

MOTION TEMPLATE -- RULE 3.800(a) CORRECTION OF ILLEGAL SENTENCE

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MOTION TEMPLATE -- RULE 3.800(a) CORRECTION OF ILLEGAL SENTENCE

State v. Marquis Anthony Delcampo

CRITICAL**: This motion has *NO TIME LIMIT****. It can be filed at any time, even if the Rule 3.850 deadline has passed. File this **IMMEDIATELY** if the 20-year sentence has no valid enhancement basis.*

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

STATE OF FLORIDA,

Plaintiff, CASE NO.: [CASE NUMBER]

v.

MARQUIS ANTHONY DELCAMPO,

Defendant.

DEFENDANT'S MOTION TO CORRECT ILLEGAL SENTENCE
PURSUANT TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.800(a)

COMES NOW the Defendant, MARQUIS ANTHONY DELCAMPO, pro se [or by and through undersigned counsel], and moves this Honorable Court to correct an illegal sentence pursuant to Florida Rule of Criminal Procedure 3.800(a), and states as follows:

PROCEDURAL HISTORY

1. On or about [DATE], the Defendant was found guilty of Aggravated Battery, a felony of the second degree, in violation of Florida Statute § 784.045(1)(a).

2. On or about [SENTENCING DATE], this Court sentenced the Defendant to twenty (20) years in the Florida Department of Corrections.

THE SENTENCE IS ILLEGAL

3. Aggravated Battery under F.S. § 784.045(1)(a) is classified as a felony of the second degree. F.S. § 784.045(2).

4. The maximum penalty for a felony of the second degree is a term of imprisonment not exceeding fifteen (15) years. F.S. § 775.082(3)(c).

5. The Defendant's sentence of twenty (20) years exceeds the statutory maximum of fifteen (15) years by five (5) years.

[OPTION A -- IF NO ENHANCEMENT NOTICE WAS FILED]

6. A review of the court file reveals that the State did not file any notice of intent to seek enhanced penalties under:

- a. F.S. § 775.084 (Habitual Felony Offender / Habitual Violent Felony Offender);
- b. F.S. § 775.087 (10-20-Life);
- c. F.S. § 775.082(9) (Prison Releasee Reoffender).

7. Absent a properly filed enhancement, the maximum lawful sentence for a second-degree felony is fifteen (15) years.

8. The sentence of twenty (20) years is therefore illegal, as it exceeds the maximum authorized by law.

[OPTION B -- IF HABITUAL OFFENDER ENHANCEMENT WAS APPLIED IMPROPERLY]

6. The State filed a notice of intent to seek Habitual Felony Offender (HFO) status under F.S. § 775.084.

7. However, the Defendant does not qualify as a habitual felony offender because:

[Select applicable sub-arguments:]

- a. The Defendant does not have two or more prior felony convictions as required by § 775.084(1)(a);
- b. The prior felonies relied upon by the State were not committed within five (5) years of the date of the commission of the instant offense, or within five years of the Defendant's release from prison, as required by § 775.084(1)(a)3;

c. The prior convictions used were [out-of-state convictions / juvenile adjudications / misdemeanors] that do not qualify under § 775.084;

d. The Court did not make specific findings on the record that the HFO criteria were satisfied, as required by § 775.084(3)(a);

e. The State failed to prove the qualifying prior convictions by the required standard.

8. Because the HFO enhancement was improperly applied, the Defendant's maximum lawful sentence is fifteen (15) years.

[OPTION C -- IF SCORESHEET WAS MISCALCULATED]

6. The Criminal Punishment Code scoresheet (F.S. § 921.0024) prepared for the Defendant's sentencing contains the following errors:

a. [Specify: incorrect prior record points -- offense X was scored as Y points but should have been Z];

b. [Specify: incorrect victim injury points];

c. [Specify: incorrect legal status points];

d. [Specify: other calculation errors].

7. When properly calculated, the scoresheet shows a lowest permissible sentence of [AMOUNT] and a statutory maximum of [AMOUNT].

8. The sentence imposed exceeds the lawful range and is therefore illegal. See *Heggs v. State*, 759 So.2d 620 (Fla. 2000).

[OPTION D -- IF PRE-SENTENCE JAIL CREDIT WAS NOT AWARDED]

6. The Defendant was held in pretrial custody from [ARREST DATE: May 5, 2023] to [SENTENCING DATE].

7. The Judgment and Sentence does not reflect credit for this period of pretrial incarceration.

8. Under F.S. § 921.161(1), the Defendant is entitled to credit for all time spent in custody prior to sentencing that resulted from the charge for which the sentence was imposed.

RULE 3.800(a) AUTHORITY

9. Florida Rule of Criminal Procedure 3.800(a) provides: "A court may at any time correct an illegal sentence imposed by it"

10. A sentence that exceeds the statutory maximum is illegal on its face and must be corrected. *Carter v. State*, 786 So.2d 1173 (Fla. 2001).

11. No time limit applies to a motion under Rule 3.800(a). The right to correction of an illegal sentence is not subject to waiver, procedural bar, or estoppel. *Williams v. State*, 957 So.2d 595 (Fla. 2007).

12. The Court does not need to hold an evidentiary hearing if the illegality appears on the face of the record. However, if the Court cannot determine the issue from the record, a hearing should be held.

PRAYER FOR RELIEF

WHEREFORE, the Defendant respectfully requests this Honorable Court:

- a. Correct the illegal sentence;
- b. Resentence the Defendant to a term not exceeding the statutory maximum of fifteen (15) years [or the correct enhanced maximum if a valid enhancement is established];
- c. Award all appropriate pre-sentence jail credit;
- d. Grant such other relief as this Court deems just and proper.

Respectfully submitted,

MARQUIS ANTHONY DELCAMPO

Date

DC Number: [DC NUMBER]

[Current Facility]

[Facility Address]

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this motion has been furnished by U.S. Mail to: Office of the State Attorney, 18th Judicial Circuit, 101 Eslinger Way, Sanford, FL 32773, on this ____ day of _____, 20____.

MARQUIS ANTHONY DELCAMPO

FILING NOTES

1. ****NO TIME LIMIT**** -- This can be filed at any time, even if all other deadlines have passed
2. ****Attach****: Copy of the Judgment & Sentence showing the 20-year term
3. ****Attach****: Criminal Punishment Code scoresheet (if available)
4. ****Attach****: Proof that no enhancement notice was filed (or that enhancement was improper)
5. ****File original**** with Seminole County Clerk
6. ****Mail copy**** to State Attorney's Office
7. ****The Court has 60 days**** to rule on this motion (Rule 3.800(a))
8. ****If denied****: Appeal to 5th DCA within 30 days (Rule 9.140(b)(1)(D))

CASE LAW SUPPORT

| Case | Holding |

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| Carter v. State, 786 So.2d 1173 (Fla. 2001) | Sentence exceeding statutory max is illegal |

| Williams v. State, 957 So.2d 595 (Fla. 2007) | No time bar on correcting illegal sentence |

| Penn v. State (5th DCA) | 5th DCA specifically: excess sentence must be corrected |

| Brooks v. State | HFO requires written notice before sentencing |

| Eutsey v. State | Court must make specific HFO findings on record |

| Heggs v. State, 759 So.2d 620 (Fla. 2000) | Scoresheet errors require resentencing |