

COPY

IN THE DISTRICT COURT OF APPEAL
THIRD DISTRICT STATE OF FLORIDA

DANIEL DELEON,
Appellant,

PROVIDED TO DESOTO C. I.
ON 9/3/22 FOR MAILING
INMATE INITIALS _____
OFFICER INITIALS [Signature]

v.

DCA Case No. _____
(To be assigned)

LT CASE NO: F01-34236

THE STATE OF FLORIDA and
CLERK OF COURT,
Appellee/Respondent.

PROVIDED TO DESOTO C. I.
ON 9/5/22 FOR MAILING
INMATE INITIALS _____
OFFICER INITIALS JAA

**NAME CHANGE RECALL MEMORANDUM FRAUD ON THE
APPELLATE COURT RECORD FRAUDULENT NAME**

The Appellant, by the name of Daniel DeLeon by his undersigned counsel and pursuant to Rules of Civil Procedure 1.540 and will show the Court the following good cause and rules of criminal procedure 3.800 and 3.850:

1. Appellant sought review with the appellate court to reconsider his case and correct an erroneous ruling that has become the law of case where a manifest injustice would resulted harm and prejudice to Mr. Daniel DeLeon. (See ROA page 1-103)

The lower court took advantage of the appeal changed Mr. Daniel DeLeon to JEFFREY LAGRANDEUR which is very insincere. This new name has not been filed before the lower court and the appellate court under case number F01-34236.

This new name JEFFREY LAGRANDEUR is to make believed this is Mr.

Received, Clerk, Supreme Court

SEP 13 2022

Daniel DeLeon's name that he doesn't ^{get} relief from the appellate court which is fraud and this finding is not supported by the previous record. (See ROA page 1-103)

It is crystal clear now such arrangement was calculated in advance to interfere *first* with Mr. Daniel DeLeon's illegal sentence (See ROA page 13 under case number 3D22-0925; see also, attached Memorandum with this Motion) *second* to prevent Mr. Daniel DeLeon of getting relief or going to the Florida Supreme Court. See Wenwei Sun v. Aviles, 53 So.3d 1075 (Fla. 5th DCA 2010).

This new name of JEFFREY LAGRANDEUR under case no. F01-34236 constituted fraud on the trial court and the appellate court. The record in its entirety show this is not Mr. Daniel DeLeon's name. This is insincere and very unfair.

This misconduct by the Clerk of court violates the law and criminal procedures and this cover-up is against the law and perpetrate fraud on the lower court and the appellate court.

As such this is a fraudulent name for the case F01-34236, see also Memorandum page 13 attached with this Motion.

NATURE OF RELIEF SOUGHT

1. Order the State and Clerk of Court why this name is changed from Mr. Daniel DeLeon to JEFFREY LAGRANDEUR
2. Hold an evidentiary hearing
3. vacate Defendant's illegal sentence due to his incorporates appeal that is under attack by the Clerk
4. Recall Memorandum with fraudulent name under case no: 3D22-925


Respectfully submitted,



Daniel DeLeon, Appellant
DC# M52725

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of July, 2022, a true and correct copy of the foregoing Motion Name Change Fraud on the Appellate Record has been place into the hands of prison officials for mailing to: the Office of the Attorney General at, 1 Southeast Third Avenue Suite 900 Miami, Florida 33131.



Daniel DeLeon, Appellant
DC# M52725
DeSoto Annex
13617 Southeast Highway 70

**MEMORANDUM
RULE 3.800/3.850/3.853**

Date: JUNE 02, 2022

To: MERCEDES M. PRIETO
THE CLERK
THIRD DISTRICT COURT OF APPEALS

From: CIRCUIT COURT SECTION
APPEALS UNIT
CLERK OF COURTS
HARVEY RUVIN, CLERK

By *Ground Berry*



Re: NOTICE OF APPEAL TRANSMITTED TO THIRD DISTRICT
COURT OF APPEALS ON A RULE 3.800, OR 3.850, OR 3.853
OF THE FLORIDA RULE OF CRIMINAL PROCEDURES
WITHOUT AN EVIDENTIARY HEARING.

DEFENDANT'S NAME: JEFFREY LAGRANDEUR

CASE: F01-34236

**DOCUMENTS REQUIRED ARE THOSE BEING TRANSMITTED IN
ACCORDANCE WITH RULE 9.141(b)(2) OF THE FLORIDA
RULE OF APPELLATE PROCEDURES.**

.....
**If there are any questions, please feel free to contact Lawanda
LeCointe or Robin Smith at (305) 548-5624.**

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

DANIEL DELEON,
Appellant/Petitioner,

v.

DCA Case No.: 3D21-2342
L.T. Case No.: 01-34236

STATE OF FLORIDA,
Appellee/Respondent.

DIRECTIONS TO THE CLERK
ALTERNATIVELY SUMMARY RECORD ON APPEAL

The Appellant, Daniel DeLeon, hereby directs the Clerk to include the following documents in the summary record of appeal as attachments: (**See Letter to Confirm that a review of the DeSoto Correctional Institution legal mail logs for the period of July 2021 through January 28, 2022 found that the Institution had not received any legal mail addressed to Mr. Daniel DeLeon during this period**).

Respectfully submitted,



Daniel DeLeon, Appellant

The maximum sentence is up to the statutory maximum for the primary and any additional offenses as provided in s. 775.082, F.S., unless the lowest permissible sentence under the Code exceeds the statutory maximum. Such sentences may be imposed concurrently or consecutively. If total sentence points are greater than or equal to 363, a life sentence may be imposed.

_____ maximum sentence In years

TOTAL SENTENCE IMPOSED

Years Months Days

- State Prison Life
 County Jail Time Served
 Community Control
 Probation Modified

Please check if sentenced as habitual offender, habitual violent offender, violent career criminal, prison releasee reoffender, or a mandatory minimum applies.

- Mitigated Departure Plea Bargain Prison Diversion Program

Other Reason _____

JUDGE'S SIGNATURE

Effective Date: For offenses committed under the Criminal Punishment Code effective for offenses committed on or after October 1, 1998, and subsequent revisions.

RULE 3.992(b) Supplemental Criminal Punishment Code Scoresheet

NAME (LAST, FIRST, M.I.)	DOCKET #	DATE OF SENTENCE
--------------------------	----------	------------------

II. ADDITIONAL OFFENSES(S):

DOCKET#	FEL/MM DEGREE	F.S#	OFFENSE LEVEL	QUALIFY A S C R	COUNTS	POINTS	TOTAL
____/____/____	____/____/____	____/____/____	____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x	_____ = _____	
DESCRIPTION _____							
____/____/____	____/____/____	____/____/____	____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x	_____ = _____	
DESCRIPTION _____							
____/____/____	____/____/____	____/____/____	____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x	_____ = _____	
DESCRIPTION _____							
____/____/____	____/____/____	____/____/____	____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x	_____ = _____	
DESCRIPTION _____							
____/____/____	____/____/____	____/____/____	____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x	_____ = _____	
DESCRIPTION _____							

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

II. _____

IV. PRIOR RECORD

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
____/____/____	____/____/____	____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X	_____ = _____	
____/____/____	____/____/____	____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X	_____ = _____	
____/____/____	____/____/____	____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X	_____ = _____	

SUPREME COURT OF FLORIDA


Case No: SC22-1076
DCA Case No. 3D22-925
Incorporating With Case No: 3D21-2342
L.T. Case No: 1320 01-CF-03423600011XX

DANIEL DELEON,
Appellant,
v.
STATE OF FLORIDA,
Appellee.

PROVIDED TO DESOTO C.I. DESOTO C.I.
ON 9/5/22 FOR MAILING FOR MAILING
INMATE INITIALS _____ INITIALS _____
OFFICER INITIALS J

PETITION FOR JURISDICTIONAL BRIEF

Pursuant to Art. V, § 3(b)(4), of the Florida Constitution. Petitioner Mr. Daniel DeLeon petitions this Honorable Court for jurisdictional brief directed to Respondent State of Florida and will show the good cause for relief because this Honorable Court has jurisdiction to hear and act and rule as a Supreme Court of Florida.


Mr. Daniel DeLeon, Appellant
DC# M52725
DeSoto Correctional Institution Annex
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

STRIKED

STATEMENT OF FACTS

Mr. Daniel DeLeon was charged with first degree premeditated murder without a firearm and was convicted of second degree murder without a firearm. Mr. Daniel DeLeon is currently in the lawful custody of the Department of Correction with a life sentence at DeSoto Correctional Facility without a criminal punishment code scoresheet. Petitioner appeal the trial court order rendered on July 2021 (ROA1 page 13) under case no: 3D21-2342 incorporating with case no: 3D22-925 rendered by the trial court order on May 4th, 2022. see new case (ROA2 page 8) the Third District Court granted Appellant's motion to supplement the record incorporating case no: 3D21-2342 with case no: 3D22-925 and with the two writ of mandamus. The lower tribunal took advantage of the situation by transmitted the record to the Third District Court alleged both cases as 3.850 motions. See ROA1 page/02)

Petitioner request this Honorable Court to take judicial notice due to the order of trial court which treated the post-conviction motion as a rule 3.800(a) motion to correct illegal which is the appropriate vehicle and a sentence that exceed the maximum criminal punishment code scoresheet.

The letter ROA1 refers to case no: 3D21-2342 and the Letter ROA2 refers to the incorporating case no: 3D22-925 and this Court take judicial notice of the appellate court record that Mr. Daniel DeLeon had been changed to JEFFREY LAGRANDEUR under case no: F01-34236 (ROA 2, page 13 Memorandum)

Procedural History:

Appellant was charged with first degree premeditated murder and was convicted of second degree murder without a firearm as a lesser included offense of first degree murder. His conviction life sentence was affirmed **DeLeon v. State**, 961 So.2d 950 (Fla. 3D DCA 2007) on March 2021 Appellant filed a motion to vacate or set aside his sentence imposed on second degree murder to first degree murder without any other provision under 775.087, Fla. Stat., and without a criminal punishment code scoresheet alternatively writ of habeas corpus.

The motion set forth two claims in his 3.800 Motion:

- 1. The court improperly sentenced Mr. Daniel DeLeon from a second degree murder to a first degree murder under 782.04(2), Fla. Stat., with no other provision under 775.087, Fla. Stat.**
- 2. Mr. Daniel DeLeon sentence is illegal without a criminal punishment code scoresheet.**

Mr. Daniel DeLeon had to go to the Librarian in the law library to find about his motions in the lower court. Although the order was dated and filed on July 20, 2021 it is unclear the final page of the order reflects that the clerk of the circuit court mailed the order denying his 3.800 motion. See Supplement of Record of Appeal.

Mr. Daniel DeLeon filed a rehearing because he never get any mailed from the lower court and this is one of the reasons the lower court incorporating the motion of rehearing with the appeal under case no 3D21-2342. (See Court Order

attach)

This case is governed by the criminal punishment code scoresheet and due the inquiry of the Honorable Judge during sentencing the trial court had a benefit of a criminal punishment code scoresheet and decided not to use the C.P.C. Because Mr. Daniel DeLeon had no prior record and if trial court had use a criminal punishment code scoresheet, Mr. Daniel DeLeon would not score above 363 points to impose a life sentence.

This is the issue in this instant case and Mr. Daniel DeLeon is entitled to relief crystal clear.

The State has a beneficiary made the clerk changed Mr. Daniel DeLeon's name to JEFFREY LAGRAUDEUR under case no: 3D22-925 and Mr. Daniel DeLeon sent a motion on 8-24-2022 which never reflecting a filing date on the Third District Court docket (See Memorandum Page 13 and Motion Name Change Recall Memorandum Fraud On The Appellate Court Record Fraudulent Name attach)

In Petitioner case his conviction from second degree murder increased to first degree murder due to his judgment form was not made by information, in jury finding, without the used of a firearm and without a criminal punishment code scoresheet. See Tucker v. State, 726 So.2d 768, 770-72 (Fla. 1999) see 775.082, Fla. Stat., see Rule 3.992(a), see also 775.087(1)(b), and 775.087(2)(a)3, Fla. Stat., see also Art. I, § (3)(b), of the Florida Constitution.

1). In the absence of the reclassification and the enhancement under 775.087, Fla. Stat., the life discretion without a firearm was improper because “second degree is defined in section 782.04(2), Fla. Stat. ... punishable by a term of imprisonment not exceeding 30-years and also by a term or years not exceeding life in prison”

In this instant case the jury made no express or unambiguous finding of guilt under 775.087(1)(b) or 775.087(2)(a)3, in which use of a firearm was not an essential element. Because the jury made no express or unambiguous finding of guilt under 775.087, Fla. Stat., the trial court erred in increasing Mr. Daniel DeLeon second degree felony to a first degree felony.

In denying Mr. Daniel DeLeon Rule 3.800(a), an increasement sentence should be upheld if based on a jury verdict which specifically refers to the use of a firearm in identifying the specific crime for which the defendant is found guilty. West F.S.A. § 775.087, Fla. Stat.

Petitioner Mr. Daniel DeLeon was convicted of second degree murder without a firearm. The Honorable trial judge increased the second degree murder from first degree felony to life felony and imposed a life sentence with no finding in this instant case. See Tucker v. State, 726 So.2d 768, 770-72 (Fla. 1999) (see also ROA1 page 57, Verdict Form). As such the lower tribunal (pronounced the sentence of life in prison with no finding. See 775.082, Fla. Stat., Id. 772; see also State v. Tripp, 642 So.2d 728 (Fla. 1994).

In this instant case it is a miscarriage of justice where the defendant was not charged under 775.087, Fla. Stat., with but also not convicted of a crime involving a firearm (Emphasis added) having found Mr. Daniel DeLeon guilty of lesser offenses, it was unclear for the trial judge to increase his sentence to a life felony. Crystal clear there must be a specific finding by the jury. The jury is the fact finder.

Here there was no special verdict form, interrogatory or even language in the verdict referring to a firearm because it is the clearest way for a trial judge finding to support this increase. As such the sentence imposed due to the information, jury verdict form and evidence presented at trial was in excess under section 782.04(2), Fla. Stat., see also 775.082, Fla. Stat. A sentence is an illegal sentence remediable by post-conviction relief if the terms or conditions of the punishment are impermissible as a matter of law.

This is the issue here not because Mr. Daniel DeLeon filed a motion of rehearing when he never got any mail from the lower court to appeal his case. The facts are undisputed, Mr. Daniel DeLeon received a life sentence for second degree murder without other provisions under 775.087, Fla. Stat. without a weapon. The Statute did not provide an increase in this error in punishing Mr. Daniel DeLeon to life felony was the kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances.

This Honorable Supreme Court has adopted its holding and clearly alleged “before trial court may enhance or reclassify or increase a conviction like this instant case, the jury must make a finding that the defendant committed the crime while using a firearm either by finding him guilty of a crime which involves a firearm or by answering a special question on a special verdict form. See Tucker v. State, 726 So.2d 768, 770-72 (Fla. 1999).

The Third District Court is in direct conflict with Stoute v. State, 915 So.2d 1245 (Fla. 4th DCA 2005) quoting Tucker from the Fourth District Court. Therefore, based on the aforementioned reasons increasement and the orally pronouncement of judgment of life felony was not permitted because the court is required to have the jury make that factual finding. Id at 72.

In this instant case Mr. Daniel DeLeon was convicted of second degree murder without a firearm punishable by imprisonment for a term of years not exceeding life ... and term of years not exceeding 30-years. See 782.04(2) reverse and remand for resentencing. U.S.C.A. Const. Amends 5,14.

2). In this instant case **“second degree is defined in section 782.04(2), Fla. Stat. ... punishable by a term of imprisonment not exceeding 30-years and also by a term or years not exceeding life in prison”** Rather, this Honorable Court concluded that an illegal sentence is one that exceeds the maximum period set forth by law for a particular offense without regard to the guidelines and specifically in this instant case without a criminal punishment

code scoresheet for second degree murder to life felony is illegal.

As fully developed in this writ the trial court had exceeded the maximum period set forth by law for second degree murder without a firearm because under a correct criminal punishment code scoresheet Mr. Daniel DeLeon would score **240 points** for second degree murder and **120 points** for the victim death. **240 points** plus **120 points** equal **360 points**.

In this instant case, Mr. Daniel DeLeon had no prior record (See ROA page 87) and that zero point. Crystal clear **360 points minus 28 equal 332 points** because due to the Rule 3.992. if total points are greater than 44 minus 28 points as it is crystal clear the error is harmful. See Brooks v. State, 969 So.2d 238, 243-44 (Fla. 2007).

In Brooks the Supreme Court held that proper test for appeal from denial Mr. Daniel DeLeon 3.800 motion was whether the same sentence "could have been imposed on basis of corrected scoresheet this Supreme Court citing Brooks as a harmless error or analysis.

In this instant case the Third District Court did not apply the harmless error analysis. The Third District Court is in direct conflict with Brooks quoting Val v. State, 741 So.2d 1199, 1200 (Fla. 4th DCA 1999) a similar case like this instant case quoting by Brooks the Third District Court could not conclude with certainty that Mr. Daniel DeLeon sentence would have been the same if the trial court had used a corrected criminal punishment code scoresheet.

Numerous district courts explicitly applied the same principles adopted by this Court as a Supreme Court of Florida through a motion to correct sentencing error under Rule 3.800(a) or (b) or 3.800. See Albriton v. State, 476 So.2d 158 (Fla. 1985) “**would have been** or ‘**could have been**” have not been applying in this instant case as a harmless error analysis due to Brooks, Val, Albriton; most important Mr. Daniel DeLeon.

The United States Supreme Court places the burden on the State as a beneficiary of the error to prove beyond a reasonable doubt that the error did not contribute to the verdict and this Supreme Court of Florida adopting the same standard of review.

The State is unable to prove that Mr. Daniel DeLeon would have score 363 points using a correct criminal punishment code scoresheet and unable to show there is a criminal punishment code scoresheet filed in the lower court and signed by the trial judge. See Defendant's two writs of mandamus the State is also unable to alleged or prove on the face of the record or on appeal there was a criminal punishment code scoresheet on the record of appeal and if the trial court had used a criminal punishment code scoresheet the sentence would have been the same as life felony under the sentencing guidelines. See Albriton v. State, 476 So.2d 158 (Fla. 1985) as such the abuse of life discretion was improper for reviewing departures from the sentencing guidelines and without a C.P.C. Is illegal and is *per se* reversible error. Albriton, quoting Carney v. State,

458 So.2d 13 (Fla. 1st DCA 1984).

Again the standard of review recommended by Mr. Daniel DeLeon is essentially that of Chapman v. California, 386 U.S. 18 Ct. 824 Ed 705 (1967) which places the burden on the State as beneficiary of the error to prove beyond a reasonable doubt that the error did not contribute to the verdict. **This Honorable Florida Supreme Court had adopted this standard in Albriton and hold that when a departure sentence is grounds on both valid and invalid reasons that the sentence should be reverse and the case remanded for resentencing** unless the State is able to show beyond a reasonable doubt that the absence of the invalid reasons would not affected the departure sentence.

Again the invalid reason has fully developed in this Brief is to remand to the trial court to resentencing Mr. Daniel DeLeon under a correct criminal punishment code scoresheet. Because Rule 3.800(a) provides yet a forth avenue for asserting sentencing error. U.S.C. 14th Amendment absence of the criminal punishment code scoresheet should appear to this Supreme Court of Florida to be so inconsequential as to call of the harmless error rule and also in the interest of maintaining uniformity of decision and as a matter of great public importance.

Because Mr. Daniel DeLeon does not have a criminal punishment code scoresheet and a C.P.C. Would precluded the trial court of imposing a life sentence. Crystal clear a similar standard for review has been adopted by the

Florida Supreme Court importantly for Mr. Daniel DeLeon's illegal sentence. See Basset v. State, 449 So.2d 803, 808 (Fla. 1984). Reverse remanded for resentencing.

Finally the law is clear ... the law of the case doctrine prevents a litigant from relitigating the same issues previously considered and rejected on the merits and review on appeal same thing with Mr. Daniel DeLeon sentence. **This Honorable Court alleged before in Brooks v. State (Emphasis supplied) "Rule 3.800 was enacted out of concerns that "no one" should be imprisoned beyond the term that the law provides. One general, an illegal sentence: an illegal sentence triumph over the law of the case doctrine because in this courtrooms Rule 3.800 explicitly provides an illegal sentence may be corrected at any time. Again, reverse remand for resentencing crystal clear. U.S.C.A. Const. Amend. 5, 14.**

Respectfully submitted,



Mr. Daniel DeLeon, Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Petition for Discretionary Jurisdiction has been furnished to the Office of the Attorney General at, PL-01, The Capitol Tallahassee, Florida 32399-1050; while the original was filed with the Honorable Thomas D. Hall, Clerk Supreme Court of Florida at, 500 Duval Street Tallahassee, Florida 32399-1927. By placing same, with proper postage affixed, into the hands of DeSoto Annex legal mail prison official for delivery via first-class U.S. Mail on this 5 day of SEPTEMBER 2022.¹

CERTIFICATE OF TYPE FONT & WORD-COUNT COMPLIANCE

I CERTIFY that this computer-generated brief has been set in the Arial typeface or its functional equivalent at a font of 14 points, pursuant to the type size and style requirements set forth in Florida Rules of Appellate Procedure 9.210(a)(2)(B); and that the relevant portions thereof total no more than 3,000 words, pursuant to Florida Rules of Appellate Procedure 9.045.



Mr. Daniel DeLeon, Appellant
DC# M52725
DeSoto Correctional Institution Annex
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

¹ See Rule 9.420(a)(2), Florida Rules of Appellate Procedure; **Thompson v. State**, 761 So.2d 324 (Fla. 2000) and **Haag v. State**, 591 So.2d 614 (Fla. 1992).

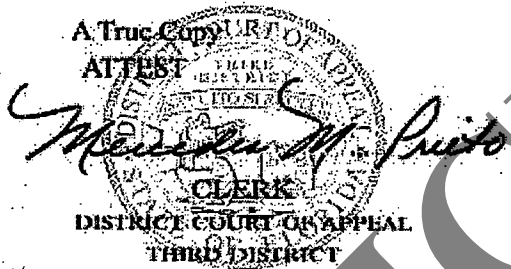
IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JUNE 22, 2022

DANIEL DELEON,
Appellant(s)/Petitioner(s),
vs.
THE STATE OF FLORIDA,
Appellee(s)/Respondent(s),

CASE NO.: 3D22-0925

L.T. NO.: F01-34236

Pro se Appellant's Motion to Supplement the Record on
Appeal, filed on June 21, 2022, is granted, and the record on appeal is
supplemented to include the documents that are attached to said Motion.



cc: OFFICE OF ATTORNEY DANIEL DELEON
GENERAL

ts

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SUMMARY

RECORD OF APPEAL

DCA # 3D22-925

APPELLANT: DANIEL DELEON

VS.

APPELLEE: THE STATE OF FLORIDA

STRICKEN

PROVIDED TO DESOTO C. I.
ON 9/12/92 FOR MAILING
INMATE INITIALS [Signature]
OFFICER INITIALS [Signature]

IN THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

DANIEL DELEON,

DEFENDANT-APPELLANT,

-Versus-

THE STATE OF FLORIDA,

PLAINTIFF-APPELLEE,

(CRIMINAL APPEAL)
3D22-925

SUMMARY
RECORD ON APPEAL IN CASE NO. F01-34236
IN THE CIRCUIT COURT OF
THE ELEVENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR MIAMI-
DADE COUNTY

HONORABLE JOSEPH PERKINS
JUDGE, CRIMINAL DIVISION OF THE
CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT OF FLORIDA IN
AND FOR MIAMI-DADE COUNTY

DANIEL DELEON
DC# M52725
DESOTO CORRECTIONAL INST
13617 SOUTHEAST HIGHWAY 70
ARCADIA, FL 34266-7800

HONORABLE ASHLEY MOODY,
ATTORNEY GENERAL
ATTORNEY FOR DEFENDANT-
APPELLEE *Injustice*
444 BRICKELL AVENUE
MIAMI, FLORIDA 33131

INDEX RECORD ON APPEAL

Index For Case: F0134236 3D22-925

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Denied
11/10/22
add
6/8/22

Div (9)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

9/14

DANIEL DELEON,
Defendant/Petitioner.

v.

STATE OF FLORIDA,
Plaintiff/Respondent

Case No. 01-34236

PROVIDED TO DESOTO C.I.
8/22/21 FOR MAILING
INMATE INITIALS
OFFICER INITIALS

MR.

MOTION OF REHEARING ALTERNATIVELY ENTITLEMENT FOR
REHARING OR TIMELY APPEAL

The Defendant/Petitioner, Daniel DeLeon, by his undersigned counsel file
this motion of rehearing and will show this Court the following good cause

In his illegal sentence Mr. Daniel DeLeon clearly argued that the trial court
improperly sentenced him when it comes to second degree murder to a life degree
felony without any other provision or guidelines and there was no guidelines sheet
to impose a life degree felony. Here it's crystal clear from the court's records Mr.
DeLeon is entitled to relief because a second degree felony is punishable by up to
30 years imprisonment not exceeding life. Mr. Daniel DeLeon never had a prior
conviction and or release from prison reoffender or career criminal offender or
habitual offender to increase his second degree to a life felony. Again DeLeon was
convicted of a second degree murder the law of the state required that he be
sentenced not exceeding life and the record showed there is no guideline
sentencing sheet to give him life degree felony again trial court, Honorable

FILED FOR RECORD
2021 AUG 27 PM 2:13
CLERK OF COURT
ELEVENTH JUDICIAL CIRCUIT
MIAMI, FLORIDA

STRIKED

Reset
SEP 14 2021

Jimenez never depart from any guidelines sentenced when he increased the penalty.

The trial transcripts record is crystal clear.

Where is Mr. Daniel DeLeon guideline sentence sheet?

Mr. Daniel DeLeon claimed is entirely supported by the record and the law and his sentenced is an illegal sentence not supported by the law. As the world watch the police officer who killed George Floyd was found guilty of second degree murder and was sentence to 26 years in prison and this is the law of the land. The rule of 3.800 is crystal clear and Mr. Daniel DeLeon motion is a motion to vacate or set aside his sentence crystal clear. Again Mr. Daniel DeLeon sentence exceed the statutory maximum sentence for second degree murder as a lesser included offense of first degree murder. See Figueroa v. State, 84 So.3d 1158 (Fla. 2d DCA 2012). Another thing about this case the enhancement Fla.Stat. 775.087 is alleged on Mr. Daniel DeLeon Information. Trial judge Jimenez did not use the enhancement statute to enhanced the conviction from a second degree felony to a life degree felony as such, Mr. Daniel DeLeon sentence is an illegal sentence.

Mr. Daniel DeLeon never alleged in his motion trial court improperly considered Mr. DeLeon's prior conviction and as it is clear there was no prior conviction to considered to impose a first degree life felony and this argument is very crystal clear with the Exhibits and again trial court did not depart from any guidelines sentence because Mr. Daniel DeLeon would not score above the life

felony guidelines.

A question to this Honorable Court, "Did the trial court properly sentence Mr. Daniel DeLeon when the jury found him guilty of second degree murder as a lesser included offense of first degree murder? The answer is no and this motion could have been raised on direct appeal or after direct appeal or at anytime in connection with a Rule 3.800 motion as such Defendant/Petitioner sentence is illegal. See Fla. Stat. 782.04(2).

Again where's the enhancement statute in the Information to enhance Mr. Daniel DeLeon sentence for the trial judge to specifically increased the penalty or provided by statute by imprisonment to life felony as such this motion is crystal clear and Mr. Daniel DeLeon is illegally detained because Mr. Daniel DeLeon have been incarcerated for 21 years.

The court treats the post-conviction motion as rule 3.800 motion to correct illegal sentence and this is Mr. Daniel DeLeon argument that his sentence is an illegal sentence why because trial court did not have a guidelines scoresheet to give him life and as such a term of years not exceeding life.

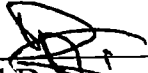
For the reason established above this Honorable Court should grant this motion for rehearing and remand for resentencing.

Respectfully submitted,


Mr. Daniel DeLeon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of August, 2021 that a true and correct copy of the foregoing Motion for Rehearing has been placed into the hands of prison officials at DeSoto Correctional Institution for mailing to the State Attorney's Office at: 1350 NW 12th Avenue Miami, Florida 33136.



Mr. Daniel DeLeon, Defendant
DeSoto Correctional Institution
DC# M52725
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

STRICKEN

DANIEL Deleon
DC# 1452725
Desoto CORRECTIONAL INSTITUTION
13617 S.E Highway 70
ARCADIA FL 34266

MAILED FROM STATE
CORRECTIONAL INSTITUTION

33125-164499

TAMPA FL 335
SAINT PETERSBURG FL
23 AUG 2021 PM 5 L



clerk of court
1351 N.W 12th Street
MIAMI FL 33125



7

ICC Deft
ICC SAO (9)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff / Respondent

v.

DANIEL DE LEON

Defendant / Petitioner.

CASE NO. F01-34236

SECTION 09

JUDGE: PERKINS

Abraham De La Cruz 322516


ORDER DENYING "MOTION OF REHEARING ALTERNATIVELY ENTITLEMENT FOR REHEARING OR TIMELY APPEAL" AND "MOTION OF HEARING"

On November 10, 2021, the Court entered its attached Order (Attachment 1) Denying "Motion of Rehearing Alternatively Entitlement for Rehearing or Timely Appeal" and "Motion of Hearing" (collectively, the "Motions"). Today the Clerk advised the Court that the Clerk's Office incorrectly processed the Order, resulting in its being incorrectly docketed despite its never having been served on Mr. De Leon. The Court today enters this Order denying the Motions and incorporates as part of this Order the attached November 10, 2021 Order.

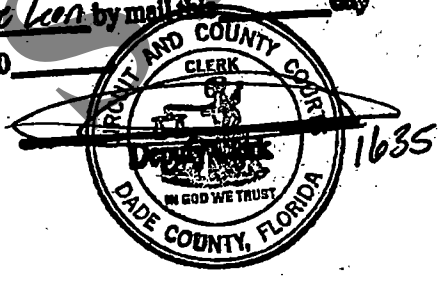
Notice of Appeal Deadline and Instructions to Clerk

Deleon has thirty (30) days from the date of this Order to appeal. The Clerk is directed to mail a copy of this Order to Daniel Deleon, DeSoto Annex (Male), D.C. # M52725, 13617 S.E. Highway 70, Arcadia, Florida 34266-7800.

DONE and ORDERED in Miami-Dade County, Florida this 3rd day of May, 2022.


JOSEPH PERKINS
CIRCUIT JUDGE

CERTIFY that a copy of this order has been furnished to
the MOVANT, Daniel De Leon by mail this day
of MAY 04 2022, 2022



RECORDED

E-FILED
MAY 04 2022

DANIEL Deleon
DC# 1452725
DESOTO CORRECTIONAL INSTITUTION
13617 S.E Highway 70
ARCADIA FL 34266

STICKEN

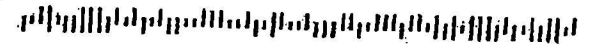
MAILED FROM STATE
CORRECTIONAL INSTITUTION

33125-164499

TAMPA FL 335
SAINT PETERSBURG FL
23 AUG 2021 PM 5 L



CLERK OF COURT
1351 N.W. 12th Street
MIAMI FL 33125



IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff / Respondent

v.

DANIEL DE LEON

Defendant / Petitioner.

CASE NO. F01-34236

SECTION 09

JUDGE: PERKINS

2021 NOV 12 AM 8:49
AR

ORDER DENYING "MOTION OF REHEARING ALTERNATIVELY ENTITLEMENT FOR REHEARING OR TIMELY APPEAL" AND "MOTION OF HEARING"

On July 20, 2021 the Court entered a final Order Denying Postconviction Motion and Other Pending Motions and Directions to Clerk ("Final Order"). Petitioner had thirty days -- through August 19, 2021 -- to appeal. Fla. R. App. P. 9.110(b). On August 1, 2021, Petitioner filed an unsigned Motion of Hearing asking that a hearing on the motions denied in the Final Order be held on August 28, 2021 at 10:00 a.m. On August 22, 2021, Petitioner filed his "Motion of Rehearing Alternately Entitlement for Rehearing or Timely Appeal" ("Motion for Rehearing").¹

The "Motion of Hearing" is denied because the Court already addressed the motions at issue in the Final Order. The Motion for Rehearing is denied as untimely. Fla. R. Crim. P. 3.800(b)(1)(B); *Jones v. Jones*, 845 So. 2d 1012, 1013 (Fla. 5th DCA 2003).

Notice of Appeal Deadline and Instructions to Clerk

Deleon has thirty (30) days from the date of this Order to appeal. The Clerk is directed to mail a copy of this Order to Daniel Deleon, DeSoto Annex (Male), D.C. # M52725, 13617 S.E. Highway 70, Arcadia, Florida 34266-7800.

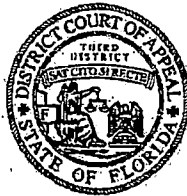
DONE and ORDERED in Miami-Dade County, Florida this 10th day of November, 2021.


JOSEPH PERKINS
CIRCUIT JUDGE

¹ Both motions were first presented to the Court on September 14, 2021.

Box#-23-42

IVAN F. FERNANDEZ
CHIEF JUDGE
KEVIN EMAS
THOMAS LOGUE
EDWIN A. SCALES, III
NORMA S. LINDSEY
ERIC W. HENDON
BROMWYN C. MILLER
MONICA GORDO
FLEUR J. LOBREE
ALEXANDER S. BOKOR
JUDGES



DISTRICT COURT OF APPEAL

THIRD DISTRICT
2001 S.W. 117 AVENUE
MIAMI, FLORIDA 33175-1716

TELEPHONE (305) 229-3200

MERCEDES M. PRIETO
CLERK
VERONICA ANTONOFF
MARSHAL
DEBBIE MCCURDY
CHIEF DEPUTY CLERK
MARIA E. MIHAIC
CHIEF DEPUTY MARSHAL

ACKNOWLEDGMENT OF NEW CASE

DATE: May 31, 2022

STYLE: DANIEL DELEON, v. THE STATE OF FLORIDA,

3DCA#: 3D22-925

The Third District Court of Appeal has received the Notice of Appeal reflecting a filing date of 5/26/22.

The county of origin is Dade.

The lower tribunal case number provided is F01-34236.

Case Type: Criminal The filing fee is No Fee-3.850.

The clerk of the lower tribunal shall index and paginate the record and send copies of the index and the record to the parties. See Fla. R. App. P. 9.141(b)(2)(B).

The Third District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

cc:

Miami-Dade Clerk
Office Of Attorney General
Daniel Deleon

im

STRICTLY CONFIDENTIAL

2022 MAY 31 PM 5:01

RS

**MEMORANDUM
RULE 3.800/3.850/3.853**

Date: JUNE 02, 2022

To: MERCEDES M. PRIETO
THE CLERK
THIRD DISTRICT COURT OF APPEALS

From: CIRCUIT COURT SECTION
APPEALS UNIT
CLERK OF COURTS
HARVEY RUVIN, CLERK

By *Harvey Ruvin*



Re: NOTICE OF APPEAL TRANSMITTED TO THIRD DISTRICT
COURT OF APPEALS ON A RULE 3.800, OR 3.850, OR 3.853
OF THE FLORIDA RULE OF CRIMINAL PROCEDURES
WITHOUT AN EVIDENTIARY HEARING.

DEFENDANT'S NAME: JEFFREY LAGRANDEUR

CASE: F01-34236

**DOCUMENTS REQUIRED ARE THOSE BEING TRANSMITTED IN
ACCORDANCE WITH RULE 9.141(b)(2) OF THE FLORIDA
RULE OF APPELLATE PROCEDURES.**

.....
If there are any questions, please feel free to contact Lawanda
LeCointe or Robin Smith at (305) 548-5624.

**Miami-Dade County Clerk of Courts
Criminal Division**

Memo

To: Mercedes M. Prieto, Clerk, Third District Court of Appeals
From: ROBIN SMITH, Assistant Supervisor, Appeals Unit,
Date: JUNE 2, 2022

CASE F01-34236 DCA# 3D22-925
DEFENDANT: DANIEL DELEON

Re: State's Response *Gambrey*
Our office is not able to submit the State's Response to your office on the above case as none were filed with this Clerk's office.

CC: Court File

STRICTLY CONFIDENTIAL

**Miami-Dade County Clerk of
Courts Criminal Division**

Memo

To: Mercedes M. Prieto, Third District Court of Appeals

From: Lawanda Lecointe, Supervisor, Appeals Unit,

Date: JUNE 3, 2022

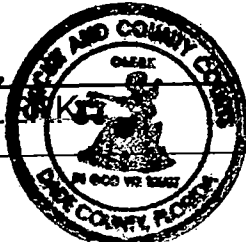
Our Case: F01-34236

There's no motion for writ of mandamus was filed in our office. However we are sending the record without the documents. For more information please be free to contact our office at 305-548-5496 or 305-584-5624

CC: Robin L. Smith, Assist. Supervisor

STRICKER

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA <input checked="" type="checkbox"/> IN THE CIRCUIT COURT IN AND FOR DADE COUNTY, FLORIDA		
<input checked="" type="checkbox"/> DIVISION CRIMINAL <input type="checkbox"/> OTHER	CERTIFICATE OF THE CLERK OF THE COURT	CASE NUMBER(S) F01-34236
STATE OF FLORIDA COUNTY OF MIAMI-DADE		CLOCK IN SS
<p>I, HARVEY RUVIN, Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Miami-Dade County, DO HEREBY CERTIFY that the foregoing pages, numbered <u>1</u> to <u>16</u> EXCLUSIVE, contain a correct Transcript of the record of the judgment in the case of the State of Florida, Plaintiff, Versus <u>DANIEL DELEON</u> Defendant, numbered <u>F01-34236</u> is true and correct recital and copy of all such instruments and proceedings in said cause as appear from the records and files of my office which appear necessary to be included in the transcript of record-on-appeal in compliance with the directions furnished me. Pages numbered _____ To _____ inclusive, embrace to transcribed notes of the Court Reporter, as made at the (trial hearing) of said cause and certified to me by <u>HIM/HER</u>.</p> <p>IN WITNESS WHERE OF, I have hereunto set my hand and affixed the Seal of the said Circuit Court of the Eleventh Judicial Circuit of Florida at Miami-Dade County, this day of <u>JUNE 6, 2022</u>.</p>		
HARVEY RUVIN CLERK OF COURTSK	BY <i>Harvey Ruvins</i> DEPUTY CLERK	JUNE 6, 2022



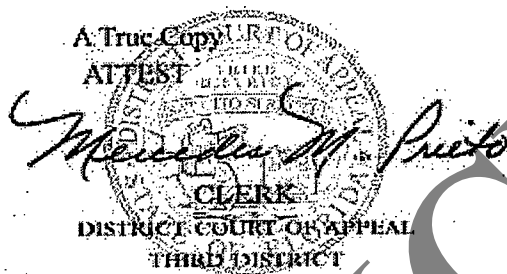
IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JUNE 22, 2022

DANIEL DELEON,
Appellant(s)/Petitioner(s),
vs.
THE STATE OF FLORIDA,
Appellee(s)/Respondent(s),

CASE NO.: 3D22-0925

L.T. NO.: F01-34236

Pro se Appellant's Motion to Supplement the Record on
Appeal, filed on June 21, 2022, is granted, and the record on appeal is
supplemented to include the documents that are attached to said Motion.



cc: OFFICE OF ATTORNEY GENERAL DANIEL DELEON

ts

COPY

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

DANIEL DELEON
Appellant/Petitioner,

v.

Case No: 3022-0922
TBA
L.T. Case No: 01-034236

STATE OF FLORIDA
Appellee/Respondent,

Provided to Desoto C. J. 5/26/22
Officer initials KE inmate initials [Signature]

SECOND WRIT OF MANDAMUS

The Petitioner, Daniel DeLeon, by his undersigned counsel and pursuant to Florida Rules of Appellate Procedure 9.030 respectfully moves this Court a second times for an order to issue a writ of mandamus to solve the issue about the criminal punishment code scoresheet and this writ of mandamus is not successive and Petitioner will show this Court the following reason:

JURISDICTION:

This Court has jurisdiction to hear and act upon this writ of mandamus and under Article V, 3(B), of the Florida Constitution.

1. This is what the General State Attorney alleged in its brief on page six(6) as pertinent part:

"As noted above, this case arose under the criminal punishment code and page 5 – additionally, the second degree murder in this case was committed in November 2001 (R15) as such, it is governed by the criminal punishment code scoresheet."

See page 5 & 6 attached with this writ of mandamus. Again the lower tribunal must have a copy of the criminal punishment code scoresheet in file as established above.

The criminal punishment code scoresheet is very important to the subject matter of a proceeding under Rule 3.800 because the trial court have the benefit of the criminal punishment code scoresheet at sentencing the clerk and the state attorney abused their power by not sending the documents request pursuant to Chapter 119.07, Fla. Stat. Mr. Daniel DeLeon ask this Court to order the clerk of court to produce this document due to the State General Attorney Brief. See case number 3D21-2342.

This is an original proceeding for the state attorney and the clerk of the court to comply with the request by the mandamus proceeding because the General State Attorney alleged in its brief this case arose under the criminal punishment code scoresheet Mr. Daniel DeLeon held mandamus was a proper remedy in his case action against the State and the clerk that refused to give such document because having this document will show to the Third District

Court that trial court could not have been imposed a life sentence using a C.P.C. scoresheet. (See fourth request pursuant to the Freedom of Information Act) attach with this writ.

2. In support Mr. Daniel DeLeon claims that the C.P.C. scoresheet is very important when it comes to establishing his illegal sentence for the foregoing reasons the State Attorney alleged that the court had a copy and the duty of the clerk or obligation is to produce this criminal punishment code scoresheet to Mr. Daniel DeLeon. Mr. Daniel DeLeon has no other legal remedies available to him. Mr. Daniel DeLeon request that this Court enter an order issuing that the clerk as respondent to produce the documents requested a second times by Mr. Daniel DeLeon because this issue has not been resolved when it come to Defendant criminal punishment code scoresheet when his conviction is governed by the criminal punishment code scoresheet. As such this Court should issue a writ of mandamus directing the lower court to held an evidentiary hearing. See Huffman v. State, 813 SO.2d 10, 11 (Fla. 2000). This second writ is not successive because the C.P.C. scoresheet has not been resolved.

Nature of Relief Sought:

1. Entry an order to show cause to produce the C.P.C. scoresheet;
2. Send a copy to Mr. Daniel DeLeon;

3. Order to hold an evidentiary hearing if this C.P.C. scoresheet cannot be located.


Respectfully submitted,



DANIEL DELEON, Appellant
DC# M52725

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26 day of May, 2022, I personally handed a true copy of the foregoing Second Writ of Mandamus to prison officials at DeSoto Correctional Institution Annex for the sole purpose of mailing via first-class U.S. Mail to: the Office of the Attorney General, at 1 Southeast Third Avenue Suite 900 Miami, Florida 33131.



DANIEL DELEON, Appellant
DC# M52725

STRICTLY

Denied
11/10/22
add
6/8/22

DeLeon (9)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

9/14

DANIEL DELEON,
Defendant/Petitioner.

v.

Case No. 01-34236

STATE OF FLORIDA,
Plaintiff/Respondent

PROVIDED TO DESOTO C.I.
8/22/21 FOR MAILING
INMATE INITIALS
OFFICER INITIALS

MR. [Signature]

**MOTION OF REHEARING ALTERNATIVELY ENTITLEMENT FOR
REHARING OR TIMELY APPEAL**

The Defendant/Petitioner, Daniel DeLeon, by his undersigned counsel file
this motion of rehearing and will show this Court the following good cause

In his illegal sentence Mr. Daniel DeLeon clearly argued that the trial court
improperly sentenced him when it comes to second degree murder to a life degree
felony without any other provision or guidelines and there was no guidelines sheet
to impose a life degree felony. Here it's crystal clear from the court's records Mr.
DeLeon is entitled to relief because a second degree felony is punishable by up to
30 years imprisonment not exceeding life. Mr. Daniel DeLeon never had a prior
conviction and or release from prison reoffender or career criminal offender or
habitual offender to increase his second degree to a life felony. Again DeLeon was
convicted of a second degree murder the law of the state required that he be
sentenced not exceeding life and the record showed there is no guideline
sentencing sheet to give him life degree felony again trial court, Honorable

FILED FOR RECORD
2021 AUG 27 PM 2:43
CIRCUIT COURT
ELEVENTH JUDICIAL CIRCUIT
MIAMI-DADE COUNTY, FLORIDA

STRIKED

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SEP 14 2021

ICC Deft
ICC SAO

9

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff / Respondent

v.

DANIEL DE LEON

Defendant / Petitioner.

CASE NO. F01-34236

SECTION 09

JUDGE: PERKINS

FILED
MAY 04 2022
CLERK OF COURT

Abraham De La Cruz 322516

ORDER DENYING "MOTION OF REHEARING ALTERNATIVELY ENTITLEMENT FOR REHEARING OR TIMELY APPEAL" AND "MOTION OF HEARING"

On November 10, 2021, the Court entered its attached Order (Attachment 1) Denying "Motion of Rehearing Alternatively Entitlement for Rehearing or Timely Appeal" and "Motion of Hearing" (collectively, the "Motions"). Today the Clerk advised the Court that the Clerk's Office incorrectly processed the Order, resulting in its being incorrectly docketed despite its never having been served on Mr. De Leon. The Court today enters this Order denying the Motions and incorporates as part of this Order the attached November 10, 2021 Order.

Notice of Appeal Deadline and Instructions to Clerk

Deleon has thirty (30) days from the date of this Order to appeal. The Clerk is directed to mail a copy of this Order to Daniel Deleon, DeSoto Annex (Male), D.C. # M52725, 13617 S.E. Highway 70, Arcadia, Florida 34266-7800.

DONE and ORDERED in Miami-Dade County, Florida this 3rd day of May, 2022.

CERTIFY that a copy of this order has been furnished to the MOVANT, Daniel De Leon by mail this day of MAY 04 2022, 20


JOSEPH PERKINS
CIRCUIT JUDGE



RECORDED

E-FILED
MAY 04 2022

DANIEL Deleon
DC# 1452725
Desoto CORRECTIONAL INSTITUTION
13617 S.E Highway 70
ARCADIA FL 34266

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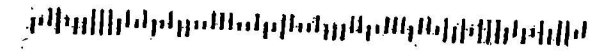
TAMPA FL 335
SAINT PETERSBURG FL
23 AUG 2021 PM 5 L



MAILED FROM STATE
CORRECTIONAL INSTITUTION

CLERK OF COURT
1351 N.W 12th Street
MIAMI FL 33125

33125-164499



1cc Deft
1cc SAO (9)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff / Respondent

CASE NO. F01-34236

SECTION 09

v.

JUDGE: PERKINS

DANIEL DE LEON

Defendant / Petitioner.

Abraham De La Cruz 322516

ORDER DENYING "MOTION OF REHEARING ALTERNATIVELY ENTITLEMENT FOR REHEARING OR TIMELY APPEAL" AND "MOTION OF HEARING"


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DONE and ORDERED in Miami-Dade County, Florida this 3rd day of May, 2022.

CERTIFY that a copy of this order has been furnished to the MOVANT, Daniel De Leon by mail this day of MAY 04 2022, 20


JOSEPH PERKINS
CIRCUIT JUDGE



RECORDED

E-FILED
MAY 04 2022

DANIEL Deleon
DC# 1452725
DESOTO CORRECTIONAL INSTITUTION
13617 S.E Highway 70
ARCADIA FL 34266

STAMPED

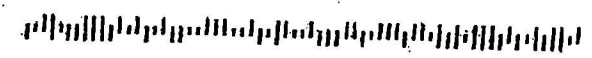
MAILED FROM STATE
CORRECTIONAL INSTITUTION

33125-164499

TAMPA FL 335
SAINT PETERSBURG FL
23 AUG 2021 PM 5 L



CLERK OF COURT
1351 N.W. 12th Street
MIAMI FL 33125



7

**MEMORANDUM
RULE 3.800/3.850/3.853**

Date: JUNE 02, 2022

To: MERCEDES M. PRIETO
THE CLERK
THIRD DISTRICT COURT OF APPEALS

From: CIRCUIT COURT SECTION
APPEALS UNIT
CLERK OF COURTS
HARVEY RUVIN, CLERK
By *Harvey Ruvin*



Re: NOTICE OF APPEAL TRANSMITTED TO THIRD DISTRICT
COURT OF APPEALS ON A RULE 3.800, OR 3.850, OR 3.853
OF THE FLORIDA RULE OF CRIMINAL PROCEDURES
WITHOUT AN EVIDENTIARY HEARING.

DEFENDANT'S NAME: JEFFREY LAGRANDEUR

CASE: F01-34236

**DOCUMENTS REQUIRED ARE THOSE BEING TRANSMITTED IN
ACCORDANCE WITH RULE 9.141(b)(2) OF THE FLORIDA
RULE OF APPELLATE PROCEDURES.**

.....
**If there are any questions, please feel free to contact Lawanda
LeCointe or Robin Smith at (305) 548-5624.**

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

SUMMARY

RECORD OF APPEAL

DCA # 3D21-2342

APPELLANT: DANIEL DELEON

VS.

APPELLEE: THE STATE OF FLORIDA

NM

STRICKEN

F0134236 3D21-2342

DATE OF FILING	INSTRUMENTS SUMMARY	PAGES
	COVER PAGE	1
	INDEX	2 - 3
03-15-2021	MOTION TO VACATE OR SET ASIDE THE SENTENCE IMPOSED ON SECOND DEGREE MURDER	4 - 17
04-08-2021	MOTION FOR ENTTITLEMENT TO RESPOND TO STATE'S RESPONSE	18 - 19
04-08-2021	MOTION TO SUPPLEMENT WITH TRUTHFUL EXHIBITS	20 - 34
04-27-2021	MOTION TO TRANSPORT ALTERNATIVELY MOTION FOR AN EVIDENTIARY	35 - 37
05-26-2021	MOTION OF FRAUDULENT DOCKET	38 - 44
06-16-2021	MOTION TO ORDER THE CLERK TO FORWARD A TRUE AND CORRECT COPY OF THE STATE'S RESPONSE	45 - 47
06-16-2021	MOTION TO APPOINT COUNSEL OR ALTERNATIVELY REMAND FOR RESENTENCING	48 - 50
06-28-2021	MOTION TO CONSOLIDATE ALL MOTIONS	51 - 52
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F0134236 3D21-2342

DATE OF FILING	INSTRUMENTS	PAGES
08-10-2021	ORDER DENYING DEFENDANT'S PROSE MOTION OF HEARING	96
11-12-2021	ORDER DENYING MOTION OF HEARING ALTERNATIVELY ENTITLEMENT FOR REHEARING	97
11-23-2021	DIRECTIONS TO THE CLERK	98 - 99
11-23-2021	NOTICE OF APPEAL	100 - 101
12-03-2021	ACKNOWLEDGMENT OF NEW CASE	102
12-29-2021	CERTIFICATE OF THE CLERK OF THE COURT	103

STRICKEN

Box 23 42

#09 3/23/21
Peekins (9)

Denied
7/20/21

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DANIEL DELEON,
Defendant/Petitioner,

v.

STATE OF FLORIDA,
Plaintiff/Respondent.

Case No: 01-34236

2021 MAR 15 PM 12:51
COURT REPORTS

**MOTION TO VACATE OR SETASIDE THE SENTENCE IMPOSED BASED
ON SECOND DEGREE MURDER WITHOUT ANY OTHER PROVISION
ALTERNATIVELY WRIT OF HABEAS CORPUS**

The Defendant, DeLeon Daniel, by his undersigned counsel and pursuant to Florida Rules of Criminal Procedure 3.800 respectfully moves this Court for an Order to resentence.

I. Jurisdiction

This Court has jurisdiction to hear and act upon this Motion under Art. I § 13, Fla. Const. Habeas Corpus is the proper remedy to challenge the lawfulness of detention on grounds that Information is fundamentally defective where it fails to cite a specific section of the Statutes in the body of the Information and totally omits an essential element of crime to be enhanced. See Jaimes v. State, 51 So.3d 445, 448 (Fla. 2010). This is a defect that can be raised at anytime before trial, after trial, on appeal or by habeas corpus. See State v. Gray, 435 So.2d 816, 819 (Fla. 1983).

In Petitioner's case, his conviction on second degree murder as a lesser included offense of first degree murder. The Fla. Stat. 775.087 cited in the head of the Information to reclassified or enhanced the conviction failed to allege in the body of the Information. The Information wholly omits to allege the essential element of the Fla. Stat. 775.087 nor did it cite any subsection or language.

Reset
MAR 23 2021

PROVIDED TO DESOTO C.I.
3-9-21 FOR MAILING
INMATE INITIALS _____
OFFICER INITIALS _____

This Information could not support any enhancement of second degree murder. See

Figuroa v. State, 988 So.2d 138, 139 (Fla. 2d DCA 2008).

II. Statement of the Facts

1. On November 30, 2001, Petitioner was charged with second degree murder and later on December 4th, 2001 charged by Indictment of murder first degree.

2. After trial a jury returned a not guilty verdict on Count I, but found Mr. Daniel DeLeon guilty of second degree murder as a lesser included offense of Count I.

3. With to Count I in the original charge of first degree murder, the State wholly omitted to allege the Fla. Stat 775.087 in the body of the Indictment to support any reclassification or to enhanced the second degree murder conviction to a first degree murder. See Fla. Stat. 775.087 (2001).

III. The Information for Count I provides in pertinent part in the body as follows

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

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about the 3rd day of November, 2001, within the County of Miami-Dade, State of Florida, DANIEL DELEON did unlawfully and feloniously kill a human being, to wit: LERIDA DIAZ, from a premeditated design to effect the death of the person killed or any human being, by strangling the said LERIDA DIAZ, from which injuries LERIDA DIAZ languished and died on November 8, 2001, in violation of s. 782.04(1) and s. 775.087, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

IV. The Trial Court improperly sentenced Defendant according to the Fla. Stat. 782.04(2)

A. The Fla. Stat. 775.087 Was Not An Essential Element Of The Crime:

1. Following a jury trial Mr. Daniel DeLeon was found guilty solely on second degree murder and was sentenced to life in prison under Fla. Stat. 782.04(2); and Fla. Stat.

finds the requisite statutory factual predicate. This is what happened at Mr. DeLeon sentencing hearing in pertinent part: Trial Transcripts, page 22, 27, 28, 30:

THE COURT: I have a person found guilty or pleading guilty to first degree murder. The discretion of life-. Life only comes to second degree murder. The Court is given much discretion critically, in a case no firearm was used, such as in a case like this. The guidelines stated is that the Court has to look at between 20.5, I believe it is and life as a sentence.... What is the sentencing guidelines. I ask you to look at does the Defendant have a prior record. in this case DeLeon does not have a prior record? I don't think this rises to the level of a prior record to determine a proper sentence.

3. Again to be permitted to reclassified or enhanced the defendant due to the Fla. Stat. 775.087 "cited at the head of the Information" on the verdict form the Miami Court is required to have the jury make that factual finding. See Stoute v. State, 915 So.2d 1245 (Fla. 4th DCA 2005) quoting Tucker v. State, 726 So.2d 760, 770-772 (Fla. 1991). Reclassification an enhancement can not be sustained if the verdict form did not include a reference to the Fla. Sta. 775.087 in identifying the specific crime for which the defendant is found guilty. Id. at 772. Based on the Information, jury instructions and verdict form, the jury had no additional option of concluding that Mr. Daniel DeLeon committed any crime under Fla. Stat. 775.087 to increase the penalty to a life enhancement statute.

Let's see the trial sentencing hearing Page 27, 28-29 in part:

THE COURT: Lassette he strangle her...The jury found him guilty. I gave a lot of weight to the jury verdict...the defendant was found guilty of a second degree murder by the jury and that is a lesser included offense adjudicated guilty and the court sentences him to life in prison without parole.

STATE: I don't have my statute book with me. I don't know the court sentencing technically to life without parole. The sentence to life without parole. I don't think the court sentence without parole.

The jury found that Mr. Daniel DeLeon strangled his wife as part of the second degree murder not a fact increasing a mandatory minimum alters the prescribed range of sentences guidelines to which a criminal defendant is exposed. Mr. Daniel DeLeon did not have any prior record to enhance his sentence and not a habitual offender or PRR and "did not plea to first degree murder." In reaching a contrary conclusion the Honorable Judge relied on the fact that

life without parole could have been imposed with or without a judicial finding of Fla. Stat. 775.087 because the jury's finding authorizes a sentence up to 30 years of second degree murder. See, Fla. Stat. 775.083, ⁸² but that fact is beside the point. The essential Sixth Amendment inquiry is whether a fact is an element of crime because the fact of strangling did not aggravate the legally prescribed range of allowable sentence or to enhanced Mr. Daniel DeLeon from a second degree felony to a first degree felony. There is no basis in principle or logic to distinguish facts that raise the maximum from those that increases the minimum. Here the "life" range was not supported by the jury verdict but rather the judge than the jury increased the penalty to which Mr. Daniel DeLeon was subjected at his sentencing hearing and violated his Sixth Amendment Rights

4. As well established above there is no facts to increasing Mr. Daniel DeLeon minimum sentence and extending the sentence beyond the statutory maximum due to the Information, jury instructions and verdict form. Again the Defendant was indicted and convicted of a lesser included offense of second degree felony. ^{MURDER}

775.0823 provides in pertinent part:

Subsection (4) For murder in the second degree as described in s. 782.04(2) and (3), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

775.082. mandatory minimum sentences for certain reoffenders.

(1) (a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death...otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b) 1. A person who actually killed, intended to kill... who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, shall be punished by a term of imprisonment for life

5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 of an offense that was reclassified as a life felony

(d) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

775.083. Fines....Etc

782.065(2), Fla. Stat. Enhanced Penalty – see also 921.1406, Fla. Stat.

775.084(4)a, Fla. Stat

- (1) In the case of felony of the second degree for a term of years not exceeding 30, and such offender shall not be eligible for release 10 years
- (2) Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law

(D) The court in conformity with the procedure established in paragraph (3)(c) shall sentence the “violent career criminal:

2. in the case of the felony of the second degree for a term of years not exceeding 40 with a mandatory minimum of 30 years imprisonment

5. Here the sentencing range by the jury's verdict was 15 years imprisonment not exceeding 30 under 775.082, 775.083 or 775.084 for a Fla. Stat. 782.04(2) known as second degree felony. Trial court imposed the life sentence based on no finding or by a no preponderance of evidence of Fla. Stat. 775.087 because the finding of Fla. Stat 775.087 would increase the penalty to which Defendant was subjected, it was not an element which had to be found by the jury beyond a reasonable doubt. The Judge rather than the jury found the reclassified statute or the enhancement from second degree felony to a life degree felony. Thus, violating Petitioner's Sixth Amendment Rights. The judgment specifically convicts Mr. Daniel DeLeon of second degree murder pursuant to section 782.04(2), not a first degree felony with no mentioned of the language in the body of the Information of Fla. Stat. 775.087 to reclassify the conviction. Mr. Daniel DeLeon specifically alleges that both the imposition of the life sentence term are illegal. The Indictment make reference to Section 775.087 in the body without any subsection and failed to charge anything under Fla. Stat. 775.087 to give the Defendant a life sentence. Section 775.087 is inapplicable. The trial court could not have reclassified or enhanced Mr. Daniel DeLeon's conviction or his judgment form from a second degree felony to a first life degree felony of ~~third degree~~ felony for murder not exceeding life. As well it is in conformity with long established practice. See Figueroa v. State, 84 So.3d 1158 (Fla. 2d DCA 2012) see also Ritchey v. State, 7 Black 168, 169 (Ind. 1844) (in order to prevent a manifest injustice and a

denial of due process relief must be granted to Mr. Daniel DeLeon. See State v. Mancino, 705 So.2d 1379, 1381 (Fla. 1992)

775.081 Classification of Felony and Misdemeanors:

(1) Felonies are classified, for the purpose of sentence and for any other purpose specifically provided by statute, into the following categories:

- (a) Capital felony;**
- (b) Life felony;**
- (c) Felony of the first degree;**
- (d) Felony of the second degree; and**
- (e) Felony of the third degree.**

6. **Nothing in this section shall be construed to alter the operation of any statute of this State authorizing a trial court, in its discretion to impose a sentence of imprisonment for indeterminate period within and maximum limits as provided by law except as provided in subsection (l).**

Mr. Daniel DeLeon. Had not been convicted of a capital felony or life felony and/or felony of the first degree murder. Mr. Daniel DeLeon. Was not a certain reoffender previously released from prison and/or career criminal offender. Mr. Daniel DeLeon. Had no prior record as habitual violent felony offender. See 921.002, 0013, 0022, 0023 of the offense committed; see also, amended Bill of s. 775.082 Section/subsection (9) of Section 775.082

A. For a felony punishable by life to a term of imprisonment of 25 years.

Effective date 7/1/21 – also retroactive

Mr. Daniel DeLeon. Is not only asking a review of his sentence but, that his sentence must be vacated and that the trial court to enter an amended judgment reflecting a second degree felony conviction concluding illegal sentence was fundamental error that needed to be corrected because the result was a manifest injustice to Mr. Daniel DeLeon.. See, Miller v. State, 988 So.2d 138, 139 (Fla. 2d DCA 2008) Figueroa and Apprendi v. New Jersey most importantly Mr. Daniel DeLeon.

As in the instant case the jury verdict provided in pertinent part:

We, the jury, find as follows as to count 1 of the Information.

(Check only one A, B, C, or D)

___ (A) The Defendant is guilty in the first degree as charged

(B) The Defendant is guilty in the "Second Degree" as a lesser included offense

Etc.

Again, upon reading the Information, jury instruction in conjunction with the verdict form trial court could not sentence Mr. Daniel DeLeon. To life imprisonment in this instant case there was no other recorded provisions under the law to change the conviction to first life felony, even a jury finding cannot cure this defect. As such Mr. Daniel DeLeon sentence is illegal.

III. Nature of the Relief Sought:

The nature of relief sought by this Motion alternatively writ of habeas corpus is crystal clear due to the Indictment, Jury Instructions, Verdict Form.

1. Order the State to show cause because Mr. Daniel DeLeon. Was illegally sentenced under Fla. Stat. 782.04(2) as a lesser included offense of first degree murder and why resentencing should not be granted and allow Petitioner the to respond to State's response
2. Vacate all orders resulting onto reclassified or enhanced Petitioner from second degree murder to a first life degree felony without any findings by the jury.
3. Set aside the illegal sentence and remand for resentencing, or release Petitioner.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of March 2021 a true and correct copy of the foregoing Motion to Vacate, Set Aside Alternative Writ of Habeas Corpus has been placed in the hands of prison officials at Desoto Correctional Institution for mailing to the Office of the State Attorney, 1350 N.W. 12th Avenue Miami, FL 33136.

Daniel DeLeon, ~~Petitioner~~
DeSoto Correctional Institution Annex
DC# M52725
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

<u>DIVISION</u>	<u>SENTENCE</u>
<input checked="" type="checkbox"/> CRIMINAL	

AS TO COUNT: 1

<u>PLAINTIFF(S)</u>	<u>VS. DEFENDANT(S)</u>
THE STATE OF FLORIDA	DANIEL DELEON

CASE NUMBER: F01-034236 OBTS NUMBER _____

The Defendant, being personally before this Court, accompanied by his/her attorney(s): ALAN J GREENSTEIN, PD 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 he/she should not be sentenced as provided by law, and no cause having been shown:

FILED FOR RECORD
 2008 NOV - 1 PM 1:38
 CLERK, CIRCUIT & COUNTY COURTS
 DADE COUNTY, FLA.
 COUNTY CRIMINAL DIV.

And the court having on 09/08/05 deferred imposition of sentence until this date.

IT IS THE SENTENCE OF THE COURT that the defendant is hereby:
 Is hereby committed to the custody of the Florida Department of Corrections..
 TO BE IMPRISONED:
 For a term of Natural Life.
 Without Parole.

STRICKEN

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN
AND FOR MIAMI-DADE COUNTY, FLORIDA

THE STATE OF FLORIDA,
Plaintiff,

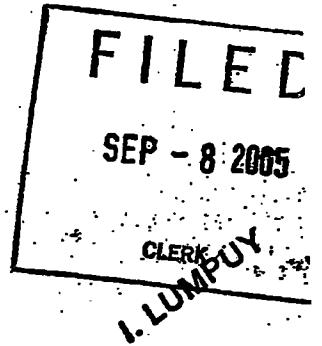
vs.

DANIEL DELEON,
Defendant /

CRIMINAL DIVISION

CASE NO: F01-34236

VERDICT



We, the jury, find as follows, as to Count 1 of the indictment:
(Check only one: a, b, c or d)

- (a) The defendant is guilty of murder in the first degree, as charged.
- (b) The defendant is guilty of murder in the second degree, as a lesser included offense.
- (c) The defendant is guilty of manslaughter, as a lesser included offense.
- (d) The defendant is not guilty.

SO SAY WE ALL, this 8th day of September, 2005, at Miami-Dade County,
Florida.

Daniel L. Bethel
Foreperson

STRICTLY CONFIDENTIAL

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA - FALL TERM, 2001

F01-34236
INDICTMENT

STATE OF FLORIDA v.

DANIEL DELEON, Defendant.

MURDER FIRST DEGREE,
782.04(1) & 775.087 FC

FILED FOR RECORD
2006 DEC -14 PM 2:37
CLERK OF COUNTY COURTS
MIAMI-DADE COUNTY, FLA.
CIVIL #5

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

The Grand Jurors of the State of Florida, duly called, impaneled and sworn to inquire and true presentment make in and for the body of the County of Miami-Dade, upon their oaths, present that on or about the 3rd day of November, 2001, within the County of Miami-Dade, State of Florida, DANIEL DELEON did unlawfully and feloniously kill a human being, to wit: LERIDA DIAZ, from a premeditated design to effect the death of the person killed or any human being, by strangling the said LERIDA DIAZ, from which injuries LERIDA DIAZ languished and died on November 8, 2001, in violation of s. 782.04(1) and s. 775.087, Florida Statutes, to the evil example of all others in like cases offending and against the peace and dignity of the State of Florida.

María Elena Hernández
MARIA ELENA HERNANDEZ
FOREPERSON OF THE GRAND JURY

WHITE; MALE; DOB 05/20/1971; SS #: (UNKNOWN)

STRICTLY CONFIDENTIAL

FOI 24236

MARCH 10TH 2011

DEAR CLERK OF COURT

MY NAME IS DANIEL DELEON CASE NO. 01-34036. I WOULD LIKE TO HAVE A COPY OF SENTENCING SCORE SHEETS AND ALSO SENTENCING SCORE POINTS. YOUR PROMPT REPLY WILL BE APPRECIATE THANKS

SINCERELY SUBMITTED
Daniel Deleon
DC# 152725

Original

along with copy of

envelope given to Fern Fern & Manny

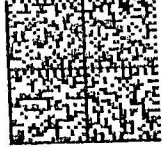
STRIKED

152725

CORRECTIONAL INSTITUTION
S E Highway 70

LA FL 34266 DC# M 52725

Desoto Correctional
13617 SE Highway 70
Aventura, FL 34266



UNITED STATES POSTAGE
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STRICKEN

COURT OFFICE/LOWERCOURT
1351 W. W 12th STREET - SUITE 90
MIAMI FL 33125

MAILED FROM STATE
CORRECTIONAL INSTITUTION

Denied
7/20/21

DIV 09

4-4-21

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

[Handwritten initials]

DANIEL DELEON,
Defendant/Petitioner,

v.

STATE OF FLORIDA,
Plaintiff/Respondent.

Case No: 01-34236

APR - 8 PM 3:37
RECORDED

GHC

MOTION FOR ENTITLEMENT TO RESPOND TO STATE'S RESPONSE

The Defendant, Daniel DeLeon, by and pursuant to Florida Rule of Criminal Procedure 3.800 respectfully moves this Court to allowing him or give him an opportunity to respond to State's Response and will show this Honorable Court the good cause.

ENTITLEMENT TO RESPONSE

1. The Petitioner has filed a *pro se* motion to vacate his illegal sentence under second degree without any pre-sentencing investigation or without any rule 3.992 as a criminal punishment code sheet under the sentencing guidelines in this court. For efficiency, this Court takes judicial notice of facts in this Court docket in case number F01-34236 arising out of the circuit court in and for Miami-Dade County that Mr. Daniel DeLeon have not received any State's response as part of the record.


2. Mr. Daniel DeLeon as a party in this instant case should be given an opportunity to respond to the State's response under rule 3.800. In addition, this

Court takes judicial notice of facts by not letting Mr. Daniel DeLeon respond to State's response and sending him a copy demonstrated that State's response was insufficient to Defendant's motion to vacate his illegal sentence. As such, this Honorable Court should direct the clerk to send a true and correct copy of State's response to Mr. Daniel DeLeon and give Mr. Daniel DeLeon enough time to respond as a Respondent and makes Defendant respond as part of the record and as part of the court docket. See Motion ^{SETUP ON} ~~sent~~ March 30, 2021; State's Response. See U.S.C.A. 14th Amendment.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April 2021, a true and correct copy of the foregoing Motion for Entitlement to Respond to State's Response has been placed in the hands of prison official at DeSoto Correctional Institution for mailing to the Office of the State Attorney at: 1350 N.W. 12th Avenue Miami Florida 33136.

Respectfully Submitted


Daniel DeLeon, Petitioner
DC# M52725
DeSoto Correctional Institution
13617 Southeast Highway 70
Arcadia, Fl 34266-7800

Denied
7/29/21

DIV (9)

4-4-21

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

[Handwritten signature]

4-13-21

DANIEL DELEON,
Defendant/Petitioner,

CASE NO. 01-24236

v.

STATE OF FLORIDA,
Plaintiff/Respondent.

FILED
APR 13 2021
CLERK OF COURT
GHC

**MOTION TO SUPPLEMENT WITH TRUTHFUL
EXHIBITS/NUNC PRO TUNC**

The Defendant, Daniel DeLeon, by his undersigned counsel file this motion to supplement with truthful exhibits to the motion to vacate or set aside the sentenced imposed on second degree felony to a life degree felony and will show the Honorable Court the following good cause.

1. Defendant sought review with the trial court sentencing hearing, arguing it was error with discretion of the trial court judge to classify his conviction as a first degree life felony because there was the possibility that a conviction for a lesser included second degree offense could result in a first life degree offense adjudication and sentencing. The State filed a one count information charging Mr. Daniel DeLeon with first premeditated murder a first degree felony punishable by life, under Fla. Stat. 782.04(1). Pursuant to agreement of the prosecutor and defense counsel, the trial court instructed the jury that second

degree murder is a lesser included offense (682 So.2d 187) the jury found Mr. Daniel DeLeon guilty of second degree murder. See the first motion to vacate sentence alternatively writ of habeas corpus.

2. On the day after trial, the trial court adjudicated Mr. Daniel DeLeon guilty of second degree murder and sentenced him to life in prison without parole. Although the written does not state the degree of the conviction for second degree murder, it is clear from the sentence imposed and our review of the relevant sentencing trial transcripts that the trial must considered Mr. Daniel DeLeon "prior" convictions to impose a first degree life felony. See 782.04(1), see also 782.04(2), Fla. Stat. (1993). This what happened at Mr. Daniel DeLeon sentencing hearing in pertinent part:

Trial Transcripts, page 22

TRIAL JUDGE: And what is the sentencing guidelines? ... I ask you to look at: does the Defendant have prior record? In this case, Mr. DeLeon "Does not have" a prior record ... I don't think this rises to the level of a prior record to determine a proper sentence. The Court has to look at the defendant in terms of his prior record.

(See, Exhibit A, attached with this Supplement)

A life sentence was not discretionary in Mr. Daniel DeLeon's case because the trial court sentencing record and concluded that the trial court exercised its discretion to depart from a guidelines sentence by considering certain information

related to Mr. Daniel DeLeon prior record. See Mason, 134 So.3d at 501 (see also **Exhibit A** Trial Transcripts, page 22; attached with this Supplement). As such, Mr. Daniel DeLeon had no prior record for the discretion of life felony. The State also concedes that this omission requires resentencing. Where there is a possibility that a conviction for a lesser included offense may result in first degree life felony adjudication and sentencing, the State must put the defendant on notice in the charging document. (See Defendant's Motion), see also Young v. State, 641 So.2d 401 (Fla. 1994). In this instant case it was an error to classify or with discretion of the trial court to depart from a guidelines sentence from a second degree murder to a first degree life felony without any pre-sentence investigation. This is what happened after trial, the trial transcripts revealed in pertinent part:

Trial Transcripts, page(s) 2-4

STATE: I think Dr. Alvarez should complete his evaluation. Second of all when the court ordered the P.S.I. he was supposed to do a pre-sentencing evaluation not a few word paper: He was to do a pre-sentencing evaluation. This is completely unacceptable ... No one from my office talked to the probation officer. Likewise recently representing Mr. DeLeon no one from my office I'm sorry no one from my office.

(See **Exhibit B**, attached with this Supplement)

TRIAL JUDGE: If you look at the report ... even though it says that you looked at the report as I have and you looked at the evaluation by the doctor.

A potential problem does exist in this are as the record clearly showed there was no pre-sentencing investigation in Defendant's case. Mr. Daniel DeLeon was convicted solely as a principal of second degree murder and because the jury only found that Mr. DeLeon did not use a firearm due the 775.087, Fla. Stat. mentioned in the indictment. The trial judge discretion was improper to impose a life felony without no P.S.I.

3. Mr. DeLeon does not have prior felony of any kind. There is no acceptable guidelines that this Honorable Court can use to impose a sentence ranging anywhere between 20½ years at the bottom of the guidelines to life in this instant case. See Simmons v. State, 215 So.3d 162 (Fla. 1st DCA 2007) see also LeWellen v. State, 682 So.2d 186 (Fla. 1996). If there's children or the victim had children trial court does impose a life sentence because of the children. This discretion does not rise to the level of a prior record because the victim left children behind after her death or because she no longer with them to sentence Mr. Daniel DeLeon to a life felony. The trial court did not give a lot of weight that the jury found Mr. Daniel DeLeon guilty of second degree murder which is a lesser included offense of the main charged offense pursuant to 782.04(1), see rule 3.992 (a criminal punishment code sheet for second degree murder, notes under the sentencing guidelines the maximum he could have receive was thirty years. Because the offense at were second degree not exceeding life. Therefore if a

sentencing impose that departs from the recommended guidelines sentence. The reason for departure shall be "orally" articulated at the time sentence is imposed. Which is not on the face of the record in this instant case. Any departure sentence must be accompanied by written statement, signed by the sentencing judge delineating the reasons for departure which is not on the face of this record. The written statement shall be filed in the court within 7 days after the date of sentencing and the written statement delineating the reasons for departure shall be made part of the record. In this instant case Mr. Daniel DeLeon had denied his score sheet and such written statement see sentencing guidelines at 660 So.2d 1374 an illegal sentence is one that exceed the maximum period set forth by law for a particular offense without regard to the guidelines. See Fla. R. Crim 3.800, see also Callaway v. State, 642 So.2d 636 (Fla. 2d DCA 1994). A simple question to this

Honorable Court:

Where is Defendant Mr. Daniel DeLeon's Scoresheet guidelines?


The additional records sought are either to the subject matter of proceeding for relief under Fla. R. Crim. 3.800. The Court cannot provide the written statement or scoresheet guidelines that classified his second degree murder to a first degree life felony, this Honorable Court shall hold an evidentiary hearing or vacate the illegal sentence. (See Exhibit C, Scoresheet Not In File)

NATURE OF RELIEF SOUGHT

1. Entry of an Order to show cause to this Supplement and hold an Evidentiary Hearing.
2. Set aside the illegal sentence from the guidelines scoresheet and resentencing Defendant due to no clerical error.
3. Give Mr. Daniel DeLeon his Scoresheet guidelines to file a proper Motion to the court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 2021, that a true copy of the foregoing Motion to Supplement With Truthful Exhibits has been placed in the hands of prison officials at DeSoto Correctional Institution Annex for mailing to the Office of the State Attorney at: 1350 N.W. 12th Avenue Miami, Florida 33136.



Daniel DeLeon, Petitioner
DC # M52725
DeSoto Correctional Institution Annex
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

EXHIBIT

A

TRICKEN

1 denied that a court should have no discretion, assuming the
2 defendant's penalty was waived.

3 I have a person found guilty or pleading guilty to first
4 degree murder. The discretion of life -- life only comes to
5 second degree murder. The Court is given much discretion.
6 Critically, in a case where no firearm was used, such as in a
7 case like this, the guidelines stated is that the Court has
8 to look at between 20-5, I believe it is, and life as a
9 sentence.

10 And what is the sentencing guidelines? I ask you to
11 look at one of the things -- I ask you to look at: does the
12 defendant have a prior record? In this case, Mr. Deleon does
13 not have, apparently, unpaid traffic tickets what led to the
14 warrant for him to be arrested.

15 I don't think this rises to the level of a prior record
16 to determine a proper sentence. The Court has to look at the
17 defendant in terms of his prior record. The second thing the
18 Court has to look at is, obviously, the victim; what has
19 happened to the victim. And in any murder case, Your Honor,
20 any murder case -- any time -- occurred where someone has
21 suffered.

22 Technically, if their next of kin and there's children
23 involved -- but, your Honor, does that make a life more
24 worthwhile when someone doesn't have a family left. I think
25 not. An argument to give my client life in a case of

EXHIBIT

B

TRICKEN

1 Thereupon, the following proceedings were had:

2 THE COURT: Page 16; let's do Daniel Deleon. Do we have
3 any attorney's here on page 16?

4 MR. GREENSTEIN: Yes, Judge.

5 THE COURT: Daniel Deleon. And we have other people in
6 the audience.

7 MR. ARAUJO: We have Ken Prince. They need an
8 interpreter as well.

9 THE COURT: All right. We'll have the same interpreter
10 speak loud so that everybody can understand --

11 MR. GREENSTEIN: Judge, just before we start, for one
12 moment, Judge, once again, I want to renew the defendant's
13 motion for continuance on the defense's presentation. Im not
14 asking -- the state's presentation that's not fair with the
15 witnesses here. I think the Court can hear them.

16 There's two witnesses the Court should testify in the
17 defense's matter. If you read Dr. Alvarez's report, there is
18 still Dr. Alvarez -- he likes to conduct -- it gives us
19 greater insight if you look at the last paragraph. I think
20 there's no rush to accept Mr. Deleon -- the Court should give
21 him more time.

22 I think Dr. Alvarez's should complete his evaluation.
23 Second of all, when the Court ordered the PSI, he was
24 supposed to do a presentencing evaluation, not a few words on
25 paper. He was to do a presentencing evaluation. This is

1 completely unacceptable, your Honor.

2 The presentencing investigator in -- it is not
3 telling accurate information where it says, for example: --
4 however, the Public Defenders Office instructed the probation
5 officer and Mr. Deleon not to discuss the case. That is not
6 true. I never spoke to the probation officer. She never
7 called me. I instructed the current probation officer -- it
8 is factually incorrect.

9 THE COURT: Where is that?

10 MR. GREENSTEIN: The second page of the PSI.

11 THE COURT: The second page of the PSI? And --

12 MR. GREENSTEIN: Right in the -- defendant's statement.

13 THE COURT: Okay. Do you know if someone from your
14 office --

15 MR. GREENSTEIN: No one from my office talked to the
16 probation officer. Likewise, recently, representing Mr.
17 Deleon, no one from my office, from -- I'm sorry. No one
18 from my office contacted her. Additionally, the only
19 attorney -- see on the back page -- knows the defendant's
20 attorney, Alan Greenstein --

21 THE COURT: Let me ask you. Is it possible she called
22 and spoke to someone, a secretary, and was told not to
23 discuss the facts -- of the case specifically, as the defense
24 was planning to appeal?

25 MR. GREENSTEIN: Well, Judge --

1 THE COURT: Anyway --

2 MR. GREENSTEIN: Anything is possible, of course,
3 anything is possible. I know my secretary did not tell the
4 probation officer not to talk to my client without speaking
5 to me first.

6 THE COURT: Also, Alan, if you look at the report -- even
7 though it says that you looked at the report, as I have, and
8 you looked at the evaluation by the doctor, your client
9 denies everything. And I have looked at the defense's expert
10 and your client very carefully. And in his report it says
11 that your client denies everything. He says where's the
12 evidence.

13 MR. GREENSTEIN: That may be the case. Two things --

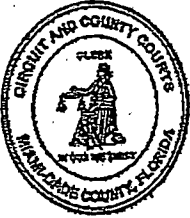
14 THE COURT: And we need the interpreter to speak loud so
15 the family can hear. Maybe we want the family to stand over
16 here. We have one interpreter, and different people don't
17 understand -- okay. Whoever doesn't understand -- they have
18 family members?

19 MR. ARAUJO: Victim witnesses --

20 MR. GREENSTEIN: Judge, Milly will be speaking.

21 THE COURT: Okay. In the report by Dr. Alvarez, your
22 client states that there isn't any evidence. He denies
23 everything. He denies having committed a crime. He
24 testified in court and I heard his testimony in the trial,
25 and I remember it.

Harvey Ruvin
CLERK OF THE CIRCUIT AND COUNTY COURTS
Miami-Dade County, Florida



CRIMINAL COURTS DIVISION
 TRAFFIC/MISDEMEANOR
Richard E. Gerstein Justice Building
1351 N.W. 12th Street
Suite # 9000
Miami, Florida 33125
Telephone: (305) 275-1155

Date: 3-26-21

Dear Sir/Madam: Daniel Deleon. # F01-34236

Enclosed are the documents/information you requested from our office. If you need any further assistance, please contact our office at (305) 275-1155 between the hours of 9:00 a.m. to 4:00 p.m., or direct your inquiries to the Clerk of Courts, 1351 N.W. 12th Street, Miami, Fl. 33125, Suite 9000 or 8100 attention Research and Correspondence. Please refer to the items checked below for any further information concerning your request.

- Order Correcting Sentence
& - Corrected Sentence

- Copies of Information, Judgment & Sentence, arrest form and clerk's minutes enclosed.
- The document(s) you requested is (are) not available through our office.
- The document(s) you requested has (have) been supplied to your attorney.
- The document(s) you requested was (were) previously supplied to you on _____.
- Other Score Sheet not in file.

You have Motion to Vacate Set on 3/30/21
& also State Response.

Sincerely,

Harvey Ruvin
Clerk of Courts

By: J. SANCHEZ 7615
Deputy Clerk
7615

Central Depository • Civil Division • Clerk of the Board • Code Enforcement • Comptroller/Auditor • County Recorder Criminal Division • District Courts Division • Family Courts Division • Human Resources / Administrative Services • Juvenile Division • Marriage License • Parking Violations • Records / Archives Management • Technical Services Division • Traffic Division • V.A.B.

COPY

MARCH 24TH 2021

Jean Clark on Court
STATE ATTORNEY OFFICE

PROVIDED TO DESOTO CI.
3-24-21 FOR MAILING
INMATE INITIALS
OFFICER INITIALS

My name is DANIEL DELEON and my
case number is F101-34236. I would
like to have a copy of my CRIMINAL
PUNISHMENT case scoresheet. Your prompt
reply will be APPRECIATE THANKS

Respectfully SUBMITTED

DCT# 

STRICTLY

Denied
7/20/21

DIV (9)

4/22/21

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DANIEL DELEON,
Defendant/Petitioner,

5-11-21

v.
STATE OF FLORIDA,
Plaintiff/Respondent.

Case No. 01-34236

FILED FOR DELEON
2021 APR 27 PM 2:24
MAR

MOTION TO TRANSPORT ALTERNATIVELY
MOTION FOR AN EVIDENTIARY HEARING

This cause having come before this Court on the Defendant, Daniel DeLeon Motion to Vacate or Set Aside the Sentence Supplement with Truthful Exhibits for Post-Conviction Relief; and this Court; having reviewed the motion, Court files and record, in this case that a life sentence was not discretionary in Mr. Daniel DeLeon's case. Because, the trial court's sentencing record concluded that the trial court exercised its discretion to depart from a guidelines sentence; by considering certain information in the guidelines itself to enhance the conviction from a second-degree felony to a life felony.

Mr. Daniel DeLeon's request to vacate his sentence is, crystal clear as to the factual background and dates surrounding his request when it comes to the scoresheet that enhanced his conviction; and, the clerk of court made it clear that such important document is not in the files and the clerk has not performed his best efforts in order to fulfill the request.

Reset
MAY 11 2021

It appears that the clerk has not previously provided Petitioner with this document.

Wherefore, this Honorable Court may undertake whatever further or other order this Court may issue regarding this cause.

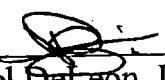
However, in an abundance of caution and in an attempt to facilitate this Court in case the clerk cannot provide copies of responsive documents that classified his conviction from a second degree to a first degree life felony, this Honorable Court stands ready to transport Mr. Daniel DeLeon for an evidentiary hearing or grant Defendant's motion accordingly, reverse and remand for resentencing. See Rule 3.992, see also § 782.04(2), Fla. Stat.

NATURE OF RELIEF SOUGHT

1. Grant this motion to transport from DeSoto Correctional Institution to the Eleventh Judicial Court in Miami, Florida under case number 01-34236.
2. Set aside the illegal sentence due there is no guidelines scoresheet filed with this Court or no written statement signed by the sentencing judge.
3. Hold an evidentiary hearing to solve this issue because Mr. Daniel DeLeon's sentence is illegal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of April, 2021 that a true and correct copy of the foregoing motion to Transport Alternatively Motion For Evidentiary Hearing has been placed into the hands of prison officials at DeSoto Correctional Institution for mailing to the Office of the State Attorney at: 1350 N.W. 12th Avenue Miami, Florida 33136.


Mr. Daniel DeLeon, Defendant
DeSoto Correctional Institution
DC# M52725
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

STRICKEL

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

#23-42

6/4/21

Denied
7/20/21

DANIEL DELEON,
Defendant,

DIV. 09

L.T. Case No. 01-34236
Honorable Judge Bertila

v.
STATE OF FLORIDA,
Plaintiff.

RULE 3

CLERK, CIRCUIT & COUNTY COURTS
MIAMI-DADE COUNTY, FLA.
CRIMINAL #15

2021 MAY 26 AM 11:08

FILED FOR RECORD

A.P.

MOTION OF FRAUDULENT DOCKET

The Defendant, Daniel DeLeon, by his undersigned counsel and pursuant to Florida Rules of Criminal Procedure 3.850 and Rules of Civil Procedure 1.540 and will show the Court the following good cause:

1. Defendant sought review with the trial court sentencing hearing arguing it was error with discretion of the trial judge Honorable Julio Jimenez presiding judge at the sentencing hearing to classify his conviction from a second degree murder to a first degree life felony without any enhancement statute of 775.087 and also without any criminal punishment code sheet or score sheet for second degree murder when Mr. Daniel DeLeon had no prior record and when the sentencing range by the jury's verdict for second degree murder should not exceeding 30 years of imprisonment under § 775.082, 775.083 or 775.084 for a Fla. Stat. 782.04(2) known as a second degree murder.

2. Due to Mr. Daniel DeLeon Motion to Compel Alternatively Writ of Mandamus and Third District Court's Order to the clerk of court, state attorney, and attorney general, the lower court took advantage of the situation to file a new docket number that has not been filed before with this Court. This docket number, 00286, on 10-18-2005 score sheet not submitted in court are contradicted to the previous docket numbers dated 10-18-2005. (See Exhibit A, attached dated 10-18-2005, Sentencing and closed). As such, this docket number or this new

docket is to make believed that it was filed in court on October 18th, 2005 during Defendant's sentencing hearing or after and this finding is not supported by the previous record, See *Wenwei Sun v. Aviles*, 53 So.3d 1075 (Fla. 5th DCA 2010). Additionally, trial court abused its discretion by filing a new docket number now which is fraud and a fraudulent docket. Moreover, Mr. Daniel DeLeon never seen in his trial transcripts or docket filed with this Court mentioned "score sheet not filed" and if there was a filed record of this recreated docket, Mr. Daniel DeLeon would have filed his 3.800 motion earlier than 5 months ago.

3. This new filing now showing a date back to 2005 constitute fraud on the court in this case because there was no showing that such docket existed in 2005. (See **Exhibit B**, attached, **October 18th, 2005 Life Without Parole**). There is nowhere the second date mentioned score sheet not filed concerning the date of October 18th, 2005. it is crystal clear now such filing was calculated in advance to interfere first with his writ of mandamus and second with his motion to vacate his illegal sentence. Again, this finding is not supported by the prosecutor who still remains in this case for post-conviction matter.

Mr. Attorney, Ray Araujo clearly alleged the paralegal further reviewed the sentencing transcripts yet found no clear reference to the filing of a score sheet not submitted in court. See Motion to Accept Pleading Case No.: 3D21-905 or 0905.

4. Mr. Daniel DeLeon did not receive a copy of such filing until now as part of his record. See *Wells Fargo Bank v. Reeves*, 92 So.3d 249, 252 (Fla 1st DCA 2012). The trial transcripts sentencing hearing does not contain evidence supporting this finding when the trial court made believe that there was a sentencing guidelines departure from 20½ years to a life felony. See the Record, pg. 26, Sentencing Hearing. The record in its entirety, suggests that the court should sentence Defendant to the minimum sentence under the "Guidelines."

Mr. Daniel DeLeon also seeks reversal of the trial court's sentencing. The error must be so extreme that it could not be corrected by filing a new docket and that its so damaging. The fairness of the trial court to have this new docket and that the public interests in our system of justice justified this new filing will solve Mr. Daniel DeLeon's illegal sentence when no steps have been taken to resentence Mr. Daniel DeLeon.

This misconduct by the trial court by filing this new docket number sullied the entire proceedings and Defendant's Motion to Vacate his Illegal Sentence. This might devastate any chance Mr. Daniel DeLeon have to vacate his illegal sentence because it seems like trial judge, Julio Jimenez, did not need a score sheet to enhance or reclassified or classified his second degree murder to a first degree life felony. This cover up is also improper and also perpetrate fraud on the court. The evidence in previous trial sentencing hearings does not support this new filing of record docket number 00286 dated 10-18-2005 as score sheet not submitted in court. As such, this is fraudulent docket.

NATURE OF RELIEF SOUGHT


1. Order the State to show cause why this is not fraudulent docket due to previous docket;
2. Hold an Evidentiary Hearing;
3. Vacate Defendant's Illegal Sentence even though scoresheet not submitted in court.

Respectfully submitted,


Mr. Daniel DeLeon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of May, 2021 that a true and correct copy of the foregoing Motion of Fraudulent Docket has been placed into the hands of prison officials at DeSoto Correctional Institution for mailing to the Office of the State Attorney at: 1350 NW 12th Avenue Miami, Florida 33136.


Mr. Daniel DeLeon, Defendant
DeSoto Correctional Institution
DC# M52725
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

STRICKEN

DATE: 04/27/2021
TIME: 03:47

CRIMINAL JUSTICE INFORMATION SYSTEM
DOCKET INQUIRY

CJSMRCDR

PAGE: 38

CASE NO: F01034236
DEFENDANT: DELEON

DANIEL

SEQ	DATE	PROGRESS OF CASE
00358	10/18/2005	CASE CLOSED
00353	10/18/2005	CASE CLOSED
00348	10/18/2005	CASE CLOSED
00343	10/18/2005	CASE CLOSED
00326	10/18/2005	CASE CLOSED
00322	10/18/2005	CASE CLOSED
00316	10/18/2005	CASE CLOSED
00286	10/18/2005	SCORESHEET NOT SUBMITTED IN COURT
00284	10/18/2005	CLOSING JUDGE JIMENEZ, JULIO
00283	10/18/2005	CASE CLOSED
00277	10/18/2005	CASE CLOSED

PRINT: N PRINTER: _____
PF1 HELP PF2 EXIT PF3 PM PF7 PB PF8 PF PF10 E-SUMMONS
RCDR-PM-4, ADDITIONAL DATA AVAILABLE, PRESS PF8 TO VIEW.

PFK: _____

STRICKEN

JUDGE/CLK	JIMENEZ-TC	J. Jimenez TC	J. Jimenez/CLK	J. Jimenez/CLK
DATE	SEP - 6 2005	SEP - 7 2005	SEP - 8 2005	
STATE	R. ARAUJO	Roy Araujo	Do	
DEFENSE	A. Greenstein + G. Lewis DP	Allen Greenstein Bill Lewis DP	Do Do DP	
INTERPRETER				
CT. REPORTER	E. Valle	E. Valle	Do	
FIRM	CAPITOL	Capitol	Do	

CLERKS MINUTES AS REDUCED: LESSER INCLUDED OFFENSE

DEFT. SWORN & VOIR DIRE RE PLEA 2^o murder
ERROL
(JURY) SEP - 8 2005

SCORE SHEET SUBMITTED NOT SUBMITTED ACQUITTED (COURT)

DEFT. WAIVES PSI FINDING OF GUILT (COURT) 2^o murder
(JURY) SEP - 8 2005

GUIDELINES DEPARTURE (ADJ) 1^o murder SEP - 8 2005 WH

GORT DEPARTURE ADJ DELINQUENT

SEP - 6 2005 See Jury Minutes

SEP - 7 2005 The following juror were selected and sworn in Chief:

- 1) 00397 Cruz, Talina
- 2) 00442 Payton, Luke
- 3) 00774 Buttrick, John
- 4) 00696 Smith, David
- 5) 00143 Thompson, Isabella
- 6) 00777 Farquhar, Marlon
- 7) 00151 Ramirez, Luis
- 8) 01706 Bennett, Paul
- 9) 00048 Bethel, Eddie
- 10) 00031 Horna, Elzaida
- 11) 00029 Thompson, Redonna
- 12) 00015 Parulita, Myra
- 13) 01492 Amica-Cross, Marquita (Att 1)
- 14) 01607 Lopez, Omar (Att 2)

- SENTENCE(S) -

TIME SERVED IN DCJ TO WIT: _____ DAYS

(DAMO) IN DCJ. SENT. TO BEGIN FROM DATE OF INCARCERATION NO CTS.

OCT 18 2005 Life in prison without parole
less 14 46 C.T.S.

CT. COST WAIVED <input checked="" type="checkbox"/>	IMPOSED <input type="checkbox"/>
LFCJTF (938.05)	\$ 200.00
GCA (938.03)	50.00
LETF (938.01(1) & 938.15)	\$ 5.00
JAC (938.17)	\$ 3.00
ELDERLY VICT. (938.09)	\$
P.D. APPL. FEE (27.52)	\$
COURT FACILITIES (939.18)	\$
OTHER	\$
OTHER	\$
OTHER	\$

STAY OF EXECUTION UNTIL:

WH & _____ (MO/YR) COMM. CTRL.

WH & _____ (MO/YR) PROB.

SP. COND.: OF COMM. CTRL PROB.

CRIMINAL DIVISION
THE STATE OF FLORIDA

"WRITE-IN" VS. NO. 01-34236

JUDGE/CLERK	S. BAGLEY-KE	S. Blake-TC	S. SIMENEZ-KE	DO, D
DATE	DEC 11 2003	JAN 28 2004	FEB 03 2004	MAR 03 2004
GUILTY	/	/	/	/
NOT GUILTY	/	/	/	/
WAIVER OF JURY	/	/	/	/
STATE	L. ADAMS	J. Datz	L. ADAMS	DO
DEFENSE	A. GREENSTEIN	DO	DO	DO
	(DNP)	DP	(DNP)	(DO)
INTERPRETER				
CT. REPORTER	K. MESFAN	DO	V. BOYER	E. VALLE
FIRM	CAPITAL	DO	DO	DO

CLERK'S MINUTES	DEPT - ACTION DATE	ORAL NOTICE	CONTINUED TO/FOR	S	D
AUG 16 2005 (cont.)	MAR 30 2005	DNP	08-04-05		SP
1. Daniel Dolson - Sworn & testified.			08-15-05		J. Mal
Dolson's Rests	AUG - 3 2005		8-15-05		TR
The court denied the motion to Suppress Statements	AUG 15 2005	DNP	9/2/05		TEL
AUG 22 2005 Joint cont. - granted.	AUG 16 2005	DP	8/20/05		TEL
	AUG 22 2005	DP	9/6/05		TEL
	AUG 23 2005		9-6-05		TR
	SEP - 6 2005	DP	9-7-05		do
	SEP - 7 2005	DP	9/8/05		TEL
	SEP - 8 2005	Jail	10-18-05		
	SEP 29 2005	DP	O/C		
			10/18/05		Sentence
	OCT 12 2005	Jail	10-18-05		DO
	OCT 18 2005	DP	Closed		

Denied
7/20/21

D119

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DANIEL DELEON,
Appellant,

06-10-21

v.
STATE OF FLORIDA,
Appellee.

Case No. 01-34236

FILED FOR RECORD
2021 JUN 16 PM 2:33
CIRCUIT COURT
MIAMI-DADE
COUNTY
FLORIDA

**MOTION TO ORDER THE CLERK TO FORWARD A TRUE AND
CORRECT COPY OF THE STATE'S RESPONSE**

The Defendant, Daniel DeLeon, has filed a *pro se* motion to vacate or set aside the sentence imposed based on second degree murder as a life felony without any other provision or enhancement or guidelines scoresheet alternatively writ of habeas corpus. This Court take judicial notice of facts demonstrated on March 30, 2021 by the Clerk clearly alleged on its document check mark: "You have motion to vacate on 3-30-21 and also **State Response**. (See **Exhibit A**, Clerk Copy)


Mr. Daniel DeLeon have not received a copy of this motion or a copy of State response, as such, the clerk of court should be directed to forward a true and correct copy of the State's Response to Mr. Daniel DeLeon as part of his record in case a filed copy was filed with this Honorable Court.

Respectfully submitted,

Mr. Daniel DeLeon
DC#M52725

CERTIFICATE OF SERVICE

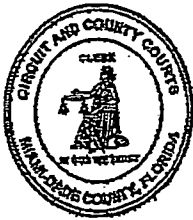
I HEREBY CERTIFY that on this 9th day of June, 2021 that a true and correct copy of the foregoing Motion to Order the Clerk to Forward a True and Correct Copy of the State's Response has been placed into the hands of prison officials at DeSoto Correctional Institution for mailing to the State Attorney's Office at: 1350 NW 12th Avenue Miami, Florida 33136.



Mr. Daniel DeLeon, Defendant
DeSoto Correctional Institution
DC# M52725
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

STRICKEN

Harvey Ruvin
CLERK OF THE CIRCUIT AND COUNTY COURTS
Miami-Dade County, Florida



CRIMINAL COURTS DIVISION
 TRAFFIC/MISDEMEANOR
Richard E. Gerstein Justice Building
1351 N.W. 12th Street
Suite # 9000
Miami, Florida 33125
Telephone: (305) 275-1155

Date: 3-26-21

Dear Sir/Madam:

Daniel Deleon # FOI-34236

Enclosed are the documents/information you requested from our office. If you need any further assistance, please contact our office at (305) 275-1155 between the hours of 9:00 a.m. to 4:00 p.m., or direct your inquiries to the Clerk of Courts, 1351 N.W. 12th Street, Miami, FL 33125, Suite 9000 or 8100 attention Research and Correspondence. Please refer to the items checked below for any further information concerning your request.

Copies of ~~Information, Judgment & Sentence, arrest form and clerk's minutes~~ enclosed.

The document(s) you requested is (are) not available through our office.

The document(s) you requested has (have) been supplied to your attorney.

The document(s) you requested was (were) previously supplied to you on _____.

Other Score Sheet not in file.

You have Motion to Vagate Set on 3/30/21
& also State Response.

Sincerely,

Harvey Ruvin
Clerk of Courts

By: J. Sanchez 7615

Deputy Clerk

Central Depository • Civil Division • Clerk of the Board • Code Enforcement • Comptroller/Auditor • County Recorder Criminal Division • District Courts Division • Family Courts Division • Human Resources / Administrative Services • Juvenile Division • Marriage License • Parking Violations • Records / Archives Management • Technical Services Division • Traffic Division • V.A.B.

Clerk's web address: www.miami-dadeclerk.com

Printed on Recycled Paper

Denied
7/20/21

6/29/21 DIV(9)

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DANIEL DELEON,
Appellant,

06-10-21

v.
STATE OF FLORIDA,
Appellee.

Case No. 01-34236

6-29-21

**MOTION TO APPOINT COUNSEL
OR ALTERNATIVELY REMAND FOR RESENTENCING**

FILED FOR RECORD
2021 JUN 16 3:21 PM '21
CIRCUIT COURT
MIAMI
FLORIDA

MR

The Defendant, Mr. Daniel DeLeon, proceeding *pro se* files this motion for the appointment of counsel and will show the Honorable Court the following good cause.

1. Defendant sought review with the trial court sentencing hearing arguing it was fundamental error to sentence him to a first degree life felony without any enhancement Florida Statute from the Information or any other provision or score sheet guidelines or PRR or habitual or no prior record when he was found guilty of second degree murder for a term of years not exceeding 30. See § 782.04(2); and also 775.084(2).

2. Mr. Daniel DeLeon has a sixth amendment right to have representation of counsel during his hearing. U.S.C.A. Const. Amend. 6., see also Motion to Order the Clerk to Forward a True and Correct Copy of the State's Response. See also Motion for Entitlement to Respond to State's Response which

~~Reset~~
JUN 29 2021

Reset
JUN 29 2021

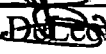
Mr. Daniel DeLeon never received a copy as a party and see also, Motion of Fraudulent Docket filed by the Chief Judge Bertila Soto due to the motion to compel alternatively writ of mandamus that there is no score sheet to sentence Mr. Daniel DeLeon from a second degree felony to a first life degree felony, as such, all this misrepresentation requires legal representation. U.S.C.A. Const. Amend. 6.

3. As the Miami Court records clearly showed Mr. Daniel DeLeon's sentence is an illegal sentence and this is why trial judge Julio Jimenez as a honorable presiding judge did not use the scoresheet guideline to sentence Mr. Daniel DeLeon accordingly which is unconstitutional. See Rule 3.800, see also, U.S.C.A. Const. Amend 14.

NATURE OF RELIEF

1. Appoint an attorney to represent Mr. Daniel DeLeon due to these reasons alleged in the motion.
2. Vacate all enhancements or reclassification or classified and remand for resentencing or again legal representation due to misrepresentation by the court.

Respectfully submitted,



Mr. Daniel DeLeon, Defendant
DC# M52725

8
Denied
7/20/21

DW (9)

7/19/21

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff,

v.
DANIEL DELEON,
Defendant.

Case No. 01-34236

FILE FOR RECORD
2021 JUN 28 PM 1:22
CLERK, CIRCUIT & COUNTY
MIAMI-DADE COUNTY, FL
CIRCUIT CRIMINAL #255

MOTION TO CONSOLIDATE ALL MOTIONS
FILED FOR TIMELY APPEAL ALTERNATIVELY
MOTION TO HEAR AND RULE

The Defendant, Mr. Daniel DeLeon, *pro se*, and pursuant to Rule of Administrative Procedure and Rule of Consolidated respectfully moves this Court to act on Defendant's motions and will show this Honorable Court the following good cause:

1. The Defendant, Mr. Daniel DeLeon, starting in March 2021 has filed numerous motions to this Honorable Court and this Court has jurisdiction to consolidate all motions filed for timely appeal or grant Defendant's motions and attach records why Defendant should not be resentenced when the jury found him guilty of second degree murder as a lesser included offense of first degree murder. See § 782.04(1); see also, § 782.04(2), Fla. Stat.

2. Mr. Daniel DeLeon gives "*notice*" to this Honorable Court due to his motion filed in March 2021, motion to vacate or set aside the sentence imposed on second degree as a life felony without any other provision and other motions and if this Honorable Court do not hear and rule with all motions filed with this Court and after three (3) months from the date of this motion to consolidate all motions filed for timely appeal alternatively motion to hear and rule filed and he will seek a writ of mandamus to the third district court because a Honorable Judge has to clear out his basket every six (6) months. Due to trial court sentencing hearing page twenty-two (22), the State wanted Defendant to be sentenced to 20 years and six months and Mr.


STRIKED

Reset
JUL 09 2021

Daniel DeLeon had served that time.

Based on aforementioned reasons, this Court also has a good reason to consolidate all the motions and hear and rule on Defendant motions. See Rule of Administrative Procedure.


Respectfully submitted,



Mr. Daniel DeLeon Defendant
DC# M52725

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of June, 2021 that a true and correct copy of the foregoing Motion to Consolidate All Motions Filed for Timely Appeal Alternatively Motion to Hear and Rule has been placed into the hands of prison officials at DeSoto Correctional Institution for mailing to the State Attorney's Office at: 1350 NW 12th Avenue Miami, Florida 33136.



Mr. Daniel DeLeon, Defendant
DeSoto Correctional Institution
DC# M52725
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

6-22-21

CA

STRICTLY CONFIDENTIAL

lec - Dept
lec - SAB

DIV 9

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO. F01-34236

Plaintiff / Respondent

SECTION 09

v.

JUDGE: PERKINS

DANIEL DE LEON

Defendant / Petitioner.

FILED FOR RECORD
2021 JUN 20 PM 4:08
CLERK OF COURT
MARIANNE H. HALL, CLERK
1101 MIAMI AVENUE, SUITE 201
MIAMI, FL 33133

**ORDER DENYING POSTCONVICTION MOTION
AND OTHER PENDING MOTIONS AND DIRECTIONS TO CLERK**

In 2001 the State of Florida charged Daniel Deleon with murdering Lerida Diaz. The State charged him with first-degree murder, but on September 8, 2005, following trial, the jury convicted him of the lesser-included offense of second-degree murder. On October 18, 2005, the Court sentenced Deleon to life in prison "without parole." On April 12, 2007, the Court, on Deleon's motion, corrected the sentence to omit the "without parole" language.

On March 9, 2021, Deleon filed his Motion to Vacate or Set Aside the Sentence Imposed Based on Second Degree Murder Without Any Other Provision Alternatively Writ of Habeas Corpus ("Postconviction Motion"). Between April 1, 2021 and June 22, 2021, Deleon filed seven more motions.¹

In his Postconviction Motion, Deleon argues that second-degree murder is a second-degree felony punishable by up to fifteen years in prison. The trial court, according to Deleon, unlawfully

¹ (1) April 1, 2021 "Motion to Supplement with Truthful Exhibits/Nunc Pro Tunc," (2) April 22, 2021 "Motion for Entitlement to State's Response," (3) April 22, 2021 "Motion to Transport Alternatively Motion for an Evidentiary Hearing," (4) May 18, 2021 "Motion of Fraudulent Docket," (5) June 9, 2021 "Motion to Order the Clerk to Forward a True and Correct Copy of the State's Response," (6) June 9, 2021 Motion to Appoint Counsel or Alternatively Remand for Resentencing, and (7) June 22, 2021 Motion to Consolidate All Motions Filed for Timely Appeal Alternatively Motion to Hear and Rule.

E-FILED
AUG 10 2021

enhanced Deleon's second-degree murder conviction to first-degree murder pursuant to Florida Statutes § 775.087. For the reasons below, the Court denies the Postconviction Motion on the merits.

Discussion

The Court treats the Postconviction Motion as a Rule 3.800(a) motion to correct illegal sentence, which is the appropriate vehicle for asserting that an imposed sentence exceeds the statutory maximum sentence for the offense for which a defendant is convicted. *Davis v. State*, 26 So. 3d 647, 650 (Fla. 2d DCA 2010); *see Broom v. State*, 907 So. 2d 1261 (Fla. 3d DCA 2005) (holding that habeas relief is unavailable where a motion challenges the validity of a defendant's sentence, as opposed to the validity of incarceration). Pursuant to Rule 3.800(a), "[a] court may at any time correct an illegal sentence imposed by it, or an incorrect calculation made by it in a sentencing scoresheet, when it is affirmatively alleged that the court records demonstrate on their face an entitlement to that relief"

Here, it is clear from the court records that Deleon is not entitled to relief. Deleon was convicted of second-degree murder and sentenced to life. *See Exhibit 1* (Verdict); *Exhibit 2* (Judgment and Sentence); *Exhibit 3* (Order Correcting Clerical Error); *Exhibit 4* (Amended Sentence omitting "without parole"). Second-degree murder is and, at all material times, has been, a first-degree felony punishable by a term of years not exceeding life. *See Fla. Stat. 782.04(2)* (2001); *Fla. Stat. 782.04(2)* (2021); *see also Fla. Stat. § 775.082(3)(b)* (2001) (providing that first-degree felonies are punishable by up to 30 years imprisonment "or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment"); *Fla. Stat. § 775.082(3)(b)(1)* (2021) (same).

In Deleon's Motion to Supplement with Truthful Exhibits/Nunc Pro Tunc ("Supplement"), which the Court interprets to be supplemental argument to the Postconviction Motion, Deleon

asserts that the trial court improperly considered Deleon's prior convictions to "impose" a "first degree life felony" and "depart from guidelines" even though Deleon did not have any prior criminal record. *Id.* at 2-3. Deleon's argument fails for the simple reason that he misquotes the trial transcript (attributing defense counsel's argument as being a pronouncement from the Court), *id.*, at 2, and the actual transcript² reflects none of these things. **Exhibit 5** (Sentencing Hearing Transcript).³

The Court denies Deleon's remaining motions identified in footnote one above without comment.

Warning Regarding Future Filings

Deleon's Postconviction Motion and related motions are frivolous and entirely unsupported by the record or the law. To make matters worse, his misquoting of the jury verdict, Postconviction Motion at 7-8, and sentencing hearing transcript, Supplement at 2, suggest an effort to mislead the Court. Abusing the judicial system by filing frivolous motions is a sanctionable nuisance, and possible sanctions include barring the Defendant from filing pleadings and referral to the Department of Corrections for discipline. *See State v. Spencer*, 751 So.2d 47 (Fla. 1999); Fla. Stat. § 944.279. **The Court warns Deleon that his right to file *pro se* pleadings and papers in this case is in serious jeopardy.**

² The sentencing transcript is part of the official record of sentencing and, thus, can be considered in connection with a Rule 3.800(a) motion. *Williams v. State*, 957 So. 2d 600, 604 (Fla. 2007).

³ To the extent Deleon argues in his supplement that the trial court improperly exercised sentencing discretion or improperly sentenced Deleon without a presentencing investigation or scoresheet, such claims are not properly cognizable in a postconviction motion because they could have been raised on direct appeal. *Whiteley v. State*, 192 So. 3d 579 (Fla. 4th DCA 2016).

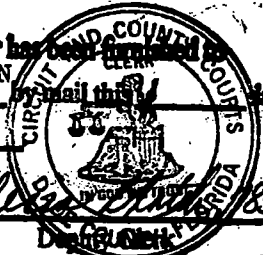
Notice of Appeal Deadline and Instructions to Clerk

Deleon has thirty (30) days from the date of this Order to appeal. The Clerk is directed to mail a copy of this Order to Daniel Deleon, DeSoto Annex (Male), D.C. # M52725, 13617 S.E. Highway 70, Arcadia, Florida 34266-7800.

If Deleon appeals, the Clerk is directed to transmit to the Third District Court of Appeals, as part of the record, this Order, the Motion to Vacate or Set Aside the Sentence Imposed Based on Second Degree Murder Without Any Other Provision Alternatively Writ of Habeas Corpus, and the motions identified in footnote one above.

DONE and ORDERED in Miami-Dade County, Florida this 20th day of July, 2021.

CERTIFY that a copy of this order has been furnished by
the MOVANT, DANIEL DE LEON, by mail this day
of AUG 05 2021, 20


Felecia Blatch
FELECIA BLATCH 7854


JOSEPH PERKINS
CIRCUIT JUDGE

STRICKEN

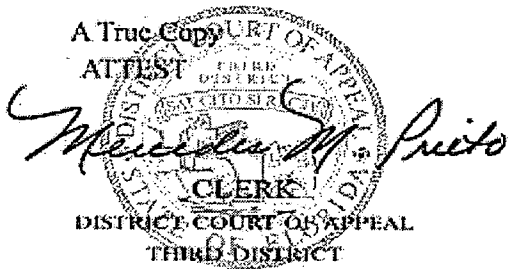
IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
MARCH 02, 2022

DANIEL DELEON,
Appellant(s)/Petitioner(s),
vs.
THE STATE OF FLORIDA,
Appellee(s)/Respondent(s),

CASE NO.: 3D21-2342

L.T. NO.: F01-34236

Appellee's Motion to Supplement the Record in Appeal, filed on
March 1, 2022, is granted, and the record on appeal is supplemented to
include the document that is attached to said Motion.



cc: OFFICE OF ATTORNEY GENERAL RICHARD L. POLIN DANIEL DELEON

ts

STRICKEN

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA
 IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DIVISION

- CRIMINAL
 OTHER

FINGERPRINTS OF DEFENDANT

THE STATE OF FLORIDA VS.

DANIEL De LEON

PLAINTIFF

DEFENDANT

CASE NUMBER: *FO1-34236*

I hereby certify that the foregoing fingerprints on this judgment are the fingerprints of the defendant named above, and that they were placed thereon by said defendant in my presence, in open court, on this date and that the defendant provided the below Social Security Number or was unable to provide said number as indicated.

Fingerprints taken by:

J. 3920
Name

COI
Title











CLOCK IN

FILED

SEP - 8 2005

CLERK

FINGERPRINTS OF DEFENDANT

1. R. Thumb	2. R. Index	3. R. Middle	4. R. Ring	5. R. Little
				
1. L. Thumb	2. L. Index	3. L. Middle	4. L. Ring	5. L. Little
				

Social Security Number of Defendant _____

ONE AND ORDERED in Open Court in Miami-Dade County, Florida this 8 day of September 2005

Page 3 of 3

JUDGE

JULIO R. IBANEZ
Circuit Court Judge

Clerk's web address: www.miami-dadeclerk.com

FD-854, REV. 7/03

DIVISION <input checked="" type="checkbox"/> CRIMINAL	<u>SENTENCE</u>
--	-----------------

AS TO COUNT: 1

PLAINTIFF(S) THE STATE OF FLORIDA	VS. DEFENDANT(S) DANIEL DELEON
--------------------------------------	-----------------------------------

CASE NUMBER: F01-034236	OBTS NUMBER _____
-------------------------	-------------------

The Defendant, being personally before this Court, accompanied by his/her attorney(s):ALAN J GREENSTEIN, PD 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 he/she should not be sentenced as provided by law, and no cause having been shown:

FILED FOR RECORD
 2005 NOV - 1 PM 1:38
 CLERK, CIRCUIT COURT & COUNTY CLERK
 MIAMI-DADE COUNTY, FLA.
 COUNTY CRIMINAL DIV.

And the court having on 09/08/05 deferred imposition of sentence until this date.

IT IS THE SENTENCE OF THE COURT that the defendant is hereby:
 Is hereby committed to the custody of the Florida Department of Corrections..

TO BE IMPRISONED:
 For a term of Natural Life.
 Without Parole.

STRICKEN

-10/31/05
 10/02
 's web address: www.miami-dadeclerk.com

IN REF: Defendant
DANIEL DELEON

OTHER PROVISIONS

CASE NUMBER: F01-034236

<u>CATEGORY</u>	<u>OTHER PROVISION DESCRIPTION</u>	<u>SPECIFICATION</u>
Jail Credit	It is further ordered that the defendant shall be allowed a total of the specified time as credit for time incarcerated prior to imposition of this sentence.	1,446 DAYS

In the event the above sentence is to the Department of Corrections, the Sheriff of Dade 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 Statutes.

The defendant in Open Court was advised of his right to appeal from this sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing indigence.

DONE AND ORDERED in Open Court in Miami-Dade County, Florida this 18th day of October, 2005.

JUDGE JULIO JIMENEZ

IT-10/31/05

V 10/02

clerk's web address: www.miami-dadeclerk.com

Page 2 of 2

DIVISION

CRIMINAL

CORRECTED SENTENCE

AS TO COUNT: 1

PLAINTIFF(S)

THE STATE OF FLORIDA

VS. DEFENDANT(S)

DANIEL DELEON

CASE NUMBER: F01-034236

OBTS NUMBER _____

The Defendant, being personally before this Court, accompanied by his/her attorney(s): ROBERT GODFREY, PD 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 he/she should not be sentenced as provided by law, and no cause having been shown:

~~FILED IN RECORDS
2001 APR 27 AM 2:10
CLERK OF CIRCUIT COURT
MIAMI-DADE COUNTY, FLA.
CRIMINAL DIVISION~~

Previously entered a judgment in this case on the defendant now resentsences the defendant.

IT IS THE SENTENCE OF THE COURT that the defendant is hereby:

Is hereby committed to the custody of the Florida Department of Corrections..

TO BE IMPRISONED:

For a term of Natural Life.

FILED IN RECORDS
2001 MAY -2 AM 8:28
CLERK OF CIRCUIT COURT
MIAMI-DADE COUNTY, FLA.
CRIMINAL DIVISION

STRICKEN

Exhibit 4

JER-04/25/07

REV 10/02

Page 1 of 2

Clerk's web address: www.miami-dadeclerk.com

IN REF: Defendant
DANIEL DELEON

CORRECTED OTHER PROVISIONS

CASE NUMBER: F01-034236

<u>CATEGORY</u>	<u>OTHER PROVISION DESCRIPTION</u>	<u>SPECIFICATION</u>
Jail Credit	It is further ordered that the Defendant shall be allowed a total of the specified time as credit for time incarcerated prior to imposition of this sentence.	1,446 DAYS

In the event the above sentence is to the Department of Corrections, the Sheriff of Dade 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 Statutes.

The defendant in Open Court was advised of his right to appeal from this sentence by filing notice of appeal within thirty days from this date with the Clerk of this Court, and the defendant's right to the assistance of counsel in taking said appeal at the expense of the State upon showing indigence.

NUNC PRO TUNC: 10/18/05

DONE AND ORDERED in Open Court in Miami-Dade County, Florida this 12th day of April 2007


JUDGE JULIO JIMENEZ

JER-05/01/07

FWF 10/02

Clerk's web address: www.miami-dadeclerk.com

Page 2 of 2

1 completely unacceptable, your Honor.

2 The presentencing investigator in -- it is not
3 telling accurate information where it says, for example: --
4 however, the Public Defenders Office instructed the probation
5 officer and Mr. Deleon not to discuss the case. That is not
6 true. I never spoke to the probation officer. She never
7 called me. I instructed the current probation officer -- it
8 is factually incorrect.

9 THE COURT: Where is that?

10 MR. GREENSTEIN: The second page of the PSI.

11 THE COURT: The second page of the PSI? And --

12 MR. GREENSTEIN: Right in the -- defendant's statement.

13 THE COURT: Okay. Do you know if someone from your
14 office --

15 MR. GREENSTEIN: No one from my office talked to the
16 probation officer. Likewise, recently, representing Mr.
17 Deleon, no one from my office, from -- I'm sorry. No one
18 from my office contacted her. Additionally, the only
19 attorney -- see on the back page -- knows the defendant's
20 attorney, Alan Greenstein --

21 THE COURT: Let me ask you. Is it possible she called
22 and spoke to someone, a secretary, and was told not to
23 discuss the facts -- of the case specifically, as the defense
24 was planning to appeal?

25 MR. GREENSTEIN: Well, Judge --

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1 THE COURT: Alan, if you want to, you've got a record of
2 whatever it is your client will say -- whatever he says here
3 today, you can say whatever you like to say. That way it I
4 don't need to read the PSI. Tell me directly at the time of
5 sentencing.

6 MR. GREENSTEIN: If that's the case, you need to order a
7 presentencing investigation --

8 THE COURT: You know with PSIs ordered -- a lot of times,
9 PSIs consist of a lot of information regarding the
10 defendant's prior crimes. Here, if he has no prior crimes,
11 he should have a short presentencing investigation.

12 It does have a lot of information about him, and now
13 anything else that he would like to say or you would like to
14 say that's not contained in the presentencing investigation,
15 you can tell me directly now at the time of sentencing.

16 MR. GREENSTEIN: I agree.

17 THE COURT: Regarding the PSI, I regard the report by Dr.
18 Alvarez -- the report will speak for itself. But, you know,
19 the doctor makes a finding of mental retardation, and it's
20 very clear -- throughout the report -- I read it. And I'm
21 aware of that and remember your talking about it is also
22 possible the above date representing the psychological -- in
23 light of the Barry (Phonetic) Sub Test scores in the WSIC
24 III.

25 This cannot further -- also -- however it might be

1 useful to understand Mr. Delon -- in greater detail and his
2 stability relative for -- making the role of these factors --
3 possibly played or is associated with some organic
4 impairment, which is better understood in the light of the
5 alleged incident.

6 Any recommendations as to his mind and abilities and
7 prognosis require further assessment with purely
8 psychological instruments. You know, your Honor, I guess we
9 can do the sentencing --

10 THE COURT: And you're at liberty to -- doing all the
11 assessments you want. You can come in in 60 days for any
12 mitigation and bring any evidence in favor of mitigation
13 before the Court. And you know the door is open to you as to
14 anyone else.

15 All right. Now, obviously, both sides have received and
16 reviewed the presentencing investigation, and is there
17 anything that the state would like to present?

18 MR. ARAUJO: First, with regards to the PSI -- that also
19 in reviewing it, I noted that, in fact, it was presented by
20 qualified -- sensitive to the Department of Correction. It
21 does describe in detail about the defendant's family -- here,
22 a female member and her insinuations, like that just for our
23 purposes to put on the record -- adopt the belief,
24 perfunctory belief also --

25 THE COURT; I don't think it was in the PSI. This
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1 gentleman has no prior record, and you know you can't invent
2 it. He has no children, I believe, and what it does say is
3 that he's -- from Mexico, and his life is here and his work is
4 here. And this is a lot of information about him.

5 And you know, luckily, this case -- thanks to Alan, we
6 have his individual evaluation by Dr. Alvarez regarding this
7 defendant being somewhat retarded or at the lower level,
8 marginal, if not retarded. So I --

9 MR. ARAUJO: I want to indicate for the record the PSI,
10 as to charges, you yourself, your Honor, are aware of
11 preceding charge of first degree murder, the jury returned a
12 verdict of guilty for second degree murder. The defendant
13 does not have prior felonies of any kind.

14 We have sworn out under the accepted guidelines that
15 this Court is free to impose a sentence ranging anywhere
16 between 20.5 years at the bottom of the guidelines to life.
17 At this time, your Honor, we have members of the victim's
18 family that would like to speak to the Court and be heard.

19 THE COURT: All right. Come over here. All right. The
20 witnesses that are going to testify, whether or not they're
21 just mere presence -- let me put you under oath and the
22 defendant as well. The defendant as well.

23 (Thereupon, the witnesses were duly sworn.)

24 THE COURT: All right. Everyone put down your hand. Now
25 -- the name of the official court interpreter for the record

1 is Salvias Perez. Both sides stipulate to her qualifications?

2 MR. GREENSTEIN: Yes.

3 MR. ARAUJO: Yes.

4 THE COURT: All right. Now, state, who's your first
5 witness?

6 MR. ARAUJO: I believe the victim's mother.

7 THE COURT: All right. Madam interpreter, stand over
8 here. Madam interpreter, I need you to speak loud so the
9 defendant can hear, to show how many -- what detail this PSI
10 -- he has a hearing problem, right, which he either does not
11 hear well from afar.

12 You have a hearing problem?

13 THE WITNESS: Yes, I do.

14 THE COURT: All right. I need for you to yell, okay?

15 THE INTERPRETER: Yes.

16 THE COURT: Let's go. And for the defendant, when you
17 can't hear, go like this.

18 THE DEFENDANT: Yes.

19 THE COURT: Ma'am, at this time, if you would like, you
20 can make a statement to the Court about your feelings about
21 this case and what happened to your daughter.

22 THE WITNESS: Well, I'm very affected, because she left
23 two children, small children that have been affected
24 emotionally, psychologically. Two kids, where one is seven
25 years old and one is 14 years old.

1 She was an exemplary daughter; beautiful. She would
2 work and fight for her kids, so that's why the family has
3 been affected by it. She was my oldest daughter. My heart
4 is full of a lot of feelings --

5 THE COURT: Okay.

6 THE WITNESS: -- by the fact that I lost my daughter. I
7 want all the love -- she was a wonderful mother and a good
8 sister. And shew as a very smart woman. She had worked for
9 the Marines, as a Marine officer, the Merchant Marines. I
10 hope the weight of the law upholds.

11 She was a wonderful daughter. She would fight for her
12 kids.

13 THE COURT: Okay. Let me ask the momma a few questions.
14 Where are you from?

15 THE WITNESS: Venezuela.

16 THE COURT: Your daughter was born in Venezuela?

17 THE WITNESS: Yes, she was born in Venezuela, and she had
18 her education in Venezuela.

19 THE COURT: And --

20 THE WITNESS: She was an officer in the Merchant Marine -
21 - she was a tech secretary.

22 THE COURT: And her name was Lydia -- Diaz? When she
23 came to the United States, not her, her daughter?

24 THE WITNESS: Years ago, she had been eight years here.

25 THE COURT: All right.

1 THE WITNESS: She came when her kids were small.

2 THE COURT: You were raising her kids?

3 THE WITNESS: No, she had them here.

4 THE COURT: When she died, her children were here with
5 her?

6 THE WITNESS: Yes, here. Here, and now her sister is
7 taking care of them. She has custody of them.

8 THE COURT: Was the sister living here when she died?

9 THE WITNESS: Yes, yes.

10 THE COURT: So when she died -- so when she died, the
11 sister took the children?

12 THE WITNESS: Yes. Yes, she took care of the kids.

13 THE COURT: How old were the children when she died?

14 THE WITNESS: Six.

15 THE COURT: Hold on. Now we have the sister talking.

16 And the name of the sister?

17 THE WITNESS: Nessie Diriaz (Phonetic).

18 THE COURT: And you took over the children?

19 THE WITNESS: Yes.

20 THE COURT: And how old were they when your sister died?

21 THE WITNESS: The girl was six and the boy was 14.

22 THE COURT: And did they immediately learn she died?

23 THE WITNESS: She was in the hospital. So when she died,
24 they found out about everything.

25 THE COURT: After the attack, she was in the hospital for

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1 how many days; 11 days?

2 THE WITNESS: In a coma for eight days or four days.
3 Something like that.

4 THE COURT: Did she ever wake up, ever wake up?

5 THE WITNESS: No. No, her brain was paralyzed. The
6 neurons from her brain never woke up.

7 THE COURT: When she went to the hospital, was she in a
8 coma?

9 THE WITNESS: In a coma in intensive care, and they
10 declared her dead, you know. You know, she was in a serious
11 condition. She probably was not going to be able to be
12 saved.

13 THE COURT: And how many days was it before she died?

14 THE WITNESS: She was all the days, according to the law
15 -- you can keep her connected to the machines and immediately
16 after that, by the law, they had to disconnect her.

17 THE COURT: Okay. And she never came through. And while
18 she was in a coma, she wasn't feeling anything?

19 THE WITNESS: No, no. she wouldn't -- she never had any
20 reactions.

21 THE COURT: Okay. All right. Go ahead.

22 MR. ARAUJO: Thank you, your Honor. I know you have not
23 shown the photographs during your testimony what you wanted
24 to present to the Court. I'll show them to Mr. Greenstein
25 briefly.

1 THE COURT: Yes.

2 MR. ARAUJO: I'll pass them to your Honor -- we've got a
3 photograph of her and several family members, including her
4 kids --

5 THE WITNESS: Her kids, with her family.

6 THE COURT: That's her with her daughter?

7 THE WITNESS: With a niece.

8 THE COURT: Okay. Your daughter was very pretty.

9 THE WITNESS: Yes, very pretty.

10 THE COURT: This is your daughter with the son?

11 THE WITNESS: Yes, yes, the boy is going to be 18 now.

12 THE COURT: This is with the daughter?

13 THE WITNESS: Yes, the six-year-old.

14 THE COURT: This is her with her daughter?

15 THE WITNESS: Yes.

16 THE COURT: First communion?

17 THE WITNESS: No, she was in kindergarten, something like
18 that.

19 THE COURT: This is her as an officer in the Merchant
20 Marine?

21 THE WITNESS: Yes, she was a Merchant Marine in
22 communications. She worked in CBA.

23 THE COURT: How about this photograph here?

24 THE WITNESS: The family -- the family of the boy and
25 her.

1 THE COURT: The father of the boy or girl --

2 THE WITNESS: Girl, the girl --

3 THE COURT: Excuse me, both full pictures. How old was
4 she when she died?

5 THE WITNESS: Thirty-six.

6 THE COURT: And thank you very much for sharing your
7 pictures. Let me ask you about the children. Let me ask the
8 sister.

9 THE WITNESS: The girl, it was difficult for me. I don't
10 have kids. I -- God hasn't given me the chance to have kids,
11 so emotionally, it has been hard on the girl. She's gone to
12 therapy in school. She still does. The boy, he's great when
13 she's down. And now he was -- in school, and now he's --
14 he's going to go into the Marines.

15 But emotionally it affected all of us a lot more. The
16 mother and father, for them, because I'm single, I work in
17 Homestead in the farms. I only -- and I only live for them.

18 THE COURT: Anything further?

19 THE WITNESS: I don't have any help from anybody. Mom,
20 she was a very supreme woman, a very humane person.

21 THE COURT: Thank you. Anything further with respect to
22 these ladies, Ray?

23 THE WITNESS: She didn't deserve to die like that that.

24 THE COURT: Alan, any questions?

25 MR. GREENSTEIN: No.

1 THE COURT: You can go resume your seats back there. And
2 anything else that you wish to present or argue?

3 MR. ARAUJO: In terms of witnesses, the state does not
4 have any further witnesses. In terms of arguments, we wish
5 to point out to the Court that although the Court can't
6 legally --

7 THE COURT: Let me have the interpreter stand by the
8 defendant. I think it's left. Either -- that's good.
9 Interpret for them, for him. Go ahead.

10 MR. ARAUJO: I was going to say, although the Court can't
11 legally impose the sentencing as low as 20 and a half years
12 in state prison, as your Honor has seen, this is a murder
13 that has devastated this entire family, left two young minor
14 children without a mother, and is something that they still,
15 to this day, are not able to recover, probably for the rest
16 of their lives. They want to be able to recover fully.

17 It was a very, very heinous crime; -- committed by
18 strangling not quickly -- not painlessly by the defendant.
19 And, in light of all those factors, we ask that the Court
20 impose a life sentence on Mr. Deleon.

21 THE COURT: Okay. Alan, anything you would like to
22 present?

23 MR. GREENSTEIN: Yes; one second. Just a couple. His
24 brother is here. I would like him to say a few words.

25 THE COURT: He was previously sworn?

1 MR. GREENSTEIN: He was not sworn.

2 (Thereupon, the witness was duly sworn.)

3 THE COURT: All right.

4 MR. GREENSTEIN: Tell the Judge your name.

5 THE WITNESS: Errol Deleon.

6 MR. GREENSTEIN: Are you related to Daniel Deleon?

7 THE WITNESS: Yes.

8 MR. GREENSTEIN: How are you related?

9 THE WITNESS: Well, we're brothers.

10 MR. GREENSTEIN: Okay. Is there anything you would like
11 to tell the Judge about your brother before the Judge imposes
12 a sentence?

13 THE WITNESS: The thing is that my brother -- I declared
14 him innocent. He has behaved well, never had a record. Well,
15 he's a normal person, humble.

16 MR. GREENSTEIN: What kind of brother was he?

17 THE WITNESS: He's a beautiful brother. He also behaved
18 right, working -- a hard worker. He worked for my mother and
19 my father and for the whole family. And, you know, I never
20 had any problems with him, my brother.

21 MR. GREENSTEIN: Have you come to court before?

22 THE WITNESS: No, I was not subpoenaed.

23 MR. GREENSTEIN: Have you come to court on occasion to --
24 Daniel's case?

25 THE WITNESS: Yes.

1 MR. GREENSTEIN: You know how many times?

2 THE WITNESS: About 16 times.

3 MR. GREENSTEIN: I don't have any more questions.

4 THE COURT: All right. Thank you, sir.

5 MR. GREENSTEIN: Thank you, Mr. Deleon. Daniel, is there
6 anything you would like to tell the Judge before he imposes a
7 sentence?

8 THE DEFENDANT: Yes.

9 THE COURT: Go ahead.

10 THE DEFENDANT: Judge, I never thought about hurting
11 anybody. It has not gone through my mind. I signed forcibly
12 that paper that the police forced me to sign -- meant that I
13 had five tickets. I don't deny that. I haven't fled from
14 any law, not from my country, not from this country. And I'm
15 not fleeing from any law.

16 THE COURT: Go ahead.

17 THE DEFENDANT: I'm not in front of you -- the police
18 forced me to sign a paper and you'd realized that you don't
19 have any evidence of my facts. Her family -- I never thought
20 about hurting, never ever. I never thought about hurting
21 anybody.

22 And today I'm before you, I'm not hiding. You realize
23 that I'm here in front of you, I have not offed anybody; I
24 have not lacked respect on anybody. I'm here and I want you
25 to be fair with me.

1 THE COURT: Let me ask you. Your lawyer said that you
2 may -- did not have the opportunity to say what you wanted to
3 say to the probation officer in what was prepared in the
4 investigation. Is there anything that you would have wanted
5 to tell that probation officer to include in that report that
6 you want to say now?

7 The probation officer would have asked you if you had
8 anything to say regarding the facts of the case, regarding
9 the crime that the jury found you guilty of. I'm now giving
10 you that opportunity to include for the record anything else
11 you would like to say.

12 THE DEFENDANT: I will accept.

13 THE COURT: The obvious question would have been -- I
14 don't know, your lawyer wants you to answer this. You have
15 the right to appeal, but did you commit this crime?

16 THE DEFENDANT: I didn't commit anything. I'm here
17 before you. Like I told you, I'm not fleeing from any law,
18 before the law. But the truth is, I think --

19 THE COURT: Hold on. The interpreter and only the
20 interpreter --

21 THE DEFENDANT: -- and you know what there is in English.
22 According to the school of mental -- and I'm learning a
23 little English.

24 THE COURT: Let me ask you, did you kill the Lydia Diaz?

25 THE DEFENDANT: No, I never thought of hurting her,

1 never.

2 THE COURT: Were you present when she was strangled?

3 THE WITNESS: No, not at that moment. There is a guy her
4 friend knows that followed me twice and that time when the
5 facts happened. Her friend went and to the one that was my
6 girlfriend. She went to tell Mr. -- that she said -- let's
7 go home now and he said to her -- to her friend.

8 Her friend told her: let's go, or I'll tell everyone
9 she's hiding something there. And when I told her, you know,
10 what is that? She said: no, forget it. It's nothing. She
11 tell her friend: let's go to the bathroom. When we go to the
12 bathroom, she didn't come back to me. When I realized she
13 was sitting at -- and it was that guy, the one she left with
14 and her friend.

15 And when she came to me, the blood was already drawn and
16 then I said to her: what's going on? No, nothing is going
17 on. Let's go. So I went and I asked for the keys to the one
18 keeping the keys there at the cafeteria. When we left, she
19 says to me: my story and I said -- then she says to me: go to
20 tell her we're leaving.

21 And when I go to her, I told her: let's go. She's
22 saying that we're leaving. She's not feeling well. When she
23 says: keys, I showed her the keys.

24 MR. GREENSTEIN: Excuse me, Judge, I don't -- although
25 Mr. Deleon has a right to say anything he wants to, I think

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1 we're getting far afield. Clearly, Mr. Deleon denies
2 committing the crime. I think you got at the testimony from
3 the motions to suppress, that supplement for this part.

4 What he likes to say, I think, if you have any
5 questions.

6 THE COURT: I want to make sure -- do you believe that
7 your client has had a full opportunity to say what he wanted
8 to say?

9 MR. GREENSTEIN: Yes, sir. Let me say --

10 THE COURT: Do you agree, Mr. Deleon?

11 MR. GREENSTEIN: As far as that -- I made comments, he
12 never accepted in front of the Court. You know my comments.
13 The Court knows my comments on the investigation. They don't
14 have any investigation, right. My point is he didn't get a
15 chance to present, but shows that if a probation officer lies
16 about that, you can't trust anything in this report any way.

17 THE COURT: Okay. I'll declare for the record, clearly,
18 there is no evidence the probation officer lied about
19 anything.

20 MR. GREENSTEIN: I didn't talk to her.

21 THE COURT: It's just an allegation you're making without
22 any evidence, Mr. Greenstein. It says, however, the Public
23 Defender's Office instructed this officer --

24 MR. GREENSTEIN: And I tell you, no one instructed that
25 probation officer.

1 THE COURT: You can't say that. A lot of times I deal
2 with the Public Defender's Office. Some things that the
3 lawyers say and other things, what the secretary, everybody
4 else says.

5 MR. GREENSTEIN: I don't want to get stuck on that.

6 THE COURT: Anything else, Mr. Deleon? You said your
7 piece here?

8 THE DEFENDANT: Yes, I told you we were in trial. He
9 never spoke about that.

10 THE COURT: Like he said, very carefully, you did not
11 kill Lydia Diaz?

12 THE DEFENDANT: I never hurt anybody, Judge.

13 THE COURT: Thank you very much.

14 MR. GREENSTEIN: The only other evidence, Judge, Dr.
15 Alvarez's report. I think we made it a part of the record.

16 THE COURT: Yes.

17 MR. GREENSTEIN: In terms of argument, let me say, any
18 remarks -- I'm saying must not be misinterpreted. Mr. Deleon
19 should not be put away by this Court. Clearly, the jury
20 found Mr. Deleon guilty. Therefore, under our laws, Mr.
21 Deleon should be punished.

22 Anything should not be interpreted any other way, any
23 other proper sentence -- maybe. Judge, the sentencing
24 guidelines -- because -- it allows the Judge to give some
25 distraction as to what the legislature formed the law. They

1 denied that a court should have no discretion, assuming the
2 defendant's penalty was waived.

3 I have a person found guilty or pleading guilty to first
4 degree murder. The discretion of life -- life only comes to
5 second degree murder. The Court is given much discretion.
6 Critically, in a case where no firearm was used, such as in a
7 case like this, the guidelines stated is that the Court has
8 to look at between 20.5, I believe it is, and life as a
9 sentence.

10 And what is the sentencing guidelines? I ask you to
11 look at one of the things -- I ask you to look at: does the
12 defendant have a prior record? In this case, Mr. Deleon does
13 not have, apparently, unpaid traffic tickets what led to the
14 warrant for him to be arrested.

15 I don't think this rises to the level of a prior record
16 to determine a proper sentence. The Court has to look at the
17 defendant in terms of his prior record. The second thing the
18 Court has to look at is, obviously, the victim; what has
19 happened to the victim. And in any murder case, Your Honor,
20 any murder case -- any time -- occurred where someone has
21 suffered.

22 Technically, If their next of kin and there's children
23 involved -- but, your Honor, does that make a life more
24 worthwhile when someone doesn't have a family left. I think
25 not. An argument to give my client life in a case of

1 this Court who have never been abusive or out of order in any
2 matter whatsoever. There is no evidence that Mr. Deleon has
3 a drug abuse -- abused drugs in any matter whatsoever.

4 And we're not asking what else has been done in this
5 case, but what we're talking about is one moment in a man's
6 life. And I think it is clear from the evidence presented to
7 the Court that Mr. Deleon loved Ms. Diaz. Clearly he loved
8 her based upon the statement he gave to the police. He was
9 in love with this woman. That's what is important.

10 Dr. Alvarez -- because, your Honor, Mr. Deleon is
11 borderline mentally retarded very concretely thinking, he is
12 unable to assimilate in social circumstances -- that not
13 asking his behavior -- understand his behavior and what Dr.
14 Alvarez says: four and five this May will lead to his
15 understanding of -- interpersonal matters, motives,
16 intentions.

17 Your Honor, Ms. Diaz worked at a bar where her job --
18 I'm not saying she was a prostitute; I'm not saying that her
19 job to entertain men who came to that bar, to dance with them
20 and entertain them. And because in Homestead a lot of
21 migrant workers -- that was her job -- not that discourages -
22 - that it is clear after two years of this, Mr. Deleon,
23 because of his mental retardation, understood the
24 relationship he had with Ms. Diaz.

25 That someone else of greater intelligence may not have

1 misunderstood. That when he went down there and confronted
2 Ms. Diaz, he could not control himself and did not understand
3 the interpersonal relationship that was going on. That he
4 did not understand how Ms. Diaz could be married and be --
5 could be living with another man.

6 When he was being entertained by Ms. Diaz over a two-
7 year period, that's the insight you have to have. That's why
8 the Court should not sentence Mr. Deleon to life, because the
9 Court has the discretion, and the discretion should be which
10 side --

11 When you have a psychological understanding of why this
12 incident occurred with this man -- we're talking about one --
13 we're talking about one -- a man's life that deserves
14 punishment but does not deserve life.

15 One other thing to go along with that. Although the
16 state should not be bound, I'm not saying they should abide
17 by any plea offer they made to Mr. Deleon. In fact, they
18 offered Mr. Deleon 15 years. He chose not to accept it. Now
19 he has to suffer the consequences.

20 The Court can take that into account when determining
21 what a proper sentence might be under the circumstances. I'm
22 not saying the Court must give him 15 years but, certainly,
23 the Court should not sentence him to life simply because he
24 went to trial.

25 There are certain logical underpinnings that explain why
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1 Mr. Deleon did this act on this date. And I think that this
2 is a mitigating factor the Court should take into account.
3 And I think the Court should sentence him to the minimum
4 sentence under the guidelines. And I think that saves both
5 punishment -- and I think it saves everybody.

6 In that term -- because a 20-year sentence, 25-year
7 sentence is a very long time for a man of 34 years old. He
8 has never been in trouble before. That is why I'm asking the
9 Court to do this.

10 MR. ARAUJO: Briefly. The points I want to raise first -
11 - I think it's preposterous for counsel to suggest the
12 defendant's love for the victim should be seen as a
13 mitigating factor by the Court. In fact, the fact that he
14 had these alleged feelings for her should be an aggravating
15 fact that he was able to commit such a heinous act.

16 My only other point -- although the state offered a plea
17 of 15 years in this case, so the record is clear, that it was
18 not because we believed that it was an explanation of what
19 the case was worth or Ms. Diaz's life was worth.

20 There were several reasons for that offer, among them --
21 it placed on the defendant having accountability for his
22 actions, and taken his statement of what he had done. The
23 state placed great -- on that. And not only that, the state
24 also wanted to spare the family and the next of kin the
25 uncertainty while -- especially knowing the trial was going

1 on, as well as future uncertainty specifically to the
2 sentence. That's all I would like to add.

3 THE COURT: All right. You now the doctor's report, Dr.
4 Alvarez's report on the defendant says that he would rather
5 be sent to the electric chair than life, the way he lives in
6 jail. And he said that in prison.

7 The Court has taken into account the situation of the
8 defendant. Yes, he has always been -- here in court. Seems
9 like simple human being. I see the report that he might be
10 borderline mentally retarded or functioning at a low level of
11 intelligence.

12 I think that might be more of a case of low level of
13 intelligence. I've seen him and dealt with him, and I don't
14 think he's retarded. I'm making this finding on the record.
15 While he may not be a great, bright defendant, he has the
16 ability to communicate and express himself.

17 And in this particular case, I remember the confession
18 to the police, first him saying that Lydia Diaz or whatever
19 nickname --

20 MR. ARAUJO: Lasette (Phonetic).

21 THE COURT: Lasette. He strangled her -- and that's what
22 I first wrote out. And when the detective said: how do you
23 expect me to believe this? Then he explained that, yes, he
24 had strangled her. You know, he tried to deny then and he
25 confessed he strangled this woman with a shoelaces.

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1 I don't -- and the jury found him guilty. I give a lot
2 of weight to the jury's verdict. The jury viewed this
3 evidence and found him guilty. I don't know when he
4 strangled her, if he was looking into her eyes as he was
5 killing her. I don't know the agony that Lydia Diaz felt.

6 Imagine not knowing you're being strangled to death, a
7 young woman like that, a woman with children, by this man. I
8 don't know of any evidence that they were ever intimate. The
9 most I know is she was a hostess at a club. Men drink, talk
10 to ladies -- happens at Spanish clubs. And there is no
11 sexual relations or anything like that.

12 They served -- to men; that is not uncommon in Spanish
13 culture here. The woman got killed for no reason. I know
14 you look at the man and you saw a poor guy going to prison.
15 How about the lady that died. She has family members. She
16 has kids who wept through -- having their mom killed, living
17 without a mother.

18 And then the report by Dr. Alvarez; he says throughout
19 most of the session, he appears essentially in denial.
20 Little emotional reaction, and that has been the demeanor in
21 court as well. Clearly, when the issue of sentencing was
22 introduced, he has been distraught.

23 In the pleadings that his case be retried, he keeps
24 repeating that there is no evidence. Contrary to what he
25 things, there was enough evidence to go to the jury. There

1 was enough evidence that he strangled this poor woman for no
2 reason whatsoever in an overjealous --

3 Is there anything else anyone needs to say before
4 sentencing?

5 MR. ARAUJO: No, your Honor.

6 THE COURT: The other day, I was distraught. In a murder
7 case in the middle of the trial, the state offered the
8 defendant a plea of 50 years, and if there was ever anything
9 -- I changed my sentencing for that plea. The defendant was
10 found guilty of second degree murder by a jury. And that's a
11 lesser included offense, adjudicated guilty, and the Court
12 sentenced him to life in prison without the possibility of
13 parole.

14 And he imposed court costs and 100 -- the public
15 defender knew he has 30 days to file information of appeal
16 and appoint the Public Defender's Office for filing further.
17 We need to excuse --

18 MR. GREENSTEIN: I don't have my statute book with me. I
19 don't know the court sentencing -- technically to life
20 without parole. The sentence to life without parole. I
21 don't think the Court sentence without parole --

22 MR. ARAUJO: Pursuant to statute, there is no parole for
23 life sentence.

24 MR. GREENSTEIN: Right.

25 MR. ARAUJO: I understand counsel's point. You can't

1 rely on statutory -- say no parole. Life sentence means no
2 parole.

3 THE COURT: I understand. Life without parole -- there
4 is no longer parole. He will die in prison, and that is
5 exactly what I want.

6 MR. GREENSTEIN: What I'm saying, on the first degree
7 murder, it says life without parole. I don't believe that's
8 a life sentence, it's life.

9 THE COURT: If the language I'm suing is superfluous,
10 they can delete that part of the sentence. Clearly, my
11 intention is he serve life, that he never get out.

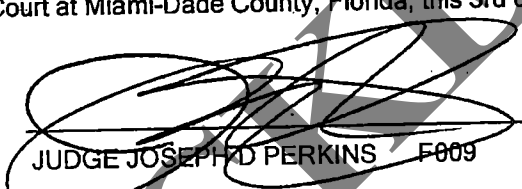
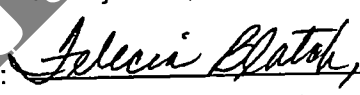
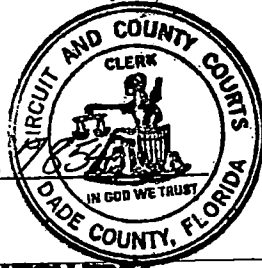
12 MR. GREENSTEIN: I think that the Court made that clear.

13 THE COURT: Thank you. Anything else further?

14 MR. ARAUJO: No, your Honor.

15 THE BAILIFF: All rise.

16 Thereupon the hearing was concluded.
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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA		CASE NUMBER: F01034236
CRIMINAL DIVISION	ORDER DENYING DEFENDANT'S PRO SE MOTION OF HEARING WITH ATTACHED AFFIDAVIT AND TO BE ATTACHED WITH MOTION TO VACATE SENTENCE Filed 7/22/2021	
THE STATE OF FLORIDA PLAINTIFF	VS. DANIEL DELEON DEFENDANT	CLOCK IN
<p>THIS CAUSE HAVING COME BEFORE the Court upon the Defendant's Pro Se Motion and the Court having examined the said Motion and the Motion being insufficient to support the relief prayed, IT IS THEREUPON,</p> <p>CONSIDERED, ORDERED AND ADJUDGED that the above Pro Se Motion filed by the above prisoner be, and the same is hereby DENIED WITHOUT A HEARING</p> <p>The movant is advised that he/she has the right to appeal within thirty (30) days of the rendition of this order.</p> <p>DONE AND ORDERED IN Open Court at Miami-Dade County, Florida, this 3rd day of August, 2021.</p> <p style="text-align: center;"> JUDGE JOSEPH D PERKINS F809</p> <p>I CERTIFY that a copy hereof has been furnished to the Movant, DANIEL DELEON, by mail this</p> <p>AUG 10 2021</p> <p>Harvey Ruvin, Clerk</p> <p>BY:  Deputy Clerk</p> <p style="text-align: right;"> FELECIA BLATCH 7854</p>		

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

STATE OF FLORIDA,

Plaintiff / Respondent

v.

DANIEL DE LEON

Defendant / Petitioner.

CASE NO. F01-34236

SECTION 09

JUDGE: PERKINS

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#D

ORDER DENYING "MOTION OF REHEARING ALTERNATIVELY ENTITLEMENT FOR REHEARING OR TIMELY APPEAL" AND "MOTION OF HEARING"

On July 20, 2021 the Court entered a final Order Denying Postconviction Motion and Other Pending Motions and Directions to Clerk ("Final Order"). Petitioner had thirty days – through August 19, 2021 – to appeal. Fla. R. App. P. 9.110(b). On August 1, 2021, Petitioner filed an unsigned Motion of Hearing asking that a hearing on the motions denied in the Final Order be held on August 28, 2021 at 10:00 a.m. On August 22, 2021, Petitioner filed his "Motion of Rehearing Alternatively Entitlement for Rehearing or Timely Appeal" ("Motion for Rehearing").¹

The "Motion of Hearing" is denied because the Court already addressed the motions at issue in the Final Order. The Motion for Rehearing is denied as untimely. Fla. R. Crim. P. 3.800(b)(1)(B); *Jones v. Jones*, 845 So. 2d 1012, 1013 (Fla. 5th DCA 2003).

Notice of Appeal Deadline and Instructions to Clerk

Deleon has thirty (30) days from the date of this Order to appeal. The Clerk is directed to mail a copy of this Order to Daniel Deleon, DeSoto Annex (Male), D.C. # M52725, 13617 S.E. Highway 70, Arcadia, Florida 34266-7800.

DONE and ORDERED in Miami-Dade County, Florida this 10th day of November, 2021.


JOSEPH PERKINS
CIRCUIT JUDGE

¹ Both motions were first presented to the Court on September 14, 2021.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DANIEL DELEON,
Defendant,

v.
STATE OF FLORIDA,
Plaintiff.

Case No. 01-34236

DIRECTIONS TO THE CLERK


The Defendant/Appellant, Daniel DeLeon, by his undersigned counsel hereby directs the Clerk to include the following items in the original record on appeal:

1. Motion To Vacate Or Set Aside The Sentenced Imposed Based On Second Degree Murder Without Any Other Provisions. *MOTION OF REHEARING AL. ENTITLEMENT FOR REHEARING OR TIMELY APPEAL.*
2. Motion To Supplement With Truthful Exhibits/Nunc Pro Tunc
3. The judgment And Sentence Of The Court.
4. Trial Transcripts Sentencing Hearing All Pages (31) Pages.
5. State Closing Argument On Second Degree Murder And Trial Counsel Closing Argument On Second Degree Murder (Trial Transcripts).

The following Items:


- a. Judgment Form
- b. Information
- c. Verdict Forms
- d. Corrected Clerical Error

Respectfully submitted,


Mr. Daniel DeLeon, Defendant
DC# M52725

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of September, 2021 that a true and correct copy of the foregoing Directions to the Clerk has been placed into the hands of prison officials at DeSoto Correctional Institution for mailing to the State Attorney's Office at: 1350 NW 12th Avenue Miami, Florida 33136.


Mr. Daniel DeLeon, Defendant
DeSoto Correctional Institution
DC# M52725
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

STRICKEN

#23-42

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DANIEL DELEON,
Defendant,

Div. 09

v.
STATE OF FLORIDA,
Plaintiff.

Case No. 01-34236

SEP 27 11:11:27


A-91

NOTICE OF APPEAL

Defendant, Daniel DeLeon, by his undersigned counsel give Notice that he only appealing the following motions to the Third District Court of Appeal:


1. Motion to Vacate or Set Aside the Sentence Imposed Based on Second Degree Murder without any other provisions alternatively writ of habeas corpus.
2. Motion to Supplement with Truthful Exhibits/Nunc Pro Tunc.

Respectfully submitted,


Mr. Daniel DeLeon
DC# M52725


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of September, 2021 that a true and correct copy of the foregoing Notice of Appeal has been placed into the hands of prison officials at DeSoto Correctional Institution for mailing to the State Attorney's Office at: 1350 NW 12th Avenue Miami, Florida 33136.


Mr. Daniel DeLeon, Defendant
DeSoto Correctional Institution
DC# M52725
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

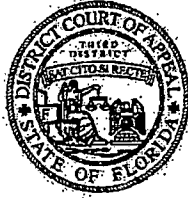
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of September, 2021 that a true and correct copy of the foregoing Directions to the Clerk has been placed into the hands of prison officials at DeSoto Correctional Institution for mailing to the State Attorney's Office at: 1350 NW 12th Avenue Miami, Florida 33136.


Mr. Daniel DeLeon, Defendant
DeSoto Correctional Institution
DC# M52725
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

STRICKEN

Box# 04-23-42



IVAN F. FERNANDEZ
CHIEF JUDGE
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THOMAS LOGUE
EDWIN A. SCALES, III
NORMA S. LINDSEY
ERIC W. HENDON
BRONWYN C. MILLER
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CHIEF DEPUTY CLERK
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CHIEF DEPUTY MARSHAL

DISTRICT COURT OF APPEAL

THIRD DISTRICT
2001 S.W. 117 AVENUE
MIAMI, FLORIDA 33175-1716

TELEPHONE (305) 229-3200

ACKNOWLEDGMENT OF NEW CASE

DATE: December 3, 2021

STYLE: DANIEL DELEON, v. THE STATE OF FLORIDA,

3DCA#: 3D21-2342

The Third District Court of Appeal has received the Notice of Appeal reflecting a filing date of 11/23/21.

The county of origin is Dade.

The lower tribunal case number provided is 01-34236.

Case Type: Criminal The filing fee is No Fee-3.850.

The clerk of the lower tribunal shall index and paginate the record and send copies of the index and the record to the parties. See Fla. R. App. P. 9.141(b)(2)(B).

The Third District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS SIGNED BY AN ATTORNEY MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER.

Please review and comply with any handouts enclosed with this acknowledgment.

cc:

Office Of Attorney General
Miami-Dade Clerk
Daniel Deleon

im


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CLERK'S OFFICE
DISTRICT COURT OF APPEAL
THIRD DISTRICT
MIAMI, FLORIDA

<input checked="" type="checkbox"/> IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA <input checked="" type="checkbox"/> IN THE CIRCUIT COURT IN AND FOR DADE COUNTY, FLORIDA		
<input checked="" type="checkbox"/> DIVISION CRIMINAL <input type="checkbox"/> OTHER	CERTIFICATE OF THE CLERK OF THE COURT	CASE NUMBER(S) F01-34236
STATE OF FLORIDA COUNTY OF MIAMI-DADE		CLOCK IN SS

I, HARVEY RUVIN, Clerk of the Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Miami-Dade County, DO HEREBY CERTIFY that the foregoing pages, numbered 1 To 103 EXCLUSIVE, contain a correct Transcript of the record of the judgment in the case of the State of Florida, Plaintiff, Versus

DANIEL DELEON Defendant, numbered F01-34236 is true and correct recital and copy of all such instruments and proceedings in said cause as appear from the records and files of my office which appear necessary to be included in the transcript of record-on-appeal in compliance with the directions furnished me. Pages numbered To inclusive, embrace to transcribed notes of the Court Reporter, as made at the (trial hearing) of said cause and certified to me by HIM/HER.

IN WITNESS WHERE OF, I have hereunto set my hand and affixed the Seal of the said Circuit Court of the Eleventh Judicial Circuit of Florida at Miami-Dade County, this day of DECEMBER 29, 2021.

HARVEY RUVIN CLERK OF COURT	BY <i>Ronald Bergman</i> DEPUTY CLERK		DECEMBER 29, 2021
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PROVIDED TO DESOTO C.I.
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IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

DANIEL DELEON,
Defendant,

V.

Case No.: 01-34236

STATE OF FLORIDA,
Plaintiff. /


DIRECTIONS TO THE CLERK

The Defendant, Daniel Deleon, Direct the Clerk to include the following Items in the record of Appeal;

- 1) Writ of Mandamus Case No.: 3D21-0905

CERTIFICATE OF SERVICE

I hereby certify that a true copy of Directions To The Clerk was furnished to DCI staff for mailing in postage prepaid envelope addressed to Office of the State Attorney at 1350 N.W. 12th Avenue, Miami, FL 33136 on this 17 day of May, 2022.


Daniel Deleon DC#M52725
Desoto Correctional Institution
13617 Southeast Highway 70
Arcadia, Florida 34266-7800

STRICKEN