

Supreme Court of Florida

No. SC21-891

IN RE: AMENDMENTS TO FLORIDA RULE OF CRIMINAL PROCEDURE 3.992.

March 24, 2022
CORRECTED OPINION

PER CURIAM.

This matter is before the Court for consideration of proposed amendments to Florida Rule of Criminal Procedure 3.992. We have jurisdiction. See art. V, § 2(a), Fla. Const. The Criminal Court Steering Committee (CCSC) filed a report proposing amendments to rule 3.992 (Criminal Punishment Code Scoresheets). The CCSC’s report was in response to a referral from the Court to propose amendments to the rule in accordance with the Court’s recent decision in *State v. Gabriel*, 314 So. 3d 1243, 1252 (Fla. 2021) (concluding that “under section 921.0024(2), the LPS [lowest permissible sentence] is an individual minimum sentence where there are multiple convictions subject to sentencing on a single

scoresheet”). The CCSC and the Court previously published the proposal for comment. The CCSC submitted an amended report, which was published by the Court and received one comment.

Having considered the amended proposal, the comment, and the Committee’s response, the Court hereby amends rule 3.992 with additional modifications to the amended proposal. Specifically, under the sentence computation heading, in the third box, additional language is added to explain that the lowest permissible sentence is imposed if it is higher than the statutory maximum for an individual felony offense pursuant to *Gabriel*, and a detailed calculation is added to explain how to total the maximum sentence for each felony offense before the court for sentencing.

The CCSC’s amended proposal does not fully resolve the concerns identified by this Court in *Gabriel*. In *Gabriel*, on the single line titled “maximum sentence in years,” the trial judge entered “25 years,” the collective statutory maximum for the three offenses before the court for sentencing. 314 So. 3d at 1251 n.6. As noted by this Court in *Gabriel*, this single line suggested one collective maximum sentence when there were multiple convictions subject to sentencing. Further, the language in the third box

stating that “[t]he 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 (LPS) under the Code exceeds the statutory maximum” created ambiguity regarding the trial court’s individual consideration of each offense’s statutory maximum sentence for purposes of determining whether it was exceeded by the LPS. The CCSC’s response suggests that the purpose of the single line titled “maximum sentence in years” in the third box under the sentence computation heading is to assist the trial court in accurately advising a defendant of the maximum prison exposure prior to entering a plea. We believe that the amendments reflected in appendix A to this opinion clarify the calculation for determining a defendant’s total maximum sentence when there are multiple offenses before the court for sentencing. For purposes of illustrating its use, we applied the amendments to rule 3.992 to Gabriel’s case in appendix B to this opinion.

Accordingly, we amend Florida Rule of Criminal Procedure 3.992 as reflected in appendix A to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments to the rule shall become effective

immediately. Because the amendments were significantly altered from the version that was previously published for comment, interested persons shall have seventy-five days from the date of this opinion in which to file comments with the Court.¹

It is so ordered.

CANADY, C.J., and POLSTON, LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

THE FILING OF A MOTION FOR REHEARING SHALL NOT ALTER THE EFFECTIVE DATE OF THESE AMENDMENTS.

1. All comments must be filed with the Court on or before June 7, 2022, with a certificate of service verifying that a copy has been served on the Committee Chair, Honorable Debra J. Riva, Twelfth Judicial Circuit, P.O. Box 48927, Sarasota, Florida 34230-5927, driva@jud12.flcourts.org, and on the OSCA Staff Liaison to the Committee, Bart Schneider, 500 S. Duval Street, Tallahassee, Florida 32399, schneidb@flcourts.org, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until June 28, 2022, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal) in accordance with *In re Electronic Filing in the Supreme Court of Florida via the Florida Courts E-Filing Portal*, Fla. Admin. Order No. AOSC13-7 (Feb. 18, 2013). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927; no additional copies are required or will be accepted.

Original Proceeding – Florida Rules of Criminal Procedure

Judge Debra J. Riva, Chair, Criminal Court Steering Committee,
Sarasota, Florida, and Bart Schneider, Staff Liaison, Office of the State
Courts Administrator, Tallahassee, Florida,

for Petitioner

Hon. Carlos J. Martinez and Maria E. Lauredo on behalf of the Florida
Public Defender Association, Inc., Miami, Florida,

Responding with comments

APPENDIX A

Rule 3.992(a) Criminal Punishment Code Scoresheet

The Criminal Punishment Code Scoresheet Preparation Manual is available at: http://www.dc.state.fl.us/pub/sen_cpcm/index.html

1. DATE OF SENTENCE	2. PREPARER'S NAME	3. COUNTY	4. SENTENCING JUDGE	
5. NAME (LAST, FIRST, M.I.)	6. DOB	8. RACE <input type="checkbox"/> B <input type="checkbox"/> W <input type="checkbox"/> OTHER	10. PRIMARY OFF. DATE	12. PLEA <input type="checkbox"/>
	7. DC #	9. GENDER <input type="checkbox"/> M <input type="checkbox"/> F	11. PRIMARY DOCKET #	TRIAL <input type="checkbox"/>

I. **PRIMARY OFFENSE:** If Qualifier, please check A S C R (A=Attempt, S=Solicitation, C=Conspiracy, R=Reclassification)

FELONY DEGREE	F.S.#	DESCRIPTION	OFFENSE LEVEL	POINTS
_____ / _____ / _____				
(Level - Points: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)				
Prior capital felony triples Primary Offense points <input type="checkbox"/>				I. _____

II. **ADDITIONAL OFFENSE(S):** Supplemental page attached

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 _____							

(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)

Prior capital felony triples Additional Offense points

Supplemental page points _____

II. _____

III. **VICTIM INJURY:**

	Number	Total		Number	Total
2nd Degree Murder	240 x _____	= _____	Slight	4 x _____	= _____
Death	120 x _____	= _____	Sex Penetration	80 x _____	= _____
Severe	40 x _____	= _____	Sex Contact	40 x _____	= _____
Moderate	18 x _____	= _____			

III. _____

IV. **PRIOR RECORD:** Supplemental page attached

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER	POINTS
_____ / _____ / _____			<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 _____	= _____
_____ / _____ / _____			<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 _____	= _____

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 TOTAL DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	OFFENSE/DATE/STATE	NUMBER	POINTS
_____	_____ / _____	_____	□ □ □ □	_____ / _____ / _____	_____ X _____	= _____
_____	_____ / _____	_____	□ □ □ □	_____ / _____ / _____	_____ X _____	= _____
_____	_____ / _____	_____	□ □ □ □	_____ / _____ / _____	_____ X _____	= _____
_____	_____ / _____	_____	□ □ □ □	_____ / _____ / _____	_____ X _____	= _____
_____	_____ / _____	_____	□ □ □ □	_____ / _____ / _____	_____ X _____	= _____
_____	_____ / _____	_____	□ □ □ □	_____ / _____ / _____	_____ X _____	= _____

(Level = Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

IV. _____

REASONS FOR DEPARTURE - MITIGATING CIRCUMSTANCES
(reasons may be checked here or written on the scoresheet)

- Legitimate, uncoerced plea bargain.
- The defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- The capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- The defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction, or for a physical disability, and the defendant is amenable to treatment.
- The need for payment of restitution to the victim outweighs the need for a prison sentence.
- The victim was an initiator, willing participant, aggressor, or provoker of the incident.
- The defendant acted under extreme duress or under the domination of another person.
- Before the identity of the defendant was determined, the victim was substantially compensated.
- The defendant cooperated with the State to resolve the current offense or any other offense.
- The offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.
- At the time of the offense the defendant was too young to appreciate the consequences of the offense.
- The defendant is to be sentenced as a youthful offender.
- The defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program.
- The defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.

Pursuant to 921.0026(3) the defendant's substance abuse or addiction does not justify a downward departure from the lowest permissible sentence, except for the provisions of s. 921.0026(2)(m).

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

APPENDIX B

The maximum sentence for each individual felony offense is the statutory maximum as provided in s. 775.082, F.S., unless the lowest permissible sentence listed above exceeds the statutory maximum for that offense. If the lowest permissible sentence exceeds the statutory maximum for an individual felony offense, the lowest permissible sentence replaces the statutory maximum and must be imposed for that offense. See *State v. Gabriel*, 314 So. 3d 1243 (Fla. 2021). Sentences for multiple felony offenses may be imposed concurrently or consecutively. If total sentence points are greater than or equal to 363, a life sentence may be imposed.

Primary offense: <u>Attempted robbery with a firearm</u> Description	<u>15 years</u> Maximum sentence in years
Additional offense: <u>Resisting officer with violence</u> Description	<u>8.93 years</u> Maximum sentence in years
Additional offense: <u>Aggravated assault with a firearm</u> Description	<u>8.93 years</u> Maximum sentence in years
Additional offense: _____ Description	_____ Maximum sentence in years
Total maximum sentence in years for all counts above if consecutive sentences imposed:	<u>32.86 years</u>