

IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE
FLORIDA RULES OF CRIMINAL
PROCEDURE—2018 REGULAR-
CYCLE REPORT

SC18-118

NOTICE OF SCRIVENER'S ERROR

Sheila Ann Loizos, Chair of the Criminal Procedure Rules Committee (“Committee”), and Joshua E. Doyle, Executive Director of The Florida Bar, file this notice of scrivener’s error.

RULE 3.172. ACCEPTANCE OF GUILTY OR NOLO CONTENDERE PLEA

In its opinion, dated July 19, 2018, the Court declined to amend Rule 3.172 (Acceptance of Guilty or Nolo Contendere) as proposed to “require that the terms of the plea agreement include the amount of time credited for time previously service [].” (*See* Opinion at 5.) The Court was, however, silent as to proposed editorial, spelling, and punctuation corrections proposed in subdivisions (c), (c)(10), and (e).

Specifically, within subdivision (c), the Committee proposed several editorial amendments. In subdivision (c), the Committee proposed adding a comma after “personally,” to conform to *In re: Guidelines for Rules Submissions*, AOSC06-14 (Fla. 2006). (*See* Scrivener’s Error Appendix A – 1.) In the title of subdivision (c)(10), and throughout the subdivision, the Committee recommended removing the “s” after “driver” to correctly refer to “driver license.” This would conform the rule to the phraseology used in section 322.01(17), Florida Statutes. The Committee proposed adding an “e” to “nolo contendere” to correct the spelling. Finally, the Committee proposed removing the superfluous parentheses surrounding “either by the court or by a separate agency.” The specific proposed amendments are indicated in yellow highlight in Scrivener’s Error Appendix A. (*See* Scrivener’s Error Appendix A – 3.)

In subdivision (e), the Committee proposed adding a colon to the end of the subdivision. The Committee proposed adding a semicolon to the end of subdivision (e)(1) and making subdivisions (e)(1) and (e)(2) into separate paragraphs to conform to *Guidelines*. (*See* Scrivener’s Error Appendix A – 3.)

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Finally, the Committee proposed an editorial amendment to the 2015 Committee Note adding a comma after the citation for *Padilla v. Kentucky*.

RULE 3.986. FORMS RELATED TO JUDGMENT AND SENTENCE

In subdivision (d) of Rule 3.986 (Forms Related to Judgment and Sentence), under the “Special Provision,” the report did not indicate with struck through text “Criminal” within “Continuing Criminal Enterprise.” (See Scrivener’s Error Appendix A – 14.) The specific word is indicated in yellow highlight in Scrivener’s Error Appendix A.

WHEREFORE, the Criminal Procedure Rules Committee respectfully requests that the Court amend the Florida Rules of Criminal Procedure 3.172 and 3.986 to include the correction of the scrivener’s errors as detailed above.

Respectfully submitted on August 14, 2018.

/s/ Sheila Ann Loizos

Sheila Ann Loizos

Chair

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CERTIFICATE OF COMPLIANCE

I certify that this notice was prepared in compliance with the font requirements of Florida Rule of Appellate Procedure 9.210(a)(2).

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RULE 3.172. ACCEPTANCE OF GUILTY OR NOLO CONTENDERE PLEA

(a) **Voluntariness; Factual Basis.** Before accepting a plea of guilty or nolo contendere, the trial judge shall determine that the plea is voluntarily entered and that a factual basis for the plea exists. Counsel for the prosecution and the defense shall assist the trial judge in this function.

(b) **Open Court.** All pleas shall be taken in open court, except that when good cause is shown a plea may be taken in camera.

(c) **Determination of Voluntariness.** Except when a defendant is not present for a plea, pursuant to the provisions of rule 3.180(d), the trial judge must, when determining voluntariness, place the defendant under oath, address the defendant personally, and determine on the record that he or she understands:

(1) **Nature of the Charge.** The nature of the charge to which the plea is offered, the maximum possible penalty, and any mandatory minimum penalty provided by law.

(2) **Right to Representation.** If not represented by an attorney, that the defendant has the right to be represented by an attorney at every stage of the proceeding and, if necessary, an attorney will be appointed to represent him or her.

(3) **Right to Trial By Jury and Attendant Rights.** The right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury, and at that trial a defendant has the right to the assistance of counsel, the right to compel attendance of witnesses on his or her behalf, the right to confront and cross-examine witnesses against him or her, and the right not to testify or be compelled to incriminate himself or herself.

(4) **Effect of Plea.** Upon a plea of guilty, or nolo contendere without express reservation of the right to appeal, he or she gives up the right to appeal all matters relating to the judgment, including the issue of guilt or innocence, but does not impair the right to review by appropriate collateral attack.

(5) **Waiving Right to Trial.** If the defendant pleads guilty or is adjudged guilty after a plea of nolo contendere there will not be a further trial of any kind, so that by pleading guilty or nolo contendere he or she waives the right to a trial.

(6) **Questioning by Judge.** If the defendant pleads guilty or nolo contendere, the trial judge may ask the defendant questions about the offense to which he or she has pleaded, and if the defendant answers these questions under oath, on the record, and in the presence of counsel, the answers may later be used against him or her in a prosecution for perjury.

(7) **Terms of Plea Agreement.** The complete terms of any plea agreement, including specifically all obligations the defendant will incur as a result.

(8) **Deportation Consequences.**

(A) If the defendant is not a citizen of the United States, a finding of guilt by the court, and the court's acceptance of the defendant's plea of guilty or no contest, regardless of whether adjudication of guilt has been withheld, may have the additional consequence of changing his or her immigration status, including deportation or removal from the United States.

(B) The court should advise the defendant to consult with counsel if he or she needs additional information concerning the potential deportation consequences of the plea.

(C) If the defendant has not discussed the potential deportation consequences with his or her counsel, prior to accepting the defendant's plea, the court is required, upon request, to allow a reasonable amount of time to permit the defendant to consider the appropriateness of the plea in light of the advisement described in this section.

(D) This admonition should be given to all defendants in all cases, and the trial court must not require at the time of entering a plea that the defendant disclose his or her legal status in the United States.

(9) Sexually Violent or Sexually Motivated Offenses. If the defendant pleads guilty or nolo contendere, and the offense to which the defendant is pleading is a sexually violent offense or a sexually motivated offense, or if the defendant has been previously convicted of such an offense, the plea may subject the defendant to involuntary civil commitment as a sexually violent predator upon completion of his or her sentence. It shall not be necessary for the trial judge to determine whether the present or prior offenses were sexually motivated, as this admonition shall be given to all defendants in all cases.

(10) Driver's License Suspension or Revocation. If the defendant pleads guilty or nolo contendere and the offense to which the defendant is pleading is one for which automatic, mandatory driver's license suspension or revocation is required by law to be imposed, (either by the court or by a separate agency), the plea will provide the basis for the suspension or revocation of the defendant's driver's license.

(d) DNA Evidence Inquiry. Before accepting a defendant's plea of guilty or nolo contendere to a felony, the judge must inquire whether counsel for the defense has reviewed the discovery disclosed by the state, whether such discovery included a listing or description of physical items of evidence, and whether counsel has reviewed the nature of the evidence with the defendant. The judge must then inquire of the defendant and counsel for the defendant and the state whether physical evidence containing DNA is known to exist that could exonerate the defendant. If no such physical evidence is known to exist, the court may accept the defendant's plea and impose sentence. If such physical evidence is known to exist, upon defendant's motion specifying the physical evidence to be tested, the court may postpone the proceeding and order DNA testing.

(e) Acknowledgment by Defendant. Before the trial judge accepts a guilty or nolo contendere plea, the judge must determine that the defendant either:

(1) acknowledges his or her guilt; or

(2) acknowledges that he or she feels the plea to be in his or her best interest, while maintaining his or her innocence.

(f) **Proceedings of Record.** The proceedings at which a defendant pleads guilty or nolo contendere shall be of record.

(g) **Withdrawal of Plea Offer or Negotiation.** No plea offer or negotiation is binding until it is accepted by the trial judge formally after making all the inquiries, advisements, and determinations required by this rule. Until that time, it may be withdrawn by either party without any necessary justification.

(h) **Withdrawal of Plea When Judge Does Not Concur.** If the trial judge does not concur in a tendered plea of guilty or nolo contendere arising from negotiations, the plea may be withdrawn.

(i) **Evidence.** Except as otherwise provided in this rule, evidence of an offer or a plea of guilty or nolo contendere, later withdrawn, or of statements made in connection therewith, is not admissible in any civil or criminal proceeding against the person who made the plea or offer.

(j) **Prejudice.** Failure to follow any of the procedures in this rule shall not render a plea void absent a showing of prejudice.

Committee Notes

1977 Adoption. New in Florida. In view of the supreme court's emphasis on the importance of this procedure as set forth in *Williams v. State*, 316 So. 2d 267 (Fla. 1975), the committee felt it appropriate to expand the language of former rule 3.170(j) (deleted) and establish a separate rule. Incorporates Federal Rule of Criminal Procedure 11(c) and allows for pleas of convenience as provided in *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L.Ed.2d 162 (1970).

(a), (b) Mandatory record of voluntariness and factual predicate is proper responsibility of counsel as well as the court.

(c)(iv) This waiver of right to appeal is a change from the proposed amendments to the rules of criminal procedure now pending. A sentence if lawful is not subject to appellate review; a judgment, however, is. The committee was of the opinion that the proposed rule should be expanded to include a waiver of appeal from the judgment as well as the sentence. Waivers of appeal have been

approved. *United States ex rel. Amuso v. LaValle*, 291 F.Supp. 383 (E.D.N.Y. 1968), *aff'd* 427 F.2d 328 (2d Cir. 1970); *State v. Gibson*, 68 N.J. 499, 348 A.2d 769 (1975); *People v. Williams*, 36 N.Y.2d 829, 370 N.Y.S.2d 904, 331 N.E.2d 684 (1975).

(vii) Requires the court to explain the plea agreement to the defendant, including conditions subsequent such as conditions of probation.

(e) Provides a readily available record (either oral or by use of standard forms) in all cases where a felony is charged.

(h) Rewording of federal rule 11(e)(6).

2005 Amendment. Rule 3.172(c)(9) added. See section 394.910, et seq., Fla. Stat.; and *State v. Harris*, 881 So. 2d 1079 (Fla. 2004).

2015 Amendment. In view of the holdings in *Padilla v. Kentucky*, 559 U.S. 356, 130 S. Ct. 1473 (2010), and *Hernandez v. State*, 124 So. 3d 757 (Fla. 2012), the Committee felt it appropriate to expand the requirements in subdivision (c)(8).

RULE 3.986. FORMS RELATED TO JUDGMENT AND SENTENCE

(a) **Sufficiency of Forms.** The forms as set forth below, or computer generated formats that duplicate these forms, shall be used by all courts. Variations from these forms do not void a judgment, sentence, order, or fingerprints that are otherwise sufficient.

(b) Form for Judgment.

___ Probation Violator
___ Community Control Violator
___ Retrial
___ Resentence

In the Circuit Court,
_____ Judicial Circuit, in and for
_____ County, Florida
Division _____
Case Number _____

State of Florida

v.

Defendant

JUDGMENT

The defendant, _____, being personally before this court represented
by _____, the attorney of record, and the state represented by _____, and having

___ been tried and found guilty by jury/by court of the following crime(s)

___ entered a plea of guilty to the following crime(s)

___ entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree of Crime	Case Number	OBTS Number
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

(c) **Form for Charges, Costs, and Fees.**

In the Circuit Court,
_____ Judicial Circuit, in and for
_____ County, Florida
Division _____
Case Number _____

State of Florida

v.

Defendant

CHARGES/COSTS/FEEES

The defendant is hereby ordered to pay the following sums ~~if checked~~:

~~___ \$50.00 pursuant to section 938.03, Florida Statutes (Crimes Compensation Trust Fund).~~

~~___ \$3.00 as a court cost pursuant to section 938.01, Florida Statutes (Criminal Justice Trust Fund).~~

~~___ \$2.00 as a court cost pursuant to section 938.15, Florida Statutes (Criminal Justice Education by Municipalities and Counties).~~

~~___ A fine in the sum of \$ _____ pursuant to section 775.0835, Florida Statutes. (This provision refers to the optional fine for the Crimes Compensation Trust Fund and is not applicable unless checked and completed. Fines imposed as part of a sentence to section 775.083, Florida Statutes, are to be recorded on the sentence page(s).)~~

~~___ A sum of \$ _____ pursuant to section 938.27, Florida Statutes (Prosecution/Investigative Costs).~~

~~___ A sum of \$ _____ pursuant to section 938.29, Florida Statutes (Public Defender/Appointed Counsel Fees).~~

~~___ Restitution in accordance with attached order.~~

~~___ \$201 pursuant to section 938.08, Florida Statutes (Funding Programs in Domestic Violence).~~

Other _____

DONE AND ORDERED in open court in _____ County, Florida, on(date).....

Scrivener's Error Appendix A – 10

(d) Form for Sentencing.

Defendant _____ Case Number _____ OBTS Number _____

SENTENCE

(As to Count ____)

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

(Check one if applicable)

____ and the court having on(date)..... deferred imposition of sentence until this date

____ and the court having previously entered a judgment in this case on(date)..... now resentsences the defendant

____ and the court having placed the defendant on probation/community control and having subsequently revoked the defendant's probation/community control

It Is The Sentence Of The Court That:

____ The defendant pay a fine of \$____, pursuant to section 775.083, Florida Statutes, plus \$____ as the 5% surcharge required by section 938.04, Florida Statutes.

____ The defendant is hereby committed to the custody of the Department of Corrections.

____ The defendant is hereby committed to the custody of the Sheriff of _____ County, Florida

____ The defendant is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.

To Be Imprisoned (check one; unmarked sections are inapplicable):

____ For a term of natural life.

____ For a term of _____.

____ Said SENTENCE SUSPENDED for a period of _____ subject to conditions set forth in this order.

If “split” sentence complete the appropriate paragraph

___ Followed by a period of _____ on probation/community control under the supervision of the Department of Corrections according to the terms and conditions of supervision set forth in a separate order entered herein.

___ However, after serving a period of _____ imprisonment in _____ the balance of the sentence shall be suspended and the defendant shall be placed on probation/community control for a period of _____ under supervision of the Department of Corrections according to the terms and conditions of probation/community control set forth in a separate order entered herein.

In the event the defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied before the defendant begins service of the supervision terms.

SPECIAL PROVISIONS

(As to Count ___)

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

~~Mandatory/Minimum Provisions:~~

~~Firearm~~

~~___ It is further ordered that the 3-year minimum imprisonment provision of section 775.087(2), Florida Statutes, is hereby imposed for the sentence specified in this count.~~

~~Drug Trafficking~~

~~___ It is further ordered that the _____ mandatory minimum imprisonment provision of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.~~

~~Controlled Substance Within 1,000 Feet of School~~

~~___ It is further ordered that the 3-year minimum imprisonment provision of section 893.13(1)(c)1, Florida Statutes, is hereby imposed for the sentence specified in this count.~~

~~Habitual Felony Offender~~

~~___ The defendant is adjudicated a habitual felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.~~

~~Habitual Violent Felony Offender~~

~~_____ The defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of _____ year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.~~

~~Law Enforcement Protection Act~~

~~_____ It is further ordered that the defendant shall serve a minimum of _____ years before release in accordance with section 775.0823, Florida Statutes. (Offenses committed before January 1, 1994.)~~

~~Capital Offense~~

~~_____ It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes. (Offenses committed before October 1, 1995.)~~

~~Short Barreled Rifle, Shotgun, Machine Gun~~

~~_____ It is further ordered that the 5 year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count. (Offenses committed before January 1, 1994.)~~

~~Continuing Criminal Enterprise~~

~~_____ It is further ordered that the 25 year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count. (Offenses committed before January 1, 1994.)~~

~~Taking a Law Enforcement Officer's Firearm~~

~~_____ It is further ordered that the 3 year mandatory minimum imprisonment provision of section 775.0875(1), Florida Statutes, is hereby imposed for the sentence specified in this count. (Offenses committed before January 1, 1994.)~~

~~Sexual Offender/Sexual Predator Determinations:~~

~~Sexual Predator~~

~~The defendant is adjudicated a sexual predator as set forth in section 775.21, Florida Statutes.~~

~~Sexual Offender~~

~~The defendant meets the criteria for a sexual offender as set forth in section 943.0435(1)(a)1a., b., c., or d, Florida Statutes.~~

~~Age of Victim~~

The victim was _____ years of age at the time of the offense.

Age of Defendant

The defendant was _____ years of age at the time of the offense.

Relationship to Victim

The defendant is not the victim's parent or guardian.

Sexual Activity [Section 800.04(4), Florida Statutes]

The offense _____ did _____ did not involve sexual activity.

Use of Force or Coercion [Section 800.04(4), Florida Statutes]

The sexual activity described herein _____ did _____ did not involve the use of force or coercion.

Use of Force or Coercion/unclothed Genitals [Section 800.04(5), Florida Statutes]

The molestation _____ did _____ did not involve unclothed genitals or genital area.

The molestation _____ did _____ did not involve the use of force or coercion.

Other Provisions:

Criminal Gang Activity

_____ The felony conviction is for an offense that was found, pursuant to section 874.04, Florida Statutes, to have been committed for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

[Include all findings, sentencing enhancements, and mandatory minimum provisions, as authorized by law and pronounced at sentencing.]

Retention of Jurisdiction

_____ The court retains jurisdiction over the defendant pursuant to section 947.16(4), Florida Statutes (1983).

Jail Credit

___ It is further ordered that the defendant shall be allowed a total of ___ days as credit for time incarcerated before imposition of this sentence.

CREDIT FOR TIME SERVED
IN RESENTENCING AFTER
VIOLATION OF PROBATION
OR COMMUNITY CONTROL

___ It is further ordered that the defendant be allowed ___ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served and unforfeited gain time previously awarded on case/count _____. (Offenses committed before October 1, 1989.)

___ It is further ordered that the defendant be allowed ___ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served on case/count _____. (Offenses committed between October 1, 1989, and December 31, 1993.)

___ The Court deems the unforfeited gain time previously awarded on the above case/count forfeited under section 948.06(7), Florida Statutes.

___ The Court allows unforfeited gain time previously awarded on the above case/count. (Gain time may be subject to forfeiture by the Department of Corrections under section 944.28(1), Florida Statutes.)

___ It is further ordered that the defendant be allowed ___ days time served between date of arrest as a violator following release from prison to the date of resentencing. The Department of Corrections shall apply original jail time credit and shall compute and apply credit for time served only pursuant to section 921.0017, Florida Statutes, on case/count _____. (Offenses committed on or after January 1, 1994.)

Consecutive/Concurrent as to Other Counts

It is further ordered that the sentence imposed for this count shall run (check one)
___ consecutive to ___ concurrent with the sentence set forth in count ___ of this case.

Consecutive/Concurrent as to Other Convictions

It is further ordered that the composite term of all sentences imposed for the counts specified in this order shall run (check one) ___ consecutive to ___ concurrent with (check one) the following:

___ any active sentence being served.

____ specific sentences: _____

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

The defendant in open court was advised of the right to appeal from this sentence by filing notice of appeal within 30 days from this date with the clerk of this court and the defendant's right to the assistance of counsel in taking the appeal at the expense of the state on showing of indigency.

In imposing the above sentence, the court further recommends _____

DONE AND ORDERED in open court at _____ County, Florida, on(date).....

Judge

(e) **Form for Order of Probation.**

In the _____ Court,
of _____ County, Florida
Case Number _____

State of Florida

v.

Defendant

ORDER OF PROBATION

This cause coming on this day to be heard before me, and you, the defendant, _____, being now present before me, and you having

(check one)

___ entered a plea of guilty to

___ entered a plea of nolo contendere to

___ been found guilty by jury verdict of

___ been found guilty by the court trying the case without a jury of the offense(s) of ____

SECTION 1: Judgment Of Guilt

___ The Court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

____ Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on probation for a period of ____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Probation During Portion Of Sentence

It is hereby ordered and adjudged that you be

____ committed to the Department of Corrections

____ confined in the County Jail

for a term of ____ with credit for ____ jail time. After you have served ____ of the term you shall be placed on probation for a period of ____ under the supervision of the Department of Corrections, subject to Florida law.

____ confined in the County Jail

for a term of ____ with credit for ____ jail time, as a special condition of probation.

It is further ordered that you shall comply with the following conditions of probation during the probationary period:;

~~(1) — Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.~~

~~(2) — You will pay the State of Florida the amount of \$ _____ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.~~

~~(3) — You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.~~

~~(4) — You will not possess, carry, or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.~~

~~(5) — You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your probation.~~

~~(6) — You will not associate with any person engaged in any criminal activity.~~

~~(7) — You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.~~

~~(8) — You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.~~

~~(9) — You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site, or elsewhere, and you will comply with all instructions your officer may give you.~~

~~(10) — You will pay restitution, costs, and/or fees in accordance with the attached orders.~~

~~(11) — You will report in person within 72 hours of your release from confinement to the probation office in _____ County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at _____.~~

~~(12) — You shall submit to the drawing of blood or other biological specimens as required by section 943.325, Florida Statutes.~~

~~(13) — You shall submit to the taking of a digitized photograph as required by section 948.03, Florida Statutes.~~

SPECIAL CONDITIONS

~~_____ You must undergo a (drug/alcohol) evaluation and, if treatment is deemed necessary, you must successfully complete the treatment.~~

~~_____ You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.~~

~~_____ You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.~~

~~_____ You will not associate with _____ during the period of probation.~~

~~_____ You will not associate with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.~~

~~_____ You will not contact _____ during the period of probation.~~

~~_____ You will attend and successfully complete an approved batterers' intervention program.~~

GENERAL CONDITIONS: [List the general conditions of probation pursuant to section 948.03, Florida Statutes.]

SPECIAL CONDITIONS: [List the special conditions of probation as orally pronounced and authorized by law.]

____ Other _____

(Use the space below for additional conditions as necessary.)

~~You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence. The court may rescind or modify at any time the terms and conditions imposed by it upon the probationer.~~

It is further ordered that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. ~~(This paragraph applies only if section 1 or section 2 is checked.)~~

It is further ordered that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, on(date).....

Judge

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

.....(date).....

Probationer _____

Instructed by _____

Original:

Clerk of the Court

Certified Copies:

Probationer
Florida Department of Corrections,
Probation and Parole Service

(f) Form for Community Control.

In the _____ Court,
of _____ County, Florida
Case Number _____

State of Florida

v.

Defendant

ORDER OF COMMUNITY CONTROL

This cause coming on this day to be heard before me, and you, the defendant, _____, being now present before me, and you having

(check one)

___ entered a plea of guilty to

___ entered a plea of nolo contendere to

___ been found guilty by jury verdict of

___ been found guilty by the court trying the case without a jury of the offense(s) of _____

SECTION 1: Judgment of Guilt

___ The court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that you be placed on community control for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

___ Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on Community Control for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Community Control During Portion Of Sentence

It is hereby ordered and adjudged that you be

___ committed to the Department of Corrections

___ confined in the County Jail

for a term of _____ with credit for _____ jail time. After you have served ___ of the term, you shall be placed on community control for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

___ confined in the County Jail

for a term of _____ with credit for _____ jail time, as a special condition of community control.

It is further ordered that you shall comply with the following conditions of community control during the community control period:

~~(1) — Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.~~

~~(2) — You will pay the State of Florida the amount of \$ _____ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.~~

~~(3) — You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.~~

~~(4) — You will not possess, carry, or own any firearm. You will not possess, carry, or own other weapons without first procuring the consent of your officer.~~

~~(5) — You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your community control.~~

~~(6) — You will not associate with any person engaged in any criminal activity.~~

~~(7) — You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.~~

~~(8) — You will work diligently at a lawful occupation, advise your employer of your community control status, and support any dependents to the best of your ability as directed by your officer.~~

~~(9) — You will promptly and truthfully answer all inquiries directed to you by the court or your officer and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.~~

~~(10) — You will report to your officer at least 4 times a week, or, if unemployed full time, daily.~~

~~(11) — You will perform _____ hours of public service work as directed by your officer.~~

~~(12) — You will remain confined to your approved residence except for one half hour before and after your approved employment, public service work, or any other special activities approved by your officer.~~

~~(13) — You will pay restitution, costs, and/or fees in accordance with the attached orders.~~

~~(14) — You will report in person within 72 hours of your release from confinement to the probation office in _____ County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at _____.~~

~~(15) — You shall submit to the drawing of blood or other biological specimens as required by section 943.325, Florida Statutes.~~

~~(16) — You shall submit to the taking of a digitized photograph as required by section 948.101, Florida Statutes.~~

SPECIAL CONDITIONS

~~_____ You must undergo a (drug/alcohol) evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.~~

~~_____ You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.~~

~~_____ You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.~~

~~_____ You will not associate with _____ during the period of community control.~~

~~_____ You will not associate with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.~~

~~_____ You will not contact _____ during the period of community control.~~

~~_____ You will maintain an hourly accounting of all your activities on a daily log which you will submit to your officer on request.~~

~~_____ You will participate in self-improvement programs as determined by the court or your officer.~~

~~_____ You will submit to electronic monitoring of your whereabouts as required by the Florida Department of Corrections.~~

~~_____ You will attend and successfully complete an approved batterers' intervention program.~~

~~_____ Other _____~~

~~_____~~

~~(Use the space below for additional conditions as necessary.)~~

GENERAL CONDITIONS: [List the general conditions of community control pursuant to section 948.101, Florida Statutes.]

SPECIAL CONDITIONS: [List the special conditions of community control as orally pronounced and authorized by law.]

~~You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your community control, or may extend the period of community control as authorized by law, or may discharge you from further supervision or return you to a program of regular probation supervision. If you violate any of the conditions and sanctions of your community control, you may be arrested, and the court may adjudicate you guilty if adjudication of guilt was withheld, revoke your community control, and impose any sentence that it might have imposed before placing you on community control. The court may rescind or modify at any time the terms and conditions imposed by it upon the community controllee.~~

It is further ordered that when you have reported to your officer and have been instructed as to the conditions of community control, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. ~~(This paragraph applies only if section 1 or section 2 is checked.)~~

It is further ordered that the clerk of this court file this order in the clerk's office, and forthwith provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, on(date).....

Judge

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

.....(date).....

Community controller _____

Instructed by _____

Original:

Certified Copies:

Clerk of the Court

Community Controllee

Florida Department of Corrections,

Probation and Parole Service

(g) **Form for Restitution Order.**

In the Circuit Court,
_____ Judicial Circuit, in and for
_____ County, Florida
Division _____
Case Number _____

State of Florida

v.

Defendant

RESTITUTION ORDER

By appropriate notation, the following provisions apply to the sentence imposed in this section:

- ___ Restitution is not ordered as it is not applicable.
- ___ Restitution is not ordered due to the financial resources of the defendant.
- ___ Restitution is not ordered due to _____.
- ___ Due to the financial resources of the defendant, restitution of a portion of the damages is ordered as prescribed below.
- ___ Restitution is ordered as prescribed below.
- ___ Restitution is ordered for the following victim. (Victim refers to the aggrieved party, aggrieved party's estate, or aggrieved party's next of kin if the aggrieved party is deceased as a result of the offense. In lieu of the victim's address, the address and phone number of the prosecuting attorney, victim's attorney, or victim advocate may be used.)

Name of victim

Name of attorney or advocate if applicable

Address _____

City, State, and Zip Code _____

Phone Number (of prosecuting attorney, victim's attorney, or victim advocate) _____

~~_____ The sum of \$ _____ for medical and related services and devices relating to physical, psychiatric, and psychological care, including non-medical care and treatment rendered in accordance with a recognized method of healing.~~

~~_____ The sum of \$ _____ for necessary physical and occupational therapy and rehabilitation.~~

~~_____ The sum of \$ _____ to reimburse the victim for income lost as a result of the offense.~~

~~_____ The sum of \$ _____ for necessary funeral and related services if the offense resulted in bodily injury resulting in the death of the victim.~~

~~_____ The sum of \$ _____ for damages resulting from the offense.~~

~~_____ The sum of \$ _____ for _____~~

~~It is further ordered that the defendant fulfill restitution obligations in the following manner:~~

~~_____ Total monetary restitution is determined to be \$ _____ to be paid at a rate of \$ _____ per (check one) _____ month _____ week _____ other (specify) _____ and is to be paid (check one) _____ through the clerk of the circuit court, _____ to the victim's designee, or _____ through the Department of Corrections, with an additional 4% fee of \$ _____ for handling, processing, and forwarding the restitution to the victim(s).~~

~~_____ For which sum let execution issue.~~

[Include all restitution and findings, as authorized by law and pronounced at sentencing.]

DONE AND ORDERED at _____ County, Florida, on(date).....

Judge

Original: Clerk of the Court

Certified Copy: Victim

Committee Note

1980 Amendment. The proposed changes to rule 3.986 are housekeeping in nature. References to the Department of Offender Rehabilitation have been changed to Department of Corrections to reflect a legislative change. See section 20.315, Florida Statutes (Supp. 1978). The reference to "hard labor" has been

stricken as the courts have consistently held such a condition of sentence is not authorized by statute. See, *e.g.*, *McDonald v. State*, 321 So. 2d 453, 458 (Fla. 4th DCA 1975).