APPLICATION FOR NOMINATION TO THE FIFTH DISTRICT COURT

Instructions: *Respond fully to the questions asked below. Please make all efforts to include your full answer to each question in this document. You may attach additional pages, as necessary, however it is discouraged. In addition to the application, you must provide a recent color photograph to help identify yourself.*

Full Name: Keith F. White **Social Security No.:** REDACTED

Florida Bar No.: 957259 **Date Admitted to Practice in Florida:** 9/29/1992

1. Please state your current employer and title, including any professional position and any public or judicial office you hold, your business address and telephone number.

   State of Florida, Circuit Judge, Ninth Judicial Circuit, Orange County Courthouse, 425 N. Orange Ave., Orlando, FL 32801, 407-836-0477.

2. Please state your current residential address, including city, county, and zip code. Indicate how long you have resided at this location and how long you have lived in Florida. Additionally, please provide a telephone number where you can be reached (preferably a cell phone number).

   XXXXXXX-REDACTED-XXXXXXX (Orange County). I have resided at this address since 1998, and I have resided in Florida since 1967. Mobile: REDACTED.

3. State your birthdate and place of birth. REDACTED; Honolulu, Hawaii.

4. Are you a registered voter in Florida (Y/N)? Yes.

5. Please list all courts (including state bar admissions) and administrative bodies having special admissions requirements to which you have ever been admitted to practice, giving the dates of admission, and if applicable, state whether you have ever been suspended or resigned. Please explain the reason for any lapse in membership.

   The Florida Bar (9-29-92); U.S. District Court, M.D. Fla. (12-17-92); U.S. Court of Appeals, 11th Cir. (3-1-93); U.S. District Court, N.D. Fla. (1-15-99); U.S. District Court, S.D. Fla. (1-15-99).

6. Have you ever been known by any aliases? No. If so, please indicate and when you were known by such alias. N/A.

EDUCATION:

7. List in reverse chronological order each secondary school, college, university, law school or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, the date the degree was received, class standing, and graduating

GPA (if your class standing or graduating GPA is unknown, please request the same from such school).

Florida State Univ.: 1989-92; J.D., High Honors, 1992; 12/171; 89.5/100.0.
Univ. of Central Fla.: 1986-89; B.S.E., Summa Cum Laude, 1989; 41/1267; 3.83/4.00.
Brevard Community College: 1984-86; A.A., 1986; standing & GPA requested.
Rockledge HS: 1980-84; Diploma, 1984; Co-Valedictorian (class size unavailable); 3.74/4.00.

8. List and describe any organizations, clubs, fraternities or sororities, and extracurricular activities you engaged in during your higher education. For each, list any positions or titles you held and the dates of participation.

Florida State University: Law Review, 1990-1992; Moot Court, 1990-1992; Student Gov't Ass'n, 1990-1991 or 1992 (Supreme Court Justice, 1990-1991 or 1992); Student Bar Ass'n, 1989-1992 (Law Student Representative, YLD of The Florida Bar, 1990-1991).
University of Central Florida: Student Gov't Ass'n, 1986-1989 (Senator, 1986-1988 (Chairman of Legislative, Judicial & Rules Committee, 1987-1988), Attorney General, 1988-1989); Lambda Chi Alpha (fraternity), 1986-1989 (Treasurer, 1987-1988); Academic Peer Advisement Team (incoming freshmen assistance organization), 1988-1989; Order of Omega (fraternity & sorority honor & service organization), 1988-1989 (President, 1988-1989); President's Leadership Council (honor & service organization), 1987-1988.

EMPLOYMENT:

9. List in reverse chronological order all full-time jobs or employment (including internships and clerkships) you have held since the age of 21. Include the name and address of the employer, job title(s) and dates of employment. For non-legal employment, please briefly describe the position and provide a business address and telephone number.

See response to 1; Feb. 1, 2011-Present.
President and sole shareholder of Keith F. White, P.A., which was a partner in Broad and Cassel, 390 N. Orange Ave., Ste. 1400, Orlando, FL 32801, 2000-Jan. 31, 2011.
Associate, Broad and Cassel, address above, 1992-1999.
Summer Law Clerk, Carlton, Fields, et al., Orlando, FL, 1991.
Summer Law Clerk, Moore, Williams, et al., Tallahassee, FL, 1990.

10. Describe the general nature of your current practice including any certifications which you possess; additionally, if your practice is substantially different from your prior practice or if you are not now practicing law, give details of prior practice. Describe your typical clients or former clients and the problems for which they sought your services.

During the period from 1998 to January 2011, I focused my practice in the area of labor and employment ("L&E") law, and was lead L&E counsel for the Greater Orlando Aviation Authority from August 2000 to January 2011. My clients and I attempted to identify potential

problems in an effort to avoid future litigation. I assisted employers in navigating through the statutes and regulations that govern the workplace and defending against employment-related claims in administrative and judicial proceedings. Management and I worked together to resolve union-related matters, including collective bargaining, organizing campaigns, and unfair labor practice charges. I also handled a wide variety of complex litigation matters, and assisted my clients with all aspects of such litigation in the trial and appellate courts.

11. What percentage of your appearance in court in the last five years or in the last five years of practice (include the dates: Jan. 2006-Jan. 2011) was:

Court		Area of Practice	
Federal Appellate	0 %	Civil	100 %
Federal Trial	2 %	Criminal	0 %
Federal Other	0 %	Family	0 %
State Appellate	1 %	Probate	0 %
State Trial	97 %	Other	0 %
State Administrative	0 %		
State Other	0 %		
TOTAL	100 %	TOTAL	100 %

If your appearance in court the last five years is substantially different from your prior practice, please provide a brief explanation: See response to 18 regarding the period from 1993 to 1997.

12. In your lifetime, how many (number) of the cases that you tried to verdict, judgment, or final decision were:

Jury? 3 (in one of those trials a non-jury declaratory judgment claim was tried by the court at the same time)

Non-jury? 0 (except as noted)

Arbitration? 0

Administrative Bodies? 0

Appellate? 5

13. Please list every case that you have argued (or substantially participated) in front of the United States Supreme Court, a United States Circuit Court, the Florida Supreme Court, or a Florida District Court of Appeal, providing the case name, jurisdiction, case number, date of argument,

and the name(s), e-mail address(es), and telephone number(s) for opposing appellate counsel. If there is a published opinion, please also include that citation.

A. Three Keys, Ltd. v. Kennedy Funding, Inc., 28 So. 3d 894 (Fla. 5th DCA 2009); oral argument date: unknown; opposing appellate counsel: David Simmons, dsimmons@dsklawgroup.com, 407-422-2454; Ken Hazouri, khazouri@dsklawgroup.com, 407-422-2454; Bart Valdes, bvaldes@dsklawgroup.com, 813-251-5825.

B. Laborers' Int'l Union v. Greater Orlando Aviation Authority, 869 So. 2d 608 (Fla. 5th DCA 2004); oral argument date: unknown; opposing appellate counsel: Tobe Lev, tlev@eganlev.com, 407-422-1400.

C. Corporate Express Office Products, Inc. v. Phillips, 847 So. 2d 406 (Fla. 2003), quashing 800 So. 2d 618 (Fla. 5th DCA 2001); oral argument dates: Nov. 4, 2002 (Fla.), N/A (5th DCA); opposing appellate counsel: Allan Weitzman, aweitzman@weitzmanams.com, 561-221-4437; Joseph Santoro, jsantoro@gunster.com, 561-655-1980; Sarah Mindes, sarah_mindes@yahoo.com, 847-828-2580.

D. Hydro Aluminum Automotive, Inc. v. Sorensen, 165 F.3d 40 (11th Cir. 1998) (mem.); oral argument date: Nov. 19, 1998; opposing appellate counsel: Wayne Allen, wallenatty@gmail.com, 321-431-0645; R. Brent Blackburn, rb2112tyc@gmail.com, 321-259-7306.

E. RTC v. SLR of Maitland Center Ltd., 22 F.3d 1098 (11th Cir. 1994) (mem.); oral argument date: unknown; opposing appellate counsel: Guy Motzer, guy@guymotzerlaw.com, 561-818-4602.

14. Within the last ten years, have you ever been formally reprimanded, sanctioned, demoted, disciplined, placed on probation, suspended, or terminated by an employer or tribunal before which you have appeared? No. If so, please state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action. N/A.

15. In the last ten years, have you failed to meet any deadline imposed by court order or received notice that you have not complied with substantive requirements of any business or contractual arrangement? No. If so, please explain full. N/A.

16. For your last six cases, which were tried to verdict or handled on appeal, either before a jury, judge, appellate panel, arbitration panel or any other administrative hearing officer, list the names, e-mail addresses, and telephone numbers of the trial/appellate counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

17. For your last six cases, which were either settled in mediation or settled without mediation or trial, list the names and telephone numbers of trial counsel on all sides and court case numbers (include appellate cases). *This question is optional for sitting judges who have served five years or more.*

18. During the last five years, on average, how many times per month have you appeared in Court or at administrative hearings? If during any period you have appeared in court with greater frequency than during the last five years, indicate the period during which you appeared with greater frequency and succinctly explain.

During the last five years I was in practice, on average, I appeared in court two times per month. During the period from 1993 to 1997, my practice was almost exclusively devoted to commercial litigation matters in state trial court, including hundreds of collection matters. I had primary responsibility for all but one of the collection matters, and had secondary responsibility for the other commercial litigation matters. I believe that I averaged 4 court appearances per month during that period.

19. If Questions 16, 17, and 18 do not apply to your practice, please list your last six major transactions or other legal matters that were resolved, listing the names, e-mail addresses, and telephone numbers of the other party counsel. N/A.

20. During the last five years, if your practice was greater than 50% personal injury, workers' compensation or professional malpractice, what percentage of your work was in representation of plaintiffs or defendants? N/A.

21. List and describe the five most significant cases which you personally litigated giving the case style, number, court and judge, the date of the case, the names, e-mail addresses, and telephone numbers of the other attorneys involved, and citation to reported decisions, if any. Identify your client and describe the nature of your participation in the case and the reason you believe it to be significant.

A. Three Keys, Ltd. v. Kennedy Funding, Inc., 28 So. 3d 894 (Fla. 5th DCA 2009), affirming 2002-CA-3552 (Fla. 9th Cir. Ct. 2008).

In the Kennedy Funding case, I represented Kennedy Funding, Inc., KFI, LLC and Anglo-American Financial, LLC. Bob Gatton (unavailable to contact) was lead counsel, and we were assisted by Kimberly Doud (kdoud@littler.com, 407-393-2951). Plaintiffs, Three Keys, Ltd. and Brad Muller, as Successor Trustee of the Corinne R. Muller Trust, were represented by David Simmons, Ken Hazouri and Bart Valdes (see 13.A for contact info for all of them). Shortly before trial, Irwin Gilbert (igilbert@conradscherer.com, 954-462-5500) substituted as counsel for Anglo-American.

Plaintiffs, as participant lenders, and Defendants, as lead lenders, made a loan of more than $16 million, which was secured by a super-priority mortgage lien on certain collateral, and executed an inter-creditor agreement. After the borrower defaulted, Defendants foreclosed, obtained title and sold the collateral. Plaintiffs claimed that Defendants failed to consult with them and failed to sell the collateral in a proper manner. Plaintiffs alleged numerous causes of action in multiple versions of their complaint, and sought approximately $12 million in damages and a declaratory judgment regarding the distribution of sales proceeds. My involvement in the case began in fall 2003. Soon thereafter, the case was transferred to Business Court (Judge Roche). I had primary responsibility over the day-to-day aspects of the litigation, including, but not limited to, strategic planning, discovery, and motion practice. I frequently interacted with our clients, and provided direction and guidance to Ms. Doud and the paralegal assigned to the case. I attended the trial of the case in June 2007, and assisted Bob Gatton and Irwin Gilbert. I had primary responsibility over the pre-trial stipulation, motions for directed verdict and jury instructions, and handled the arguments regarding those matters. After the jury's verdict, I was primarily responsible for the renewed motion for directed verdict, and was substantially involved in the preparation of the motion for new trial and the motion for entry of final judgment. I argued the renewed motion for directed verdict before the trial court. I had primary responsibility over the appeal of the Final Judgment, and secondary responsibility over the appeal of the order denying attorneys' fees. Irwin Gilbert and I handled the oral argument before the Fifth DCA regarding Plaintiffs' appeal of the Final Judgment. I was primarily responsible for Defendants' Memorandum in Opposition to Plaintiffs' Motion for Rehearing, Rehearing En Banc, and/or Certification. Plaintiffs' Motion was denied on February 18, 2010. Subsequently, Mr. Gilbert and I handled the settlement negotiations that led to the resolution of the case.

The case is legally significant because the Fifth DCA determined the liability standard applicable to a party who is expressly granted "sole discretion" and is sued for breach of the implied covenant of good faith and fair dealing. The case is personally significant because I was extensively involved in all aspects of this extremely contentious and complex case, including a two-week jury trial and a 90-minute appellate oral argument.

B. Laborers' Int'l Union v. Greater Orlando Aviation Authority, 869 So. 2d 608 (Fla. 5th DCA 2004), affirming CA-2002-037 (Fla. PERC 2002).

In the GOAA case, I represented GOAA, and I was assisted by Kimberly Doud (see 21.A for contact info). Tobe Lev (see 13.B for contact info) was opposing counsel.

The Union filed an unfair labor practice charge against my client based on alleged failure to bargain. I was substantially involved with the legal analysis and other preparations for the anticipated PERC proceedings. After PERC's summary dismissal of the charge, I took the lead in preparing the brief filed with the Fifth DCA, and argued the case before that court.

The case is legally significant because the Fifth DCA held that GOAA could unilaterally impose a stricter requirement on its employees' access to secured areas, notwithstanding that an employee was terminated because he did not meet the stricter requirements, which could broadly affect union and management relations regarding security measures implemented by other public transportation

agencies. The case is personally significant because it was the first appeal that I handled for a very important client and against an opposing counsel with a distinguished career representing unions.

C. Corporate Express Office Products, Inc. v. Phillips, 847 So. 2d 406 (Fla. 2003), quashing 800 So. 2d 618 (Fla. 5th DCA 2001), reversing CIO-00-8168 (Fla. 9th Cir. Ct. 2001).

In the Phillips case, I represented Doug Phillips, Lori Farrell, Edward Goff and Commercial Design Services, Inc. Alan Gerlach (deceased) was my co-counsel during the proceedings before the trial court (Judge Sprinkel) and the Fifth DCA, and we were assisted by Keith Kress (kresske@yahoo.com, 407-353-6369). I was assisted by Steve Turner (contact info unknown) and Kimberly Doud (see 21.A for contact info) during the Supreme Court proceedings. Allan Weitzman, Joseph Santoro and Sarah Mindes (see 13.C for contact info for all of them) were opposing counsel.

Plaintiff alleged that my individual clients breached their non-compete agreements and alleged other related claims. I was substantially involved in the trial court proceedings, which included handling depositions and other discovery, preparing a motion to dismiss and attending the preliminary injunction hearing. I was also substantially involved in preparing the briefs filed with the Fifth DCA. I took the lead in preparing the brief filed with the Supreme Court, and argued the case before that Court. I handled the settlement negotiations that led to the resolution of the case.

The case is legally significant because the Supreme Court determined the effect of an asset sale, a stock sale, a merger and a name change on a successor's ability to enforce its predecessor's non-compete agreements. The case is personally significant because it is the only case that I handled through all three levels of our judicial system.

D. Remis v. University of Central Florida Board of Trustees, 6:03-cv-210-Orl-22DAB (M.D. Fla. 2003); Remis v. University of Central Florida Board of Trustees, 2003-CA-1421 (Fla. 9th Cir. 2003).

In the UCF case, I represented UCF and twenty-two employees of UCF who were sued individually, including, the President, the Provost, the Dean of the College of Health and Public Affairs, and the General Counsel. I was assisted by Kimberly Doud (see 21.A for contact info), and Youndy Cook (youndy.cook@ucf.edu, 407-823-2482) and Scott Cole (scott.cole@ucf.edu, 407-823-2482), both in-house counsel for UCF. Plaintiffs, Rob Remis (contact info unknown) and Diane Sudia (contact info unknown) were attorneys and represented themselves.

Plaintiffs were a tenured associate professor (Mr. Remis) and a former assistant professor (Ms. Sudia) who claimed that they had been discriminated against in violation of state and federal law, and alleged various other state law claims. I handled the mediation during the EEOC proceedings. I was lead counsel in the state court (Judge Gridley) and federal court (District Judge Conway, Magistrate Judge Baker) proceedings. I handled the depositions and other discovery, attended hearings in both courts, and prepared and responded to motions in both courts. I had primary responsibility for preparing a motion to dismiss in each court, and argued the motion filed in the state court. I handled the settlement negotiations that led to the resolution of the case.

The case is legally significant because it raised important issues regarding Eleventh Amendment immunity, sovereign immunity, individual liability, the faculty tenure selection process and the faculty contract renewal process. The case is personally significant because it was challenging to represent many highly educated and opinionated individuals and their distinguished university in a very acrimonious dispute, and was satisfying that the success of the motions to dismiss facilitated a settlement that seemed impossible to achieve at the outset.

E. Bared & Co. v. School Board of Orange County, 97-889-CIV-ORL-18 (M.D. Fla. 1997).

In the School Board case, I represented the School Board. Andrew Thomas (abtlaw@mindspring.com, 407-404-0898) was lead counsel and I was associate counsel. After the trial, Arthur England (deceased), Thom Rumberger (deceased) and Chris Hill (chill@hrkmlaw.com, 407-926-7460) joined as co-counsel. Plaintiff was represented by Paul Platte (paul@paulplatte.com, 727-474-1011) and Olga Fernandez (contact info unknown).

Plaintiff was an HVAC subcontractor that claimed that it had been subjected to discrimination in violation of federal law. I prepared a pre-trial motion for summary judgment and assisted in trial preparations. I attended the jury trial in June 1997 and assisted Mr. Thomas. After the adverse jury verdict, I was substantially involved in the preparation of a motion for judgment as a matter of law, a motion for a new trial, and the replies to Plaintiff's responses to the post-trial motions. After the court (Judge Sharp) granted the motion for a new trial and set aside the $3.5 million verdict, the client retained David King (dking@kbzwlaw.com, 407-422-2472) and Bruce Blackwell (bruceblackwell46@outlook.com, 407-353-3045) to handle the matter and my involvement ended.

The case is legally significant because it raised important issues regarding respondeat superior liability based on alleged wrongdoing of staff and the use of a disparity study that was commissioned to redress past discrimination. The case is personally significant because I acquired federal court trial experience, had the opportunity to work closely with Arthur England on the post-trial motions, and believe that the success of the motion for a new trial enabled the School Board to settle the case for less than the amount of the verdict that was set aside.

22. Attach at least two, but no more than three, examples of legal writing which you personally wrote. If you have not personally written any legal documents recently, you may attach a writing sample for which you had substantial responsibility. Please describe your degree of involvement in preparing the writing you attached.

Please see the attached copy of the Order on Motions for Summary Judgment entered in the Singh case referenced in 26(iv)B. I analyzed the motions, issues and authorities, discussed same with the assigned Staff Attorney, Megan Bittakis, and provided directions for Ms. Bittakis to prepare several drafts of the order. I reviewed all drafts prepared by Ms. Bittakis, modified them as I deemed appropriate, and signed the final version of the order.

Please see the attached copy of the Order Denying Defendant's Successive Motion for Postconviction Relief: to Vacate, Set Aside, or Correct Sentence on Count Two Upon Remand entered in the Ortiz case referenced in 28. I analyzed the motion, issues and authorities, discussed

same with the assigned Staff Attorney, Michael Andriano, and provided directions for Mr. Andriano to prepare a draft of the order. After I reviewed the draft prepared by Mr. Andriano, I made substantial modifications to the draft and signed the final version of the order.

PRIOR JUDICIAL EXPERIENCE OR PUBLIC OFFICE

23. Have you ever held judicial office or been a candidate for judicial office? If so, state the court(s) involved, the dates of service or dates of candidacy, and any election results.

Yes. On Jan. 3, 2011, I was appointed as Circuit Judge, Circuit 9, Group 27. I commenced my term on Feb. 1, 2011, for a term ending in Jan. 2013. On Aug. 14, 2012, I won the election for that position for a term that commenced in Jan. 2013. In 2018, I was elected (unopposed) for that position for a term that commenced in Jan. 2019. I served as an Associate Judge of the Fifth District Court of Appeal on March 22 & 24, 2016, July 25, 2019, and Oct. 8, 2020. I served as a Referee from Dec. 17, 2019 to July 9, 2020 in The Florida Bar v. Gabaldon, SC19-1963 (Fla.).

24. If you have previously submitted a questionnaire or application to this or any other judicial nominating commission, please give the name(s) of the commission, the approximate date(s) of each submission, and indicate if your name was certified to the Governor's Office for consideration.

Fifth District Court JNC: Mar. 2006, Feb. 2017, May 2018, Dec. 2018 & Aug. 2019; Ninth Judicial Circuit Court JNC: Feb. 2010, Sep. 2010 & Oct. 2010; Florida Federal JNC: Aug. 2013. My name was certified to the Governor's Office regarding my applications submitted in May 2018, Oct. 2010, Sep. 2010 & Feb. 2010.

25. List any prior quasi-judicial service, including the agency or entity, dates of service, position(s) held, and a brief description of the issues you heard. None.

26. If you have prior judicial or quasi-judicial experience, please list the following information:

(i) the names, phone numbers and addresses of six attorneys who appeared before you on matters of substance;

Deneen N. Carrier, Esq., Law Offices of Robert D. Tetreault, 100 S. Ashley Dr., Ste. 550, Tampa, FL 33602, 813-301-3600.

Thomas E. Dukes, III, Esq., McEwan, Martinez, Dukes & Hall, P.A., 108 E. Central Blvd., Orlando, FL 32801, 407-423-8571.

Walter A. Ketcham, Jr., Esq., Grower Ketcham, 901 N. Lake Destiny Rd., Ste. 450, Maitland, FL 32751, 407-423-9545.

Robert L. McLeod, II, Esq., The McLeod Firm, 1200 Plantation Island Dr. S., Ste. 140, St. Augustine, FL 32080, 904-471-5007.

Keith R. Mitnik, Esq., Morgan & Morgan, P.A., 20 N. Orange Ave., Ste. 1600, Orlando, FL 32801, 407-420-1414.

Justin C. Patrou, Esq., Public Defender's Office, 9th Judicial Cir., 2 Courthouse Square, Kissimmee, FL 34741, 407-742-7024.

(ii) the approximate number and nature of the cases you handled during your tenure;

In the Domestic Violence Division, from Feb. 1, 2011 to Dec. 31, 2012, I handled more than 2,000 cases, and presided over more than 1,000 court proceedings, including final injunction hearings and multi-day bench trials for family cases.

In the Criminal Division, from Jan. 1, 2013 to Dec. 31, 2014, and from Jan. 1, 2018 to Mar. 2020, I presided over numerous jury trials, several violation of probation hearings, and a multitude of other proceedings, including bond hearings, competency hearings, pleas, sentencing hearings and suppression hearings. I estimate that I handled thousands of cases because I had approximately 450 cases pending on a daily basis. From Mar. 2020 to present, I have not conducted any jury trials and have conducted a limited number of other proceedings because of pandemic-related restrictions. Approximately 650 cases are pending at this time.

In the Civil Division, from Jan. 1, 2015 to Dec. 31, 2017, I presided over numerous jury and non-jury trials, and a panoply of evidentiary and non-evidentiary hearings on the multitude of motions filed in civil cases. I estimate that I handled thousands of cases because I had approximately 2500 cases pending on a daily basis.

(iii) the citations of any published opinions; and

None.

(iv) descriptions of the five most significant cases you have tried or heard, identifying the citation or style, attorneys involved, dates of the case, and the reason you believe these cases to be significant.

A. State v. Nelson, 2017-CF-15684 (Fla. 9th Cir. Ct. 2019), aff'd, 298 So. 3d 1162 (Fla. 5th DCA 2020).

In this case, Defendant, Scott Nelson, was charged with First Degree Murder with a Weapon (Capital felony), Burglary of a Dwelling with an Assault or a Battery with a Weapon (Life felony), Kidnapping with Intent to Inflict Bodily Harm or Terrorize with a Weapon (Life felony), Carjacking with a Deadly Weapon (1st degree felony punishable by life), and Robbery with a Deadly Weapon (1st degree felony punishable by life) by the State of Florida. The State sought the death penalty on the First Degree Murder count. State's counsel: Asst. State Attorneys, Linda Burdick, Kelly Hicks & Kenneth Nunnelley. Defendant's counsel: Asst. Public Defenders, Robert Larr, Chelsea Simmons & Sarah Moore.

Jury selection was conducted on June 10-14, 2019 and June 17-21, 2019. The guilt phase was tried on June 24-28, 2019. During the guilt phase, twenty-eight witnesses testified, including Defendant, and one hundred ninety-four exhibits were admitted in evidence. I granted Defendant's motion for judgment of acquittal on the Burglary count because the State conceded that it failed to prove that count, but the remaining counts were submitted to the jury. After several hours of deliberations, the jury found Defendant guilty as charged on all counts. The penalty phase on the First Degree Murder count was tried on July 1-3, 2019 and July 8-11, 2019. During the penalty phase, nineteen witnesses testified, including Defendant, and sixteen exhibits were admitted in evidence. After two days of deliberations, the jury returned a verdict for life imprisonment. I sentenced Defendant to life imprisonment on the First Degree Murder count, followed by three concurrent life imprisonment sentences on the other three counts.

This case is legally significant because it presents the following issues: 1) whether Defendant may raise on appeal alleged errors during jury selection after he instructed his attorneys to not take any action to prevent a jury from being sworn on June 21, 2019; and 2) whether Defendant was entitled to the Insanity Instruction based on testimony at trial, even though he did not comply with Rule 3.216.

This case is personally significant because it was my first trial of a capital case, it had extensive publicity before and during trial, it required a complicated three-phase jury selection with 424 potential jurors, it involved a challenging defendant, and it was the most emotionally and intellectually demanding case that I have ever handled. It was both humbling and motivating to handle such a case. In addition, handling the case filled me with gratitude for all the support I received from so many people, and with pride for the jurors and others whose service was essential in bringing this case to conclusion.

B. Singh v. Orange County, 2014-CA-10858 (Fla. 9th Cir. Ct. 2016), aff'd, 230 So. 3d 639 (Fla. 5th DCA 2017), approved, 268 So. 3d 668 (Fla. 2019).

In this case, Plaintiffs, Sheriff Jerry Demings, Property Appraiser Rick Singh and Tax Collector Scott Randolph, in their official capacities, filed suit against Defendants, Orange County, Florida, Supervisor of Elections Bill Cowles and Orange County Canvassing Board ("OCCB"). Subsequently, OCCB was dropped as Defendant, and Rick Singh and Scott Randolph, in their individual capacities, were added as Plaintiffs. Plaintiffs' counsel: Eric Dunlap (Sheriff Demings); Michael Marder (Mr. Singh, in both capacities); Gigi Rollini (Mr. Randolph, official capacity); Scott Randolph (pro se). Defendants' counsel: William Turner (Orange County); Edward Chew (OCCB); Nicholas Shannin (Mr. Cowles).

Plaintiffs alleged that an amendment to the Orange County Charter, proposed by the County Commission, and ratified by the voters in 2014, was invalid under various provisions of the Florida Constitution, Florida Statutes and the Charter. Essentially, the

amendment established non-partisan elections and term limits for county constitutional officers, including Sheriff, Property Appraiser and Tax Collector. Plaintiffs sought declaratory and supplemental relief. Orange County denied Plaintiffs' allegations and challenged Plaintiffs' standing to assert the claims in their official capacities. The parties filed motions for summary judgment, and presented extensive written arguments to the court. Hearings on the motions were held on December 2, 2015, April 18, 2016 and May 26, 2016. On March 28, 2016, I announced my decision and rationale regarding the motion for summary judgment as to standing, which is set forth in the transcript filed on April 12, 2016. A Final Judgment in that regard was entered on June 16, 2016. As to the other motions for summary judgment, I entered an order on June 16, 2016 and a Final Judgment on July 12, 2016. On August 25, 2016, I entered a corrected order granting Plaintiffs' emergency motion to vacate automatic stay.

This case is legally significant because I believe it presented the following issues of first impression: 1) whether county constitutional officers have standing to challenge a charter amendment that establishes non-partisan elections and term limits for the offices they hold; 2) whether such a charter amendment, if proposed by ordinance, is governed by, and complies with, the single-subject statute; and 3) whether such a charter amendment conflicts with the constitutional and statutory provisions regarding the Legislature's authority to regulate elections. This case is personally significant because I had no prior experience with an elections case, and it thoroughly prepared me to perform the duties of an appellate judge. I read voluminous filings, conducted extensive research, analyzed a vast array of authorities, listened to sophisticated arguments and pondered complex issues. After Ms. Bittakis was assigned to assist me, I worked with her as an appellate judge works with a law clerk. I believe my oral and written rulings are clear and understandable, and reflect my dedication to judicial restraint, stare decisis and textualism, which are essential to upholding the rule of law.

C. U.S. Bank v. Village Square, 2014-CA-7727 (Fla. 9th Cir. Ct. 2015), aff'd, 206 So. 3d 806 (Fla. 5th DCA 2016).

In this case, Plaintiff, U.S. Bank Nat'l Ass'n, filed suit against Defendant, Village Square Condo. Plaintiff's counsel: Avri Ben-Hamo. Defendant's counsel: Jacob Brainard.

Plaintiff asserted claims to compel compliance with section 718.116(1)(b), Fla. Stat., for declaratory relief and for damages. Defendant disputed those claims and asserted that Plaintiff did not qualify for safe harbor under the statute, which limits a first mortgagee's liability for past-due condominium association assessments. Each party filed a motion for summary judgment. On June 25, 2015, both motions were heard, and I entered a Final Judgment in favor of Plaintiff.

This case is legally significant because it resulted in the holding that a party who is the holder, but not the owner, of the note and mortgage is entitled to the protections of section

718.116(1)(b). The case raised a very important issue that needed to be resolved because foreclosure actions are often filed by non-owner holders. Two other district courts are in accord with the Fifth DCA. See Brittany's Place Condo. Ass'n v. U.S. Bank, 205 So. 3d 794 (Fla 2d DCA 2016); San Matera the Gardens Condo. Ass'n v. Fed. Home Loan Mortgage Corp., 207 So. 3d 1017 (Fla. 4th DCA 2017). This case is personally significant because, without the benefit of any appellate decision, I analyzed the authorities, considered the arguments and utilized a textualist approach to reach a conclusion that has been approved by every appellate court that has addressed the issue.

D. State v. Paolercio, 2012-CF-793 (Fla. 9th Cir. Ct. 2013), pet. granted, 129 So. 3d 1174 (Fla. 5th DCA 2014).

In this case, Defendant, Alfonso Paolercio, was charged with Possession of Cocaine (3d degree felony) and two misdemeanors by the State of Florida. State's counsel: An Asst. State Attorney, but I cannot recall his or her name. Defendant's counsel: Asst. Public Defender, Justin Patrou.

My predecessor had released Defendant on his own recognizance after he was found incompetent to proceed because of a traumatic brain injury that occurred several years prior to his arrest. Subsequently, Defendant was arrested on new charges: burglary of dwelling (2d degree felony); grand theft (3d degree felony); and criminal mischief (misdemeanor). The Initial Appearance Judge revoked his pretrial release and detained him without bond pursuant to section 903.0471, Fla. Stat., which authorizes such detention when the court find probable cause to believe the defendant committed a new crime while on pretrial release. Defendant filed a motion for release on his own recognizance. I held hearings on September 10, 12 and 19, 2013, October 24, 2013 and November 22, 2013. I concluded that: 1) Defendant remained incompetent to proceed; 2) Defendant could not be restored to competency through treatment; 3) section 916.17, Fla. Stat., was inapplicable; 4) there was probable cause that Defendant committed new crimes while on pretrial release; 5) section 903.0471 was applicable; and 6) the totality of the circumstances, including burglary of dwelling being defined as a "dangerous crime" under section 907.041, Fla. Stat. (regulating pretrial detention and release), authorized the court to detain Defendant without bond.

This case is legally significant because it raised an issue of first impression: whether a defendant who is unable to be restored to competency, able to survive alone or with assistance, and unlikely to cause serious bodily harm to himself or others, may be detained pursuant to section 903.0471. This issue arises frequently in criminal cases and needed to be addressed. The appellate court stated that I "may [have been] correct" in finding that section 916.17 did not apply and recognized that "[t]his case presents a troubling set of circumstances." It concluded, however, that section 903.0471 does not permit detention of such a defendant who commits new crimes while on pretrial release. This case is personally significant because it was the first time that an appellate court overruled a decision I made. This was an important lesson because the judicial oath requires me to submit to a higher

court, even if I disagree with that court's decision. Without humility, a judge cannot uphold the rule of law.

E. Colaneri v. Romans, 2011-DR-16408 (Fla. 9th Cir. Ct. 2011).

In this case, Petitioner, Judy Colaneri, filed an action seeking an injunction for protection against domestic violence against Respondent, Christopher Romans. Petitioner's counsel: Calvin Horvath. Respondent was pro se.

Petitioner alleged that Respondent had brutally attacked her with a brick and caused significant injuries. In his pending criminal case, Respondent was charged with Attempted 1st Degree Murder with a Weapon. I conducted a hearing on October 4, 2011. Petitioner and Respondent testified. It was undisputed that the parties did not have children together. It was also undisputed that the parties were homeless and had lived together on the street, but had never lived together in a building, house, room or even a tent. Based on the undisputed facts and applicable statute, I dismissed the petition without prejudice.

This case is legally significant because it presented an important question regarding the meaning of section 741.28, Fla. Stat. Under that statute, if the parties do not have a child in common, then the petitioner cannot obtain a domestic violence injunction unless the parties are currently residing or previously resided together "in the same single dwelling unit." I concluded that the plain language of the statute precluded Petitioner's claim. Although the allegations of violence were horrific, I declined Petitioner's counsel's invitation to essentially rewrite the statute to cover the homeless. The Legislature has not amended the statute after my ruling. This case is personally significant because it was the first case where my decision was publicly criticized. In addition, my opponent used media reports about that decision during the 2012 election campaign. I value that experience because it strengthened my resolve to do what is right despite the consequences.

27. Provide citations and a brief summary of all of your orders or opinions where your decision was reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, attach copies of the opinions.

State v. Jones, 2017-CF-9370 (Fla. 9th Cir. Ct. 2018) (denying motion to suppress), aff'd on other grounds, 279 So. 3d 342 (Fla. 5th DCA 2019), rev'd sub nom. Jones v. State, 2020 WL 391319 (Fla. 5th DCA Jan. 24, 2020); State v. Ortiz, 1999-CF-11367 (Fla. 9th Cir. Ct. 2019) (denying motion for postconviction relief), rev'd, 287 So. 3d 678 (Fla. 5th DCA 2019); State v. Cuyler, 1997-CF-9833 (Fla. 9th Cir. Ct. 2019) (dismissing motion for postconviction relief), rev'd, 278 So. 3d 314 (Fla. 5th DCA 2019); Newman v. Hirst, 2015-CA-7389 (Fla. 9th Cir. Ct. 2017) (finding waiver of all privileges to interrogatories), pet. granted, 236 So. 3d 506 (Fla. 5th DCA 2018); Milord v. State, 2016-CA-7847 (Fla. 9th Cir. Ct. 2016) (dismissing petition for writ of habeas corpus), aff'd on other grounds, 225 So. 3d 305 (Fla. 5th DCA 2017); Copeland v.

Varnedore, 2012-CA-17372 (Fla. 9th Cir. Ct. 2016) (granting motion to amend to add punitive damages claims), quashed, 210 So. 3d 741 (Fla. 5th DCA 2017); U.S. Bank Trust, N.A. v. Ashe, 2014-CA-3987 (Fla. 9th Cir. Ct. 2016) (denying motion to vacate final judgment), rev'd, 204 So. 3d 597 (Fla. 5th DCA 2016); Gray v. Dep't of Corrections, 2016-CA-4697 (Fla. 9th Cir. Ct. 2016) (denying petition for writ of habeas corpus), aff'd on other grounds, 204 So. 3d 975 (Fla. 5th DCA 2016); Whitfield v. State, 2016-CA-4568 (Fla. 9th Cir. Ct. 2016) (denying petition for writ of habeas corpus), aff'd on other grounds, 202 So. 3d 116 (Fla. 5th DCA 2016); Nelson v. State, 2015-CA-9205 (Fla. 9th Cir. Ct. 2016) (dismissing petition for writ of habeas corpus), rev'd, 200 So. 3d 1300 (Fla. 5th DCA 2016); State v. Mora, 2013-CF-4544 (Fla. 9th Cir. Ct. 2014) (convicting and sentencing after jury trial), rev'd, 188 So. 3d 111 (Fla. 5th DCA 2016); Paolercio (see 26(iv)D). Copies of my orders (without attachments) entered in the aforesaid cases are attached.

28. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, attach copies of the opinions.

Singh (see 26(iv)B); Watkins v. State, 278 So. 3d 314 (Fla. 5th DCA 2019) (I joined, but did not write, opinion); State v. Ortiz, 1999-CF-11367 (Fla. 9th Cir. Ct. 2020), appeal pending, 5D20-1270 (Fla. 5th DCA). Copies of my orders entered in Singh and Ortiz are attached (see 22).

29. Has a complaint about you ever been made to the Judicial Qualifications Commission? I do not know of any such complaint. If so, give the date, describe the complaint, whether or not there was a finding of probable cause, whether or not you have appeared before the Commission, and its resolution. N/A.

30. Have you ever held an attorney in contempt? No. If so, for each instance state the name of the attorney, case style for the matter in question, approximate date and describe the circumstances. N/A.

31. Have you ever held or been a candidate for any other public office? If so, state the office, location, dates of service or candidacy, and any election results.

Yes. I was elected Councilman for the City of Maitland in 1996 and 1999, and served in that position from 1996 to 2001. In 2000, I was elected as Vice Mayor by the City Council, and served in that position until 2001. No earlier than 1994, I was appointed by the City Council to the Board of Zoning Adjustment, and served in that position until my term as Councilman commenced.

NON-LEGAL BUSINESS INVOLVEMENT

32. If you are now an officer, director, or otherwise engaged in the management of any business enterprise, state the name of such enterprise, the nature of the business, the nature of your duties,

and whether you intend to resign such position immediately upon your appointment or election to judicial office. N/A.

33. Since being admitted to the Bar, have you ever engaged in any occupation, business or profession other than the practice of law? No. If so, explain and provide dates. N/A. If you received any compensation of any kind outside the practice of law during this time, please list the amount of compensation received. N/A.

POSSIBLE BIAS OR PREJUDICE

34. The Commission is interested in knowing if there are certain types of cases, groups of entities, or extended relationships or associations which would limit the cases for which you could sit as the presiding judge. Please list all types or classifications of cases or litigants for which you, as a general proposition, believe it would be difficult for you to sit as the presiding judge. Indicate the reason for each situation as to why you believe you might be in conflict. If you have prior judicial experience, describe the types of cases from which you have recused yourself.

None, other than: 1) cases involving my former law firm or former clients for whom I performed substantial services; 2) cases that I handled as a circuit judge; and 3) as permitted or required by applicable law. As a circuit judge, I have recused myself approximately 19 times for reasons 1) and 3).

PROFESSIONAL ACCOMPLISHMENTS AND OTHER ACTIVITIES

35. List the titles, publishers, and dates of any books, articles, reports, letters to the editor, editorial pieces, or other published materials you have written or edited, including materials published only on the Internet. None. Attach a copy of each listed or provide a URL at which a copy can be accessed. N/A.

36. List any reports, memoranda or policy statements you prepared or contributed to the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. None. Provide the name of the entity, the date published, and a summary of the document. N/A. To the extent you have the document, please attach a copy or provide a URL at which a copy can be accessed. N/A.

37. List any speeches or talks you have delivered, including commencement speeches, remarks, interviews, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place they were delivered, the sponsor of the presentation, and a summary of the presentation. If there are any readily available press reports, a transcript or recording, please attach a copy or provide a URL at which a copy can be accessed.

I spoke on "Mental Health and Emotional Issues in the Workplace" and "Protecting Business Interests" at a seminar sponsored by Sterling Education Services, LLC in Orlando, FL on May 8, 2003. I spoke on "Strategies for Downsizing-What You Need to Know" at a meeting of the HR

Peer Group of Associated Builders & Contractors, Inc. in Orlando, FL on Nov. 18, 2008. I spoke to students enrolled in Professor Kinyel Ragland's U.S. Gov't course at Valencia Community College in Kissimmee, FL on Mar. 28, 2014. I spoke at the "What Civil Judges Want You to Know" Judicial Forum sponsored by National Business Institute, Inc. in Orlando, FL on Nov. 13, 2015. I spoke on "Courtroom Etiquette" at a New Lawyer Training Program sponsored by the Orange County Bar Ass'n, presented in person in Orlando, FL on Aug. 3, 2018 and Aug. 16, 2019, and presented virtually on Sep. 11, 2020. I moderated a panel discussion on "Staying Ahead of the COVID Curve: Employment Law Do's and Don'ts" at a Bench Bar Conference sponsored by the Orange County Bar Ass'n, presented virtually on Oct. 2, 2020. I do not have copies of, or URLs for, press reports, transcripts or recordings of any of those.

38. Have you ever taught a course at an institution of higher education or a bar association? If so, provide the course title, a description of the course subject matter, the institution at which you taught, and the dates of teaching. If you have a syllabus for each course, please provide.

Yes. See response to 37. I do not have a syllabus for any of those.

39. List any fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement. Include the date received and the presenting entity or organization.

See response to 8. Dean's List (UCF, 1986-1989); Greek Scholar of the Year (Inter-Fraternity Council, 1989); Honor Societies at UCF-Phi Kappa Phi (date unknown), Omicron Delta Kappa (date unknown); Graduate Scholarships (Lambda Chi Alpha, 1989-1992); Book Award for Legal Research & Writing II (FSU, 1990); Order of the Coif (FSU, 1992). I was named in the Florida Labor & Employment section of "Chambers USA 2010." In June 2010, I received a Certificate of Appreciation from the Legal Aid Society of the OCBA for service as a guardian ad litem.

40. Do you have a Martindale-Hubbell rating? No. If so, what is it and when was it earned? N/A.

41. List all bar associations, legal, and judicial-related committees of which you are or have been a member. For each, please provide dates of membership or participation. Also, for each indicate any office you have held and the dates of office.

The Florida Bar (1992-present (Federal Court Practice Committee, 2004-2010)); Orange County Bar Association (1992-present); Central Florida Association for Women Lawyers (2018-present); Hispanic Bar Association of Central Florida (2011-present); Paul C. Perkins Bar Association (2015-present).

42. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in the previous question to which you belong, or to which you have belonged since graduating law school. For each, please provide dates of membership or participation and indicate any office you have held and the dates of office.

Grace Church (2019-present); First United Methodist Church of Winter Park (1995-2019 (Co-Chair, Student Ministry Leadership Committee, 2016-2017; Board of Trustees, 2012-2014)); Bible Study Fellowship (2017-present); George C. Young American Inn of Court (2011-present); The Federalist Society (2019-present); Osceola County Bar Association (2013-2014); Central Florida Family Law American Inn of Court (2011-2012); UCF Alumni Association (1992-present (Board of Directors, 2002-2011; Chair, Legislative Relations Committee, 2004-2008; Vice Chair, 2007-2008; Chair-Elect, 2008-2009; Chairman, 2009-2010; Past Chair, 2010-2011)); UCF Golden Knights Club (1992-present); Lambda Chi Alpha Educational Foundation (2009-2011 (Board of Directors, 2009-2011; Chair, Board Development Committee, 2010-2011)); Lambda Chi Alpha Fraternity (1986-present (Former Director, UCF Chapter Housing Corporation)); Society for Human Resource Management (1998-2011); Central Florida Human Resource Association (1998-2011); Orange County Young Republicans (no earlier than 1993-no later than 2001); Maitland Rotary Club (no earlier than 1994-no later than 2001).

43. Do you now or have you ever belonged to a club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion (other than a church, synagogue, mosque or other religious institution), national origin, or sex (other than an educational institution, fraternity or sorority)? If so, state the name and nature of the club(s) or organization(s), relevant policies and practices and whether you intend to continue as a member if you are selected to serve on the bench.

I was a member of the Maitland Rotary Club ("the MRC"), a community service and networking organization. It is my understanding that the MRC had a policy or practice of restricting its membership to males. During the time of my membership in the MRC, that policy or practice was changed and females were accepted for membership. I joined the MRC no earlier than 1994 and resigned from the MRC no later than 2001.

44. Please describe any significant pro bono legal work you have done in the past 10 years, giving dates of service.

I served as a guardian ad litem in several cases over several years prior to February 1, 2011.

45. Please describe any hobbies or other vocational interests.

Working out, watching movies, reading, listening to classical music, dining out and traveling.

46. Please state whether you have served or currently serve in the military, including your dates of service, branch, highest rank, and type of discharge.

I do not currently serve, and I have not served, in the military.

47. Please provide links to all social media and blog accounts you currently maintain, including, but not limited to, Facebook, Twitter, LinkedIn, and Instagram. N/A.

FAMILY BACKGROUND

48. Please state your current marital status. If you are currently married, please list your spouse's name, current occupation, including employer, and the date of the marriage. If you have ever been divorced, please state for each former spouse their name, current address, current telephone number, the date and place of the divorce and court and case number information.

I am married to X-REDACTED-X, who is employed in a sales position by Georgia-Pacific Consumer Products LP. We have been married since Aug. 12, 1995. I have never been divorced.

49. If you have children, please list their names and ages. N/A. If your children are over 18 years of age, please list their current occupation, residential address, and a current telephone number. N/A.

CRIMINAL AND MISCELLANEOUS ACTIONS

50. Have you ever been convicted of a felony or misdemeanor, including adjudications of guilt withheld? No. If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms. N/A.

51. Have you ever pled nolo contendere or guilty to a crime which is a felony or misdemeanor, including adjudications of guilt withheld? No. If so, please list and provide the charges, case style, date of conviction, and terms of any sentence imposed, including whether you have completed those terms. N/A.

52. Have you ever been arrested, regardless of whether charges were filed? No. If so, please list and provide sufficient details surrounding the arrest, the approximate date and jurisdiction. N/A.

53. Have you ever been a party to a lawsuit, either as the plaintiff, defendant, petitioner, or respondent? If so, please supply the case style, jurisdiction/county in which the lawsuit was filed, case number, your status in the case, and describe the nature and disposition of the matter.

Yes.

I believe that the first suit was filed and tried in 1986. I was the defendant and State Farm or its insured (Ms. Kidd) was the plaintiff. The suit sought recovery of the costs to repair the damage that Ms. Kidd's automobile sustained in a collision between her automobile and my automobile. The court in Brevard County entered a judgment against me and I paid the judgment pursuant to a payment plan.

The second suit was filed in May 2011. My wife and I filed a petition against Commissioner of Internal Revenue (Docket No. 10703-11S, U.S. Tax Ct.) disputing a Notice of Deficiency for tax year 2008. In July 2011, the court entered a Decision, pursuant to the agreement of the parties, finding that there was no deficiency or penalty due from, and no overpayment due to, my wife and me for tax year 2008.

The third suit was filed in Oct. 2015. John Henry Frederick filed a "Motion for Damages" against "The Honorable Judge Keith F. White" which was docketed by the Clerk as a civil action (2015-CA-9732, Fla. 9th Cir. Ct.), but was never served on me. I became aware of this case on Feb. 13, 2017 when I received a copy of the Notice of Lack of Prosecution entered on that date. On May 17, 2017, an Order of Dismissal was entered. The motion does not contain any specific factual allegations against me, so I am unable to respond to the motion. The caption of the motion refers to 2013-CF-12364, a case assigned to Criminal Division 17. I was not assigned to that division until Jan. 1, 2018.

54. To your knowledge, has there ever been a complaint made or filed alleging malpractice as a result of action or inaction on your part? No.

55. To the extent you are aware, have you or your professional liability carrier ever settled a claim against you for professional malpractice? No. If so, give particulars, including the name of the client(s), approximate dates, nature of the claims, the disposition and any amounts involved. N/A.

56. Has there ever been a finding of probable cause or other citation issued against you or are you presently under investigation for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group? No. If so, provide the particulars of each finding or investigation. N/A.

57. To your knowledge, within the last ten years, have any of your current or former co-workers, subordinates, supervisors, customers, clients, or the like, ever filed a formal complaint or accusation of misconduct including, but not limited to, any allegations involving sexual harassment, creating a hostile work environment or conditions, or discriminatory behavior against you with any regulatory or investigatory agency or with your employer? No. If so, please state the date of complaint or accusation, specifics surrounding the complaint or accusation, and the resolution or disposition. N/A.

58. Are you currently the subject of an investigation which could result in civil, administrative, or criminal action against you? No. If yes, please state the nature of the investigation, the agency conducting the investigation, and the expected completion date of the investigation. N/A.

59. Have you ever filed a personal petition in bankruptcy or has a petition in bankruptcy been filed against you, this includes any corporation or business entity that you were involved with? No. If

so, please provide the case style, case number, approximate date of disposition, and any relevant details surrounding the bankruptcy. N/A.

60. In the past ten years, have you been subject to or threatened with eviction proceedings? No. If yes, please explain. N/A.

61. Please explain whether you have complied with all legally required tax return filings. To the extent you have ever had to pay a tax penalty or a tax lien was filed against you, please explain giving the date, the amounts, disposition, and current status.

I have complied with all legally required tax return filings. A tax lien has never been filed against me. I paid a tax penalty in the amount of $114 in 2007 because an insufficient amount of federal income tax was withheld during 2006.

HEALTH

62. Are you currently addicted to or dependent upon the use of narcotics, drugs, or alcohol? No.

63. During the last ten years have you been hospitalized or have you consulted a professional or have you received treatment or a diagnosis from a professional for any of the following: Kleptomania, Pathological or Compulsive Gambling, Pedophilia, Exhibitionism or Voyeurism? No. If your answer is yes, please direct each such professional, hospital and other facility to furnish the Chairperson of the Commission any information the Commission may request with respect to any such hospitalization, consultation, treatment or diagnosis. ["Professional" includes a Physician, Psychiatrist, Psychologist, Psychotherapist or Mental Health Counselor.] N/A. Please describe such treatment or diagnosis. N/A.

64. In the past ten years have any of the following occurred to you which would interfere with your ability to work in a competent and professional manner: experiencing periods of no sleep for two or three nights, experiencing periods of hyperactivity, spending money profusely with extremely poor judgment, suffering from extreme loss of appetite, issuing checks without sufficient funds, defaulting on a loan, experiencing frequent mood swings, uncontrollable tiredness, falling asleep without warning in the middle of an activity? No. If yes, please explain. N/A.

65. Do you currently have a physical or mental impairment which in any way limits your ability or fitness to properly exercise your duties as a member of the Judiciary in a competent and professional manner? No. If yes please explain the limitation or impairment and any treatment, program or counseling sought or prescribed. N/A.

66. During the last ten years, have you ever been declared legally incompetent or have you or your property been placed under any guardianship, conservatorship or committee? No. If yes, provide full details as to court, date, and circumstances. N/A.

67. During the last ten years, have you unlawfully used controlled substances, narcotic drugs, or dangerous drugs as defined by Federal or State laws? No. If your answer is "Yes," explain in detail. (Unlawful use includes the use of one or more drugs and/or the unlawful possession or distribution of drugs. It does not include the use of drugs taken under supervision of a licensed health care professional or other uses authorized by Federal or State law provisions.) N/A.

68. In the past ten years, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, cautioned, or terminated by an employer as result of your alleged consumption of alcohol, prescription drugs, or illegal drugs? No. If so, please state the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action. N/A.

69. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? No. If so, please state the date you were requested to submit to such a test, the type of test required, the name of the entity requesting that you submit to the test, the outcome of your refusal, and the reason why you refused to submit to such a test. N/A.

70. In the past ten years, have you suffered memory loss or impaired judgment for any reason? No. If so, please explain in full. N/A.

SUPPLEMENTAL INFORMATION

71. Describe any additional education or experiences you have which could assist you in holding judicial office.

I earned 188.25 credit hours of CJE from Feb. 1, 2011 to Jan. 31, 2020, which is more than twice the amount of CJE required during that period. Those courses were in the substantive areas of civil, ethics, family, criminal, and fairness and diversity, including the handling capital cases ("HCC") initial course, two HCC refresher courses, and the fairness and diversity course required for all judges.

My undergraduate training in engineering provides me with analytical skills that complement those skills that I learned in law school, developed in private practice and acquired on the bench. My experience with the City of Maitland assists me as a judge because as Councilman I gave all interested parties an opportunity to be heard, analyzed all aspects of the issue and exercised my reasoned judgment to render a decision. In addition, that experience will assist me as a district judge because I learned how to successfully build consensus without compromising core values. That experience, coupled with my judicial experience, has given me a practical perspective of the importance of separation of powers, and will enable me to be an effective liaison between the judicial branch and the other branches of government. In fact, in April 2019, a group of legislators asked me to consult with them regarding proposed bills relating to Amendment 4 and existing law.

72. Explain the particular contribution you believe your selection would bring to this position and provide any additional information you feel would be helpful to the Commission and Governor in evaluating your application.

I believe that I will bring a unique combination of humility, commitment to the rule of law, dedication, aptitude for legal analysis and writing, energy, experience, fair-mindedness and temperament to the position.

I was raised in a middle-class family, and I am the product of public schools. With limited assistance from my parents, I paid my way through BCC, UCF and FSU using a combination of part-time employment, loans and scholarships. Since 2011, I have served during the school year as a small group leader for a high school student ministry. I have served as a mock trial or moot court judge for high school, college or law school students at least once a year since 2015, excluding 2020 because those events were cancelled. I will be serving as a mentor for a FAMU law student from Oct. 15, 2020 to April 8, 2021. I have interacted with a diversity of people and my background allows me to relate to most people. I believe that I have a duty to serve the community in a capacity that allows me to best utilize my abilities, and that is the primary reason that I am applying for this position.

REFERENCES

73. List the names, addresses, e-mail addresses and telephone numbers of ten persons who are in a position to comment on your qualifications for a judicial position and of whom inquiry may be made by the Commission and the Governor.

Kimberly A. Ashby, Esquire, Foley & Lardner LLP, 111 N. Orange Ave., Suite 1800, Orlando, FL 32801, kashby@foley.com, 407-244-3265

The Honorable Denise Kim Beamer, Orange County Courthouse, 425 N. Orange Ave., Suite 815, Orlando, FL 32801, ctjudb2@ocnjcc.org, 407-836-2091

Michael M. Brownlee, Esquire, The Brownlee Law Firm, P.A., 390 N. Orange Ave., Suite 2200, Orlando, FL 32801, mbrownlee@brownleelawfirmpa.com, 407-403-5886

The Honorable Paetra T. Brownlee, Orange County Courthouse, 425 N. Orange Ave., Suite 1145, Orlando, FL 32801, ctjupb1@ocnjcc.org, 407-836-0568

R. Dean Cannon, Jr., Esquire, GrayRobinson, P.A., 301 S. Bronough St., Suite 600, Tallahassee, FL 32301, dean.cannon@gray-robinson.com, 850-577-9090

Kimberly J. Doud, Esquire, Littler Mendelson P.C., 111 N. Orange Ave., Suite 1750, Orlando, FL 32801, kdoud@littler.com, 407-393-2951

The Honorable Eric J. Eisnaugle, Fifth District Court of Appeal, 300 South Beach St., Daytona Beach, FL 32114, eisnauglee@flcourts.org, 386-947-1530

Michael J. Grindstaff, Esquire, Shutts & Bowen LLP, 300 S. Orange Ave., Suite 1600, Orlando, FL 32801, mgrindstaff@shutts.com, 407-835-6927

The Honorable Jamie R. Grosshans, Florida Supreme Court, 500 South Duval St., Tallahassee, FL 32399, grosshansj@flcourts.org, REDACTED

Joshua D. Grosshans, Esquire, Latham, Luna, Eden & Beaudine, LLP, 111 N. Magnolia Ave., Suite 1400, Orlando, FL 32801, josh@lathamluna.com, 407-481-5800

Michael E. Marder, Esquire, Greenspoon Marder LLP, 201 E. Pine St., Suite 500, Orlando, FL 32801, michael.marder@gmlaw.com, 407-425-6559

Rafael E. Martinez, Esquire, McEwan, Martinez, Dukes & Hall, P.A., 108 E. Central Blvd., Orlando, FL 32801, rmartinez@mmdorl.com, 407-423-8571

The Honorable Carlos E. Mendoza, George C. Young U.S. Courthouse, 401 W. Central Blvd., Suite 5-650, Orlando, FL 32801, carlos_mendoza@flmd.uscourts.gov, 407-835-4310

The Honorable Renee A. Roche, Orange County Courthouse, 425 N. Orange Ave., Suite 1725, Orlando, FL 32801, ctjurr1@ocnjcc.org, 407-836-1464

The Honorable Meredith L. Sasso, Fifth District Court of Appeal, 300 South Beach St., Daytona Beach, FL 32114, sassom@flcourts.org, 386-947-1530

Michael A. Sasso, Esquire, Sasso & Sasso, P.A., 1031 W. Morse Blvd., Suite 120, Winter Park, FL 32789, masasso@sasso-law.com, 407-644-7161

The Honorable Dan Traver, Fifth District Court of Appeal, 300 South Beach St., Daytona Beach, FL 32114, traverd@flcourts.org, 386-947-1530

The Honorable F. Rand Wallis, Fifth District Court of Appeal, 300 South Beach St., Daytona Beach, FL 32114, wallisr@flcourts.org, 386-947-1530

CERTIFICATE

I have read the foregoing questions carefully and have answered them truthfully, fully and completely. I hereby waive notice by and authorize The Florida Bar or any of its committees, educational and other institutions, the Judicial Qualifications Commission, the Florida Board of Bar Examiners or any judicial or professional disciplinary or supervisory body or commission, any references furnished by me, employers, business and professional associates, all governmental agencies and instrumentalities and all consumer and credit reporting agencies to release to the respective Judicial Nominating Commission and Office of the Governor any information, files, records or credit reports requested by the commission in connection with any consideration of me as possible nominee for appointment to judicial office. Information relating to any Florida Bar disciplinary proceedings is to be made available in accordance with Rule 3-7.1(l), Rules Regulating The Florida Bar. I recognize and agree that, pursuant to the Florida Constitution and the Uniform Rules of this commission, the contents of this questionnaire and other information received from or concerning me, and all interviews and proceedings of the commission, except for deliberations by the commission, shall be open to the public.

Further, I stipulate I have read, and understand the requirements of the Florida Code of Judicial Conduct.

Dated this 9th day of October 2020.

Keith F. White	[signature]
Printed Name	**Signature**

(Pursuant to Section 119.071(4)(d)(1), F.S.), . . . *The home addresses and telephone numbers of justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the home addresses, telephone numbers, and places of employment of the spouses and children of justices and judges; and the names and locations of schools and day care facilities attended by the children of justices and judges are exempt from the provisions of subsection (1), dealing with public records.*

FINANCIAL HISTORY

1. State the amount of gross income you have earned, or losses you have incurred (before deducting expenses and taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

   Current Year-To-Date: $120,516______

   Last Three Years: $160,688_____ $160,688______ $149,732______

2. State the amount of net income you have earned, or losses you have incurred (after deducting expenses but not taxes) from the practice of law for the preceding three-year period. This income figure should be stated on a year to year basis and include year to date information, and salary, if the nature of your employment is in a legal field.

   Current Year-To-Date: $104,534______

   Last Three Years: $139,379______ $139,379______ $129,656______

3. State the gross amount of income or loses incurred (before deducting expenses or taxes)

   Current Year-To-Date: $120,548______

   Last Three Years: $158,698______ $158,241______ $152,995______

4. State the amount you have earned in the preceding three years on a year by year basis from all sources other than the practice of law, and generally describe the source of such income or losses.

   Current Year-To-Date: $32 (acct. int.)

   Last Three Years: -$1,990 (acct. int., mut. fund gains, p/s losses); -$2,447 (acct. int., cancelled debt, mut. funds gains, p/s losses); $3,263 (acct. int., cancelled debt, mut. fund gains)

5. State the amount of net income you have earned or losses incurred (after deducting expenses) from all sources other than the practice of law for the preceding three-year period on a year by year basis, and generally describe the sources of such income or losses.

   Current Year-To-Date: $32 (see 4)

   Last Three Years: -$1,990 (see 4) -$2,447 (see 4) $3,263 (see 4)

FORM 6
FULL AND PUBLIC
DISCLOSURE OF FINANCIAL INTEREST

PART A – NET WORTH

Please enter the value of your net worth as of December 31 or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of Dec. 31, 2019 was $1,144,444.

PART B - ASSETS

HOUSEHOLD GOODS AND PERSONAL EFFECTS:

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following, if not held for investment purposes; jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is $143,000.

ASSETS INDIVIDUALLY VALUED AT OVER $1,000:

DESCRIPTION OF ASSET (specific description is required – see instructions p. 3)	VALUE OF ASSET
SEE ATTACHMENT "A"	

PART C - LIABILITIES

LIABILITIES IN EXCESS OF $1,000 (See instructions on page 4):

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
SEE ATTACHMENT "A"	

JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:

NAME AND ADDRESS OF CREDITOR	AMOUNT OF LIABILITY
NONE	

PART D - INCOME

You may ***EITHER*** (1) file a complete copy of your latest federal income tax return, *including all W2's, schedules, and attachments,* ***OR*** (2) file a sworn statement identifying each separate source and amount of income which exceeds $1,000 including secondary sources of income, by completing the remainder of Part D, below.

☐ I elect to file a copy of my latest federal income tax return and all W2's, schedules, and attachments.
(if you check this box and attach a copy of your latest tax return, you need *not* complete the remainder of Part D.]

PRIMARY SOURCE OF INCOME (See instructions on page 5):

NAME OF SOURCE OF INCOME EXCEEDING $1,000	ADDRESS OF SOURCE OF INCOME	AMOUNT
SEE ATTACHMENT "A"		

SECONDARY SOURCES OF INCOME [Major customers, clients, etc., of businesses owned by reporting person—see instructions on page 6]

NAME OF BUSINESS ENTITY	NAME OF MAJOR SOURCES OF BUSINESS' INCOME	ADDRESS OF SOURCE	PRINCIPAL BUSINESS ACTIVITY OF SOURCE
NONE			

PART E – INTERESTS IN SPECIFIC BUSINESS [Instructions on page 7]

	BUSINESS ENTITY #1	BUSINESS ENTITY #2	BUSINESS ENTITY #3
NAME OF BUSINESS ENTTITY	NONE		
ADDRESS OF BUSINESS ENTITY			
PRINCIPAL BUSINESS ACTIVITY			
POSITION HELD WITH ENTITY			
I OWN MORE THAN A 5% INTEREST IN THE BUSINESS			
NATURE OF MY OWNERSHIP INTEREST			

IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☒

OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

[signature]

SIGNATURE

STATE OF FLORIDA

COUNTY OF Orange

Sworn to (or affirmed) and subscribed before me this 1st day of October, 20 20 by Keith F. White

[signature]

(Signature of Notary Public—State of Florida)

LIZANDRA S. MONTERO
MY COMMISSION # GG 288586
EXPIRES: January 3, 2023
Bonded Thru Notary Public Underwriters

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ✓ *OR* Produced Identification ______

Type of Identification Produced ______

ATTACHMENT "A" TO FORM 6 FOR 2019

PART B – ASSETS INDIVIDUALLY VALUED AT OVER $1,000

Single Family Home (XXXXXXXX-REDACTED-XXXXXXXX)	$358,624*
Checking Account (Fifth Third Bank)	$5,034
Checking Account (Bank of America)	$67,953
Savings Account (Bank of America)	$137,803
IRA (Bank of America)	$13,667
IRA (Fidelity Mgmt. Trust Co.)	$474,552
Mutual Fund (Victory Funds)	$4,603
Deferred Comp Plan (Nationwide Retirement Services)	$135,826

PART C – LIABILITIES IN EXCESS OF $1,000

Fannie Mae, 13100 Worldgate Dr., Herndon, VA 20170	$93,030
Bank of America, P.O. Box 26078, Greensboro, NC 27420	$70,104

PART D – PRIMARY SOURCES OF INCOME

State of Florida, 200 E. Gaines St., Tallahassee, FL 32399	$160,688

(*Estimated)

JUDICIAL APPLICATION DATA RECORD

The judicial application shall include a separate page asking applicants to identify their race, ethnicity and gender. Completion of this page shall be optional, and the page shall include an explanation that the information is requested for data collection purposes in order to assess and promote diversity in the judiciary. The chair of the Commission shall forward all such completed pages, along with the names of the nominees to the JNC Coordinator in the Governor's Office (pursuant to JNC Uniform Rule of Procedure).

(Please Type or Print)

Date: October 9, 2020

JNC Submitting To: Fifth District Court of Appeal

Name(please print): Keith F. White

Current Occupation: Circuit Judge

Telephone Number: 407-836-0477 Attorney No.: 957259

Gender (check one): ☒ Male ☐ Female

Ethnic Origin (check one):
- ☒ White, non-Hispanic
- ☐ Hispanic
- ☐ Black
- ☐ American Indian/Alaskan Native
- ☐ Asian/Pacific Islander

County of Residence: Orange

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

DISCLOSURE PURSUANT TO THE
FAIR CREDIT REPORTING ACT (FCRA)

The Florida Department of Law Enforcement (FDLE) may obtain one or more consumer reports, including but not limited to credit reports, about you, for employment purposes as defined by the Fair Credit Reporting Act, including for determinations related to initial employment, reassignment, promotion, or other employment-related actions.

CONSUMER'S AUTHORIZATION FOR
FDLE TO OBTAIN CONSUMER REPORT(S)

I have read and understand the above Disclosure. I authorize the Florida Department of Law Enforcement (FDLE) to obtain one or more consumer reports on me, for employment purposes, as described in the above Disclosure.

Keith F. White
Printed Name of Applicant

____
Signature of Applicant

Date: October 9, 2020

Filing # 42854554 E-Filed 06/16/2016 01:43:46 PM

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

Jerry L. Demings, Sheriff of Orange County; Rick Singh, Orange County Property Appraiser; Scott Randolph, Orange County Tax Collector; Rick Singh, individually; and Scott Randolph, individually;

CASE NO.: 2014-CA-010858-O

Plaintiffs,

v.

Orange County, Florida; and Bill Cowles, Orange County Supervisor of Elections;

Defendants.
_____________________________________/

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on the following motions: "Plaintiffs' Motion for Summary Judgment and Memorandum of Law" (Pls.' Mot. Summ. J.), filed on September 25, 2015; "Orange County, Florida's Memorandum in Opposition to Plaintiffs' Motion for Summary Final Judgment and Cross-Motion for Summary Final Judgment in Favor of Orange County and Memorandum of Law" (Cross Mot. Summ. J.), filed on November 10, 2015; and "Plaintiffs' Omnibus Reply to Orange County's Motion for Summary Judgment, Memorandum in Opposition to Plaintiffs' Motion for Summary Final Judgment and Cross-Motion for Summary Final Judgment" (Pls.' Reply), filed on November 24, 2015. After hearing arguments on April 18, 2016, and May 26, 2016, the Court finds as follows:

A. Facts

In 2014, the Orange County Board of County Commissioners debated whether they should pass an ordinance asking county electors to vote on whether the Orange County Charter should be amended to change the elections for county constitutional officers to nonpartisan elections and to impose term limits on those officers. During the hearings regarding these proposals, several county commissioners discussed whether the provisions should be separated into two separate ordinances—one for the term limits provisions and one for the nonpartisan elections provisions. Ultimately, the Board voted to include both in one ordinance, and on August 19, 2014, the Board enacted Ordinance No. 2014-21, which states, in its entirety:

> **AN ORDINANCE PROPOSING AN AMENDMENT TO THE ORANGE COUNTY CHARTER; AMENDING THE ORANGE COUNTY CHARTER TO PROVIDE FOR TERM LIMITS AND NON-PARTISAN ELECTIONS FOR COUNTY CONSTITUTIONAL OFFICERS, AND TO PROVIDE FOR CLARIFICATION THAT THE ESTABLISHMENT OF NON-PARTISAN ELECTIONS AND TERM LIMITS FOR COUNTY CONSTITUTIONAL OFFICERS SHALL NOT AFFECT OR IMPUGN THEIR INDEPENDENT CONSTITUTIONAL STATUS; CALLING A REFERENDUM ON THE PROPOSED CHARTER AMENDMENT; PROVIDING THE BALLOT TITLE AND SUMMARY FOR THE REFERENDUM; CONDITIONING THE EFFECTIVENESS OF THE CHARTER AMENDMENT ON VOTER APPROVAL AT THE REFERENDUM; PROVIDING FOR OTHER RELATED MATTERS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR EFFECTIVE DATES.**

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA:

Section 1. Charter Amendment. Section 703 of the Orange County Charter is amended to read as follows:

Sec. 703. County officers.

A. The charter offices of property appraiser, tax collector and sheriff formerly created by this section 703 are abolished. The functions and duties of each of these respective charter offices are transferred to the property appraiser, tax collector, and sheriff, as county officers under Article VIII, Section 1(d) of the Florida Constitution and each of these offices is hereby reestablished under Article VIII, Section 1(d) of the Constitution of the State of Florida.

This subsection A. shall take effect on January 8, 1997. The holders of the former charter offices of property appraiser, tax collector and sheriff as of the effective date shall be retained and shall constitute the initial county officers serving as property appraiser, tax collector and sheriff, as those offices are reestablished under Article VIII, Section 1(d) of the Constitution of the State of Florida.

B. Except as may be specifically set forth in the Charter, the county officers referenced under Article VIII, Section 1(d) of the Florida Constitution and Chapter 72-461, Laws of Florida, shall not be governed by the Charter but instead governed by the Constitution and laws of the State of Florida. The establishment of non-partisan elections and term limits for county constitutional officers shall in no way affect or impugn their status as independent constitutional officers, and shall in no way imply any authority by the board whatsoever over such independent constitutional officers.

C. Elections for all county constitutional offices shall be non-partisan. No county constitutional office candidate shall be required to pay any party assessment

or be required to state the party of which the candidate is a member. All county constitutional office candidates' names shall be placed on the ballot without reference to political party affiliation.

In the event that more than two (2) candidates have qualified for any single county constitutional office, an election shall be held at the time of the first primary election and, providing no candidate receives a majority of the votes cast, the two (2) candidates receiving the most votes shall be placed on the ballot for the general election.

D. Any county constitutional officer who has held the same county constitutional office for the preceding four (4) full consecutive terms is prohibited from appearing on the ballot for reelection to that office; provided, however, that the terms of office beginning before January 1, 2015 shall not be counted.

Section 2. Referendum Called. Pursuant to its authority and duty under Article VII of the Orange County Charter, the Board of County Commissioners calls a referendum on the amendment to the charter set forth in Section 1. The referendum shall be held at the countywide election to be held on November 4, 2014. The ballot title and ballot summary for the referendum shall be as follows:

CHARTER AMENDMENT PROVIDING FOR TERM LIMITS AND NON-PARTISAN ELECTIONS FOR COUNTY CONSTITUTIONAL OFFICERS

For the purpose of establishing term limits and non-partisan elections for the Orange County Clerk of the Circuit Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector, this amendment provides for county constitutional officers

to be elected on a non-partisan basis and subject to term limits of four consecutive full 4-year terms.

_______ Yes

_______ No

Section 3. Severability. If any section, subsection, sentence, clause, or provision of this ordinance or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect any other provision or application of this ordinance, and to this end the provisions of this ordinance are declared severable.

Section 4. Effective Date. This ordinance shall take effect pursuant to general law. However, the amendment to the Orange County Charter in Section 1 shall take effect only if and when approved by a majority of the electors voting in the referendum called by the Board in Section 2.

(Am. Compl. Ex. 1.) Orange County voters passed the Ordinance.

Plaintiffs filed suit against Orange County and the Orange County Supervisor of Elections seeking a declaratory judgment that the Ordinance and resulting amendment are unconstitutional under the Florida Constitution and violate Florida Statutes and Orange County Charter provisions. Plaintiffs allege that the ballot title and summary are defective, that the Ordinance violates the single subject rule, and that it infringes on the constitutional officers' independent status. Plaintiffs also seek injunctive relief, asking the Court to prohibit Orange "County and the Orange County

Supervisor of Elections from enforcing any changes to the Charter pending the resolution of the litigation on the substantive issues . . . ." (Am. Compl. at 29.) Before the Court are the parties' cross motions for summary judgment.

B. Standard of Review

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law." *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000); Fla. R. Civ. P. 1.510(c). Determining whether there are genuine issues of material fact is a question of law for the court, and the court may find that such issues exist, even when both parties move for summary judgment. *Daniel Laurent, Inc. v. Coral Television Corp.*, 431 So. 2d 1047, 1048 (Fla. 3d DCA 1983).

C. Discussion

1. Count I Ballot Summary Defects

Plaintiffs argue that Ordinance No. 2014-21's ballot title and summary violate Florida Statute section 101.161(1) (2014), which states, "The ballot summary of the . . . public measure shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." The ballot title and summary state:

> CHARTER AMENDMENT PROVIDING FOR TERM LIMITS AND NON-PARTISAN ELECTIONS FOR COUNTY CONSTITUTIONAL OFFICERS
>
> For the purpose of establishing term limits and non-partisan elections for the Orange County Clerk of the Circuit Court, Comptroller, Property Appraiser, Sheriff, Supervisor of Elections and Tax Collector, this amendment provides for county constitutional officers

to be elected on a non-partisan basis and subject to term limits of four consecutive full 4-year terms.

(Am. Compl. Ex. 1.)

The ballot title and summary are read together to determine if they properly inform the voter. *O'Connell v. Martin Cnty.*, 84 So. 3d 463, 465 (Fla. 4th DCA 2012). "While the ballot title and summary must state in clear and unambiguous language the chief purpose of the measure, they need not explain every detail or ramification of the proposed amendment." *Id.* The court should first consider whether the proposed amendment's chief purpose is fairly conveyed in the title and summary. *Id.* Then, the court should consider whether the title and summary are misleading. *Id.* The proposed ballot summary and title must be "clearly and conclusively defective" to violate section 101.161(1). *Askew v. Firestone*, 421 So. 2d 151, 154 (Fla. 1982). Voters should have notice of what they are voting on. *Id.* at 155. These principles "are applicable to proposed amendments to county charters." *Elected Cnty. Mayor Pol. Comm., Inc. v. Shirk*, 989 So. 2d 1267, 1273 (Fla. 2d DCA 2008).

In *Askew*, the ballot summary was misleading because it appeared to impose limitations on lobbying, but was in fact a loosening of lobbying restrictions. *Askew*, 421 So. 2d at 155-56. "The purpose of section 101.161 is to assure that the electorate is advised of the true meaning, and ramifications, of an amendment. A proposed amendment cannot fly under false colors . . . ." *Id.* at 156. Ballot summaries also violate section 101.161(1) if they appear to create new rights or protections, but the "actual effect is to reduce or eliminate rights or protections already in existence." *Harris v. Moore*, 752 So. 2d 1241, 1243 (Fla. 4th DCA 2000). The ballot summary does not need to include what was in place before, so long as there is no affirmative misrepresentation of the amendment's chief purpose. *Id.* In *Harris v. Moore*, the ballot summary was not misleading, as it informed the voters of the proposed change to the county government structure, and omitting that the change was "an important change in the present form of government [was] not misleading." *Id.*

Plaintiffs argue that Ordinance No. 2014-21's ballot title and summary are misleading because they do not explain that the proposed amendment will change when the constitutional officers are elected—from the general election to the primary election. But a title and summary are not misleading if they do not contain every detail regarding the proposed change. *See Advisory Op. to Attorney Gen. Re: Fla. Growth Mgmt. Initiative Giving Citizens the Right to Decide Local Growth Mgmt. Plan Changes*, 2 So. 3d 118, 123 (Fla. 2008) (rejecting argument that ballot summary and title were misleading because they did not contain details of petition process being voted upon, as the proposed amendment would "not conflict with or restrict any existing rights . . . .").

Plaintiffs also argue that it was not explained that the current process is partisan and that there are no term limits. In *Advisory Opinion to Attorney General—Limited Political Terms in Certain Elective Offices*, 592 So. 2d 225, 228 (Fla. 1991), the Supreme Court of Florida held that the ballot summary complied with section 101.161. The chief purpose of the proposed amendment before the court was term limits, and the ballot title and summary identified the offices affected and stated that an incumbent who held the office for the previous eight years could not run again. *Id.* Although the summary did not state that currently there were no term limits, this did not render the summary misleading, especially because it did not conceal "a conflict with an existing provision." *Id.*

Here, the ballot summary states that nonpartisan elections and term limits are being established, which expressly states the Ordinance's chief purpose. Just as in the case discussed above, term limits and nonpartisan elections did not exist for these offices before the Ordinance was enacted. Because there was no conflict with an existing provision, and the ballot title and summary specifically state that the Ordinance would establish term limits and nonpartisan elections, it does not violate section 101.161 for failing to explain the previous state of affairs. Additionally, the word "establish" used in the Ordinance informs the voter that these provisions did not exist in the past.

See Evans v. Firestone, 457 So. 2d 1351, 1355 (Fla. 1984) (holding ballot summary misleading when it said amendment "establishes" a right that currently existed).

Plaintiffs argue that the summary does not explain that the voters will be giving up their right to know the candidates' political parties and that the candidates' party affiliations will no longer appear on the ballot. The summary clearly states that the elections will be nonpartisan, however, and thus the voter that wants the elections to be nonpartisan will be unconcerned about no longer knowing the candidates' political parties.

Plaintiffs also argue that the summary does not inform voters that the term limits will be locally-imposed, will be applied to current constitutional officers, and that the "change eliminates voter's right to re-elect constitutional officers." (Am. Compl. ¶ 83.) Plaintiffs complain that the summary does not explain that terms commenced before 2015 are not counted toward the term limits, and instead, the "summary erroneously informs voters that the term limits proposed are 'four consecutive full 4-year terms.'" (*Id.* at ¶ 84.)

In *Abramowitz v. Glasser*, 656 So. 2d 1332, 1332-33 (Fla. 4th DCA 1995), a term limits amendment to a city charter was challenged under section 101.161. The opponents to the amendment argued that it was misleading because it neglected to mention an exception to the term limits. *Id.* at 1333. The Fourth District rejected this argument. *Id.* at 1334. Ballot summaries are not invalidated when they "accurately set forth the substance of the proposal to be voted on, or omit[] only exceptions which were narrower than the general proposal." *Id.* at 1333. "Term limits . . . is a general concept, and voters who are interested are either for or against limits." *Id.* at 1334.

Here, the Ordinance's ballot title and summary specifically include the phrase "term limits." (Am. Compl. Ex. 1.) The summary expressly states that the amendment will establish term limits for the listed constitutional offices. Just as in *Abramowitz*, not every detail regarding the Ordinance and its effects were contained in the title and summary. Also just as in *Abramowitz*, the title and summary

clearly state that the Ordinance is about term limits. Because the ballot title and summary clearly informed the voters that they were voting on term limits, they were not misleading.

The ballot title and summary told the voters that a "yes" vote will create nonpartisan elections and term limits for the enumerated offices, which was the Ordinance's chief purpose. Thus, the title and summary did not misstate the chief purpose of the amendment, and the word "establish" contained in the summary informed the voters that these were changes to the status quo. The ballot summary and title complied with section 101.161(1), and therefore summary judgment is granted for Orange County on Count I.

2. Count II Single Subject Violation

a. Whether the single subject rule applies

Although Plaintiffs argue that Ordinance No. 2014-21 violates Florida law because it addresses more than one subject, Orange County contends that the single subject rule does not apply. This presents the Court with a question of first impression: whether a charter county must comply with the single subject rule in Florida Statute section 125.67 when the charter amendment is proposed via an ordinance, rather than by the charter review commission? The Court holds that the answer is no, unless the county's charter imposes such a requirement.

The single subject rule is found in the Florida Constitution, Article III, section 6, which states that statutes "shall embrace but one subject and matter properly connected therewith . . . ." Florida Statute section 125.67 uses the same language to apply the single subject rule to county ordinances. Both the Orange County Charter and the Florida Constitution give charter counties powers of local self-government, so long as those powers are not inconsistent with general law. Specifically, the Orange County Charter, in article I, section 103, states, "Unless provided to the contrary in this Charter, Orange County shall have all powers of local self-government not

inconsistent with general law . . . ." Article VIII, section 1(g), of the Florida Constitution, gives charter counties "all powers of local self-government not inconsistent with general law . . . The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law."

In *Charter Review Commission of Orange County v. Scott*, 647 So. 2d 835, 835-36 (Fla. 1994), the following question was certified to the Supreme Court of Florida as being one of great public importance: "Whether ballot questions containing county charter revisions proposed by a charter review commission are subject to a single subject rule?" In answering no to the certified question, the court noted the single subject rule in Article III, section 6, and Florida Statute section 125.67, but then stated, "Neither the constitution nor Florida Statutes applies the rule to proposed amendments to county charters." *Id.* at 836-37. Although the court "has on occasion in some of our older cases applied a general single-subject requirement to ballot questions in the absence of constitutional or statutory authority[,] . . . we have never applied the rule to proposed revisions to county charters." *Id.* at 837.

The Supreme Court compared the state constitution revision process to Orange County's Charter Review Commission. *Id.* Although there are four ways to propose changes to the Florida constitution, only one—through a petition initiative—is "subject to the single-subject rule." *Id.* The process to change the Florida Constitution through the Constitution Revision Commission provides "adequate safeguards to protect against logrolling and deception[,]" and thus the single subject rule does not apply to changes proposed through that process. *Id.* Proposed changes to Orange County's charter through the Charter Review Commission follow the same procedures "that reduce the danger of logrolling and diminish the possibility of deception." *Id.* As the charter does not contain a single subject rule, and there are safeguards to prevent the harm that the rule is designed to prevent, the Supreme Court "decline[d] to impose a single-subject requirement on this process." *Id.*

Shulmister v. Larkins, 856 So. 2d 1149, 1150 (Fla. 4th DCA 2003), concerned amendments proposed through an initiative petition, and the Fourth District held that the city charter's single subject rule did not apply to those amendments. The city charter stated, "'Every proposed ordinance or resolution . . . shall not contain more than one subject.'" *Id.* at 1151 (quoting the city charter). Because the provision stated that it applied only to ordinances or resolutions, the court held that there was no single subject rule for petitions to amend the city charter. *Id.* The court cited *Scott*, stating, "Neither the Florida Constitution nor Florida Statutes applies the single-subject rule to proposed amendments to county or city charters. Therefore, any limitation must be found within the city charter itself." *Id.* (citation omitted).

The Fifth District used this same phrase in *Seminole County v. City of Winter Springs*, 935 So. 2d 521, 528 n.5 (Fla. 5th DCA 2006). In *Seminole County*, the court disagreed with the trial court's conclusion that a charter amendment violated the single subject rule. *Id.* at 522. In that case, the county charter itself contained the single subject rule. *Id.* at 528.

Scott, *Shulmister*, and *Seminole County* all have one thing in common: all require the charter itself to impose the single subject rule upon amendments to it. In *Scott*, because the Orange County charter did not require amendments proposed by the Charter Review Commission to have a single subject, the Supreme Court "decline[d] to impose" such a rule. *Scott*, 647 So. 2d at 837. In *Shulmister*, because the charter imposed the single subject rule only on ordinances and resolutions, the court declined to impose it on a petition to amend the charter. *Shulmister*, 856 So. 2d at 1151. And in *Seminole County*, the Fifth District noted that the county charter did impose the single subject rule on proposed charter amendments while stating that the Florida Constitution and statutes do not do so. *Seminole County*, 935 So. 2d at 528. Plaintiffs correctly point out that the *Scott*, *Shulmister*, and *Seminole County* decisions did not hold that section 125.67, Florida Statutes, does not apply to an ordinance passed by Orange County to amend its Charter. Those decisions did not hold to the contrary, either.

Plaintiffs also attempt to distinguish *Scott* by pointing to the Supreme Court's discussion of the safeguards inherent in proposed charter amendments from the Charter Review Commission. But those same safeguards exist when the Legislature proposes amendments to the Florida Constitution. In *Advisory Opinion to Attorney General Regarding Independent Nonpartisan Commission to Apportion Legislative & Congressional Districts Which Replaces Apportionment by Legislature*, 926 So. 2d 1218, 1224 (Fla. 2006), the Supreme Court of Florida stated that the single subject rule is imposed on citizen petitions to amend the state constitution because the petitions are lacking the "same opportunity for public hearing and debate that accompanies the other constitutional proposal and drafting processes (i.e., constitutional amendments proposed by the Legislature . . . .)." Here, the Board of County Commissioners is similarly situated to the Florida Legislature, and it provided opportunities for public hearings and debate on Ordinance No. 2014-21. The safeguards discussed in the Advisory Opinion to the Attorney General existed here, and therefore this attempt to distinguish *Scott* fails.

Plaintiffs rely on Orange County Charter Section 207(1), which states that the Board of County Commissioners has the power and duty to adopt or enact "in accordance with the procedures provided by general law, ordinances and resolutions it deems necessary and proper for the good governance of the county . . . ." (Pls.' Reply 23.) Plaintiffs argue that an ordinance, to be enacted in accordance with general law, must have a single subject, as Florida Statute section 125.67 mandates.

The Orange County Charter allows three entities to place proposed amendments to it on the ballot: the citizens, through a petition initiative; the Board of County Commissioners; and the Charter Review Commission. Orange County, Fla. Charter art. VI, § 601, art. VII, §§ 701, 702(B).

The Charter section regarding the Charter Review Commission's ability to propose amendments requires the following of those proposals:

- they may only be placed on the ballot at general election;

- a report of the proposal must have been delivered to the clerk of the board of county commissioners on or before the last day for qualifying for election to county office;
- a report that includes an analysis and financial impact statement of the estimated change in any revenues or costs resulting from the proposal must be prepared;
- the ballot language must contain a summary of the analysis or financial impact statement; and
- at least four public hearings prior to presenting the proposal to the public must be held.

§ 702(B)(C). Regarding a citizens petition to amend the Charter, the petition must be approved by the Supervisor of Elections and signed by a certain percentage of county electors within a specified time period. §§ 601(A), 602. When the Board proposes amending the Charter, the Charter only requires a majority vote of the board to make the proposal, and the proposal must be subject to a referendum of the general electorate, at any primary, general or special election. § 701. None of these sections require that a proposed Charter amendment comply with the single subject rule.

Additionally, Florida Statutes regarding county governance indicate that the single subject rule does not apply to an ordinance proposing amendments to a county charter. Florida Statute section 125.82 permits the board of county commissioners to propose a charter to the county's electors via an ordinance. An ordinance proposing that a county become a charter county would necessarily include many subjects, such as the powers given to the county's legislative and executive branches, among other things. The Florida Legislature could not have intended to grant the county this right, but then have it rendered ineffective by applying the single subject rule to such an ordinance. *See generally Agency for Health Care Admin. v. Estate of Johnson*, 743 So. 2d 83, 86-87 (Fla. 3d DCA 1999) (courts have duty to construe statutes to give "a field of operation to all rather than

construe one statute as being meaningless . . . . [C]ourts must attempt to harmonize and reconcile two different statutes to preserve the force and effect of each.").

An "ordinance" contemplated under section 125.67 is akin to a law enacted by the Legislature, and neither require voter approval. Section 125.67 is identical to Article III, section 6 of the Florida Constitution, except "ordinance" replaced "law." An "ordinance" contemplated under section 125.82 is akin to a joint resolution from the Legislature proposing an amendment to the Florida Constitution, and both require voter approval. The single subject rule does not apply to the Legislature's joint resolutions. *Scott*, 647 So. 2d at 837. Therefore, the single subject rule is inapplicable in this case because an ordinance proposing an amendment to a county charter is akin to an ordinance under section 125.82 and a joint resolution proposing a constitutional amendment.

If the County wanted to impose a single subject rule upon proposed amendments to the Charter, it would have done so expressly, as it did with other requirements in sections 601, 602, 701, and 702. Agreeing with Plaintiffs that the language regarding enacting ordinances in accordance with general law requires a single subject would impose an additional requirement on proposed charter amendments not expressed in the sections regarding proposing charter amendments. This would be contrary to the statutory construction principle that specific provisions govern over general provisions. *See Murray v. Mariner Health*, 994 So. 2d 1051, 1061 (Fla. 2008) ("where two statutory provisions are in conflict, the specific provision controls the general provision."), *superseded by statute on different grounds as stated in Castellanos v. Next Door Co.*, 41 Fla. L. Weekly S197 (Fla. Apr. 28, 2016). That same principle requires that Florida Statute section 125.82 control over section 125.67.

For all the foregoing reasons, even though the Board used an ordinance as the vehicle for proposing the Charter amendment, the Court finds that the single subject rule does not apply to Ordinance No. 2014-21.[1]

b. Whether Ordinance No. 2014-21 violates the single subject rule

Even if the single subject rule does apply to Ordinance No. 2014-21, the Court finds that the Ordinance does not violate it. Plaintiffs argue that Ordinance No. 2014-21 contravenes the single subject rule because it encompasses two separate subjects: term limits on county constitutional officers and nonpartisan elections for those officers. Orange County argues that there is but one subject: either amending the Orange County Charter, or amending the Orange County Charter regarding election of county constitutional officers.

Regularly-enacted ordinances are presumed valid. *Miami-Dade Cnty. ex rel. Walthour v. Malibu Lodging Invs., LLC*, 64 So. 3d 716, 719 (Fla. 3d DCA 2011). They "are presumed to be constitutional, and all reasonable doubts regarding the . . . ordinance must be resolved in favor of constitutionality." *State v. Hanna*, 901 So. 2d 201, 204 (Fla. 5th DCA 2005).

Franklin v. State, 887 So. 2d 1063 (Fla. 2004), sets forth the framework for considering a constitutional challenge to a statute based on an alleged violation of the single subject rule. Although *Franklin* was concerned with the single subject rule found in Article III, section 6 of the Florida

[1] Pursuant to sections 207, 210, and 701 of the Charter, the Board could have used a resolution, rather than an ordinance, to propose the amendment to the Charter. There is no contention that a resolution would have provided more due process than an ordinance. To the contrary, it appears that using an ordinance to propose the Charter amendment provided more notice and opportunities to be heard than a resolution would have provided. If the proposed amendment had been promulgated by the Board as a resolution, then there would have been no argument regarding the single subject rule. Applying the single subject rule to invalidate an action of the Board because it was designated as an "ordinance" rather than a "resolution" would exalt form over substance. *See Plantation Residents' Ass'n v. Sch. Bd. of Broward Cnty.*, 424 So. 2d 879, 881 (Fla. 1st DCA 1982) (refusing to impose on hearing officers a standard of reversal of a school board decision that "would exalt form over substance.")

Constitution, the constitutional language is identical to the statutory language, with the statute simply substituting the word "ordinance" for "law." § 125.67, Fla. Stat. (2014); Art. III, § 6, Fla. Const.[2] The single subject rule requires three things: "First, each law shall 'embrace' only 'one subject.' Second, the law may include any matter that is 'properly connected' with the subject. The third requirement, related to the first, is that the subject shall be 'briefly expressed in the title.'" *Franklin v. State*, 887 So. 2d at 1072 (quoting Art. III, § 6). The single subject rule also has three purposes: preventing two unrelated matters from being in one act, also known as logrolling legislation; preventing unintentional adoption of laws, either by surprise or fraud, due to the titles not providing clues as to what the laws encompass; and three, giving citizens notice and an opportunity to be heard regarding the proposed laws' subjects. *Id.*

In reviewing laws under the single subject rule, "the standard of review is highly deferential." *Id.* at 1073. Courts construe the rule liberally, instead of imposing a strict construction that is unnecessary to accomplish the law's purpose. *Id.* Constitutionality is presumed, and a violation must exist beyond a reasonable doubt. *Id.*

i. Single subject and title

The first inquiry in the analysis of whether a law violates the single subject rule is determining the law's single subject. *Id.* at 1074. The court first looks to the law's title. *Id.* Because the rule states that the single subject "shall be briefly expressed in the title," the court considers the law's short title. *Id.* at 1075. The *Franklin* court described the short title as "the language immediately following the customary phrase 'an act relating to' and preceding the indexing of the act's provisions." *Id.* Even though the subject can be found in the short title, "the title of an act may be general," provided that the generality is not used to hide incongruent legislation. *Id.* at 1076. "[I]f the

[2] Article III, section 6, states, "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."

Legislature's short title is suspect for being overly broad, a court should look to the remainder of the act and the history of the legislative process to determine if the act actually contains a single subject or violates the constitution by encompassing more than one subject." *Id.* at 1076-77.

Applying *Franklin*, the Court first reviews the title of Ordinance No. 2014-21:

> AN ORDINANCE PROPOSING AN AMENDMENT TO THE ORANGE COUNTY CHARTER; AMENDING THE ORANGE COUNTY CHARTER TO PROVIDE FOR TERM LIMITS AND NON-PARTISAN ELECTIONS FOR COUNTY CONSTITUTIONAL OFFICERS, AND TO PROVIDE FOR CLARIFICATION THAT THE ESTABLISHMENT OF NON-PARTISAN ELECTIONS AND TERM LIMITS FOR COUNTY CONSTITUTIONAL OFFICERS SHALL NOT AFFECT OR IMPUGN THEIR INDEPENDENT CONSTITUTIONAL STATUS; CALLING A REFERENDUM ON THE PROPOSED CHARTER AMENDMENT; PROVIDING THE BALLOT TITLE AND SUMMARY FOR THE REFERENDUM; CONDITIONING THE EFFECTIVENESS OF THE CHARTER AMENDMENT ON VOTER APPROVAL AT THE REFERENDUM; PROVIDING FOR OTHER RELATED MATTERS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR EFFECTIVE DATES.

(Am. Compl. Ex. 1.) Under *Franklin*, looking to "the language immediately following the customary phrase 'an act relating to' and preceding the indexing of the act's provisions[,]" to determine the short title, the Ordinance's short title and subject is "an amendment to the Orange County Charter." *Franklin v. State*, 887 So. 2d at 1075.

Because this subject is so broad, under *Franklin*, the Court looks "beyond the short title to determine whether the act encompassed a single subject that was briefly stated in the title." *Id.* at 1076. Specifically, the court looks to "the remainder of the act and the history of the legislative process . . . ." *Id.* at 1076-77.

In considering the remainder of the Ordinance, the entire Ordinance relates to county constitutional officers. Regarding the legislative process, Plaintiffs point out that when the commissioners first considered term limits and nonpartisan elections, several considered them as two different ideas, even putting them forth as two separate ordinances. Eventually, however, a majority of the commissioners changed their minds and put both the term limits and nonpartisan elections provisions into Ordinance No. 2014-21.

Orange County suggests two different subjects for the Ordinance, either that it is an amendment to the Orange County Charter, which, as discussed above, is too broad, or that it is "an amendment to the Orange County Charter dealing with the election of constitutional officers." (Cross Mot. Summ. J. 17.) As all of the provisions in the Ordinance do relate to the election of constitutional officers, this is the subject of the Ordinance.[3] Plaintiffs point out that "an amendment to the Orange County Charter dealing with the election of constitutional officers" is not in the title of the Ordinance. (Pls.' Reply 14.)

Although the Ordinance's title does not use this exact phrasing, the long title does state the following regarding the Ordinance:

- it is a proposed amendment to the Charter;
- the amendment provides term limits and nonpartisan elections for county constitutional officers;
- these changes do not affect the officers' constitutional status;
- it provides the ballot title and summary for the referendum;
- it conditions the Charter amendment's effectiveness on voter approval; and
- it provides for other related matters, severability, and effective dates.

[3] The purpose of a statute is different from the subject of the statute. *See Franklin v. State*, 887 So. 2d at 1078, *quoting Gibson v. State*, 16 Fla. 291, 299 (1877) ("'The single subject clause contained in article III, section 6 'refers to the subject-matter of the legislation, and not to a single purpose or end sought to be accomplished.'").

Under *Franklin*, the court gives substantial deference to the legislature's title choice, and "length alone will not invalidate an act under the single subject clause." *Franklin v. State*, 887 So. 2d at 1074. Although the legislature is not required to index the act's provisions in the title, doing so "does tend to further one of the purposes of the single subject provision—notice to the public and the Legislature." *Id.* at 1076. The full title must be worded so that a person of average intelligence will not be misled regarding the scope of the act, will be provided with sufficient notice, and will cause the person to review the act itself. *Id.*

The requirement in section 125.67 is that the single subject be briefly expressed in the title. Although the exact phrasing, "an amendment to the Orange County Charter dealing with the election of constitutional officers" is not in the Ordinance's title, the title does list the provisions it contains, which mostly pertain to the election of constitutional officers. The title fulfills the purpose of the single subject rule, as it tells the voters that they are deciding whether to impose term limits on the county constitutional officers and whether the elections for those officers should be nonpartisan. Keeping this purpose in mind, Plaintiffs cannot demonstrate beyond a reasonable doubt that the title of the Ordinance does not contain a brief expression of its single subject of amending the Charter regarding the election of county constitutional officers. Due to this, and the large amount of deference given to the legislature regarding its choice of titles, the Court finds that the title does contain a brief expression of the Ordinance's single subject.

ii. Proper connection to single subject

Now that the Ordinance's single subject of "an amendment to the Orange County Charter dealing with the election of constitutional officers" has been determined, *Franklin* states that the next step is considering whether all the provisions are properly connected to that single subject. *Franklin v. State*, 887 So. 2d at 1077.

> A connection between a provision and the subject is proper (1) if the connection is natural or logical, or (2)

> if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject.

Id. at 1078.

Applying *Franklin* to the case at bar, the Ordinance's single subject is amending the Charter regarding the election of constitutional officers, and the connection between that subject and term limits for those officers and nonpartisan elections is natural or logical.

Plaintiffs argue that imposing term limits does not deal with elections of constitutional officers. Instead, Plaintiffs contend that the "two subjects are only tangentially related in that they both have something broadly to do with elected county constitutional officers." (Pls.' Mot. Summ. J. 34.) Plaintiffs state that the term limits provisions preclude an incumbent who serves four consecutive four year terms from seeking a fifth consecutive term, and the nonpartisan provisions eliminate the existing cycle in which constitutional officers are elected and establishes a new process for candidates running for the position of county constitutional officer. The Court finds that both issues are properly connected to the election of constitutional officers, however, because both have a natural or logical connection to the election of those officers. The nonpartisan provisions are logically connected to the election of the constitutional officers as it deals with the election itself, and the term limits provisions have a natural or logical connection to the election because it determines whether a candidate is qualified to be elected.

In *Franklin*, the single subject of the act at issue was sentencing. *Franklin v. State*, 887 So. 2d at 1080. The Supreme Court of Florida held that the act did not violate the single subject rule, even though it contained a provision changing the definition of armed burglary to include a railroad vehicle. *Id.* at 1081-82. The provision had a natural or logical connection to sentencing because its effect was to impose a harsher sentence on one that commits a crime against a person inside a railroad vehicle. *Id.* Although the connection between term limits and elections may seem

attenuated, there appears to be more of a connection between term limits and elections than there is between adding "railroad vehicles" to the definition of armed burglary and sentencing. Additionally, returning to the standard of review, violations of the single subject rule must be demonstrated beyond a reasonable doubt. It is not beyond a reasonable doubt that term limits for constitutional officers are not logically or naturally connected to the elections of those officers.

Plaintiffs also argue that the Ordinance constitutes impermissible logrolling of legislation, which would demonstrate that there is not a proper connection between term limits and the election of constitutional officers.

Logrolling occurs when a piece of legislation has unrelated provisions in an attempt to get an unpopular provision passed along with the popular provision. *Advisory Op. to Attorney Gen. Re: Indep. Nonpartisan Comm'n to Apportion Legislative & Cong. Dists. Which Replaces Apportionment by Legislature*, 926 So. 2d 1218, 1224 (Fla. 2006). As noted above, preventing logrolling is one of the purposes of the single-subject rule. *Franklin v. State*, 887 So. 2d at 1072. The courts also use the "logically or naturally connected" factor in considering whether the legislation constitutes logrolling. *Advisory Op. to Attorney Gen.*, 926 So. 2d at 1226 (quoting *Advisory Op. to Attorney Gen. Re: Fla.'s Amendment to Reduce Class Size*, 816 So. 2d 580, 582 (Fla. 2002)). A proposed amendment meets this test when it "'may be logically viewed as having a natural relation and connection as component parts or aspects of a single dominant plan or scheme. Unity of object and plan is the universal test.'" *Id.* at 1225 (quoting *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984)).

In the advisory opinion regarding a constitutional amendment to apportion legislative and congressional districts, the proposed amendment violated the single subject rule because it contained new standards for apportioning the districts, along with creating a redistricting commission. *Advisory Op. to Attorney Gen. Re: Indep. Nonpartisan Comm'n to Apportion Legislative & Cong. Dists. Which Replaces Apportionment by Legislature*, 926 So. 2d at 1226. Voters that only agreed with one provision had to

vote for both to see the one provision they supported be enacted. *Id.* "Thus, a voter would be forced to vote in the 'all or nothing' fashion that the single subject requirement safeguards against." *Id.* The same conclusion was reached in *In re Advisory Opinion to the Attorney General-Restricts Laws Related to Discrimination*, 632 So. 2d 1018, 1020 (Fla. 1994). The proposed constitutional amendment in that case contained many different classifications that would be protected from discrimination, and the court held that putting all of them into one amendment violates the purpose of the single subject rule because it would "[r]equir[e] voters to choose which classifications they feel most strongly about, and then requir[e] them to cast an all or nothing vote on the classifications listed in the amendment . . . ." *Id. See also Advisory Op. to the Attorney Gen. Re: Right of Citizens to Choose Health Care Providers*, 705 So. 2d 563, 566 (Fla. 1998) (proposed amendment violated single subject rule and was logrolling legislation because it "forces the voter who may favor or oppose one aspect of the ballot initiative to vote on the health care provider issue in an 'all or nothing' manner.").

Plaintiffs argue that Ordinance No. 2014-21 constitutes improper logrolling because it forces voters into an all-or-nothing position. During the first hearings on the term limits and nonpartisan provisions, several County Commissioners stated that some voters could favor term limits, but not nonpartisan elections, and vice versa. Orange County argues that there is no logrolling because the dominant plan or scheme of the ordinance was to give voters a referendum dealing with a proposed charter amendment changing election criteria for constitutional officers, and each part of the Ordinance has a natural connection to the objective of putting that question to the voters.

The cases discussed above are distinguishable in that they involve citizen petitions to amend the Florida Constitution. The standard of review for violations of the single subject rule in such cases is stricter than in cases involving review of statutes passed by the legislature. *Franklin v. State*, 887 So. 2d at 1077. "The use of the phrase 'properly connected' in article III, section 6 is broader than the phrase 'directly connected' required by article XI, section 3 of the Florida Constitution,

which authorizes changes in our constitution by citizen initiative petition." *Id.* It is more appropriate to take a broader view of statutes proceeding through the legislative process because those will go through debate and public hearing. *Id.* Constitutional amendments proposed via citizen petition do not go through this process. *Id.* The court demands strict compliance with the single subject rule in reviewing citizen petitions to amend the constitution because, most importantly, the constitution '"is the basic document that controls our governmental functions, including the adoption of any laws by the legislature."' *Id.* (quoting *Fine v. Firestone*, 448 So. 2d 984, 988-89 (Fla. 1984)).

The amendment to the Orange County Charter embodied in Ordinance No. 2014-21 was proposed by the Board of County Commissioners after debate and public hearings. Therefore strict compliance with the single subject rule as noted in the *Advisory Opinions* cases does not apply here. Instead, the standard of review enunciated in *Franklin* is more appropriate, as that case also involved laws coming from a legislative body, just as here, the proposed amendment comes from Orange County's legislative body—the Board of County Commissioners.

Both the term limits and nonpartisan provisions have a natural or logical connection to the Ordinance's subject. Also, Plaintiffs did not cite, and the Court did not find, a case invalidating a law under the single subject rule that put voters in an all-or-nothing position that was not a citizens' petition case. Because the cases that do support Plaintiffs' position involve a strict application of the single subject rule, and in this circumstance the rule should be applied broadly, Plaintiffs do not demonstrate beyond a reasonable doubt that Ordinance No. 2014-21 constitutes logrolling and violates the single subject rule.

Under *Franklin*, there are two ways to satisfy the proper connection test of the single subject rule: (1) there is a natural or logical connection to that single subject, discussed above, "or (2) if there is a reasonable explanation for how the provision is (a) necessary to the subject or (b) tends to make effective or promote the objects and purposes of legislation included in the subject." *Franklin v.*

State, 887 So. 2d at 1078. When determining (2), "the court may consider the citation name, the full title, the preamble, and the provisions in the body of the act." *Franklin v. State*, 887 So. 2d at 1072. Because there is an "or" separating the two factors, even if the Ordinance fails the natural or logical connection prong, the provision still could have a proper connection to the single subject if there is a reasonable explanation for how it is necessary to the subject or if there is a reasonable explanation for how the provision tends to make effective or promote the purposes included in the subject. The nonpartisan elections provisions are connected to the single subject of amending the Charter regarding the election of county constitutional officers, as they specifically deal with those elections. Thus, the Court must consider whether the term limits provisions are also connected to that single subject.

First, there appears to be a reasonable explanation for how term limits are necessary to amending the Charter regarding the election of county constitutional officers. Term limits determine who qualifies to be a county constitutional officer, and determining whether one qualifies for the office is necessary to the election of the person for that office.

Second, there seems to be a reasonable explanation for how the term limits provisions tend to make effective or promote the objects and purposes of the proposed amendment regarding the election of constitutional officers. As discussed in Part C.1., supra, one purpose of the Ordinance was to create term limits. The term limits provisions do this. Therefore, Ordinance No. 2014-21 does satisfy the single subject rule because there is a reasonable explanation of how the provisions are necessary to the Ordinance's subject or tend to make effective or promote the objects and purposes of the subject.

Therefore, even if the single subject rule did apply, Plaintiffs did not establish beyond a reasonable doubt that Ordinance No. 2014-21 violates it. Plaintiffs' motion for summary judgment on Count II is denied, and Orange County's motion for summary judgment on Count II is granted.

3. Count III Independent Status

In Count III of the Amended Complaint, Plaintiffs allege that Ordinance No. 2014-21 is inherently conflicting because it states that the constitutional officers will be governed by the Charter, instead of the Florida Constitution, but then states that establishing term limits and nonpartisan elections does not imply any Board authority over the constitutional officers. Plaintiffs contend that the Ordinance interferes with the constitutional officers' independence by changing the elections to nonpartisan ones, which alters the timing and method for selecting them, and imposing term limits. They also argue that the ordinance is ambiguous, which undermines its validity, because it contains the sentence stating that it does not imply Board authority over the constitutional officers, which prevents the ordinance from specifically and permissibly stating that it is governing the method by which the officers are selected. Plaintiffs assert that the Florida Constitution limits the areas in which the Charter may govern county officers, and this makes it clear that the Florida Constitution and Statutes govern constitutional officers, not an alternative provision in the Charter. They argue that Florida's Election Code preempts all matters to the state.

Orange County asserts that Plaintiffs did not plead preemption or conflict with Florida law. Orange County relies on *Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corp.*, 537 So. 2d 561 (Fla. 1988). In that case, the plaintiff was permitted to proceed on an unpled claim that was disclosed to the defendant twelve days before trial. *Id.* at 562. The court held that the plaintiff was precluded from recovering on that unpled claim. *Id.*

Here, the Amended Complaint alleges that the Ordinance alters the timing and method for selecting constitutional officers and that the Florida Constitution limits the areas in which the Charter may govern county officers. Thus, Plaintiffs did sufficiently plead that the Ordinance conflicts with the Florida Constitution regarding the timing and method of electing county constitutional officers. Additionally, Plaintiffs' arguments are fully set forth in their motion for

summary judgment, and Orange County replied to those arguments in its response to the motion and its own motion for summary judgment. These documents were filed more than four months before the April hearing on the summary judgment motions. Therefore, Orange County had sufficient notice of Plaintiffs' arguments and adequate time to respond to them (and did respond to them). The Court rejects Orange County's arguments that the preemption and conflict contentions were not plead.

a. Term limits and nonpartisan elections

In *Telli v. Broward County*, 94 So. 3d 504, 513 (Fla. 2012), the Supreme Court of Florida expressly receded from *Cook v. City of Jacksonville*, 823 So. 2d 86 (Fla. 2002), in which it held that a charter could not impose term limits on constitutional officers. In the *Telli* case, the Supreme Court was reviewing a charter amendment imposing term limits on county commissioners. *Id.* at 505. The term limits opponents "argu[ed] that the term limits were unconstitutional under the Florida Constitution." *Id.* In holding that the term limits were constitutional, the Supreme Court receded from *Cook*, stating that it was wrongly decided. *Id.* at 513. Instead, the Supreme Court agreed with Justice Anstead's dissent in *Cook*. *Id.* at 512. Justice Anstead's dissent stated that the Florida Constitution contains broad language "'intend[ing] to allow charter counties wide latitude in enacting regulations governing the selection and duties of county officers . . . .'" *Id.* (quoting *Cook*, 823 So. 2d at 96 (Anstead, J., dissenting)). Because general law regarding elected county officers did not conflict with the charter's term limits and the broad grant of authority to charter counties, there was "'no legal justification for concluding that charter counties should not be allowed to ask their citizens to vote on eligibility requirements of local elected officials, including term limits, since they could abolish the offices completely or decide to select the officers in any manner of their choosing.'" *Id.* (quoting *Cook*, 823 So. 2d at 96 (Anstead, J., dissenting)). Restrictions on home rule power must be

expressed, not implied, because "[i]nterpreting Florida's Constitution to find implied restrictions on powers otherwise authorized is unsound in principle." *Id.* at 513.

Telli specifically permits charter counties to impose term limits upon their constitutional officers and did not find a conflict with Florida's constitution or statutes. *Id.* Thus, the term limits provisions in the Ordinance are valid. Additionally, *Telli* dictates that a restriction on making county constitutional officers nonpartisan must be expressly stated. Under *Telli*, restrictions on a charter county's home rule power must be expressed, not implied. *Id.* Plaintiffs have not provided the Court with an express restriction on charter counties making their constitutional officers nonpartisan. Instead, Plaintiffs' arguments rest on implying this restriction from various constitutional provisions, statutes, cases, Charter provisions, and advisory opinions. This is not sufficient to prohibit Orange County electors from choosing to make their county constitutional officers nonpartisan. As noted in *Telli*, under the constitution, Orange County voters can choose "any manner"[4] to select such officers. Plaintiffs concede that the voters can make those offices appointive offices. Thus, the voters can surely take the less undemocratic step of making those offices nonpartisan elective offices, as there is no express prohibition against a charter county doing so. *See id.* at 512-13; *Cook*, 823 So. 2d at 95-96 (Anstead, J., dissenting); *see also* Art. I, § 1, Fla. Const.; Op. Att'y Gen. Fla. 00-02 (2000). Therefore, the Court finds that the first sentence of Section 1.C of the Ordinance is valid.

b. Procedure for nonpartisan elections

The constitution mandates that elections be regulated by law. *See* Art. VI, § 1, Fla. Const. The Legislature has enacted a plethora of statutes pursuant to that mandate, including provisions regarding nonpartisan elections. *See, e.g.*, §§ 97.021(21), 105.031, 105.041, 105.051, 105.10, Fla. Stat. (2014).

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[4] Florida law recognizes several manners which are used to select state and local officials, including appointment, nonpartisan election, partisan election, and merit retention.

In *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880 (Fla. 2010), the Florida Supreme Court held "that the Florida Election Code does not preempt the field of elections law . . . ." *Id.* at 883. The case involved a county charter amendment regarding several elections issues, such as paper ballots and certifying election results. *Id.* at 884-85.

After *Browning*, as pointed out by Orange County in its motion for summary judgment, Florida Statute section 97.0115 was enacted. Section 97.0115 states, "All matters set forth in chapters 97-105 are preempted to the state, except as otherwise specifically authorized by state or federal law." Thus, the Florida Legislature overruled *Browning* by expressly preempting local election laws. Allen Winsor, Sarasota Alliance for Fair Elections, Inc. v. Browning, *The Implied End to Implied Preemption*, 41 Stetson L. Rev. 499, 514-15 (2012).

Orange County argues that the Florida Election Code does not expressly require constitutional officers' elections to be nonpartisan, and thus charter counties can exercise their discretion in this area. As explained above, the Court agrees that Orange County is authorized to make the county constitutional offices nonpartisan elective offices. The Court disagrees, however, that Orange County may regulate the nonpartisan elections for such offices because those matters are preempted to the Legislature. *See Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014); *Phantom of Brevard, Inc. v. Brevard Cnty.*, 3 So. 3d 309, 314 (Fla. 2008). This renders Section 1.C, except the first sentence, of the Ordinance unconstitutional.

4. **Severability**

Because the Court has found certain provisions of Ordinance No. 2014-21 unconstitutional, the Court must address whether the unconstitutional provisions can be severed from the rest of the Ordinance.

> "When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand

> provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken."

Ray v. Mortham, 742 So. 2d 1276, 1281 (Fla. 1999) (quoting *Smith v. Department of Ins.*, 507 So. 2d 1080, 1089 (Fla. 1987)).

The party challenging the validity of the legislation has the burden of demonstrating that it is not severable and thus subject to complete invalidation. *Ray v. Mortham*, 742 So. 2d at 1281. "When the valid sections can accomplish the legislature's intent without the invalid portions, the statute is severable." *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d 26, 31-32 (Fla. 1st DCA 2008).

a. Nonpartisan elections provisions

The Court has determined that only the first sentence of Section 1.C survives the Florida Election Code's preemption. The second factor under *Ray v. Mortham* is whether the legislative purpose of making the county constitutional offices nonpartisan elective offices can be accomplished independently of the invalid provisions of Section 1.C. Florida's Election Code does contain procedures for nonpartisan elections, but these procedures are directed towards candidates for judicial office, school boards, and multicounty offices. For example, Florida Statute section 105.031(1) sets forth the time for qualifying. It contains specific deadlines for candidates for judicial office and school board members to qualify, but it does not set forth qualifying deadlines for candidates for nonpartisan offices other than judicial and school board positions. § 105.031(1). *See also* §§ 105.041, .051.

Without the invalid provisions, there is no method to hold the nonpartisan election, as the Election Code does not provide for the nonpartisan election of county constitutional officers.

Therefore, the purpose of the valid provision cannot be accomplished without the unconstitutional provisions of Section 1.C. Because this second factor under *Ray v. Mortham* cannot be met, the invalid provisions are not severable, and Section 1.C in its entirety is invalid.[5]

b. Term limits provisions

Since all provisions regarding nonpartisan elections are invalid, the Court now turns to whether those provisions are severable from the remaining provisions. Plaintiffs concede that the first and fourth factors of the severability analysis are met. That leaves the second and third factors: whether the legislative purpose expressed in the valid provisions can be accomplished independently of the invalid provisions, and whether "the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other." *Ray v. Mortham*, 742 So. 2d at 1281.

Plaintiffs argue that the Ordinance's legislative purpose was to let the voters decide whether to impose term limits on the offices and whether the offices should be nonpartisan. Because the issues were intentionally combined into one ballot question, one cannot determine whether the legislative purpose is satisfied if the nonpartisan provisions are severed or whether the term limits provisions would have passed without the nonpartisan provisions.

If severance would result in a statute that is contrary to legislative intent, then severance is not permitted. *State v. Catalano*, 104 So. 3d 1069, 1080-81 (Fla. 2012) (severability would not be applied where it would expand the statute's scope beyond what the legislature intended); *Sloban v. Fla. Bd. of Pharmacy*, 982 So. 2d at 32-33 (statute could not be severed because severing provisions would make revocations permanent, and legislature intended to give board discretion regarding allowing those with revoked licenses to reapply); *Fla. Dep't of State, Div. of Elections v. Martin*, 916 So. 2d 763, 773-74 (Fla. 2005) (severance would prohibit candidates from withdrawing after a certain

[5] This necessarily requires the Court to find that the words "non-partisan elections and" in Section 1.B are invalid.

date, which is contrary to legislative intent to allow discretion to permit withdrawal after time period; thus, statute was not severable). Here, severing the nonpartisan provisions from the term limits provisions would not result in a Charter amendment contrary to the purpose of imposing term limits upon county constitutional officers. Thus, the second factor weighs in favor of severability.

The third factor is whether "the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other." *Ray v. Mortham*, 742 So. 2d at 1281. Orange County argues that "the party challenging severability may not invoke the single subject rule to argue that a particular piece of legislation is not severable, because severability would necessarily require a violation of the single subject rule." (Orange Cnty. Br. 8-9.) Orange County relies on *Ray v. Mortham*, where the appellants argued that because the amendment did not violate the single subject rule, it was not subject to severability. *Ray v. Mortham*, 742 So. 2d at 1282. The court rejected that argument, as satisfying the single subject rule does not mean the provisions are so dependent on each other that the statute's purpose cannot be accomplished without all of the provisions. *Id.*

Plaintiffs carry the burden to demonstrate that the nonpartisan provisions are not severable. To support their argument against severability, they rely on comments made by county commissioners at prior hearings that some voters could support term limits but not support nonpartisan elections, and vice versa. The Court finds that the county commissioners' opinions expressed before they voted to put the term limits provisions and nonpartisan elections provisions into one ordinance are not sufficient for Plaintiffs to meet their burden regarding severability. Thus, Plaintiffs fail to demonstrate that the third factor precludes severability.

The term limits provisions are not preempted by the Election Code and those provisions can be implemented independent of the invalid provisions of the Ordinance. Orange County voters knew that the Ordinance's provisions were subject to severability, as its title specifically states that it

provides for severability. Severing the nonpartisan provisions from the term limits provisions would not be contrary to legislative intent, and the term limits provisions can accomplish one of the Ordinance's goals. Additionally, the Orange County Charter, Article I, Section 110, provides for severability of any subsection of the Charter held to be invalid. Thus, the Court finds that the nonpartisan provisions are severable from the term limits provisions. *See Ray*, 742 So. 2d at 1283; *Vill. of Wellington v. Palm Beach Cnty.*, 941 So. 2d 595, 600-01 (Fla. 4th DCA 2006).

Accordingly, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Orange County's Motion for Summary Judgment as to Count I and Count II is **GRANTED** and Plaintiffs' Motion for Summary Judgment as to Count I and Count II is **DENIED**.
2. The parties' Motions for Summary Judgment as to Count III are **GRANTED IN PART** and **DENIED IN PART**. Section 1.C. and the words "non-partisan elections and" in Section 1.B are **INVALID** and are **SEVERED** from Ordinance No. 2014-21. The other challenged provisions of that Ordinance are **VALID**.
3. The parties shall submit a proposed final judgment consistent with this Order.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 16 day of June, 2016.

KEITH F. WHITE
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Eric D. Dunlap, Esq.**, Orange County Sheriff's Office, Legal Services Section, 2500 W. Colonial Drive, Orlando, FL 32804, Eric.Dunlap@ocfl.net; **Michael E. Marder, Esq.**, Greenspoon Marder PA, 201 E. Pine Street, Suite 500, Orlando, FL 32801, Michael.Marder@gmlaw.com; **Mark Herron, Esq.**, and **Gigi Rollini, Esq.**, Messer Caparello, P.A., 2618 Centennial Place, Tallahassee, FL 32308, mherron@lawfla.com, grollini@lawfla.com; **Scott Randolph, Esq.**, 701 Delaney Park Drive, Orlando, FL 32806-1321, randolphscott007@gmail.com; **William C. Turner, Jr., Assistant County Attorney**, and **Edward Chew, Assistant County Attorney**, Orange County Attorney's Office, 201 S. Rosalind Avenue, Third Floor, Orlando, FL 32801, WilliamChip.Turner@ocfl.net, edward.chew@ocfl.net; **Nick Shannin, Esq.**, 119 W. Kaley Street, Orlando, FL 32806, nshannin@ocfelections.com; on this 16 day of June, 2016.

Cedi Shelton
Judicial Assistant

Filing # 107158799 E-Filed 05/06/2020 07:23:25 PM

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

STATE OF FLORIDA,

Plaintiff,

vs.

JENISE ORTIZ,

Defendant.
_______________________________/

CASE NO.: 1999-CF-011367-A-O
DIVISION: 17

ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF: TO VACATE, SET ASIDE, OR CORRECT SENTENCE ON COUNT TWO UPON REMAND

THIS MATTER comes before the Court pursuant to the Fifth District Court of Appeal's ruling in *Ortiz v. State*, 287 So. 3d 678 (Fla. 5th DCA 2019), reversing and remanding for this Court to address the Eighth Amendment and Equal Protection Clause issues raised in the Defendant's Successive Motion for Postconviction Relief: to Vacate, Set Aside, or Correct Sentence on Count Two. After reviewing the Defendant's Motion, the Defendant's Supplemental Memorandum of Law filed on February 11, 2020, the State's Response filed on February 18, 2020, and the Defendant's Reply filed on February 28, 2020, the court file, the record, the Court hereby finds as follows:

PROCEDURAL HISTORY

On May 25, 2000, the Defendant pleaded guilty to second degree murder (a lesser-included offense of the charged offense of first degree murder) (Count One) and arson (Count Two). On November 9, 2000, she was sentenced to concurrent terms of thirty-five (35) years in the Florida Department of Corrections, subject to a 25-year minimum mandatory term, on Count One, and thirty (30) years in the Florida Department of Corrections on Count Two. She appealed, and the Fifth District Court of Appeal *per curiam* affirmed. *Ortiz v. State*, 788 So. 2d 987 (Fla. 5th DCA 2001). The Mandate was issued on June 8, 2001.

On July 2, 2001, she filed a Motion for Correction, Reduction, and Modification of Sentence pursuant to Rule 3.800(c), which the Court denied on July 16, 2001.

On March 24, 2003, she filed a Motion for Postconviction Relief pursuant to Rule 3.850, alleging three claims of ineffective assistance of counsel. The Court denied the Motion on March 2, 2004. She did not appeal.

On December 6, 2017, she filed a Motion to Correct Illegal Sentence pursuant to Rule 3.800(a), arguing that her 35-year sentence for second degree murder constitutes a defacto life sentence that does not provide meaningful opportunity for early release based upon demonstrated maturity and rehabilitation. On January 11, 2018, the State filed its Response to the Motion, asserting that it was leaving it in the "Court's discretion to grant the Defendant's request" for resentencing. On January 30, 2018, the Court granted in part the Motion and scheduled a resentencing hearing on Count One for March 28, 2018, which was continued twice and reset for November 9, 2018.

On October 25, 2018, the State filed a Motion to Stay Proceedings based on the fact that the Florida Supreme Court granted review in *Hart v. State*, 246 So. 3d 417 (Fla. 4th DCA 2018), where the court held that a juvenile offender's sentence of 30 years in prison, with no review provisions, for burglary of a dwelling with a firearm, robbery with a firearm, and attempted robbery with a firearm violated neither the prohibition of excessive sentences under the Eighth Amendment and the Florida Constitution nor the United States Supreme Court's decision in *Graham v. Florida*, 560 U.S. 48 (2010), which prohibited juvenile offenders convicted of nonhomicide offenses from being sentenced to life without parole, where even if he served his sentence day-for-day, the offender would be released in his forties.[1] On October 31, 2018, the Defendant filed her Objection to the State's Motion to Stay. On November 2, 2018, the Court granted the State's Motion to Stay Proceedings for a period of sixty (60) days.

On December 10, 2018, the Defendant filed the instant Motion seeking an Order correcting, vacating, or setting aside her original sentence for Count Two, arguing that because her 30-year sentence for arson is also a "lengthy sentence" under Florida law, and because it too lacks a mechanism for early release based upon a showing of rehabilitation and maturity, it is also an illegal sentence under *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016) and should be vacated and resentenced along with Count One. On May 14, 2019, the Defendant filed her Notice of Supplemental Authority, asserting that the case of *Link v. State*, 2019 WL 2017389 (Fla. 3d DCA May 8, 2019) supports her argument that this Court should lift the stay and proceed with resentencing on Count Two. Additionally, on May 14, 2019, the State filed its Response to the instant Motion, arguing that the instant Motion should be denied because her 30-year sentence in Count Two does not violate the Eighth Amendment because thirty (30) years is the statutory maximum for the offense of arson. On May 30, 2019, the Court entered an order denying the Successive Motion for Postconviction Relief, holding that *State v. Purdy*, 252 So. 3d 723, 726 (Fla. 2018), and the doctrine of collateral estoppel foreclosed relief. On June 18, 2019, she was resentenced on Count One to 30 years in the Florida Department of Correction, subject to a 25-year minimum mandatory term. The Court found that Defendant actually killed the victim and is entitled to a judicial review after 25 years. The sentence on Count 1 is concurrent with the sentence

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[1] On November 27, 2018, the Florida Supreme Court dismissed jurisdiction in *Hart*. *See Hart v. State*, 2018 WL 6181698 (Fla. Nov. 27, 2018). However, on December 6, 2018, the Florida Supreme Court granted review in *Pedroza v. State*, 244 So. 3d 1128 (Fla. 4th DCA 2018), *rev. granted* 2018 WL 6433136 (Fla. 2018), which held that, based on *Hart*, a juvenile offender's sentence of forty (40) years for second-degree murder did not violate the Eighth Amendment, as construed by any decision of the United States Supreme Court, nor does any binding Florida Supreme Court decision require resentencing. On March 12, 2020, the Florida Supreme Court issued its opinion in *Pedroza v. State*, 2020 WL 1173747 (Fla. Mar. 12, 2020).

on Count 2, *nunc pro tunc* November 9, 2000. Defendant did not appeal those rulings regarding Count One.

Defendant did appeal, however, the Court's denial of the instant Motion. On December 20, 2019, the Fifth District Court of Appeal reversed and remanded for this Court to address the Eighth Amendment and Equal Protection Clause issues on the merits that were raised in the instant Successive Motion, finding that *Purdy* and the doctrine of collateral estoppel were inapplicable. *Ortiz v. State*, 287 So. 3d 678 (Fla. 5th DCA 2019). The Mandate was issued on January 16, 2020. On January 22, 2020, the Court entered an Order directing the parties to file supplemental briefing addressing the Eighth Amendment and Equal Protection Clause issues pursuant to *Ortiz v. State*, 287 So. 3d 678. On February 11, 2020, the Defendant filed her Supplemental Memorandum of Law. On February 18, 2020, the State filed its Response. On February 28, 2020, the Defendant filed her Reply.

ANALYSIS AND RULING

The Defendant argues that the constitutionality of her sentence is not based on the length of the sentence – whether it is a life or life-equivalent term – but rather on the status of and the opportunity afforded to her as a juvenile to be released early on a showing of maturity and rehabilitation; therefore, because her 30-year sentence for arson lacks a judicial review mechanism, it is unconstitutional. Regarding the Eighth Amendment, she argues that despite the absence of a statutory basis in sections 775.082 and 921.1402, Florida Statutes (2019), for judicial review of her 30-year sentence for arson, she is constitutionally entitled to judicial review because "'the Eighth Amendment will not tolerate prison sentences that lack a review mechanism for evaluating this special class of offenders [juvenile non-homicide offenders] for demonstrable maturity and reform in the future because any term of imprisonment for a juvenile is qualitatively different than a comparable period of incarceration is for an adult,'" quoting *Henry v. State*, 175 So. 3d 675, 680 (Fla. 2015). Regarding the Equal Protection Clause, she argues that section 775.082(3) treats juvenile non-homicide offenders differently depending on whether the offender commits a first-degree felony (treated identically to an adult at sentencing) versus a life or punishable by life ("PBL") felony (treated less severely than an adult at sentencing). Defendant contends that she has a fundamental right to be treated differently at sentencing than an adult who

commits the same crime and, even in the absence of this fundamental right, the statute's disparate treatment of juveniles convicted of non-life first-degree felonies fails the rational basis test.

The State argues that no defendant, convicted of a crime committed before he or she attained the age of 18, who was originally sentenced to a term of years that is not a life or de facto life sentence, regardless of the crime committed or the defendant's role in the commission of the crime, is entitled to be resentenced because term of years sentences for any crime that are not life or de facto life sentences do not violate the United States Constitution, Florida Constitution, Florida statutes, or any precedent from the United States or Florida Supreme Courts.

I.A

The Court finds that the Eighth Amendment provides no relief. Recently, the Florida Supreme Court issued its ruling in *Pedroza v. State*, 2020 WL 1173747, at *6 (Fla. Mar. 12, 2020), where it held that "a juvenile offender's sentence does not implicate *Graham*, and therefore *Miller [v. Alabama*, 567 U.S. 460 (2012)], unless it meets the threshold requirement of being a life sentence or the functional equivalent of a life sentence." The Court also declared that, "to the extent this Court has previously instructed that resentencing is required for all juvenile offenders serving sentences longer than twenty years without the opportunity for early release based on judicial review, it did so in error." *Id.* at *1. The Court clarified or receded from language in *Henry v. State*, 175 So. 3d 675 (Fla. 2015), *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016), and *Johnson v. State*, 215 So. 3d 1237 (Fla. 2017), that may have been construed to require that all juvenile sentences exceeding twenty years must include an opportunity for early release through the judicial review mechanism to comply with the Eighth Amendment. *See id.* at *3-6. Thus, even though the trial court did not give individualized consideration to Pedroza's youth and its attendant characteristics when sentencing her, she did not establish that her 40-year sentence for second-degree murder was a life sentence or the functional equivalent of a life sentence, and by failing to make this threshold

showing, she failed to establish that her sentence violated the Eighth Amendment. *See id.* at *2, 6. The Court finds that *Pedroza* applies to this case because the Florida Supreme Court did not distinguish between juvenile homicide and nonhomicide offenders – it discussed all juvenile offender sentences.[2] Pursuant to *Pedroza*, the Court finds that Defendant's 30-year sentence for arson does not implicate *Graham* because she neither argues nor shows that it is a life sentence or the functional equivalent of a life sentence. Therefore, she is not entitled to resentencing on Count Two because her sentence does not violate the Eighth Amendment[3] as construed in *Graham*.

I.B

The Court also rejects Defendant's contention that her 30-year sentence on Count Two, with no right to judicial review, runs afoul of the Eighth Amendment because it is "disproportionate." Defendant's claim that the "disproportionate" sentence arises from the statutory scheme is misplaced. The statutory scheme enacted in response to *Graham* and *Miller* expressly provides that it only applies to juvenile offenders who committed crimes on or after July 1, 2014. *See Horsley v. State*, 160 So. 3d 393, 394 (Fla. 2015). Defendant lacks standing to challenge the constitutionality of those statutes because she is not adversely affected by a statutory scheme that is inapplicable to her and all other juveniles who offended prior to July 1, 2014. *See*

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[2] With respect to this issue, *Pedroza* disapproved the following decisions from the Fifth District Court of Appeal: *Katwaroo v. State*, 237 So. 3d 446 (Fla. 5th DCA 2018); *Burrows v. State*, 219 So. 3d 910 (Fla. 5th DCA 2017); and *Tarrand v. State*, 199 So. 3d 507 (Fla. 5th DCA 2016). The Court notes Defendant's reliance on *Peterson v. State*, 193 So. 3d 1034 (Fla. 5th DCA 2016), *Tyson v. State*, 199 So. 3d 1087 (Fla. 5th DCA 2016), and *Montgomery v. State*, 230 So. 3d 1256 (Fla. 5th DCA 2017). *Peterson* relied on *Henry*, which *Pedroza* clarified. *Peterson* also relied on *Thomas v. State*, 177 So. 3d 1275 (Fla. 2015), which *Pedroza* noted lacked any precedential value. *See id.* at *3 n.2. *Tyson* relied on *Henry* and *Peterson*. *Montgomery* relied on *Henry, Kelsey* and *Johnson*, which *Pedroza* clarified or receded from. *Montgomery* also relied on *Burrows*, which *Pedroza* disapproved, *Peterson* and *Tyson*. Therefore, the holdings in *Peterson, Tyson* and *Montgomery* have been implicitly eviscerated by *Pedroza's* clarification of, disapproval of, or receding from the cases upon which *Peterson, Tyson* and *Montgomery* are grounded. In any event, *Pedroza* makes clear that a juvenile nonhomicide offender's sentence only implicates *Graham* when it is a life sentence or the functional equivalent thereof, and that neither resentencing nor a judicial review is required for every juvenile offender serving a sentence longer than twenty years. *Pedroza* is a Florida Supreme Court opinion and this Court is bound by its ruling.

[3] The Florida Constitution does not provide greater protection from "cruel and unusual punishment." *See Pedroza* at *1 n.1.

M.Z. v. State, 747 So. 2d 978, 980 (Fla. 1st DCA 1999); *State v. Flowers*, 643 So. 2d 644, 645 (Fla. 1st DCA 1994). The Florida Supreme Court, however, concluded that the proper judicial remedy is to apply those statutes to all juvenile offenders who committed crimes prior to July 1, 2014 and whose sentences were unconstitutional under *Miller*. *See Horsley*, 160 So. 3d at 394-95. The Court subsequently decided to adopt that judicial remedy for all juvenile offenders who committed crimes before July 1, 2014 and whose sentences violate *Graham*. *See Pedroza*, at *4 (citing *Kelsey*, 206 So. 3d at 8). In the wake of *Horsley*, *Kelsey* and *Pedroza*, a juvenile offender who committed a capital, life or PBL felony prior to July 1, 2014 and received a life sentence or the functional equivalent of a life sentence may be released after 15, 20 or 25 years through judicial review, but a juvenile offender (like Defendant) who committed a first-degree felony before July 1, 2014 and received a 30-year sentence may not seek such release. Even if that result is "disproportionate" under the Eighth Amendment, Defendant's claim fails because this Court has no authority to disregard, modify or overrule the Florida Supreme Court decisions that cause that result.[4]

I.C

In any event, the Florida Supreme Court recently explained the difference between a holding and dictum. *See Pedroza*, at *4. Applying those principles to the cases cited by Defendant (*Graham*; *Landrum v. State*, 192 So. 3d 459 (Fla. 2016); *Gridine v. State*, 175 So. 3d 672 (Fla. 2015); *Buford v. State*, 403 So. 2d 943 (Fla. 1981); and *Peters v. State*, 128 So. 3d 832 (Fla 4th DCA 2013)) reveals that those cases do not hold that it is "disproportionate" in violation of the Eighth Amendment to provide an opportunity for release after 15, 20 or 25 years through judicial review to a juvenile offender sentenced to life or the functional equivalent of life for a capital, life

[4] This Court also notes that the *Pedroza* majority was apparently unfazed by the lone dissenter's complaint about the "disproportionate result." *Id.* at *6 (Labarga, J., dissenting).

or PBL felony, but not provide such opportunity to a juvenile offender sentenced to 30 years for a first-degree felony. Furthermore, those cases do not hold that a 30-year sentence for a life felony (like Second Degree Murder (with a firearm)), and a concurrent 30-year sentence for a first-degree felony (like Arson) arising out of the same criminal episode, offends the Eighth Amendment because it is "disproportionate." The Court's rulings in this case on June 18, 2019 entitle Defendant to a judicial review of her sentence on Count One after 25 years. After that review, it is possible that Defendant will be released from prison for Count One prior to completely serving her sentence for Count Two, but it is also possible that Defendant will not obtain such release. At best, Defendant's "disproportionate" claim is premature.

II.A

The Equal Protection Clause[5] provides no relief for Defendant. As she did with her "disproportionate" complaint, Defendant erroneously directs her "disparate treatment" complaint at the juvenile sentencing statutory scheme. Defendant does not have standing to attack the constitutionality of that statutory scheme. *See supra* Part I.B. The Court has summarized the Florida Supreme Court cases that made the judicial review remedy available to certain juvenile offenders, but not to others, including Defendant. *See supra* Part I.B. Therefore, Defendant's complaint must be rejected because this Court cannot alter the decisions in *Horsley*, *Kelsey* or *Pedroza* to address the resulting "disparate treatment" that allegedly violates the Equal Protection Clause.

II.B

Even if Defendant has standing and the Court is not constrained by Florida Supreme Court precedent, the Court rejects Defendant's Equal Protection Clause claim. As a provision that curtails

[5] The Court has not found, and Defendant has not cited, any case that would support granting relief under Article I, section 2 of the Florida Constitution if Defendant is not entitled to relief under the Equal Protection Clause.

government classification, *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 59 (1973) (Stewart, J., concurring), the Equal Protection Clause "deals with intentional discrimination and does not require proportional outcomes." *Rollinson v. State*, 743 So. 2d 585, 589 (Fla. 4th DCA 1999). "In the absence of a fundamental right or a protected class, equal protection demands only that a distinction which results in unequal treatment bear some rational relationship to a legitimate state purpose." *Duncan v. Moore*, 754 So. 2d 708, 712 (Fla. 2000); *see also Love v. State*, 282 So. 3d 1003, 1003-04 (Fla. 1st DCA 2019) (in a criminal case not involving the death penalty, a sentence "violates the Equal Protection Clause only if it reflects disparate treatment of similarly situated defendants lacking any rational basis.") (citations omitted). The Court finds that section 775.082 does not affect a fundamental right or suspect class;[6] therefore, the rational basis test applies. *See Graham v. State*, 286 So. 3d 800, 805 (Fla. 1st DCA 2019) (citing *Jackson v. State*, 191 So. 3d 423, 427 (Fla. 2016)).

> Under rational basis review, "a statute must be upheld if there is any conceivable state of facts or plausible reason to justify the classification, regardless of whether the legislature actually relied on such facts or reason." The statutory classification does not have to affect the permissible goal in the best possible manner, rather some degree of inequality is permitted. Stated differently, "[a] statutory classification will be deemed to violate equal protection only if it causes different treatments so disparate as relates to the difference in classification so as to be wholly arbitrary."

Id. (citations omitted).

Sections 775.082, 921.1401, and 921.1402, Florida Statutes (2019), provide special sentencing rules for juveniles convicted of "certain serious felonies" identified in those statutes. Ch. 14-220, Laws of Fla. (title). Those provisions, by their express terms, apply only to capital,

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[6] Defendant argues that she has a fundamental right to be "treated differently" at sentencing than an adult who commits a first-degree felony. It would stand the *Equal Protection* Clause on its head to allow it to be invoked to mandate *different treatment*. Not surprisingly, Defendant does not cite any case that recognizes such a remedy under the Equal Protection Clause. Defendant also fails to cite a case finding an Equal Protection Clause violation based on a claim that a juvenile who commits a first-degree felony has a fundamental right to a judicial review of his or her sentence if a juvenile who commits a capital, life or PBL felony is entitled to such a review. Although juveniles have been described as a "special class" under the Eighth Amendment, Defendant cites no authority that equates that description with "suspect class" under the Equal Protection Clause.

life, and PBL felonies. *See* § 775.082(1)(b), (3)(a)5, (3)(b)2, (3)(c), Fla. Stat. (2019). For the specified felonies, the statutory scheme provides the possibility of early release through judicial review. *See id.*; § 921.1402. Defendant was convicted of arson, a first-degree felony, which is excluded from the scope of the statutory judicial review scheme because it has a maximum penalty of 30 years.

"The legislature has wide discretion in creating statutory classifications, and its role in establishing the appropriate sentences for criminal offenses is especially important. Reviewing courts 'should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes.'" *Graham*, 286 So. 3d at 805 (citations omitted). Section 775.082 serves a legitimate governmental purpose, namely to remedy the constitutional deficiencies of juvenile sentencing schemes identified in *Graham* and *Miller*. *See id. Pedroza* held that *Graham* and *Miller* are not implicated unless a juvenile is sentenced to life or the functional equivalent of life. It is rational for the statutory scheme to provide judicial review to a juvenile who commits a capital, life or PBL felony, but not provide judicial review to a juvenile who commits a first-degree felony, because it is almost impossible for the latter to receive a sentence that implicates the cases which prompted the Legislature to enact that scheme. The disparate treatment between juvenile offenders is also rationally related to the legitimate goal of conserving resources. *See Miller v. State*, 971 So. 2d 951, 955 (Fla. 5th DCA 2007) (citing *Doe v. Moore*, 410 F.3d 1337 (11th Cir. 2005)). Financial, judicial and related resources are saved by limiting judicial review to juvenile capital, life and PBL felony cases. For all the foregoing reasons, section 775.082 survives Defendant's facial challenge under the Equal Protection Clause.

II.C

An as-applied challenge is also meritless. To prevail, Defendant must show, inter alia, that she is treated differently under the statute than a similarly-situated person. *See Graham*, 286 So. 3d at 806 (citing *Miller*, 971 So. 2d at 953). Section 775.082 treats Defendant the same as every other similarly-situated offender because no first-degree (not PBL) felony offender is provided with a judicial review. *See* § 775.082(3)(b), (c); *cf. Graham*, 286 So. 3d at 806-07 (finding that defendant was treated the same as all other similarly-situated offenders who commit non-homicide PBL felonies). Therefore, any as-applied challenge by Defendant under the Equal Protection Clause fails.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. The Defendant's Successive Motion for Postconviction Relief: to Vacate, Set Aside, or Correct Sentence on Count Two is **DENIED**.
2. The Defendant may file a notice of appeal in writing within thirty (30) days of the date of rendition of this Order.
3. The Clerk of the Court shall promptly serve a copy of this Order upon the Defendant, including an appropriate certificate of service.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 6 day of May, 2020.

KEITH F. WHITE
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY that a copy of this Order has been furnished by U.S. Mail / E-portal this 6 day of May, 2020, to **Jenise Ortiz**, DOC# X24416, Lowell Correctional Institution, 11120 NW Gainesville Rd., Ocala, Florida 34482-1479; **David L. Redfearn, Esq.**, Attorney for Defendant, **Office of the Public Defender**, 435 North Orange Avenue, Suite 400, Orlando, Florida 32801, dredfearn@circuit9.org; and to **Laura Maynard Sacha, Esq.**, **Office of the State Attorney, Postconviction Felony Unit**, Post Office Box 1673, 415 North Orange Avenue, Suite 200, Orlando, Florida 32801, PCF@sao9.org / lsacha@sao9.org.

Judicial Assistant

STATE OF FLORIDA
VS.

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

CASE NUMBER: 2017-CF-009370-A-O
DIVISION: White, Keith F

PHILLIP JUNIOR JONES, Defendant

DOB: 11/2/1992

ORDER-CORRECTED TO ADD WITHOUT PREJUDICE

This cause coming on this day for: **Pre-Trial Conference**, with Asst State Attorney, REBECCA ADDISON, present and you, the defendant, **PHILLIP JUNIOR JONES** being now Present **and represented by MICHAEL LAFAY** Present , you have:

COURT ORDERS:

Court Minutes

Motion to Suppress — is hereby denied based on reasons stated on the record.

The court finds probable cause as to Counts 1-4 based on reasons stated on the record.

Per the Court: — Case to Remain as Previously Set for trial on 8/20/18 at 9:00 am.

Defense Motion to Continue — Denied without prejudice

DONE, ORDERED and FILED in Open Court on August 9, 2018

Honorable Judge: ____________________
Keith F White

PHILLIP JUNIOR JONES 4298 WATCH HILL RD
ORLANDO, FL, 32808

Deputy Clerk in Attendance: Monica E.
Office of Tiffany M. Russell, Orange County Clerk of the Circuit and County Courts

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____ Dockets ____ C.F.S.C. ____ Other ____ Defendant

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

STATE OF FLORIDA,

Plaintiff,

CASE NO.: 1999-CF-011367-A-O
DIVISION: 17

vs.

JENISE ORTIZ,

Defendant.

_______________________________/

ORDER DENYING DEFENDANT'S SUCCESSIVE MOTION FOR POSTCONVICTION RELIEF: TO VACATE, SET ASIDE, OR CORRECT SENTENCE ON COUNT TWO

THIS MATTER comes before the Court on the Defendant's Successive Motion for Postconviction Relief: to Vacate, Set Aside, or Correct Sentence on Count Two, filed on December 10, 2018, pursuant to Florida Rule of Criminal Procedure 3.800(a) and, alternatively, Florida Rule of Criminal Procedure 3.850. After reviewing the Defendant's Motion, the State's response, the court file, and the record, the Court finds as follows:

PROCEDURAL HISTORY

On May 25, 2000, the Defendant pleaded guilty to second degree murder (a lesser-included offense of the charged offense of first degree murder) (Count One) and arson (Count Two). On November 9, 2000, she was sentenced to concurrent terms of thirty-five (35) years in the Florida Department of Corrections, subject to a 25-year minimum mandatory term, on Count One, and thirty (30) years in the Florida Department of Corrections on Count Two. She appealed, and the Fifth District Court of Appeal *per curiam* affirmed. *Ortiz v. State*, 788 So. 2d 987 (Fla. 5th DCA 2001). The Mandate was issued on June 8, 2001.

On July 2, 2001, she filed a Motion for Correction, Reduction, and Modification of Sentence pursuant to Rule 3.800(c), which the Court denied on July 16, 2001.

On March 24, 2003, she filed a Motion for Postconviction Relief pursuant to Rule 3.850, alleging three claims of ineffective assistance of counsel. The Court denied the Motion on March 2, 2004. She did not appeal.

On December 6, 2017, she filed a Motion to Correct Illegal Sentence pursuant to Rule 3.800(a), arguing that her 35-year sentence for second degree murder constitutes a defacto life

sentence that does not provide meaningful opportunity for early release based upon demonstrated maturity and rehabilitation. On January 11, 2018, the State filed its Response to the Motion, asserting that it was leaving it in the "Court's discretion to grant the Defendant's request" for resentencing. On January 30, 2018, the Court granted in part the Motion and scheduled a resentencing hearing for March 28, 2018, which was continued twice and reset for November 9, 2018.

On October 25, 2018, the State filed a Motion to Stay Proceedings based on the fact that the Florida Supreme Court granted review in *Hart v. State*, 246 So. 3d 417 (Fla. 4th DCA 2018), where the court held that a juvenile offender's sentence of 30 years in prison, with no review provisions, for burglary of a dwelling with a firearm, robbery with a firearm, and attempted robbery with a firearm violated neither the prohibition of excessive sentences under the Eighth Amendment and the Florida Constitution nor the United States Supreme Court's decision in *Graham v. Florida*, 560 U.S. 48 (2010), which prohibited juvenile offenders convicted of nonhomicide offenses from being sentenced to life without parole, where even if he served his sentence day-for-day, the offender would be released in his forties.[1] On October 31, 2018, the Defendant filed her Objection to the State's Motion to Stay. On November 2, 2018, the Court granted the State's Motion to Stay Proceedings for a period of sixty (60) days.

On December 10, 2018, the Defendant filed the instant Motion seeking an Order correcting, vacating, or setting aside her original sentence for Count Two, arguing that because her 30-year sentence for arson is also a "lengthy sentence" under Florida law, and because it too lacks a mechanism for early release based upon a showing of rehabilitation and maturity, it is also an illegal sentence under *Kelsey v. State*, 206 So. 3d 5 (Fla. 2016) and should be vacated and resentenced along with Count One. On May 14, 2019, the Defendant filed her Notice of Supplemental Authority, asserting that the case of *Link v. State*, 2019 WL 2017389 (Fla. 3d DCA May 8, 2019) supports her argument that this Court should lift the stay and proceed with resentencing on Count Two. Additionally, on May 14, 2019, the State filed its Response to the instant Motion, arguing that the instant Motion should be denied because her 30-year sentence in Count Two does not violate the Eighth Amendment because thirty (30) years is the statutory maximum for the offense of arson.

ANALYSIS AND RULING

The Court hereby adopts, incorporates, and relies on the State's Response in denying the instant Motion. First, the Court finds that the case of *Link v. State* does not require the stay to be lifted in the instant case because "[a] motion for stay is addressed to the sound discretion of the

[1] On November 27, 2018, the Florida Supreme Court dismissed jurisdiction in *Hart*. *See Hart v. State*, 2018 WL 6181698 (Fla. Nov. 27, 2018). However, on December 6, 2018, the Florida Supreme Court granted review in *Pedroza v. State*, 244 So. 3d 1128 (Fla. 4th DCA 2018), *rev. granted* 2018 WL 6433136 (Fla. 2018), which held that, based on *Hart*, a juvenile offender's sentence of forty (40) years for second-degree murder did not violate the Eighth Amendment, as construed by any decision of the United States Supreme Court, nor does any binding Florida Supreme Court decision require resentencing.

trial court." *Onett v. Ahola*, 780 So. 2d 979, 980 (Fla. 5th DCA 2001). Second, the Court finds that the instant Motion is without merit for the below reasons.

An illegal sentence is one that imposes "a kind of punishment that no judge under the entire body of sentencing statutes could possibly inflict under any set of factual circumstances." *Carter v. State*, 786 So. 2d 1173, 1178 (Fla. 2001) (quoting *Blakley v. State*, 746 So. 2d 1182, 1186–87 (Fla. 4th DCA 1999)). Rule 3.800(a) is intended to provide relief for a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law. *Judge v. State*, 596 So. 2d 73, 77 (Fla. 2d DCA 1991). It is concerned primarily with whether the terms and conditions of the punishment for a particular offense are permissible as a matter of law. *Id.*

Here, the Defendant was charged with and convicted of arson, a first-degree felony.[2] This Court finds that the offense of arson does not fall within the scope of sections 775.082, 921.1401, and 921.1402, Florida Statutes (2018).[3] Sections 775.082, 921.1401, and 921.1402, Florida

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[2] *See* section 806.01, Fla. Stat. (2018).
[3] Section 921.1401, Florida Statutes, states:

(1) Upon conviction or adjudication of guilt of an offense described in s. 775.082(1)(b), s. 775.082(3)(a) 5., s. 775.082(3)(b) 2., or s. 775.082(3)(c) which was committed on or after July 1, 2014, the court may conduct a separate sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.

(2) In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:

(a) The nature and circumstances of the offense committed by the defendant.

(b) The effect of the crime on the victim's family and on the community.

(c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

(d) The defendant's background, including his or her family, home, and community environment.

(e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

(f) The extent of the defendant's participation in the offense.

(g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.

Statutes (2018), provide special sentencing rules for juveniles convicted of "certain serious felonies" identified in those statutes. Ch. 2014-220 (title). Those provisions, by their express terms, apply only to homicide offenses, which are defined in section 782.04, Florida Statutes (2018), and nonhomicide offenses that can be punished by life. *See* §§ 775.082(1)(b), 775.082(3)(a)5., 775.082(3)(c)., Fla. Stat. (2018). As drafted, the special sentencing rules created by chapter 2014-220 do not apply to any other offenses. *Id.* For the "specified offenses," each subsection provides an early release mechanism, based on a finding of maturity and rehabilitation, for the sentence imposed pursuant to that subsection on the specified offense. *Id.*; *see*, e.g., § 775.082(3)(c) (explaining that a juvenile convicted of a nonhomicide offense that is punishable by life or a term of years not exceeding life, and who is sentenced to a term of imprisonment "of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d)"). However, Chapter 2014-220 did not add any special juvenile sentencing provisions for lower-level offenses, such as the offense of arson in the instant case. *State v. Purdy*, 252 So. 3d 723, 726 (Fla. 2018). For example, no review mechanism is provided for first-degree felonies (except for Fl-PBLs), second-degree felonies, or third-degree felonies. *Purdy*, 252 So. 3d at 726. Moreover,

> The new juvenile sentencing rules for life felonies and F1-PBLs are categorized based upon whether the underlying offense is a homicide offense or nonhomicide offense and the length of sentence imposed. For example, a juvenile sentenced for a nonhomicide life felony to a term-of-years sentence of more than 20 years is entitled to review of that sentence after 20 years and, for longer sentences, is entitled to a second review 10 years after the initial review. §§ 775.082(3)(c), 921.1402(2)(d), Fla. Stat. (2015). As seen in these examples, and in the text itself, the review provisions added by the Legislature are clearly and unequivocally linked to those offenses specified in chapter 2014-220. Although a review mechanism is provided for some term-of-years sentences, this is only because life felonies and F1-PBLs can be punished by a term-of-years sentence, and because a juvenile can

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(h) The nature and extent of the defendant's prior criminal history.

(i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

(j) The possibility of rehabilitating the defendant.

> now be sentenced to a term-of-years sentence for a capital offense. §§ 775.082(1)(b), 775.082(3)(a) 5., 775.082(3)(b)2., 775.082(3)(c)., Fla. Stat. (2015).

Id. at 727. Because the offense of arson is not a life felony or a capital offense, the Defendant is not entitled to a judicial review mechanism. It follows then that the Defendant is not entitled to be resentenced on the arson conviction. *See Purdy*, 252 So. 3d at 728-29 (holding that the defendant was not entitled to review of aggregate nine-year sentence for armed robbery (an FI-PBL) and armed carjacking (FI-PBL) to determine whether modification of sentence was warranted based on maturity and rehabilitation because Purdy was sentenced to less than 10 years on each offense). Importantly, the Defendant scored thirty (30) years in prison and was sentenced to the statutory maximum for the offense of arson which is within the discretion of the Court; thus, the 30-year sentence is not illegal. *See* section 775.082(b)(1), Fla. Stat. (2018). *See also* Scoresheet.

Additionally, the Defendant has already challenged her sentence on direct appeal. On or about December 19, 2000, the Defendant, though court appointed counsel, filed a Notice of Appeal with the Fifth District Court of Appeal, which was *per curiam* affirmed on May 22, 2001. *See Ortiz*, 788 So. 2d 987. The Defendant then filed a pro se Motion for Correction, Reduction and Modification of Sentence pursuant to Fla. R. Crim. P. 3.800, which was clocked in by the Orange County Clerk of Court on July 2, 2001. Judge Lauten denied the Motion for Correction, Reduction and Modification of Sentence on July 13, 2001. In that Order denying the relief that the Defendant again seeks, Judge Lauten outlined the sentence and declined to exercise his discretion in reducing the Defendant's legal sentences.

"The doctrine of collateral estoppel precludes successive review of a specific issue that already has been decided on the merits." *Gonzalez v. State*, 208 So. 3d 143, 148 (Fla 3d DCA 2016). *See also State v. McBride*, 848 So. 2d 287, 291 (Fla. 2003) ("Collateral estoppel ... precludes a defendant from rearguing in a successive rule 3.800 motion the same issue argued in a prior

motion."); *Harvey v. State*, 78 So. 3d 1 1, 12 (Fla. 3d DCA 2011) ("The collateral estoppel bar, however, only applies when the identical issue is raised in a prior motion and the issue is decided on the merits."); *accord Garcia v. State*, 69 So. 3d 1003 (Fla. 3d DCA 2011); *Pleasure v. state*, 931 So. 2d 1000 (Fla. 3d DCA 2006). However, the doctrine of collateral estoppel does not apply to bar a defendant from seeking relief when the issue presented has never been considered and decided on the merits. *See Pleasure*, 931 So. 2d at 1002 ("For the bar of collateral estoppel to apply, the prior decision must have been on the merits."); *Williams v. State*, 868 So. 2d 1234, 1235 (Fla. 1st DCA 2004) ("[T]he trial court erred in denying the appellant's claim as being barred by the doctrine of collateral estoppel as it is not clear from the record before this Court that the instant claim has ever been decided on the merits."). Similarly, "[i]f there was a prior decision on the merits and an affirmance on appeal, then the law of the case doctrine would also come into play." *Pleasure*, 931 So. 2d at 1002 n. 2; *accord McBride*, 848 So. 2d at 289—90 (stating that the law of the case doctrine applies to motions filed under Rule 3.800); *Swain v. state*, 911 So. 2d 140, 144 (Fla. 3d DCA 2005) ("As this appeal is based upon the trial court's denial of the same claims previously raised by the defendant and affirmed on appeal on the merits, the law of the case doctrine serves as a procedural bar herein."). Here, the Defendant previously challenged her sentence in Count Two in the direct appeal to the Fifth District Court of Appeal on December 19, 2000 and in the Motion for Correction, Reduction and Modification of Sentence pursuant to Fla. R. Crim. P. 3.800, as well as before Judge Lauten at a status hearing on October 31, 2018. (*See* Court Minutes). Thus, there is no manifest injustice in collaterally estopping the Defendant from raising the claim that her 30-year sentence for the arson conviction constitutes a violation of the Eighth Amendment. Accordingly, the instant Motion is denied.[4]

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

[4] The Court holds that the denial of the instant Motion has no effect or bearing on the resentencing issue in Count One.

1. The Defendant's Successive Motion for Postconviction Relief: to Vacate, Set Aside, or Correct Sentence on Count Two is **DENIED**.

2. The Defendant may file a notice of appeal in writing within thirty (30) days of the date of rendition of this Order.

3. The Clerk of the Court shall promptly serve a copy of this Order upon the Defendant, including an appropriate certificate of service.

4. Copies of the following are attached to this Order and incorporated by reference: Information; Plea Form; Judgment; Sentence; Scoresheet; Mandate; Order Denying Motion for Correction, Reduction, and Modification of Sentence; Order Denying Motion for Postconviction Relief; Order Granting in Part "Motion to Correct An Illegal Sentence," Setting Resentencing Hearing, and Appointing Counsel; Order Granting Motion to Stay Proceedings; and Court Minutes.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 29 day of May, 2019.

KEITH F. WHITE
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished by U.S. Mail / E-portal this 30 day of May, 2019, to **Jenise Ortiz**, DOC# X24416, OC Booking # 19013062, Orange County Jail, 00012345 M-4A, P.O. Box 4970, Orlando, FL 32802-4970; **David L. Redfearn, Esq.**, Attorney for Defendant, **Office of the Public Defender**, 435 North Orange Avenue, Suite 400, Orlando, Florida 32801, dredfearn@circuit9.org; and to **Laura Maynard Sacha, Esq.**, **Office of the State Attorney, Postconviction Felony Unit**, Post Office Box 1673, 415 North Orange Avenue, Suite 200, Orlando, Florida 32801, PCF@sao9.org / lsacha@sao9.org.

Judicial Assistant

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

CASE NO.: 1997-CF-009833-A-O
DIVISION: 17

STATE OF FLORIDA,

Plaintiff,

vs.

MIKAEL T. CUYLER,

Defendant.
_____________________________/

FINAL ORDER DISMISSING DEFENDANT'S
MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE AS UNTIMELY

THIS MATTER comes before the Court on Defendant's *pro se* Motion to Vacate, Set Aside, or Correct Sentence, provided for mailing on August 8, 2018, and received by this Court on August 13, 2018. After reviewing the Defendant's Motion, the court file, and the record, the Court hereby finds as follows:

PROCEDURAL HISTORY

On May 7, 1998, the Defendant was convicted of first-degree murder in Count 1, armed robbery in Count 2, and armed kidnapping in Counts 3 and 4, with a special verdict finding that he used, carried, or displayed a firearm in the commission of the offenses.

On June 10, 1998, he was sentenced to four terms of life in the Department of Corrections, with counts 3 and 4 running consecutive to counts 1 and 2.Each term was subject to a 3-year minimum mandatory for use of the firearm, and he received 318 days of credit for time served prior to sentencing.

On June 16, 1998, counsel filed a Motion to Correct Sentence, alleging the sentences on Counts 2, 3, and 4 were departures for which no written reasons had been provided. This motion was either denied or abandoned, because counsel filed a notice of appeal on June 22, 1998.

The Fifth District Court of Appeal affirmed the convictions and the sentence for the murder

but reversed the sentences for the robbery and kidnappings based upon a finding that these sentences were unjustified departures, as alleged in the Motion to Correct Sentence. *Cuyler v. State*, 733 So. 2d 568 (Fla. 5th DCA 1999). The Mandate was issued on May 24, 1999.

On June 24, 1999, he was resentenced to 266.7 months in the Department of Corrections on Counts 2, 3, and 4, to run concurrently with each other and with the life sentence previously imposed on Count 1. He did not appeal.

On May 4, 2000, he filed a Motion for Postconviction Relief, alleging insufficient evidence, ineffective assistance of counsel, and trial court error. This Motion was denied on July 10, 2001. The Fifth District Court of Appeal *per curiam* affirmed. *Cuyler v. State*, 801 So. 2d 948 (Fla. 5th DCA 2001).

On April 1, 2009, he filed a Petition for Writ of Habeas Corpus, followed by a Notice of Supplemental Authority on April 17, 2009. This Petition was denied on May 29, 2009. His motion for Reconsideration was denied on June 18, 2009. The Fifth District Court of Appeal *per curiam* affirmed. *Cuyler v. State*, 2009 WL 5252638 (Fla. 5th DCA 2009).

On December 12, 2011, he filed a Motion for Postconviction Relief, essentially alleging that the Court was without jurisdiction to enter his judgment and sentences. On April 25, 2012, the Court denied the motion. On August 28, 2012, the Fifth District Court of Appeal *per curiam* affirmed. The Mandate was issued on September 21, 2012. *Cuyler v. State*, 144 So. 3d 553 (Fla. 5th DCA 2012). The instant Motion followed.

ANALYSIS AND RULING

A Rule 3.850 motion must be filed within two years after the judgment and sentence became final. *Meyer v. State*, 997 So. 2d 1262, 1262 (Fla. 5th DCA 2009). The Fifth District Court of Appeal's Mandate, affirming the Defendant's judgment and sentence for the murder conviction was issued on May 24, 1999. Additionally, his judgment and sentences for the robbery and kidnappings became final on July 26, 1999. The instant Motion was filed on August 13, 2018. Therefore, this Court concludes that it is procedurally barred as untimely and must be dismissed because it fails to meet the criteria for relief outlined in Florida Rule of Criminal Procedure 3.850(b)(1), (2), or (3).

The Court notes that this is the Defendant's fifth motion for postconviction relief

challenging the legality of his judgment and sentences, and all prior challenges have been denied and affirmed on appeal. The Defendant is cautioned that if he continues to file successive, procedurally barred, or otherwise meritless *pro se* postconviction motions, he will be ordered to show cause as to why he should not be barred from further *pro se* access to this Court. *See State v. Spencer*, 751 So. 2d 47 (Fla. 1999); *Bain v. State*, 771 So. 2d 1292 (Fla. 5th DCA 2000); *Johnson v. State*, 652 So. 2d 980 (Fla. 5th DCA 1995); *Isley v. State*, 652 So. 2d 409, 411 (Fla. 5th DCA 1995) ("Enough is enough.").

Based upon the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. The Defendant's *pro se* Motion to Vacate, Set Aside, or Correct Sentence is **DISMISSED WITH PREJUDICE**.

2. The Defendant may file a notice of appeal in writing within **thirty (30) days** of the date of rendition of this Order.

3. The Clerk of the Court shall promptly serve a copy of this Order upon Defendant, including an appropriate certificate of service.

DONE AND ORDERED in Chambers at Orlando, Orange County, Florida, this 6 day of March, 2019.

KEITH F. WHITE
Circuit Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished by U.S. Mail / E-portal this 7 day of March, 2019, to **Mikael T. Cuyler**, DOC# X11888, Blackwater River Correctional Facility, 5914 Jeff Ates Road, Milton, Florida 32583-0000; and to **William J. Busch, Esq., Office of the State Attorney, Postconviction Felony Unit**, Post Office Box 1673, 415 North Orange Avenue, Suite 200, Orlando, Florida 32801, PCF@sao9.org / wbusch@sao9.org.

Judicial Assistant

Filing # 59184710 E-Filed 07/18/2017 04:20:42 PM

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

DAVID NEWMAN,

Plaintiff,

Case No.: 2015-CA-7389

v.

GLENN HIRST, an individual
and WERNER ENTERPRISES, INC.,
a foreign corporation,

Defendants,
_______________________________________/

ORDER ON DEFENDANTS' MOTION FOR IMPOSITION OF SANCTIONS

THIS CAUSE, having come before the Court on July 13, 2017 upon Defendants' Motion for Imposition of Sanctions, and the Court, having considered the Motion and the argument of counsel and being otherwise fully advised and informed in the premises, it is hereby:

ORDERED AND ADJUDGED as follows:

1. The Court **RULES** that Plaintiff expressly waived all privileges to the Boecher Interrogatories by stipulating to the Agreed Order entered on May 11, 2017.

RN 13/15 2. The Court **TAKES UNDER ADVISEMENT** the issue of whether Plaintiff ~~implicitly~~ waived all privileges to the Boecher Requests for Production by stipulating to the Agreed Order entered on May 11, 2017.

3. The Court **RESERVES RULING** with respect to the issue of sanctions presented in the Motion.

DONE AND ORDERED in Chambers, in Orlando, Orange County, Florida, this 18 day of July, 2017.

Keith F. White, Circuit Judge

Conformed copies furnished to all Counsel of Record.

7/18/17

Judicial Assistant **Date**

9/9/2016 3:34 PM FILED IN OFFICE TIFFANY M RUSSELL CLERK CIRCUIT COURT ORANGE CO FL

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

CASE NO. 2016-CA-007847-O

YVES JEAN JACQUES MILORD,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.
_______________________/

ORDER DISMISSING PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER came before the Court for consideration of the Petition for Writ of Habeas Corpus filed September 02, 2016, by Yves Jean Jacques Milord (herein "Petitioner"). It has been reviewed pursuant to Florida Rule of Civil Procedure 1.630.

Jurisdiction in a habeas corpus proceeding is established at the time of filing, and Petitioner is currently incarcerated in Hardee Correctional Institution, which is located in Hardee County. Therefore, habeas relief is not available to him in Orange County, because such petitions must be filed with the clerk of the court in the county where the inmate is detained. Fla. Stat. § 79.09 (2016); *see also Collins v. State*, 859 So. 2d 1244, 1246 (Fla. 5th DCA 2003) ("[T]he general rule is that the circuit court where the defendant is incarcerated has jurisdiction to grant a writ of habeas corpus."); *Raley v. State*, 675 So. 2d 170 (Fla. 5th DCA 1996) (holding that the trial court lacks authority to rule on a petition for writ of habeas corpus filed by a prisoner detained outside the court's territorial jurisdiction). Because this Court is without jurisdiction to grant the relief the Petitioner seeks, his petition must be dismissed.

9/9/2016 3:34 PM FILED IN OFFICE TIFFANY M RUSSELL CLERK CIRCUIT COURT ORANGE CO FL

Based on the foregoing, it is **ORDERED AND ADJUDGED** that the Petition for Writ of Habeas Corpus is hereby **DISMISSED**.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida, this 8 day of September, 2016.

KEITH F. WHITE
Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order Dismissing Petition for Writ of Habeas Corpus has been provided this 9 day of September, 2016 by U.S. Mail / hand delivery to **Yves Jean Jacques Milord, DC# 62866**, Hardee Correctional Institution, 6901 State Road 62, Bowling Green, Florida 33834; and to the **Postconviction Felony Unit, Office of the State Attorney**, 415 North Orange Avenue, Orlando, Florida 32801.

Judicial Assistant

4/28/2016 12:49 PM FILED IN OFFICE TIFFANY M. RUSSELL CLERK CIRCUIT COURT ORANGE CO FL

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNT

TODD COPELAND, on behalf of, and as Trustee for, KYONDA HACKSHAW, and Guardian ad Litem for KYONIE COREY FERGUSON, a minor, and JARREL LAMAR SLEDGE, a minor,

Case No. 2012-CA-017372

Plaintiff,

vs.

ADVENTIST HEALTH SYSTEM/SUNBELT, INC., d/b/a FLORIDA HOSPITAL ORLANDO; FLORIDA HOSPITAL MEDICAL GROUP, INC.; BIRDIE M. VARNEDORE, M.D.; EDGARDO M. RODRIQUEZ, M.D.; FLORIDA EMERGENCY PHYSICIANS, KANG & ASSOCIATES, M.D., P.A.; FRANK HELLINGER, M.D.; DONALD BEHRMANN, M.D.; ORLANDO NEURO-SURGERY, P.A.; ADVENTIST HEALTH SYSTEM/ SUNBELT, INC., d/b/a FLORIDA HOSPITAL ORLANDO d/b/a LOCH HAVEN OB/GYN; MARK SAMUEL CRIDER, M.D.; SCOTT ALLEN BOONE, M.D.; MELANIE JACOBS REIS, CNM, ARNP; CRISTOPHER ARTHUR ROY WALKER, M.D.; ADVANCED WOMEN'S UROLOGY AND GYNECOLOGY, PLLC,

Defendants.
_______________________________________/

ORDER ON PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT AND ADD PUNITIVE DAMAGES CLAIMS

THIS MATTER, having come before the Court on April 15, 2016, on Plaintiff's Motion for Leave to Amend Complaint to Add Punitive Damages Claims against Defendants (i) Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Orlando, (ii) Florida Hospital Medical Group, Inc., (iii) Florida Emergency Physicians, Kang & Associates, M.D., P.A., (iv) Birdie M. Varnedore, M.D., and, (v) Edgardo M. Rodriguez, M.D., and the Court having read the

4/28/2016 12:49 PM FILED IN OFFICE TIFFANY M. RUSSELL CLERK CIRCUIT COURT ORANGE CO FL

Parties' legal memoranda, having heard oral arguments of the Parties, having considered Plaintiff's proffer of evidence, and, otherwise, being duly advised in the premises of Plaintiff's Motion, it is HEREBY ORDERED:

1. Plaintiff's Motion as to Defendant Adventist Health System/Sunbelt, Inc., d/b/a Florida Hospital Orlando, is DENIED;

2. Plaintiff's Motion as to Defendant Florida Hospital Medical Group, Inc. is DENIED;

3. Plaintiff's Motion as to Defendant Florida Emergency Physicians, Kang & Associates, M.D., PA. is DENIED;

4. Plaintiff's Motion as to Defendant Birdie M. Varnedore, M.D. is GRANTED;

5. Plaintiff's Motion as to Defendant Edgardo M. Rodriguez, M.D. is GRANTED;

6. Plaintiff's shall have ten (10) days from the entry of this Order in which to file their Third Amended Complaint; and,

7. Defendants shall have ten (10) days thereafter in which to respond to Plaintiff's Third Amended Complaint.

DONE and ORDERED in Chambers, Orange County, Florida, this 27 day of April, 2016.

The Honorable Keith F. White
Circuit Civil Judge

4/28/2016 12:49 PM FILED IN OFFICE TIFFANY M. RUSSELL CLERK CIRCUIT COURT ORANGE CO FL

Copy to:

Craig Foels, Esq. (csf@eifg-law.com)
Mark Estes, Esq. (mae@eifg-law.com)
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Carlos Diez-Arguelles, Esq. (carlos@theorlandolawyers.com)
Jack Cook, Esq. (jack@theorlandolawyers.com)
Julia Young, Esq. (julia@theorlandolawyers.com)

Conformed and Mailed
APR 27 2016
BIANCA DuBOSE

IN THE CIRCUIT COURT OF THE 9th JUDICIAL CIRCUIT
IN AND FOR Orange COUNTY, FLORIDA

US Bank

Plaintiff,

Case No. 2014 CA 005987-0

vs.

Yoashia Ashe

Defendants.

FILED IN OPEN COURT
THIS 25 DAY OF Jan, 2016
Clerk
BY ______ D.C.

Defendant's 12/30/15 Motion to Vacate FJ

THIS CAUSE having come before the Court on the Defendant's 12/30/15 Motion to Vacate FJ,

and the Court having heard argument of parties, having reviewed the file and the Court being otherwise duly advised, it is thereupon,

ORDERED AND ADJUDGED:

1) Defendant's 12/30/15 Motion is Denied

2) Sale to continue as scheduled

DONE AND ORDERED in Chambers at Orange County, Florida, this 25 day of January, 2016.

By: ______________________
CIRCUIT COURT JUDGE

Copies furnished to all parties by U.S. Mail

Case No. ______________ File # ______________

6/8/2016 11:25 AM FILED IN OFFICE TIFFANY M RUSSELL CLERK CIRCUIT COURT ORANGE CO FL

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

CASE NO. 2016-CA-4697
DIVISION 33

LESTER GRAY,
Petitioner,

vs.

JULIE JONES, SECRETARY, FLORIDA
DEPARTMENT OF CORRECTIONS, ETC.,
AND THE STATE OF FLORIDA,
Respondent.
_______________________________/

ORDER DENYING
PETITION FOR WRIT OF HABEAS CORPUS

This matter came before the Court for consideration of the Petition for Writ of Habeas Corpus filed May 25, 2016, by Lester Gray (herein "Petitioner"), pursuant to Florida Rule of Civil Procedure 1.630, as well as Florida Rules of Appellate Procedure 9.030(c)(3) and 9.100(a).

Petitioner is incarcerated in the Taylor Correctional Institution in Perry, Florida, which is located in Taylor County. Therefore, habeas relief is not available to him in Orange County, because such petitions must be filed with the clerk of the court in the county where the inmate is detained. §79.09, Florida Statutes (1993); *Raley v. State*, 675 So. 2d 170 (Fla. 5th DCA), *cause dismissed*, 678 So. 2d 1287 (Fla. 1996) (trial court lacks authority to rule on a petition for writ of habeas corpus filed by a prisoner detained outside the court's territorial jurisdiction).

Based on the foregoing, it is ORDERED AND ADJUDGED that the Petition for Writ of Habeas Corpus is hereby DENIED.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida, this 7 day of June 2016.

KEITH F. WHITE
Circuit Judge

Certificate of Service

I hereby certify that a copy of the foregoing Order has been provided this _______ day of June 2016 by U.S. Mail / hand delivery to Lester Gray, DC# 325006, Taylor Correctional Institution, 8515 Hampton Springs Road, Perry, Florida 32348; and to the Postconviction Felony Unit, Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801.

Conformed and Mailed

JUN 07 2016

BIANCA DuBOSE

~~Judicial Assistant~~

6/7/2016 3:34 PM FILED IN OFFICE TIFFANY M. RUSSELL CLERK CIRCUIT COURT ORANGE CO FL

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

CASE NO. 2016-CA-4568
DIVISION 33

JAHMAN WHITFIELD,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.
_______________________________/

ORDER DENYING
PETITION FOR WRIT OF HABEAS CORPUS

This matter came before the Court for consideration of the Petition for Writ of Habeas Corpus filed May 25, 2016, by Jahman Whitfield (herein "Petitioner"), pursuant to Florida Rule of Appellate Procedure 9.100(a). It has been reviewed pursuant to Florida Rule of Civil Procedure 1.630.

Petitioner is incarcerated in the Suwannee Correctional Institution in Live Oak, Florida, which is located in Suwannee County. Therefore, habeas relief is not available to him in Orange County, because such petitions must be filed with the clerk of the court in the county where the inmate is detained. §79.09, Florida Statutes (1993); *Raley v. State*, 675 So. 2d 170 (Fla. 5th DCA), *cause dismissed*, 678 So. 2d 1287 (Fla. 1996) (trial court lacks authority to rule on a petition for writ of habeas corpus filed by a prisoner detained outside the court's territorial jurisdiction).

Based on the foregoing, it is ORDERED AND ADJUDGED that the Petition for Writ of Habeas Corpus is hereby DENIED.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida, this 6 day of June 2016.

KEITH F. WHITE
Circuit Judge

Certificate of Service

I hereby certify that a copy of the foregoing Order has been provided this _______ day of June 2016 by U.S. Mail / hand delivery to Jahman Whitfield, DC# 471341, Suwannee Correctional Institution Annex, 5964 U.S. Highway 90, Live Oak, Florida 32060; and to the Postconviction Felony Unit, Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801.

Conformed and Mailed

JUN 07 2016

~~Judicial Assistant~~ BIANCA DuBOSE

Filing # 38392077 E-Filed 02/29/2016 02:25:02 PM

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

CASE NO. 2015-CA-9205-O
DIVISION 33

ELIJAH NELSON,
Petitioner,

vs.

STATE OF FLORIDA,
Respondent.
_______________________/

ORDER DISMISSING
PETITION FOR WRIT OF HABEAS CORPUS

THIS MATTER came before the Court for consideration of the Petition for Writ of Habeas Corpus, filed October 2, 2015, by Elijah Nelson (herein "Petitioner"). It has been reviewed pursuant to Florida Rule of Civil Procedure 1.630.

Jurisdiction in a habeas corpus proceeding is established at the time of filing, and Petitioner is currently incarcerated at Franklin Correctional Institution in Carabelle, Florida, which is located in Franklin County. Therefore, habeas relief is not available to him in Orange County, because such petitions must be filed with the clerk of the court in the county where the inmate is detained. § 79.09, Florida Statutes (2015); *Raley v. State*, 675 So. 2d 170 (Fla. 5th DCA 1996), *cause dismissed*, 678 So. 2d 1287 (Fla. 1996) (determining that the trial court lacks authority to rule on a petition for writ of habeas corpus filed by a prisoner detained outside the court's territorial jurisdiction).

Based on the foregoing, it is ORDERED AND ADJUDGED that the Petition for Writ of Habeas Corpus is hereby DISMISSED.

DONE AND ORDERED in chambers at Orlando, Orange County, Florida, this 26 day of February, 2016.

KEITH F. WHITE
Circuit Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order Dismissing Petition for Writ of Habeas Corpus has been provided this 29 day of February, 2016 by U.S. Mail / hand delivery to Elijah Nelson, DC# 132283, Franklin Correctional Institution, 1760 Highway 67 North, Carrabelle, Florida 32322; and to the Postconviction Felony Unit, Office of the State Attorney, 415 North Orange Avenue, Orlando, Florida 32801.

Judicial Assistant

0IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR OSCEOLA COUNTY, FLORIDA

Case No.: 13 CF 4544

STATE OF FLORIDA

VS

Alfredo Guerrero Mora /
Defendant

JUDGMENT AND SENTENCE /FINGERPRINTS

CHARGES
1) Sexual Battery (CAPITAL) 2) Sexual Battery (CAPITAL) 3) Lewd or Lascivious Molestation (25 yr. min/max) (LIFE-L9) 4) Lewd or Lascivious Conduct (F2-L6) 5) Lewd or Lascivious Conduct (F3-L5)

Judge KEITH F. WHITE, Defense Attorney M. Burnham Deputy: S. Williams
Assistant State Attorney A. Yost Court Reporter ______

1/7/14 Defendant was tried and found guilty of: LIO CT. 1: Battery; LIO CT. 2: Battery; CT. 3

CHANGE OF PLEA:DEFENDANT: NOT GUILTY AS TO CT. 4; JOA GRANTED AS TO CT. 5

____ present ____ not present ____ Interpreter Translated
SWORN AND PLED ____ Guilty ____ Guilty-Best interest ____ Nolo Contendre

Count ____ as charged/LIO ____ (F) (M)
Count ____ as charged/LIO ____ (F) (M)
Count ____ Nolle Prosequi

COUNTS (LIO) (LIO) 3

✓ Adjudged Guilty ____ Adjudication of Guilt Withheld ✓ Minimum Mandatory CT. 3: 25 years ✓ Sex ~~Offender~~ Predator (See attached)
____ Habitual Offender ____ Years ____ Violent Habitual Offender ____ Years ____ Prison Release Re-offender
____ Youthful Offender ____ Departure Sentence

SENTENCE: ✓ LIFE DOC; count 3
✓ 365 days OCJ w/ 365 Days CTS; Count 1 (LIO) ____ condition of probation
✓ 365 days ~~DOC~~ OCJ w/ 15 Days CTS; Count 2 (LIO) ____ Release today as to this case only

____ Split Sentence: ____ d/m/y jail/doc, then ____ m/y C.C. 1/2, followed by ____ m/y probation
____ Report to Probation within ____ hours of release from incarceration/by 2p.m. next business day.
✓ Concurrent: to all counts & sentences/ 3 concurrent to counts 1 and 2
✓ Consecutive: to all counts & sentences/ 1, 2
____ PROBATION: As to counts ____
____ C.C. 1/2 ____ mo/yr, followed by: State Probation ____ mo/yr cts ____; ____ mo/yr cts. ____
County Probation ____ mo/yr cts ____

____ Drug Offender Probation: Monthly drug testing, at own expense, treatment & counseling.

____ PROBATION-SPECIAL CONDITIONS: Special conditions are to be started or completed within 60 days of sentencing or violation.

____ Victim Awareness Program ____ DWLS Class ____ No alcohol ____ No Weapons
✓ DNA sample-pursuant to F.S. 943.325 ____ Forfeit seized weapon(s) ____ G.P.S. Monitor
____ AIDS/HIV Awareness class ____ Impulse control class ____ DUI Counter Attack School
____ Bridge /Program /PRC /Phoenix /Transition House/ **Jail to hold until bed available**
____ Anger management: ____ 8 hr ____ 12 wks ____ Transfer to County-State: ____
____ G.E.D. Class, enroll in and strive to complete. ____ Every hour in GED Class will be counted as community service hours
____ Community Service ____ hours to be completed at ____ hrs per mo. by the ____ month, beginning 2nd mo.
____ Batterer's Intervention Program- enroll in and complete.
____ Drug and Alcohol Evaluation and complete any recommended treatment.
____ Take all medication as prescribed.
____ Ignition Interlock Device for ____ months/years ____ Vehicle Impoundment for ____ days

_____ Drivers **License**: Suspended/revoked for ______ year(s) / day(s) / month(s) / life. __ B.P.L. after 6 months.

_____ **Weekend Jail Confinement**: You will report to Osceola County Jail by 6 P.M. Friday evening and shall be released 6 P.M. Sunday evening.

_____ **Work Release Program**: Judge recommends defendant for this program.

_____ Letter of apology: To victim (s) and give letter to probation. Due within ____ days.

_____ Drug Testing: Random drug testing.

_____ **No contact** : Victim(s)/co-defendant(s) _____ **No Hostile Contact**: Victim (s) /co-defendant (s)

_____ **Do not** return to the crime scene.

_____ Mental Health Evaluation: Mental health and/or psychological evaluation and treatment. You shall take medicine as prescribed. Failure to take your medicine will constitute a violation. Evaluation within ______ days/months.

_____ Early term/Admin Probation: After ________________ Of probation is completed, all conditions completed (costs, fees, restitution, and no violation ____ Must file motion with the court.

_____ **CURFEW**: _____ p.m.- _____ a.m. ___ may be modified for employment purposes

►► **MONETARY OBLIGATIONS: IF ON PROBATION,** You are to make payments to Probation. **If you are NOT ON PROBATION** then pay Clerk of Court. Either way, you will pay the sums and in the manner herein directed.

►► **Pursuant to section 903.286, Florida Statutes, the Clerk of Court shall deduct any Court fees, fines, and Costs from any cash bond posted on or after 07/01/05**

_____ Restitution: $ ________________ total, to be paid. ______ As a condition of probation
______ Joint & Several with: CO-DEFENDANT

_____ Restitution Ordered Reserved as to Amount. ______ Joint & Several with: CO-DEFENDANT

✓ Court Costs: **$299.25** **$325.50** **$390** **$395** **$410** **($415)** **$**_____

✓ Teen Court: **$3.00** (County Ordinance No. 05-24)

_____ Remaining Balance/Unmet Drug Court Fees: $______________

_____ Drug Case Fines: **$100.00** FDLE and **$250.00** OCDTF.

✓ Surcharge (FS 938.085) **($151.00)** and **($201.00)** Surcharge (FS 938.08)

_____ Fines: **$** ______________ + 5% Surcharge: $ ______________

✓ Cost of Prosecution: $100.00 ______ D.U.I. Costs/Fines: $____________

✓ Crimes Against Minor (938.10) **($151.00)**

_____ **$100 Cost of Public Defender**

_____ Surcharge (FS 938.13): **$15.00** (Pertains to misdemeanor crimes involving drugs/alcohol)

✓ Public Defender/Contract Attorney fee/Lien: ($50) PD App ~~$150~~ $_____ $_____ **Payable to the State of Florida.**

_____ Cost of Investigation: $ ___________ ____ Joint/Several _____ Cost of Extradition: $______________

_____ Payments: You will pay $ _________, including restitution, on or before the 1st day of each month, first payment in ____________ day(s)/month(s), if probation, pay cost of supervision, and a 4% surcharge.

********►►►►► **ALL PAYMENTS SHALL BE APPLIED TO RESTITUTION, IF ANY, FIRST.** ◄◄◄◄◄

_____ Final Judgment: Record in public records of Osceola County.: ______________

_____ Monies will be monitored by the Court through Collection Court. Pay $_____ per mo. starting ______ days after release. _____ Consecutive to ___________ / any other case currently on collection court.

_____ PSI WAIVED. ________ PSI NOT NECESSARY ______ PSI REVIEWED PRIOR TO SENTENCING

_____ Any monetary balance remaining after probation shall be paid through Collection Court at same monthly amount.

✓ Other Conditions: State's witnesses sworn and testified at sentencing: Detective Mark O'Connor and Mary Jo Lavalle

13CF4544

✓ All costs reduced to a Civil Judgment.

▶▶ You must immediately report, in person, or the next working day, or upon release from confinement to the DOC Probation Office at 1605 N. John Young Parkway, Kissimmee Florida 34741 if on State Probation or the County Probation Office at 330 Beaumont Avenue Kissimmee Florida 34741 if on County Probation.

STANDARD TERMS OF PROBATION:

1. You will make a full and truthful report to your Probation Officer on or before the 5th day of each month.
2. You will pay cost of supervision of $20.00/$40.00 or such other sums as determined by judge; plus a 4% surcharge per month.
3. You will not change your residence, employment, or leave the county of your residence without prior consent of your Probation Officer.
4. You will neither possess, carry nor own any weapons or firearms.
5. You will not violate any laws or court orders, including pay child support.
6. You will not associate with persons engaged in criminal activity.
7. You will not use intoxicants if prohibited or in excess; or possess any drugs, narcotics, or paraphernalia unless prescribed by a physician, and then, only in accordance with prescribed dosage. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed or used.
8. You will make a good faith effort to be employed.
9. You will truthfully answer all questions directed to you by the Probation Officer, and allow them to visit your home, employment or elsewhere. You will comply with all instructions he may give to you.
10. You will pay restitution, costs and fees as order herein
11. You will submit to chemical tests (breath, urine, and blood) upon request of your Probation Officer; and submit to search of your residence, person or vehicle for the presence of controlled substance, weapon, firearms and alcoholic beverages if prohibited.

STANDARD CONDITIONS OF COMMUNITY CONTROL:

12. You shall report once a week, or as directed.
13. 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.
14. You will maintain an hourly accounting of all activities on a daily log which you will submit to your officer upon request.
15. Pursuant to F.S. 948.03, your officer may place you on electronic monitoring. You will maintain a private phone line at your residence and you will be financially responsible for any lost or damaged equipment. If placed on monitor you will pay $30.00.

▶▶ The Court reserves the right to rescind, modify or revoke probation to the extent provided by law. I have received a copy of the terms and conditions of my Probation/Community Control. I have read and understand these conditions. In addition, I hereby consent to the disclosure of any alcohol and drug abuse patent records, the confidentiality of which is federally regulated under 42CFR, part II, for the duration of my supervision. You shall submit your person, property, place of residence, vehicle or personal effects to a warrantless search at any time, by any probation or community control officer or any law enforcement officer.

FINGERPRINTS OF DEFENDANT

COUNT	CRIME	OFFENSE STATUTE NUMBER	DEGREE OF CRIME
1(LIO)	Battery	784.03	M1
2(LIO)	Battery	784.03	M1
3	Lewd or Lascivious Molestation (25 year min/man)	800.04(5)(B)	LIFE
4	Not Guilty		
5	JOA Granted		

RIGHT THUMB	RIGHT INDEX	RIGHT MIDDLE	RIGHT RING	RIGHT LITTLE
LEFT THUMB	**LEFT INDEX**	**LEFT MIDDLE**	**LEFT RING**	**LEFT LITTLE**

Fingerprints taken by: E. Battisti #1522; S. Williams #1457 Title: **DEPUTY SHERIFF**

I HEREBY CERTIFY that the above ~~and foregoing~~ fingerprints are the fingerprints of the Defendant, Alfredo Guerrero Mora and that they were placed thereon by said Defendant in my presence in Open Court this date.

DONE AND ORDERED at Osceola County, Florida,

This 18 day of December 2014

JUDGE WHITE, Circuit Court Judge

FILED IN OPEN COURT THIS December 18 2014

ARMANDO RAMIREZ, CLERK OF CIRCUIT COURT

BY: DM/VC DEPUTY CLERKS

(✓)STATE (✓)DEFENDANT (✓)DEF ATTY ( )BOND (✓)PROBATION (✓)JAIL ( )SO ( )PTR
( )WKEND WORK REL (✓)BK ( )WK REL ( )REC ( )MTL HEALTH ( )BETTY ( )DHSMV
CFMFPRINT

13CF4544

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

Case No: 2012 CF 000793
Date of Offense: 02/26/2012

STATE OF FLORIDA
VS
ALFONSO PAOLERCIO JR
112 MICHELLE LN
APT A
KISSIMMEE, FL 34743

Defendant

ROBERT WESLEY
2 COURTHOUSE SQUARE
SUITE 1600
KISSIMMEE, FL 34741

Attorney

CRIMINAL APPEARANCE ORDER

Charge/s
POSSESSION OF COCAINE
POSSESSION OF DRUG PARAPHERNALIA
RESISTING OFFICER WITHOUT VIOLENCE

COURT DATES

Defendant is hereby **Ordered** to appear for:

Event	*Date*	*Time*	*Locatioı*	*Judge*
COMPETENCY REVIEW	**7/18/2014**	**9:00 AM**	**COURTROOM 4F**	**KEITH WHITE**

APPEARANCE

FELONY COURT MINUTES/ORDER
DEFENDANT PRESENT WITH COUNSEL
COURT FINDS DEFENDANT CONTINUES TO BE INCOMPETENT TO PROCEED.
RULING ON MOTION TO RELEASE DEFENDANT ROR IS HEREBY DENIED WITHOUT PREJUDICE, AT THIS TIME.
JUDGE GAVE EXPLANATION ON RECORD.
DEFENDANT DOES NOT QUALIFY FOR INVOLUNTARY COMMITMENT.
DEFENDANT TO REMIAN IN CUSTODY PENDING ANOTHER MOTION TO RELEASE 6 MONTHS AFTER DEFENDANT WAS ORIGINALLY FIND INCOMPETENT TO PROCEED. MOTION TO BE SET WITH JA.

DONE AND ORDERED THIS 22ND DAY OF NOVEMBER, 2013.

KEITH WHITE, CIRCUIT JUDGE

FILED IN OPEN COURT THIS 22ND day of November, 2013 **By**: DENISE H., DEPUTY CLERK

Jail DEFENDANT SIGNATURE

Cc: [ ]S/A [ ]DEF [ ]DEF ATTY [ ]BOND [ ]PROB [ ]JAIL [ ]HUM SVC [ ]PTR [ ]BK [ ]CSO [ ]WK REL [ ]REC [ ]M.HLTH [ ]DHSMV [ ]D6

GENOR

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the ADA Coordinator, Court Administration, Osceola County Courthouse, 2 Courthouse Square, Suite 6300, Kissimmee, Florida, (407) 742-2417, at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.