

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

STATE OF FLORIDA

v

Case No. CR-O-99-5467/A

CHARLES BERNARD WALKER,
Defendant

MOTION TO CORRECT ILLEGAL SENTENCE

COMES NOW, Jeffery L. Ashton, State Attorney for the Ninth Judicial Circuit of Florida and pursuant to Florida Rules of Criminal Procedure 3.800(a) and moves this Honorable Court to correct illegal sentence in the above-styled cause and as grounds there would state

The Defendant was convicted of Second Degree Murder. The Defendant was later sentenced on April 6, 2001 to life imprisonment to the Florida Department of Corrections with credit for 1 year 354 days and 3 years minimum/mandatory provision imposed for section 775.087(2) Florida Statute.

The Defendant was tried by a Jury and the court had instructed to the terms of First Degree Murder and lesser included offenses. On February 22, 2001 the Jury found the defendant guilty on Count 1 of Third Degree Murder. The court postponed sentencing until April 6, 2001, then sentenced the defendant to Second Degree Murder based on charging information. The defense counsel had objected to the judgment and sentence but incorrectly

classified the nature of the error. The courts rejected this argument and resentencing at present, and denied the defense counsel's claim.

When evidence sustains only conviction of lesser offense, when the jury determines that the evidence does not prove the offense for which the defendant was charged but does establish his guilt of a lesser statutory degree of the offense, or a lesser necessarily included in the offense charged. The court shall enter the judgment and the jury verdict to the judgment for the lesser degree of the offense or for the lesser included offense. See *Wilson v. State*, 680 So. 2d411 (Fla. 5th DCA 1996).

WHEREFORE, the state prays this Honorable Court will grant this Motion to Correct illegal Sentence and resentence the defendant under the sentencing guidelines.

Respectfully Submitted,



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CHARLES BERNARD WALKER,
Defendant.

ORDER GRANTING MOTION TO CORRECT ILLEGAL SENTENCE

This Cause comes before this Court by and through Jeffery L. Ashton, State Attorney for the Ninth Judicial Circuit of Florida and pursuant to Florida Rules of Criminal Procedure 3.800(a) and moves this Court for an Order correcting the Defendant's illegal sentence. The Court being otherwise advised in the premises, reviewed record, and applicable Law this court finds the following

1. CR-O-99-5467/A The Defendant was convicted of Second Degree Murder 782.04 (2).

In CR-O-99-5467/A The Defendant was sentenced to life imprisonment in the Florida Department of Corrections with credit for 1 year, 354 days jail credit and 3 years minimum/mandatory.

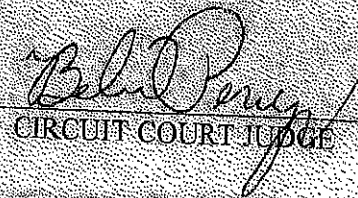
In this instance, on CR-O-99-5467/A The courts imposed life imprisonment on charges of second degree murder. The jury's verdict found the defendant guilty of lesser included offense, Third degree murder. When the courts written sentence which conflicts with an oral pronouncement of a sentence or jury verdict is an illegal sentence, and a motion alleging such a

discrepancy is cognizable in a rule 3-800. See *Wilkins v. State*, 543 So. 2d 800 (Fla. 5th DCA 2003).

It is therefore **ORDERED AND ADJUDGED** that the Defendant's Motion to Correct Illegal Sentence is **GRANTED** and the Defendant is sentenced to 15 years in Department of Corrections and awarded all past jail and prison credit.

It is further **ORDERED** that the Clerk of the Circuit Court is directed to provide a certified copy of this order to the Florida Department of Corrections Bureau of Sentence Structure, 2601 Blairstone Road, Tallahassee, Florida 32399-2500.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida, this 25 day of Sept, 2013, *non pro tunc*, April 2001.


CIRCUIT COURT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have placed a true and correct copy of the foregoing has been furnished by U.S. Mail to Nicole L. Benjamin, Benjamin Law Group, 1516 E. Colonial Dr., Suite 110, Orlando, FL 32803 on this 25 day of September 2013.


JULIE SHY
JUDICIAL ASSISTANT