

In Dr. Valeria McClain's report, she went through the results of her forensic testing, finding as follows:

"It is noteworthy that at the time of the evaluation the results from her testing "place her overall intellectual function in the borderline range. Overall, her intellectual capacity is at the 8th percentile and 92% of her peers function at a higher level as compared with her functioning. Neuropsychological testing places her immediate memory and basic language skills in the extremely low range. Her basic attention is in the borderline range. Her delayed memory is in the low average range. Her visuospatial/constructional skills are in the average range."

See (Exhibit 18 – Valerie R. McClain Forensic Psychological Evaluation, dated July 13, 2022, and September 1, 2022)

In Dr. Sarah Vinson's report, she discussed Defendant's difficulty in answering questions and thinking rationally when placed in emotional or traumatic situations.

Nicole appears to answer each question to the best of her ability; however, her thoughts are circumstantial at times and tangential others. She exhibits flashes of irritability but exercises some self-awareness and is apologetic, as she questions her clarity and occasionally asks evaluators if she answered the question.

A survival mentality, one that is characteristically short-sighted, was nurtured in the absence of sufficient provision, guidance, and protection from those entrusted with her care.

Trauma has the potential to negatively alter a child's biological, psychological, and social functioning. Exposure to traumatic experience can increase a child's susceptibility to physical health conditions, emotion and mental distress, behavior problems, poor academic functioning, and difficulty conforming to dominant social standards that are often based on the experiences of people presumed to have their needs consistently met in stable family environments. **Childhood trauma sensitizes the fight or flight response system and further impairs youth's already limited ability (relative to adults) to think rationally and regulate emotions.** Consequently, the actions in a situation are more vulnerable to being shaped by misperceptions that are warped by poorly regulated emotions.

See (Exhibit 16 – Lorio Forensics, dated October 7, 2022).

During the ex-parte Nelson Hearing, a discussion about Defendant's current school grade level sheds light on her limited education.

THE COURT: All right. And you are almost 16. But you're still 15 today; correct?

MS. JACKSON: Yes, ma'am...

THE COURT...How far did you go in school?

MS: JACKSON My teacher hasn't come because I'm – She says I'm in ninth grade, but I don't believe her.

THE COURT: You don't believe her?

MS. JACKSON: No. She keeps giving me this – Yeah.

MR. AVALLONE: What grade level do you think you're at?

MS. JACKSON: Well, my teacher thinks third grade. Me, I'm supposed to be in ninth. I missed a grade, So I am in ninth.

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 78, lines 1-5, 8-15, 20-24).

One final consideration as to Defendant's ability to understand the information from the ex-parte proceeding came from the observations of Defense Counsel. On June 1, 2022, Counsel wrote a letter to Defendant, while she was being held in the Volusia County Jail, outlining the charges in the case, her age as a factor, the State's plea offer, and the maximum penalty she was facing after trial. See (Exhibit 24 – Letter from Larry Avallone). This letter was introduced and discussed at length during the ex-parte Nelson Hearing. Defense Counsel explained why he wrote this letter and described how he needed to review information with Defendant so she would understand it:

MR. AVALLONE: So, as I've explained - both in the letter and in many meetings - because of the way the statutes read and -- Well, the Judge would have two options in her case; either juvenile sanctions, or a life sentence, and nothing in between. So regardless of the scoresheet, and what the scoresheet says, or what the numbers come to, there are no other options if she was convicted as charged. So the complaint about the scoresheet has only arisen -- And we've had -- We sat with actually the scoresheet manual, one time at the jail, Ms. Jackson and I, and we did our best. I did my best to explain to her about -- **These are complex issues. We're dealing with, you know, a 15 year old. These are complex issues, going through a scoresheet manual, Judge... So I don't fault her for not understanding. But the point is, we've been through this exercise at length, I can assure you, trying to have her understand how it all works. Which was part of the impetus for the letter, was to put it in writing so that she can spend time with that letter - because she has some learning disabilities that she needs to read and re-read things – to understand them...So that was part of the reason why I wrote everything down. Because the language in that letter is above her understanding, and I knew that. But I know that she – because we've spent so much time together – if she reads and re-reads things, she will understand it...So I believe she does understand it, to the extent she can understand what the scoresheet means;...we've been over the scoresheet to the best she can understand it.** See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 63 lines 23-25, Page 64 lines 1-14, 19-25, Page 65 lines 1-2, 4-9, 24-25, Page 66 line 1, 4-5)

Defense Counsel was clearly aware that based on her "learning disabilities", the mental health disorders, Defendant needed to "read and re-read" documents explaining legal concepts so she could understand them "to the extent she [could]". Counsel was aware Defendant was in the "borderline range of intellectual functioning" based on the Forensic Evaluations. He was aware that Dr. Vinson had found that, "Nicole's learning and short-term memory deficits, in addition to her doodling, are common symptoms of individuals who struggle with attention and concentration." (Exhibit 16 – Lorio Forensics, dated October 7, 2022). He was privy to all of the reports and findings that were discussed in detail above. All this information established Defendant was not someone who could understand complex legal issues and make decisions without additional necessary time, outside of the stress of a courtroom setting, to consider them.

In addition, Counsel knew that questions to Defendant needed to be “framed in a clear, straightforward manner” and that her ability to think rationally could be affected by traumatic and emotional situations. Based on all of this, it was imperative that Defense Counsel ensure that questions and information was clear, short, and direct and that Defendant had adequate time to consider that information before making a legally significant decision in her case. The transcript of the ex-parte Nelson Hearing shows that these safeguards were not implemented and her struggle to understand what she was being told is evident.

During the hearing, the Court attempted to explain legal concepts as well as normal procedures in a criminal case to Defendant. Many of these explanations would have been difficult for an adult who was not familiar with the criminal justice system to understand, let alone a fifteen (15) year old, with “borderline intellectual functioning” as described by Dr. Legum, Dr. McClain, and Dr. Vinson. Defendant needed questions “framed in a clear, straightforward manner, devoid of subjunctive clauses, double negatives, and the like”. There are many examples of lengthy complex explanations and descriptions throughout the ex-parte Nelson Hearing; one is the following statement by the Court, shortly before Defendant agreed to accept the State’s plea offer:

THE COURT: Okay. The way the State got to that plea offer was they changed the charges, or amended the charges. So if they changed it to Attempted First Degree Murder without the "Law Enforcement," that would change the type of charge. Because there's -- Because there's a law enforcement officer involved and a firearm, that makes it one of the most serious offenses that you could be charged with · Okay? That's what kicks you into that life with the minimum-mandatory category.

So their plea offer, which is a plea bargain, is if you take that, we'll reduce the charges. We'll give you a sentence that you would otherwise not get - you get less than what you would otherwise get if you were convicted at trial, and we'll change the charge. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 67 lines 1-17).

Multiple times during the proceedings, Defendant asked for the Court to repeat things. This is consistent with her need to have things explained in clear and concise terms as well as her need to be able to consider and repeat them in her own mind to fully understand them.

THE COURT: And you understand that will entail doing that, perhaps, to your detriment – because we have to discuss any defenses you might have, and all of those confidential communications you have had with any of your lawyers. Do you understand that?

MS. JACKSON: Say that again, please? See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 8, lines 1-7).

THE COURT: And is this the person who has previously appeared in court and given statements to the press about your case?

MS. JACKSON: Wait. Say that again. Sorry. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 14, lines 10-13).

MS. JACKSON: Sorry?

THE COURT: That's all right. Mr. Avallone, you can, kind of, help her to get to the portion we are looking at. On page 3.

Mr. Avallone: Yes, Judge. She's there. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 18, lines 3-7).

It was clear during the ex-parte Nelson Hearing, that Defendant did not understand what qualified someone to offer legal advice as well as the role of people in her pending cases in both Volusia and Flagler Counties. This was particularly relevant in Defendant's case as she was receiving legal advice from outside advocates and portions of the ex-parte hearing focused on the fact that these people were not lawyers, and she should not be listening to them. She also expressed concerns and confusion that she was not attending court in Flagler County and had received a failure to appear warrant while in the jail. Her confusion on these issues came up multiple times:

THE COURT: All right. He's not a licensed lawyer, is he?

MS. JACKSON: I'm not -- probably not. I have no clue.

THE COURT: Okay. And he did not go to law school; correct?

MS. JACKSON: Now, that, I don't know. He probably didn't go to law school. But he did study some type of law, guideline things. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 15, lines 6-14).

THE COURT: Tell Ms. Jackson what your position is with the Public Defender's office so she understands why you're involved in that. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 25 lines 3-5)

MS. JACKSON: Okay. So I had court – Let me find it. Okay. I had court somewhere last month or the other month...

THE COURT: Okay

MS. JACKSON: And I've never attended any of them. Only – And I got arrested for failure to appear. ...It just says I've been arrested for failure to appear. Now, Mr. Avallone has said I have nothing to worry about on that. Now, I believed him until I got – until an officer came to me, at 4:00 o'clock in the morning, and told me that I had been arrested for failure to appear, and I went to first appearance...

THE COURT: He represents you in Flagler.

MS. JACKSON: Yes. But he said that he has – He said that, basically, they have to get some type of conferment from Mr. Avallone. So Mr. Avallone is basically in that case too, even though he's not assigned to it. And Mr. O'Neal said he has to get some clarification from Mr. Avallone. That's why I know that they're working together on that...See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Pages 19, lines 11-25, Page 20, Lines 1-10).

Defendant expressed confusion related to the preparation of her scoresheet and her entitlement to discovery, showing that even after Counsel had explained these issues to her multiple times, she still was struggling to grasp the concept.

THE COURT: You raise issues about discovery and sentencing scoresheet.

MS. JACKSON: Mr. Avallone didn't explain to me that I can have my discovery with me. He just said I can watch it or -- No, that's a lie.

THE COURT: Take a minute.

MS. JACKSON: Sorry... Okay. Mr. Avallone said that... I can watch it and view it, like, documents, but I can't -- And I didn't know that I had access so I could have it in my cell until Matt Short told me I could have access to my discovery. I didn't even know the even topic of discovery, before he told me that I could have access to discovery, and that I was entitled to that. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 29 lines 11-15, 20-25, Page 30 lines 1-4).

THE COURT: Okay. So let's talk about your -- the discovery. One of the things I need to address, Have you seen -- You say, in your motion, you have not seen the actual footage of the shooting, the body cams. Have you now seen those?

MS. JACKSON: Well, I've been trying to get my attorneys to show me that. But they don't answer any of my text messages. So, like, a date. I haven't got a response. Mr. Avallone's computer keeps stopping. So -- See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing Transcript, Page 34 lines 18-25, Page 35, lines 1-2).

MS. JACKSON: I don't even know the number when -- The last court date, you know how they're supposed to have a scoresheet set up already?

THE COURT: Okay.

MS. JACKSON: She was calculating, right in front of my eyes, the scoresheet. So...

THE COURT: OKAY. So -- And your concern is that you haven't been able to see a printed copy of a proposed scoresheet, to see if it's correct, or to look at the numbers?

MS. JACKSON: uh-huh.

THE COURT: Is that right?

MS. JACKSON: Yes.

THE COURT: All right. Mr. Avallone, do you want to address that?

MR. AVALLONE: Sure, Judge. So we've gone over in detail the exposures and, you know, the -- Well, you've seen the letter.

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 62 lines 3-20).

MR. AVALLONE: So focusing on the scoresheet, Judge. As we know, the scoresheet is, kind of, not material in this case -- at this stage, anyway -- because of the way we're positioned if she's convicted as charged. So that's the way I've approached this case.

THE COURT: All right. So, for Ms. Jackson's understanding -- because I clearly understand -- why is the scoresheet not so important, if she were to be convicted as charged?

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 63 lines 13-25)

THE COURT... In fact, she did receive discovery at the jail, ... and what sounds like to me is, like, a blank scoresheet that was given to her so she could see what the scoresheet looks like, in the context of the discussions that she had between her and her lawyer.

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 72, lines 9-15)

After numerous meetings with Counsel, as well as the ability to review Counsel's letter, Defendant still did not understand what she was facing if she was convicted at trial. See (Exhibit 24 – Letter from Larry Avallone). To attempt to assist her, Counsel provided Defendant with caselaw to show a juvenile could receive a life sentence, which only confused her more.

THE COURT: ...she, apparently, was still under the misimpression that she could not receive a life sentence. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 63 lines 6-8)

MS. JACKSON: He said, um, that I could get life or juvenile sanctions.

THE COURT: Okay.

MS. JACKSON: But I thought that you said that you could do less or something. I don't remember...

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing Transcript, Page 66, lines 13-17).

MS. JACKSON: Um, okay. So my attorneys gave me documents of the 17 year old that was sentenced to life.

THE COURT: This is the first case?

MR. AVALLONE: She's talking about case law.

THE COURT: Oh, okay.

MR. AVALLONE: So if I may, we found out that some of the legal advice that she's been given was that a juvenile can't be given a life sentence. And this is that -- that she's been given this misinformation.

THE COURT: Okay

Mr. AVALLONE: So we gave her, just totally unrelated to her case, Judge...totally unrelated to her charges...not the exact same, it doesn't have the law enforcement component...

MS. JACKSON: **Well, the thing is that he actually hurt somebody. I didn't hurt anybody. And he was sentenced to life. So that doesn't make any sense...Basically, that they're trying to – They're trying to pressure me not to go to trial.** Because the thing is, they're not saying that I – They're not – How do I say this.

THE COURT: Take a minute

MS. JACKSON: Sorry...He's serving a life sentence. But he hurt somebody, but the guy lived. He actually raped somebody too. I didn't hurt anybody. So for them to give me this case is – I feel like it's, kind of, threatening, just because he got a life sentence. The juries know that he hurt somebody. And I didn't hurt anybody.

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 42 lines 11-25, Page 43 lines 1-4, 12-15, 20-25, Page 44 lines 6-12)

The Court acknowledged that the case law provided to Defendant was meant to help her understand what she was facing, as she was not understanding from their explanations, however she was viewing this as a scare tactic.

THE COURT: As to the issue of why she was given the case law related to some other juvenile sentences – excuse me, other life sentences that were imposed on juvenile defendants who were in adult court, the purpose of those documents were to try to educate Ms. Jackson on the

fact that, yes, the Court does have that authority to impose a life sentence under certain circumstances.

The Court understands that Ms. Jackson, unfortunately, received it as a scare tactic. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 74, lines 18-25, Page 75, lines 1-2)

THE COURT: ... So, Mr. Avallone, on that topic, do you want to expand in any more depth to answer her concerns as to why you gave her that case law? It sounds like she perceives you gave it to her to scare her or threaten her... See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 46 lines 4-8)

ISSUES INVOLVING DEFENDANT’S OUTSIDE ADVOCATES, TRUST ISSUES WITH COUNSEL, AND EMOTIONAL PRESSURES

In addition to her comprehension problems, Defendant had well documented issues with trusting people as well as an enhanced fight or flight response when placed in emotionally charged situations. This is documented within the forensic evaluations as well as in her actions leading up to the ex-parte Nelson Hearing. Dr. Vinson outlined in her psychological evaluation regarding Defendant’s distrust for authority, “Further, based on her life experiences, adults in authority could not be trusted to act in her best interest, treat her fairly, or keep her safe.” Dr. Vinson went on to discuss the effects of emotional situations on her decision making: “As a result, her ability to effectively regulate her own emotions and learn socially acceptable behaviors, which was already impacted by her developmental immaturity, was greatly impaired. Nicole experienced difficulty navigating many aspects of life, especially during emotionally charged situations”; “These decision-making deficits are most pronounced during emotionally overwhelming situations”; and “Childhood trauma sensitizes the fight or flight response system and further impairs youth's already limited ability (relative to adults) to think rationally and regulate emotions”. See (Exhibit 16 – Lorio Forensics, dated October 7, 2022). One of the major issues addressed in this hearing was the influence of civilian advocates who came out to support her during the pendency of the case. Defendant did not trust her Counsel but did trust these advocates who she believed were looking out for her best interest. While there may be questions about the accuracy of the information and advice they were providing, there is no question that Defendant was relying on them to advocate for her in this case. There were many discussions throughout the ex-parte Nelson Hearing about the influence and advice of the advocates.

THE COURT: Do you understand all of those documents, all of those statements, everything you may have given him now can be out in the universe?

MS. JACKSON: Yes, ma'am.

THE COURT: Do you understand how that is bad for your case? See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 30, lines 3-8).

You may trust Mr. Short. I don't know the person. I will tell you this. If I were in your shoes, my worry would be he served time in prison. I don't know this person from Adam. But all of a sudden, he wants to be my best friend and help me in this case. Why would he want to do this? What is he looking to get out of it? Who is he in contact with who he might give that information to? See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 31, lines 4-11).

THE COURT: That's your choice, if you want to go down that road. I will tell you, if I were in your shoes, I would stay as far away from him as I could. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 32, lines 20-23).

THE COURT...what a horrible result it would be for you if you really believed those people as opposed to listening to the advice of these attorneys, who are some of the best attorneys in the circuit, who do this kind of work on these serious cases all the time... So will you agree to listen to what they say...

MS. JACKSON: I have another thing that I've been wanting to say.

THE COURT: Okay. Answer my question first. Will you agree to stop relying on what these other people are telling you and really listen to your lawyers, who know what they are talking about?

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 48 lines 22-25, Page 49 lines 1-2, 4-5, 7-12)

An issue Defendant was especially concerned about was whether she had been shot while she was prone, injured, and on the ground. She was concerned that she had not seen a camera angle that showed her being shot to either prove or disprove this. It makes sense that a 15-year-old would be concerned with whether they had been shot by police after they were already on the ground and not a threat. It is also understandable that someone who does not trust authority and suffered from extensive trauma would focus on this issue. However, when Defendant raised these concerns, they were quickly brushed aside as not bearing on her guilt or innocence.

MS. JACKSON: Because if they shot me and I was already down on the ground, that means I didn't have a shotgun. You know, it was by me but, um, then they -- they -- there's no reason to shoot me, basically. So they shot me for no reason. I -

THE COURT: So how is that, in your mind -- Let's assume that's true, so I can ask this question. If you had already been shooting at the police --

MS. JACKSON: Allegedly.

THE COURT: "If," that was my question. If you had been shooting at the police, and they shot you as, or after, you had been shooting at them, how is where you got shot important to your defense of having shot at police first? See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 37 lines 6-20).

The Court went on to challenge the sources of this information and whether it would be admissible at trial, again calling on her to question the motives and how these advocates could hurt her by providing information to the State or the press. During Dr. Legum's first report, testing indicate that "Nicole obtained a Very Low score on the Total Scale of the Piers-Harris 3 that is the best single measure of a young person's level of self-regard." See (Exhibit 25 – Order Authorizing Administration of Psychotropic Medication and Exhibit 19 – North Florida Psychological Services, Inc, dated June 15, 2021). The Court's repeated admonishments to Defendant for relying on these outside advocates certainly seemed to have an impact on Defendant's psyche over the hour and a half hearing.

Regardless of whether Defendant should have trusted these advocates, it was clear that she did not feel her attorneys were defending her:

MS. JACKSON: Basically, that they're trying to -- They're trying to pressure me not to go to trial. Because the thing is, they're not saying that I -- They're not -- How do I say this.

THE COURT: Take a minute. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 42 lines 20-24)

MS. JACKSON: So there's slander going on about me from Sheriff or Deputy Chitwood, and saying that I burned down a halfway house, and there was puppies, and, you know, just stuff like that. My lawyers are holding back. They're not -- They're supposed to be defending me. They haven't said anything about, you know, that -- what he is saying. It is wrong, the puppy parts and burned down a halfway house. My lawyer has not said anything about that, and they refuse to talk to the media. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 48 line 17 to Page 49 line 2)

After Defendant questions the motives of her Counsel, as well as what she could receive after Trial, the Court gives a pointed rebuke as to what she was facing:

THE COURT: Okay. So, Ms. Jackson, you need to hear loud and clear from me, who would be the judge who would sentence you. If you are convicted as charged, if you were sentenced as an adult as opposed to imposing juvenile sanctions, then I can impose a life sentence. I have the legal authority to do so... This is the Judge who would sentence you... See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 46 lines 24-25, Page 47 lines 1-5,15)

SUDDEN CHANGE IN DECISION

At the end of the Nelson portion of the ex-parte hearing, the Court began to break down the State's offer:

THE COURT: So the plea offer was a – in essence - I'm not giving you all the details. But,

basically, a 20-year sentence --

MS. JACKSON: And 45 years probation.

THE COURT: -- with 45 years probation. See, you got it out before I even finished my sentence. So you know what it is.

MS. JACKSON: I will never forget it. Trust me. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 66 lines 17 to 25)

Despite the clear statement that she could “never forget” the State’s Offer, which had been available for over a year prior to being revoked at the last court date, and which she had rejected as unfair numerous times, Defendant suddenly and without warning changed her mind in the following exchange:

MS. JACKSON: Because now I think of it, taking advice, going to trial is -- Especially because now this -- Do you know what I mean?

THE COURT: All right. So I'm reading between the lines. You're telling me you want to reconsider that plea offer?

MS. JACKSON: Yeah. Because now that I know that this is just complete bull crap, and taking -- Because they -- My supporters are the reason why I wanted to go to trial. But now that I know -- Now that I see that there's something wrong with this guy, you know, there's something -- You know what I mean? You get what I'm trying to say?

THE COURT: I understand what you're saying.

MS. JACKSON: I’m probably trying to reconsider trial.

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 69 lines 6 to 19)

This statement came almost out of nowhere in the immediate aftermath of her expressing concerns that she had not seen videos about whether she had been shot while on the ground, her Attorneys pressuring her not to go to trial, and her attorney not defending her from the Sheriff’s false allegations. Defendant would assert that this reaction was a result of her giving up on her ability to advocate for herself, the emotional reaction to learning her advocates may have been working against her, and her desperation to be done with the case and out of the isolation at the jail. When she lost confidence in the people she trusted, and felt that the Court and her Counsel were minimizing her concerns, her “fight or flight” response, described by Dr. Sarah Vinson, kicked in, and her mind set shifted to how could she get out of the situation and more importantly out of the Volusia County Jail.

MS. JACKSON: Will I be able to sign today?

THE COURT: Well, if that's what you, ultimately, decide to do, you could.

MS. JACKSON: Would I be able to get sentenced today instead of...

(Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 70 lines 13 to 17)

Even after Defense Counsel stated that “The State has agreed to have sentencing occur today”, Defendant still continued to ask, “Will I be sentenced today?”, showing her single mindedness as well as

her confusion. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 83, lines 21-22, Page 105, line 9).

What should have set off immediate red flags is how completely her demeanor changed in the wake of the statement that she now wanted to accept the plea. She shifted completely from “never forget[ting]” the offer for how unreasonable she viewed it, to being thankful for it.

Ms. Jackson, we've, sort of, addressed that already in our discussions. Do you understand now that that plea offer was because the State amended the charge?

MS. JACKSON: And it's a good thing they did, because they have evidence against me. They didn't even have to make a plea offer. See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 75 line 21 to 76 line 2)

MS. JACKSON: Yes, ma'am. It gave me full mindset now about trial.

THE COURT: All right. Well, that's, ultimately, your decision. That's not my decision. My intent wasn't to make you make any decision. That's something you have to talk to your lawyers about and decide.

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 79 lines 16-22)

CONTINUED CONFUSION DURING THE PLEA AND SENTENCING

Once the Court opened the courtroom and ended the sealed portion of the proceeding, Defendant continues to show confusion about many of the legal concepts and sentence, but remained steadfast in resolving the case as quickly as she could.

THE COURT: That's all right. There's a lot going on. I'm going to give you a few moments before we open the courtroom. It's going to take everyone a few moments to get set up, which they need to have time to do so. But I want you to talk to your attorneys, to make sure you understand that in order for me to accept your pleas on the Flagler County cases, you will have to withdraw your motion to discharge your lawyers in that Flagler case as well.

MS. JACKSON: Okay.

THE COURT: Do you understand that?

MS. JACKSON: No. Can repeat that, please?

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 89, lines 22-25, Page 90, lines 1-10).

During the Sentencing Hearing, the Court asked Defendant what grade she completed prior to being incarcerated and her response was, “Sixth grade.” See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 103, line 19). This statement was contradicted by her earlier statement that “I’m supposed to be in ninth. I missed a grade, So I am in ninth” as well as the evaluation from Dr. Legum when

Defendant stated that “Nicole reports that she was in the seventh grade this past academic year” on June 15, 2021. See (Exhibit 19 – North Florida Psychological Services, Inc, dated June 15, 2021).

In addition, at the time of sentencing, Defendant was not aware if she was a US citizen:

THE COURT: All right. You understand that if you are not a U.S. citizen, you will be deported?

MS. JACKSON: Do what?

THE COURT: Do you understand that if you are not a U. S. citizen, you will be deported?

MS. JACKSON: Am I a U.S. citizen?

MR. AVALLONE: See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 105, lines 14-20).

She was not aware of where she would be housed after entering the plea:

MS. JACKSON: Will I be -- Will I be thrown in prison with everybody else, or will I be going to, like, some juvenile place until I'm 18?

See (Exhibit 11 – Transcript of Nelson Hearing, Plea, and Sentencing, Page 106, lines 12-14).

She was not aware of her right to a predisposition assessment prior to the sentencing:

THE COURT: Okay. And, Ms. Jackson, you have the right typically to have a predisposition report - which is, like, sort of, an investigative report about your history - that's usually done in juvenile court. You have the right to have that done because of your age; and you –

MS. JACKSON: A what?

THE COURT: It's called a predisposition report, or it's referred to as a PDR.

MS. JACKSON: Oh, that goes in sentencing.

THE COURT: Yes.

MS. JACKSON: No, I didn't want it.

THE COURT: Okay. You have the right to have that.

See (Exhibit 2 – Nelson Hearing and Sentencing Transcript Page 110, lines 13-25, Page 111, line 1).

She did not understand what a no contest plea was:

THE COURT: And do you understand what a no-contest plea means?

MS. JACKSON: Huh-uh.

THE COURT: All right.

MS. JACKSON: I have no clue.

See (Exhibit 11 – Nelson Hearing and Sentencing Transcript, Page 112, lines 4-8).

While ultimately, Defendant would state:

THE COURT: Do you have any kind of mental health issues, right today, as you are before me, that is causing you to have confusion or interfere with your understanding of what you're doing here this morning?

MS. JACKSON: Um, my mind is clear right now, But I do have some mental problems with anger, anxiety, and just more like that.

THE COURT: Okay. That's fair enough. Do those issues cause you any confusion about what you're doing here today?

MS. JACKSON: No, ma'am.

THE COURT: Have you had enough time to discuss this plea agreement with your lawyers –

MS. JACKSON: Yes, ma'am. See (Exhibit 11 – Nelson Hearing and Sentencing Transcript, Page 103, lines 11-25).

Defendant would assert that, while she agreed during the colloquy that she did not have confusion about what she was doing in entering a plea and had adequate time to speak to her attorney, in fact she had been overwhelmed during the emotionally charged ex-parte Nelson Hearing. That she had been in “hell” for the preceding two (2) weeks based on her total isolation on suicide watch in the Volusia County Jail. She had not been seeing her therapist regularly and when they did meet, they had not been discussing her circumstances. When she went to the hearing and had her trust in her outside advocates called into question, her concerns about the issues she perceived in her representation undermined, and when she was provided all this information she did not understand, she simply broke and could only do what she could to get out of the situation. She felt she had no option but to take the plea offer. A plea offer that she had repeatedly rejected over the preceding year. This was not a knowing and voluntary decision, but rather a reaction to the stress, confusion, and desperation she felt during the hearing. It was only with the ability to reflect, that she understood the information she had been provided and what had occurred during the ex-parte hearing. Had she been given the opportunity to fully consider the implications of her plea, as well as the information she was provided, she would not have entered a plea but would have proceeded to trial.

Defendant would certainly admit that Defense Counsel was put in a very difficult situation. They were dealing with a high-profile case involving a 14-year-old girl with major trauma and mental health issues. A Defendant who by their own admissions had difficulty understanding legal concepts; needing things repeated over and over to grasp them. They had to deal with a State Attorney’s Office aggressively prosecuting the case and offering a very severe sentence in light of their client’s age and background as well as the resolution of the Co-Defendant’s case. They had to deal with outside influences that had earned Defendant’s trust and were advising her in ways contrary to their own advice. Also, while they met with Defendant weekly, attempting to walk her through many of the complex issues in the case, she continued to have issues in trusting their motive and how they advocated for her; especially as it related to the jail and

the statements of the Sherriff. While the State would not budge on their severe plea offer, Counsel still viewed this as a preferable alternative to going to trial on charges that would require a life sentence. Taking all of this into account during the ex-parte Nelson Hearing, Defense Counsel, after defending their decisions and representation, was faced with a total change in demeanor where Defendant shifted from hostility towards the offer to being thankful and wanting to accept it, and move immediately into sentencing as quickly as possible. Defense Counsel let the Defendant steer the ship to this immediate resolution without raising any concerns and therein lies the issue.

Defense Counsel provided ineffective assistance of counsel when, knowing what they knew about Defendant's mental health history and difficulty in understanding without time to consider, they failed to continue the proceedings to allow Defendant to consider the information she had received over the hour and a half of the hearing, meet with a therapist, meet with Counsel, and give her time to reflect on the most important legal decision of her life. Defendant's evaluations and forensic testing showed that she required significant time to process concepts due to her "borderline intellectual functioning." She needed things explained to her in simple, clear language and struggled to operate in emotionally charged situations based on her history of trauma. Counsel had witnessed many of these issues in their interactions with Defendant. It was incumbent on them, against Defendant's assertions, to continue the proceedings with trial still thirty (30) days out, to meet with Defendant to give her the time to process all of the information she had received, ask the additional questions she needed to ask, and meet with mental health professionals to allow her to make an informed decision.

Under the factors provided by the Court in *Thompson v. State*, 88 So. 3d 312, 320 (Fla 4th DCA 2012), Defendant's mental health history supports factors one (1) through four (4) as argued above. In addition, the record evidence from the ex-parte Nelson Hearing suggested multiple times that the movant did not meet the *Dusky* standard during the relevant time period of the hearing. These statements, in light of the forensic psychological testing and findings within the evaluations, should have led reasonably competent counsel to question her competency to proceed.

Defendant was prejudiced by her Counsel's failure to continue the proceedings, give her time to consider the offer in light of the information from the ex-parte hearing, have her seen by a therapist, and

have her evaluated by a forensic psychologist before she entered a plea as she did not have “rational, as well as factual, understanding of the pending proceedings.” Fla. R. Crim. P. 3.211(a)(1). Defendant had not had her competency evaluated in the seventeen (17) months prior to entering the plea. Competency is not static but may change over even a short period of time. The competency reports and evaluations provide insight into Defendant’s competency and the things that could affect her ability to understand legal proceedings. Specifically, (1) Defendant would put on an “air of implacability” hiding her depression, nervousness, and other expressions of her mental health disorder. This can be seen when she suddenly became enthusiastic about taking the plea. (2) That Defendant needed to remain stable to maintain her mental state. She was clearly not stable based on her isolation on suicide watch in the jail which the Court recognized was causing “high anxiety”. (3) Defendant’s “learning and short-term memory deficits, in addition to her doodling, are common symptoms of individuals who struggle with attention and concentration[]” as well as her need to have questions “framed in a clear, straightforward manner” for her to understand. The questions and information at the ex-parte hearing were not framed in such a way and she clearly struggled understanding them. (4) Defendant’s “... ability to effectively regulate her own emotions and learn socially acceptable behaviors, which was already impacted by her developmental immaturity, was greatly impaired. Nicole experienced difficulty navigating many aspects of life, especially during emotionally charged situations” and “These decision-making deficits are most pronounced during emotionally overwhelming situations.” This was clearly a very emotionally charged situation for Defendant as she was told by the Court that the people she trusted may be working against her and that many of her concerns should not worry her. Finally, (5) Dr. Sarah Vinson described that “Childhood trauma sensitizes the fight or flight response system and further impairs youth's already limited ability (relative to adults) to think rationally and regulate emotions” about Defendant. When all of these things are taken into account when viewed against her history, Counsel’s observations, her confusion at the ex-parte Nelson, her sudden change in demeanor, and her assertion in this Motion that this was not a knowing and intelligent plea, Defendant has established a reasonable probability that a psychological evaluation would have revealed that she was incompetent to enter a plea following the ex-parte Nelson Hearing.

CLAIM TWO

DEFENDANT, NICOLE MARIE JACKSON-MALDONADO, WAS DENIED EFFECTIVE REPRESENTATION OF COUNSEL WHEN HER ATTORNEY AFFIRMATIVELY MISADVISED HER AS TO HER MAXIMUM SENTENCE AND AVAILABILITY OF A YOUTHFUL OFFENDER SENTENCE BASED ON THE CHARGE CONTAINED IN THE INFORMATION

Defendant was denied effective representation of counsel when her attorney misadvised her that based on the charges in the Information Defendant was facing a life felony and was not eligible for a youthful offense sentence. Counsel specifically advised Defendant in a letter dated June 1, 2022, that “Count 1 is a life felony. This means that if convicted of this count, the Judge must sentence you to life in prison without the possibility of parole”. Later in that letter, Counsel advised:

There is a sentencing scheme that would be very helpful to you. It is called youthful offender. Youthful offender applies to people who are 21 years of age or younger at the time the crime is committed. The Florida Statue specifically excludes any life felony from a youthful offender sentence. In short, this is not available to you because you are charged with a life felony in Count 1. See (Exhibit 24 – Letter from Larry Avallone).

At the ex-parte Nelson Hearing, Defendant raised concerns about not reviewing her Scoresheet, what Sentence she could receive after trial, and whether she would receive a mandatory life sentence. During this exchange, Defense Counsel was asked by the Court “why is the scoresheet not so important is she were to be convicted as charged?”, Counsel responded:

MR. AVALLONE: So, as I've explained - both in the letter and in many meetings - because of the way the statutes read and -- Well, the Judge would have two options in her case; either juvenile sanctions, or a life sentence, and nothing in between. So regardless of the scoresheet, and what the scoresheet says, or what the numbers come to, there are no other options if she was convicted as charged. (Exhibit 11 – Nelson Hearing and Sentencing Transcript, Page 63, lines 1-6).

The Court did not attempt to clarify or correct Counsel’s statement, rather reinforcing this legal advice by saying:

THE COURT: All right. So, Ms. Jackson, you wanted to chime in. You had a question, when Mr. Avallone was saying something about that there would be a mandatory. In essence, I would have no discretion. It would be a mandatory life sentence; and there would be a minimum-mandatory if you were found guilty as charged. (Exhibit 11 – Nelson Hearing and Sentencing Transcript, Page 65, lines 6-12).

It was immediately after these statements from her Counsel and Court, Defendant’s demeanor suddenly changed, and the conversation turned to her accepting the State’s offer. The State’s offer of twenty (20) years in prison followed by probation was available to Defendant going back to at least the date of Counsel’s letter, a year and a half before. See (Exhibit 24 – Letter from Larry Avallone). Defendant had

rejected that offer on multiple occasions and the offer had been withdrawn by the State prior to the ex-parte Nelson Hearing. Defendant would not have accepted that State's Offer if she would have known that she could have pled as charged and pursued a youthful offender sentence with the Court. As discussed in Claim One, Defendant had a significant amount of mitigation that could certainly have convinced the Court to impose a youthful offender sentence. Defendant was denied the ability to exercise her right to enter an open plea to the information and seek a youthful offender sentence based on Counsel's mis-advice that she could only receive "juvenile sanctions" or a "life sentence" "if she was convicted as charged".

According to Florida Rules of Criminal Procedure "defense counsel shall advise defendant of all pertinent matters bearing on the choice of which plea to enter and the particulars attendant upon each plea and the likely results thereof, as well as any possible alternatives that may be open to the defendant". Fla. R. Crim. P. 3.171(c)(2)(B). Unquestionably, a plea cannot be knowing and voluntary if the defendant does not understand all direct consequences of the plea, including those that affect the range of punishment. See *Murphy v. State*, 868 So. 2d 585, 586 (Fla. 2d DCA 2004) (citing *State v. Partlow*, 840 So. 2d 1040, 1042 (Fla. 2003); *Watrous v. State*, 793 So. 2d 6, 8-9 (Fla. 2d DCA 2001)). In *Ramos v. State*, 141 So. 3d 643 (Fla. 4th DCA 2014), the Court held "Counsel may be ineffective for failing to advise a defendant about the maximum possible penalty when conveying a plea offer. *Alcorn*, 121 So. 3d at 426 ("No party disputes that counsel's failure to advise a defendant of his or her exposure to an enhanced life sentence under Florida's HFO sentencing statute during plea negotiations amounts to deficient performance.")"; see also *Lester v. State*, 15 So. 3d 728, 732 (Fla. 4th DCA 2009); *McDowell v. State*, 905 So. 2d 999 (Fla. 4th DCA 2005); *Pennington v. State*, 34 So. 3d 151, 155 (Fla. 1st DCA 2010); *Williams v. State*, 924 So. 2d 897, 898-99 (Fla. 1st DCA 2006).

In the June 17, 2021 Information, Defendant was charged with Attempted Murder on a Law Enforcement Officer as follows:

COUNT I: NICOLE MARIE JACKSON-MALDONADO on or about June 1, 2021, in the County of VOLUSIA and State of Florida, did unlawfully attempt to commit murder in the first degree upon Deputy Anthony Ray and/or Deputy Donald Gray and/or Deputy Michael Sawicki and/or Deputy Nicole Richardson and/or Deputy Anthony Zimmerer and/or Sergeant Omar Bello and/or Sergeant William Maxwell and/or Deputy David Winhoven, knowing that Deputy Anthony Ray and/or Deputy Donald Gray and/or Deputy Michael Sawicki and/or Deputy Nicole Richardson and/or Deputy Anthony Zimmerer and/or

Sergeant Omar Bello and/or Sergeant William Maxwell and/or Deputy David Winhoven, was a law enforcement officer, while Deputy Anthony Ray and/or Deputy Donald Gray and/or Deputy Michael Sawicki and/or Deputy Nicole Richardson and/or Deputy Anthony Zimmerer and/or Sergeant Omar Bello and/or Sergeant William Maxwell and/or Deputy David Winhoven was engaged in the lawful performance of a duty or when the motivation for such attempt was related, all or in part, to the lawful duties of Deputy Anthony Ray and/or Deputy Donald Gray and/or Deputy Michael Sawicki and/or Deputy Nicole Richardson and/or Deputy Anthony Zimmerer and/or Sergeant Omar Bello and/or Sergeant William Maxwell and/or Deputy David Winhoven, by discharging and/or attempting to discharge a firearm towards Deputy Anthony Ray and/or Deputy Donald Gray and/or Deputy Michael Sawicki and/or Deputy Nicole Richardson and/or Deputy Anthony Zimmerer and/or Sergeant Omar Bello and/or Sergeant William Maxwell and/or Deputy David Winhoven, and in the course of committing said attempted murder did have in her actual possession a firearm, contrary to Florida Statutes 775.087, 782.04(1)(a)(1), 775.0823(2), and 777.04(1). (LIFE FELONY) (10/20 LIFE) See (Exhibit 1 – Information).

Although the parties believed that this offense was charged as a Life felony, such was not the case. It should be noted that there were no amended Information filed until January 27, 2023, when an amended information to a reduced charge was filed as part of the negotiated plea. See (Exhibit 3 – Amended Information). In order to fully develop this argument, we must dissect the original Information filed against Defendant.

First it must be noted that there is a substantive offense of Attempted Murder on a Law Enforcement Officer that is a Life felony and is found in Florida Statute 782.065 which reads as follows:

782.065 Murder; law enforcement officer, correctional officer, correctional probation officer.—Notwithstanding ss. 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant shall be sentenced to life imprisonment without eligibility for release upon findings by the trier of fact that, beyond a reasonable doubt:

- (1) The defendant committed murder in the first degree in violation of s. 782.04(1) and a death sentence was not imposed; murder in the second or third degree in violation of s. 782.04(2), (3), or (4); attempted murder in the first or second degree in violation of s. 782.04(1)(a)1. or (2); or attempted felony murder in violation of s. 782.051; and
- (2) The victim of any offense described in subsection (1) was a law enforcement officer, part-time law enforcement officer, auxiliary law enforcement officer, correctional officer, part-time correctional officer, auxiliary correctional officer, correctional probation officer, part-time correctional probation officer, or auxiliary correctional probation officer, as those terms are defined in s. 943.10, engaged in the lawful performance of a legal duty.

Defendant was not charged with this Offense as the State elected to charge Defendant under the general murder statute found in Florida Statute 782.04(1)(a) which “is murder in the first degree and constitutes a capital felony, punishable as provided in s. 775.082.” See (Exhibit 1 -Information).

The State then elected to proceed under an attempt statute which is Florida Statute 777.04(4)(b) which reads as follows:

(b) If the offense attempted, solicited, or conspired to is a capital felony, the offense of criminal attempt, criminal solicitation, or criminal conspiracy *is a felony of the first degree*, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The offense of Attempted Murder in the First Degree under the general murder statute is a felony of the First degree punishable by thirty (30) years imprisonment. See *Weatherspoon v. State*, 214 So. 3d 578, 587 (Fla. 2017) (“Because premeditated murder is a capital offense, the attempt to commit the capital offense is a first-degree felony, which is punishable by no more than thirty years' imprisonment. §§ 777.04(4)(b), 775.082(3)(b), 782.04(1)(a), Fla. Stat. (2016)”).

The offense of Attempted Murder in the First Degree can be reclassified pursuant to Florida Statute 775.087(1), if the State elected to allege in the information that: “during the commission of such felony the defendant carries, displays, uses, threatens to use, or attempts to use any weapon or firearm...” which in that case: “the felony for which the person is charged shall be reclassified as follows: (a) In the case of a felony of the first degree, to a life felony.” See Florida Statute 775.087(1). However, these elements must be charged in the Information in order for the Reclassification to apply. See *Espinoza v. State*, 264 So. 3d 343, 344 (Fla. 5th DCA 2019):

The statutory elements for such enhancement must be "precisely charged" in the information. *Lewis v. State*, 177 So. 3d 64, 65 (Fla. 2d DCA 2015) (quoting *Davis v. State*, 884 So. 2d 1058, 1060 (Fla. 2d DCA 2004)). "[I]f the state wishes to give notice of an enhancement by reference to a statute in the charging document, the state must refer to the specific subsection which subjects the defendant to the enhanced sentence." *Bienaime*, 213 So. 3d at 929-30 (citing *Inmon v. State*, 932 So. 2d 518, 520 (Fla. 4th DCA 2006)). An information's failure to cite to the specific statutory subsection, while simultaneously failing to precisely charge the elements, "cannot be cured by a jury's factual findings." *Id.* at 929 (citing *Altieri v. State*, 835 So. 2d 1181, 1183 (Fla. 4th DCA 2002)).

A thorough review of Defendant's Information omits any reference to: “carries, displays, uses, threatens to use, or attempts to use any weapon or firearm” during the commission of the felony and fails to cite to the specific subsection of the reclassification statute, simply citing Florida Statute 775.087 without a subsection. Under the facts of this case, the charged offense is not reclassified as a matter of law.

The State did properly allege “Discharge” and “Actual Possession”; however, these elements only apply to the minimum mandatory elements of Florida Statute 775.087(2) and not reclassification under Florida Statute 775.087(1). See *Latimore v. State*, 288 So. 3d 1225, 1226 (Fla. 5th DCA 2020) (“Specifically, if the person "actually possessed" a firearm, the law requires that they "shall be sentenced to a minimum term of

imprisonment of 10 years...”) See also *Mendenhall v. State*, 48 So. 3d 740, 746 (Fla. 2010) (“If the defendant discharged a firearm during the commission of an enumerated offense, he or she “shall be sentenced to a minimum term of imprisonment of 20 years.” § 775.087(2)(a)(2), Fla. Stat.”)

Lastly, the State charged Florida Statute 775.0823(2) in the Information, which reflects as follows:

Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.—The Legislature does hereby provide for an increase and certainty of penalty for any person convicted of a violent offense against any law enforcement or correctional officer, as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9); against any state attorney elected pursuant to s. 27.01 or assistant state attorney appointed under s. 27.181; or against any justice or judge of a court described in Art. V of the State Constitution, which offense arises out of or in the scope of the officer’s duty as a law enforcement or correctional officer, the state attorney’s or assistant state attorney’s duty as a prosecutor or investigator, or the justice’s or judge’s duty as a judicial officer, as follows:

- (1) For murder in the first degree as described in s. 782.04(1), if the death sentence is not imposed, a sentence of imprisonment for life without eligibility for release.
- (2) For attempted murder in the first degree as described in s. 782.04(1), a sentence pursuant to s. 775.082, s. 775.083, or s. 775.084.

Florida Statute 775.0823 is not a reclassification statute and does not allow an “attempted” offense to be treated as if it were a completed offense. See *Graves v. State*, 248 So. 3d 1238, 1245 (Fla. 3D DCA 2018) (“But section 775.0823 contains no equivalent language that could reasonably be construed as reclassifying an attempted crime to a higher degree offense by treating it as if it were a completed crime. The “increase and certainty of penalty” language is a holdover from the originally-enacted version of the statute, and the only rational conclusion, based on the statute’s history as described herein, is that the continued presence appears to be an oversight in the legislative amendatory process.”) However, in the event that a court determines that the offense for which a defendant has been convicted was against law enforcement under Florida Statute 775.823, the Court may then impose a sentencing modifier as reflected within the scoresheet for that purpose. See *Thanonglit v. State*, 838 So. 2d 1261, 1262 (Fla. 2d DCA 2003):

“Chanpheng Thanonglit was convicted of attempted murder in the first degree. § 782.04(1), Fla. Stat. (2000). When imposing sentence, the trial court applied a law enforcement protection multiplier pursuant to section 921.0024(1)(b), Florida Statutes (2000), which provides: “Law enforcement protection: If the primary offense is a violation of the Law Enforcement Protection Act under s. 775.0823(2), the subtotal sentence points are multiplied by 2.5.”

When considering all of the language and statutes cited in the Information, Count One was charged as a felony of the first degree, punishable by a maximum or thirty (30) years, and not a life felony as Counsel

advised Defendant. In addition, despite what was contained in the letter, Defendant was eligible for a youthful offender sentence under the Information as charged.

The Qualifications for Youthful Offender Sentencing are as found in Florida Statute 958.04(1)(a-c) and are as follows:

- (1) The court may sentence as a youthful offender any person:
 - (a) Who is at least 18 years of age or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 985;
 - (b) Who is found guilty of or who has tendered, and the court has accepted, a plea of nolo contendere or guilty to a crime that is, under the laws of this state, a felony if such crime was committed before the defendant turned 21 years of age; and
 - (c) Who has not previously been classified as a youthful offender under this act; however, a person who has been found guilty of a capital or life felony may not be sentenced as a youthful offender under this act.

Defendant was charged with Attempted Murder on a Law Enforcement Officer under the general murder provisions of Florida Statute 782.04(1)(a) coupled with the attempt statute found within Florida Statute 777.04(4)(b), and was not charged under Florida Statute 782.065, which renders Attempted Murder on a Law Enforcement Officer a life felony. The offense of Attempted Murder in the First Degree under the general murder statute is a felony of the First degree punishable by thirty years imprisonment. See *Weatherspoon v. State*, 214 So. 3d 578, 587 (Fla. 2017). A felony of the first degree does qualify for youthful offender sentencing. See *Pacheco-Velasquez v. State*, 208 So. 3d 293, 295 (Fn. 4)(Fla. 3d DCA 2016) ("For sentencing purposes, robbery with a weapon is classified as a first-degree felony, not a life felony, and therefore such an offense is eligible for youthful offender treatment.") citing *Simpkins v. State*, 784 So. 2d 1203 (Fla. 2d DCA 2001); *Hill v. State*, 434 So. 2d 974 (Fla. 5th DCA 1983).

Although the State charged Ms. Jackson under the 10/20/Life provisions of Florida Statute 775.087(2) which requires mandatory minimum terms to be imposed, this would not preclude youthful offender sentencing. See *Burton v. State*, 304 So. 3d 1288, 1290 (Fla. 5d DCA 2020):

This court and other Florida appellate courts have held specifically that "the minimum mandatory provisions of the 10-20-life statute do not supersede the Youthful Offender sentencing provisions." *Darrow v. State*, 789 So. 2d 552, 553 (Fla. 5th DCA 2001) (citing *State v. Wooten*, 782 So. 2d 408, 410 (Fla. 2d DCA 2001)); accord *Gallimore v. State*, 100 So. 3d 1264, 1266-67 (Fla. 4th DCA 2012) ("[T]his plain language gives a trial court the discretion to impose a youthful offender sentence in lieu of the 10-20-Life

Statute's minimum mandatory sentence." (citing *Postell v. State*, 971 So. 2d 986, 989 (Fla. 5th DCA 2008); *Bennett v. State*, 24 So. 3d 693, 694 (Fla. 1st DCA 2009); *Wooten*, 782 So. 2d at 410)).

Defense Counsel provided ineffective assistance of Counsel when he misadvised Defendant that "Count 1 is a life felony. This means that if convicted of this count, the Judge must sentence you to life" and that youthful offender sentencing was "not available to you because you are charged with a life felony in Count 1". In fact, Count One was charged as a felony of the first degree and was eligible for a youthful offender sentence. Defendant was prejudiced as had Counsel properly advised her that she could enter an open plea to the June 17, 2021 and sought a youthful offender sentence, she would have done this and would not have accepted the State's offer of twenty (20) years in prison followed by forty-five (45) years of probation.

CONCLUSION

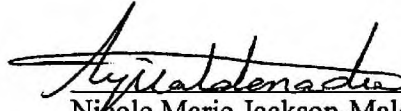
Based upon the forgoing facts, argument, exhibits, and citation to authority, the Defendant, NICOLE MARIE JACKSON-MALDONADO, has demonstrated that she was deprived of her right to the effective assistance of counsel and therefore this Honorable Court should vacate her Judgment and Sentence and allow Defendant to proceed to trial with the assistance of competent counsel, or in the alternative, order a full and fair evidentiary hearing with Defendant present and represented by counsel in order for Defendant to sustain her burden of proof under the law.

Respectfully Submitted,

//S// Dan Ripley
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Certification required by Rule 3.850 (n)(1)

I, NICOLE MARIE JACKSON-MALDONADO, under penalty of perjury, certify that I have read this motion or that it has been read to me and that I understand its content; that I read, write, and understand English; that the motion is filed in good faith and with a reasonable belief that it is timely filed, has potential merit, does not duplicate previous motions that have been disposed of by the court; and that all of the facts stated therein are true and correct.


Nicole Marie Jackson-Maldonado
Movant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court and electronically served via the State of Florida E-filing portal on the Volusia County Office of the State Attorney on this the 26th day of February 2025.

Respectfully Submitted,

//S// Dan Ripley
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EXHIBIT

1