

IN THE CIRCUIT COURT OF THE EIGHT JUDICIAL CIRCUIT,
IN AND FOR ALACHUA COUNTY, FLORIDA

STATE OF FLORIDA,

v.

Circuit Case No. 01-2023-CF-2371

1st DCA Case No. 1D24-2548

JA'ZIER ANTONIO MYERS

Defendant.

/

SECOND MOTION TO CORRECT SENTENCING ERROR
UNDER FLORIDA RULE OF CRIMINAL PROCEDURE 3.800(b)(2)

The Defendant, Ja'Zier Myers, pursuant to rule 3.800(b)(2), Florida Rules of Criminal Procedure, files this motion to correct sentencing error and to preserve this issue for appeal. As grounds for this Motion, Mr. Myers states:

Jurisdiction of this Court

1. An appeal has been taken from Mr. Myers's conviction and sentence, which is now pending before the First District Court of Appeal.

2. This case is pending the filing of the initial brief on appeal; thus this Court has jurisdiction pursuant to rule 3.800(b)(2), Florida Rules of Criminal Procedure.

3. A notice of the filing of this motion has been filed with the First District Court of Appeal as required by rule 3.800(b)(2).

4. Pursuant to rule 3.800(b)(2)(A), appellate counsel will not represent Mr. Myers in the trial court. Mr. Myers therefore requests that trial counsel be appointed to represent him at all appearances and hearings on this motion as necessary, pursuant to rules 3.800(b)(2)(A) and 9.140(d)(2), Florida Rules of Appellate Procedure.

5. Mr. Myers further requests that all papers relative to or concerning this motion be served upon Mr. Myers, his trial counsel, as well as the undersigned, the Attorney General's Office and trial counsel for the State.

6. Mr. Myers was sentenced by Circuit Court Judge James Colaw.

Facts

7. On August 31, 2023, the state charged Mr. Myers with two counts of second-degree murder in violation of Sections 782.04(2), 777.04(4)(c), 775.087(1) and 775.087(2)(a)(3), Florida Statutes, attempted second-degree felony murder in violation of Sections 782.04(2) and 777.04(4)(c), 775.087(1), and possession of a firearm or ammunition by a delinquent in violation of

790.23(1)(b), Florida Statute. (R 45-46). On February 27, 2024, Mr. Myers was indicted on two counts of first-degree murder (with a discharge of a firearm), attempted murder in the first degree, and possession of a firearm or ammunition by a delinquent. (R 88).

8. Mr. Myers entered a plea to count IV, possession of a firearm by a delinquent, and proceeded to trial on all other counts. (R 349). Following a jury trial as to counts I-III, he was found guilty as charged. (T 259).

9. Following a sentencing hearing on September 30, 2024, Mr. Myers was sentenced to consecutive sentences of life in prison as to counts one, two and three and 15 years in prison as to count four. (R 377-378).

13. At sentencing, this Court stated, “As to count 3, the sentence would be a mandatory life sentence pursuant to the 10-20-Life statute, and it would run consecutive to the sentence in Counts 1 and 2, so it would have zero days’ credit for the time served on it as well.” (R 377).

14. However, count 3, attempted first degree murder with a firearm, does not carry a mandatory life sentence. While it can be

reclassified as a life felony under 10-20-life, it is not a mandatory life sentence. See section 775.087, Florida Statutes. See also Moss v. State, 270 So.3d 559 (2019).

15. Where it is unclear from the record if the sentencing judge understood his discretion the appellate court will reverse so that the judge can consider the matter within his discretion. See Burdick v. State, 594 So. 2d 267, 271 (Fla. 1992) (“because the State argued that a life sentence is mandatory under section 775.084(4)(a)(1), and because the trial court in this case did not indicate whether it believed it could in fact decline to impose a life sentence, we remand for the trial court to reconsider the sentence as within its discretion”)

Wherefore, Mr. Myers respectfully requests that the Court order a *de novo* resentencing as to count 3 where it may exercise its discretion regarding whether a life sentence should be imposed.

Procedural Requirements

16. A Rule 3.800(b)(2) motion is filed in the Circuit Court while an appeal is pending in the District Court. Unless this Court determines that the motion can be resolved as a matter of law

without a hearing, the Court shall hold a calendar call no later than 20 days from the filing of the motion, with notice to all parties, for the purpose of either ruling on the motion or determining the need for an evidentiary hearing. If an evidentiary hearing is needed, it must be set within the next 20 days. The Court must rule upon this motion within 60 days from the date the motion was filed. If no order is filed within 60 days, then the motion shall be deemed denied.

17. Finally, rule 9.140(e)(6) provides that the Clerk of the Court is required to supplement the appellate record with this motion and any response, resulting order and/or amended sentence within 5 days from the filing of the order. If no order is issued within 60 days from the filing of the motion, the clerk is to supplement the record within 5 days of the expiration of the 60-day period.

It is especially requested that all papers relative to or concerning this motion be served upon appellate counsel for the defendant and the state, as well as Mr. Myers' trial counsel.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished, via the Florida Courts E-Filing Portal, to Trisha Meggs Pate, Assistant Attorney General, at crimappth@myfloridalegal.com; Hon. James Matthew Colaw, Alachua County Criminal Justice Center, 220 S Main St. Rm A307, Gainesville, FL 32601-6538; Ken Eulo, Jr., Smith & Eulo Law Firm, 1105 E Concord St, Orlando, FL 32803-4620; Christopher M. Elsey, Assistant State Attorney, 120 W University Ave., Gainesville, FL 32601; and, via US Mail, to Ja'Zier Myers, DC # N82464, Holmes C I, 3142 Thomas Dr., Bonifay, FL 32425-0190, on this date, May 1, 2025.

Respectfully submitted,

JESSICA J. YEARY
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

/s/ Kasey Lacey
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