a total of 418 days as credit for time incarcerated before imposition of this sentence
DOC Credit	<u>X</u>	The defendant is to receive credit for any time previously served in the Department of Corrections as to this case
Related Sentences	<u>X</u>	Sentence shall run concurrent with any active sentence

5/5

**CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT,
IN AND FOR BREVARD COUNTY, FLORIDA**

STATE OF FLORIDA

Case Number 05-2007-CF-048580-XXXX-XX

vs

LARRY D. GOODMAN

SIGNATURE PAGE

In the event the above sentence is to the Department of Corrections the Sheriff of Brevard County Florida is hereby ordered and directed to deliver the Defendant to the Department of Corrections at the facility designated by the department together with a copy of this judgment and sentence and any other documents specified by Florida Statute

The Defendant was advised in open court of the right to appeal from this sentence by filing a notice of appeal within thirty (30) days from this date with the clerk of this court and the Defendant's right to the assistance of counsel in taking the appeal at the expense of the State on showing of indigency

In imposing the above sentence the Court further recommends

*(Items marked with *(CP) *(CC) and *(COS) are Conditions of Probation Community Control and Condition of Suspension)*

(as to Count 1)

General

THE COURT HEREBY VACATES IT'S PREVIOUS SENTENCE (8-4-08) DEFENDANT RESENTENCED

Court granted motion to correct sentence

DEFENDANT PREVIOUSLY FOUND GUILTY BY JURY ON MARCH 31 2008 OF HOME INVASION

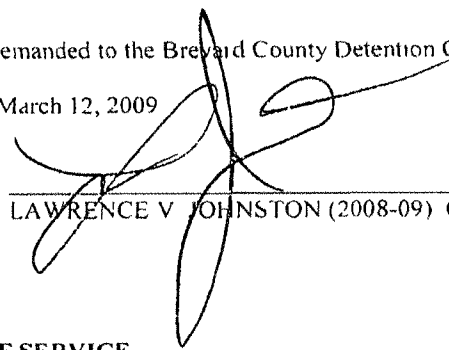
ROBBLRY NO FIREARM OR OTHER WEAPON (FS 812.135(2)(C))

Special Provisions

Def Adj Habitual Violent Fel Off

THE COURT HEREBY ORDERS THE DEFENDANT remanded to the Brevard County Detention Center

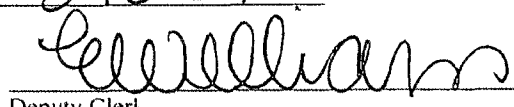
DONE AND ORDERED at Brevard County Florida on March 12, 2009



LAWRENCE V. JOHNSTON (2008-09) Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail / hand delivery to TODD DERALANY
503 5TH AVE STE 105 INDIALANTIC FL 32903-4275 on 3.12.09



Deputy Clerk

I acknowledge receipt of a certified copy of this Order and the conditions have been explained to me. I will immediately report to the Probation and Parole Office for further instructions

Date

Probationer/Community Controllee

INSTRUCTED BY _____

CLERK OF THE COURT
12501 QUEENS BOULEVARD
KEW GARDENS NY 11415

CERTIFICATE OF DISPOSITION - SUPERIOR COURT INFORMATION

DATE 07/30/2007

CERTIFICATE OF DISPOSITION NUMBER 8697

PEOPLE OF THE STATE OF NEW YORK
VS

CASE NUMBER SCI-02761-2003
LOWER COURT NUMBER(S) 2003QN046172
DATE OF ARREST 10/10/2003
ARREST # Q03637230
NYSID # 1899699K
DATE OF BIRTH 02/16/1980

GOODMAN, LARRY D

DEFENDANT

I HEREBY CERTIFY THAT IT APPEARS FROM AN EXAMINATION OF THE RECORDS ON FILE IN THIS OFFICE THAT ON 12/04/2003 BEFORE THE HONORABLE WONG, D THEN A JUDGE OF THIS COURT, THE ABOVE NAMED DEFENDANT ENTERED A PLEA OF GUILTY TO THE CRIME(S) OF

ROBBERY 3rd DEGREE PL 160 05 00 DF

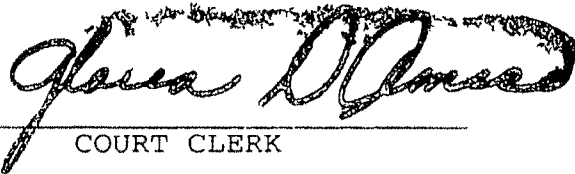
THAT ON 02/23/2004 THE ABOVE NAMED DEFENDANT WAS SENTENCED BY THE HON WONG, D , THEN A JUDGE OF THIS COURT TO

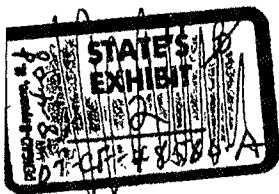
ROBBERY 3rd DEGREE PL 160 05 00 DF
ORDER OF PROTECTION = 5 YEAR(S)
PROBATION = 5 YEAR(S)

CVAF = \$10 (ADJOURNED)
SURCHARGE = \$200 (ADJOURNED)

ADDITIONAL COMMENTS THERE IS AT PRESENT AN OUTSTANDING WARRANT ISSUED ON 04/08/2004 FOR NON PAYMENT OF COURT FEES AND SURCHARGES ON 4/11/2005 THE PREVIOUS WARRANT WAS ISSUED FOR V O P

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL ON THIS DATE 07/30/2007


COURT CLERK



[Exhibit "B"

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

JANUARY TERM 2013

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

LARRY DONELL GOODMAN,

Appellant,

v

Case No 5D12-3356

STATE OF FLORIDA,

Appellee

_____ /

Decision filed January 8, 2013

3 800 Appeal from the Circuit Court
for Brevard County,
John M Griesbaum, Judge

Larry Donnell Goodman, Madison, pro se

Pamela Jo Bondi, Attorney General,
Tallahassee, and Wesley Heidt and L
Charlene Matthews, Assistants Attorney
General, Daytona Beach, for Appellee

PER CURIAM

AFFIRMED

SAWAYA, TORPY and COHEN, JJ , concur

M A N D A T E

from

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT

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

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

WITNESS THE HONORABLE RICHARD B ORFINGER, CHIEF JUDGE OF THE DISTRICT
COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, AND THE SEAL OF THE SAID
COURT AT DAYTONA BEACH, FLORIDA ON THIS DAY

DATE March 21, 2013

FIFTH DCA CASE NO 5D 12-3356

CASE STYLE LARRY DONELL GOODMAN v STATE OF FLORIDA

COUNTY OF ORIGIN Brevard

TRIAL COURT CASE NO 05-2007-CF-48580-A

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

Pamela R. Masters
PAMELA R MASTERS, CLERK



FILED IN TVL-01
CLERK OF CIR CT
BREVARD CO FL

2013 MAR 21 A 10:00

SCOTT ELLIS

cc

Wesley Heidt
Larry D Goodman

Office Of Attorney General

L Charlene Matthews
Clerk Brevard

Case # 05-2007-CF-048580-AXXX-XX

Document # 103

20617682

STATE OF FLORIDA v. LARRY D GOODMAN

05-2007-CF-048580-AXXX-XX