

**IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division**

STATE OF FLORIDA,

CASE NO.: 17-CF-012198

v.

**ARMANDO RODRIGUEZ,
Defendant.**

DIVISION: I/J

**FINAL ORDER GRANTING DEFENDANT'S MOTION FOR POSTCONVICTION
RELIEF AND VACATING DEFENDANT'S JULY 25, 2018 JUDGMENT AND SENTENCE**

THIS MATTER is before the Court on Defendant's Motion for Postconviction Relief and Support Memorandum, filed through counsel on December 3, 2018. After reviewing Defendant's motion, the court file, and the record, the Court finds as follows:

On January 4, 2018, Defendant pleaded guilty pursuant to a negotiated plea agreement to one count of aggravated battery (great bodily harm and deadly weapon). On the same date, the trial court sentenced him to two years' community control followed by five years' probation. On April 30, 2018, Defendant admitted violating the terms of his community control. The court modified Defendant's community control to include 50 hours of community service. On July 25, 2018, Defendant again admitted violating the terms of his probation. On the same date, the court revoked his community control and probation and sentenced Defendant to 52.65 months' prison. Defendant appealed the revocation of his community control but later voluntarily dismissed his appeal.

On December 3, 2018, Defendant filed a timely, sworn Motion for Postconviction Relief and Supporting Memorandum alleging one claim of ineffective assistance of counsel. Following the State's response thereto, the Court scheduled an evidentiary hearing for November 21, 2019. (*See* Transcript, Nov. 21, 2019, attached). At evidentiary hearing, the State conceded that Defendant's allegations were well-taken. (*See* Transcript, Nov. 21, 2019, p. 4, attached). Consequently, the Court

granted Defendant's motion, vacated Defendant's judgment and sentence entered July 25, 2018, and transferred the case to Circuit Criminal Division K for resentencing. This Order memorializes that ruling and constitutes a Final Order on Defendant's postconviction motion. Furthermore, the record reflects that Defendant was resentenced in Division K on November 21, 2019. (See Judgment and Sentence, attached).

It is therefore **ORDERED AND ADJUDGED** that Defendant's Motion for Postconviction Relief, filed May 21, 2018, is hereby **GRANTED**.

It is **FURTHER ORDERED** that Defendant's Judgment and Sentence, entered July 25, 2018, is hereby **VACATED**.

Defendant has thirty (30) days from the date of this Final Order within which to appeal. However, a timely-filed motion for rehearing shall toll the finality of this Order.

DONE AND ORDERED in Chambers in Hillsborough County, Florida, this _____ day of _____, 2020.

ORIGINAL SIGNED

JAN 06 2020

MICHELLE SISCO, Circuit Judge

MICHELLE SISCO
CIRCUIT JUDGE

Attachments:

Transcript, Nov. 21, 2019
Judgment and Sentence

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Order has been furnished to Loren D. Rhoton, Attorney for Defendant, 412 Madison Street, Suite 1111, Tampa, FL 33602, by regular U.S. Mail; Armando Rodriguez, 6065 NW 186th Street, Apt. 102, Miami Gardens, FL 33015, by regular U.S. Mail; and to Joan E. Corces, Assistant State Attorney, 419 Pierce Street, Tampa, FL 33602, by inter-office mail, on this _____ day of _____, 2020.


DEPUTY CLERK

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
CRIMINAL DIVISION

STATE OF FLORIDA,

Plaintiff,

vs.

CASE NO: 17-CF-012198-A

ARMANDO RODRIGUEZ,

DIVISION: J

Defendant.

TRANSCRIPT OF PROCEEDINGS

BEFORE:

HONORABLE MICHELLE D. SISCO

TAKEN AT:

Courtroom 10
Courthouse Annex
Tampa, Florida

DATE AND TIME:

November 21, 2019
a.m. docket

RECORDED BY:

Janelle Brown
Electronic Court Reporter

TRANSCRIBED BY:

Brad Shumard
Electronic Court Reporter

(ORIGINAL _____)
(COPY _____)

*Record Transcripts Incorporated
1107 East Jackson Street, Suite 201
Tampa, Florida 33602
(813) 514-5100*

A P P E A R A N C E S

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REPRESENTING THE STATE:

Joan Corces, Esquire
State Attorney's Office
419 North Pierce Street
Tampa, Florida 33602

REPRESENTING THE DEFENDANT:

Loren Rhoton, Esquire
412 East Madison Street, Suite 1111
Tampa, Florida 33602

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P R O C E E D I N G S

1
2 MS. CORCES: We have counsel here, Judge, on the
3 evidentiary hearing.

4 THE COURT: Okay.

5 MS. CORCES: And I believe the defendant was taken
6 up to Division K?

7 MR. RHOTON: I don't believe he -- I'm not sure. I
8 just got here.

9 THE COURT: Okay.

10 MR. RHOTON: I'm not sure where he is.

11 THE COURT: Okay. And so --

12 MS. CORCES: The State is going to concede to the
13 granting of the motion?

14 MR. RHOTON: Could I have a moment, just a moment
15 to speak with Ms. Corces --

16 THE COURT: Sure.

17 MR. RHOTON: -- before we go forward with that?

18 THE COURT: And what's -- you need to tell me the
19 basis for the concession.

20 MS. CORCES: My understanding is that it is the
21 allegations are well-taken. And I have had occasion to
22 speak with another attorney -- the essence of the claim,
23 Judge, I don't know if the Court recalls --

24 THE COURT: Let me take a look real quick.

25 MS. CORCES: Sure.

1 THE COURT: Let me pull it up. So this was
2 misadvice as to the actual sentence he would have
3 received?

4 MS. CORCES: Upon the admission to the violation.

5 THE COURT: Okay.

6 MS. CORCES: So this would return it to VOP court.

7 THE COURT: I see, I see. Okay, okay.

8 MR. RHOTON: And for the record, Judge, Loren
9 Rhoton on behalf of Mr. Rodriguez. Before any order is
10 entered on that, I would ask for an opportunity to speak
11 with Ms. Corces and with my client, if that would be
12 okay.

13 THE COURT: Well, that's fine because -- that's
14 fine. So is he here today?

15 MR. RHOTON: I saw him in the jail yesterday, so I
16 know he's been brought over. I don't know if he's
17 been --

18 THE BAILIFF: He's bringing him in right now.

19 THE COURT: Okay. Very good. So as soon as he
20 gets here, you all can talk.

21 MR. RHOTON: Great. Thank you.

22 THE COURT: Okay.

23 (Case passed.)

24 MS. CORCES: Your Honor, may we address the
25 Rodriguez matter which is on the 10:00 a.m. docket?

1 THE COURT: Yes. And for the record, Mr. Rodriguez
2 is present, correct?

3 THE DEFENDANT: Yes.

4 MR. RHOTON: Correct.

5 THE COURT: Okay. All right.

6 MR. RHOTON: Your Honor, I have spoken with
7 Mr. Rodriguez and just wanted to make sure he still
8 wanted to go through with everything before the State
9 concedes and the Court does anything.

10 THE COURT: Okay. So that's fine. So,
11 Mr. Rodriguez, do you understand the State is conceding,
12 meaning they're agreeing that your motion for post-
13 conviction relief pursuant to rule 3.850 is well-taken.
14 So what that means is that your judgment and sentence on
15 the violation of probation will be vacated, but it
16 doesn't mean it's gone. You will essentially be put
17 back where you were before you entered the admission of
18 violation of probation. So that means you're going to
19 go back to see or to go see Judge Nazaretian in Division
20 K.

21 Is that correct?

22 MR. RHOTON: That's correct.

23 THE COURT: So do you understand that, first of
24 all?

25 THE DEFENDANT: Yes. Yes, ma'am.

1 THE COURT: Okay. And is that your desire, to
2 proceed forward in that fashion?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And what was the sentence he originally
5 got on the violation of probation?

6 MR. RHOTON: It was 52 months. 52?

7 THE COURT: Okay.

8 THE DEFENDANT: 52 months.

9 MR. RHOTON: Yes.

10 THE COURT: Okay. And so I don't know what you
11 scored out to or what you're looking at, but do you
12 understand that there's no guarantee when you go back
13 for the violation of probation, if you are in fact --
14 again either admit to violating or found to have
15 violated your probation, Judge Nazaretian can give you
16 any sentence up to the statutory maximum, which what was
17 he originally -- what was he --

18 MS. CORCES: It was an aggravated --

19 THE COURT: Pardon me?

20 MS. CORCES: -- battery.

21 MR. RHOTON: Aggravated battery with a weapon.

22 THE COURT: So was it a first-degree felony or
23 second-degree felony?

24 MR. RHOTON: I believe it was a first-degree, the
25 way it was charged.

1 MS. CORCES: Yes.

2 THE COURT: Okay. So do you understand that when
3 you go back in front of Judge Nazaretian you do start
4 off with a clean slate, but a clean slate means you
5 would once again be looking at up to 30 years in prison
6 on the violation of probation? Do you understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: And nobody is required to give you the
9 previous sentence, to give you a better sentence. All
10 that is promised you is a new day in court. That's all
11 that is promised you. Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And do you understand that it is
14 conceivably possible you could win the battle and lose
15 the war, meaning you could win your motion, go back in
16 front of Judge Nazaretian and he could give you up to 30
17 years in prison? Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. And with that understanding, is
20 it still your desire to have your current sentence of 56
21 months Florida State Prison vacated and for you to go
22 back to Division K to start all over with the violation
23 of probation?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay. All right. Very good. So

1 with --

2 MS. CORCES: If we could just -- I'm sorry. If we
3 could just transfer this then back to K, I believe he's
4 already on K's docket for this morning.

5 THE COURT: Okay.

6 MS. CORCES: So he could --

7 MR. RHOTON: I do have him set for this morning in
8 K.

9 THE COURT: Okay. So I will go ahead and orally
10 grant the motion for post-conviction relief and vacate
11 the judgment and sentence. What's the date?

12 THE CLERK: It's July the 25th, Judge, 2018. And
13 here they have that he got 52.65 months.

14 THE COURT: I see. Okay. Thank you.

15 All right. So I will vacate that judgment and
16 sentence and you will be transferred back to Division K
17 to proceed forward on the violation of probation. Okay?

18 MS. CORCES: Okay.

19 THE COURT: All right.

20 MR. RHOTON: Thank you, Judge.

21 THE COURT: Thank you.

22 THE DEFENDANT: Thank you.

23 (The proceedings were concluded.)

24

25

COURT REPORTER CERTIFICATE

STATE OF FLORIDA

HILLSBOROUGH COUNTY

I, Brad Shumard, do hereby certify that the foregoing transcript is a true and correct of the proceedings taken by way of electronic recording.

This 26th day of December, 2019.



Brad Shumard, Electronic Reporter
Record Transcripts, Incorporated.

ARMANDO RODRIGUEZ 17-CF-012198-A

SSN: NOT
AVAILABLE

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY
CRIMINAL DIVISION**

Division: **K**

 X AMENDED, COMMUNITY CONTROL VIOLATOR, RESENTENCE

Case No: **17-CF-012198-A**

OBTS Number: **2938106305**

STATE OF FLORIDA

VS

**Case Number: 17-CF-012198-A
ARMANDO RODRIGUEZ
4854 CONWAY RD APT 13
ORLANDO, FL 32812**

**Defense Case Number: 17-CF-012198-A
Address: LOREN DAVID RHOTON
LOREN RHOTON P.A.
412 E MADISON ST STE 1111
TAMPA, FL 33602**

**JUDGMENT
RESENTENCE**

The Defendant, ARMANDO RODRIGUEZ being personally before this court represented by LOREN DAVID RHOTON, ATTORNEY the attorney of record, and the state represented by JOAN ELIZABETH CORCES and having

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

 X entered a plea of guilty to the following crime(s) (1/4/2018)

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

<u>Cnt</u>	<u>Charge Description</u>	<u>Lev/Deg</u>	<u>Plea</u>	<u>Disp Date</u>	<u>Disposition</u>
1	7840451A AGGRAVATED BATTERY GREAT BODILY HARM AND DEADLY	F1	GUILTY	7/25/2018	ADJUDGED GUILTY

If you are a "Qualified Offender" under §943.325, Florida Statutes, you are required to submit a DNA sample in the manner consistent with Florida law.

DONE AND ORDERED in open court in Hillsborough County, Florida, 11/21/2019

Nick Nazaretian
17-CF-012198-A 11/23/2019 9:19:31 F

17-CF-012198-A 11/23/2019 9:19:31 PM

Nick Nazaretian, Circuit Judge

=====SENTENCE=====

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

The defendant is hereby committed to the custody of the Department of Corrections: Florida State Prison

Ct.1 SENTENCE: CRIMINAL

Community Control (18 Months, LEVEL II)

State Probation (5 Years)

Restitution (TO BE PAID ONLY)

Provisions

- AMENDED SENTENCE-11/21/2019 DEFENDANT RESENTENCED
- ADMIT VIOLATION OF COMMUNITY CONTROL
- FOUND IN VIOLATION OF CONDITION 16
- COMMUNITY CONTROL REVOKED
- COMMUNITY CONTROL II FOLLOWED BY PROBATION
- SAME TERMS AND CONDITIONS
- PROBATION CAN AUTO TERMINATE EARLY ONCE TREATMENT CLASSES ARE DONE AND RESTITUTION PAID
- ATTEND AND COMPLETE ANGER MANAGEMENT AND TREATMENT
- DEFENDANT TO ENROLL AND COMPLETE A MENTAL HEALTH EVALUATION AND TREATMENT
- DEFENDANT TO RECEIVE CREDIT FOR ANYTHING ALREADY DONE ON COMMUNITY CONTROL
- COST OF SUPERVISION WAIVED
- CONVERT COURT COSTS TO LIEN
- MANDATORY COURT COST IMPOSED

Special Provisions

- RESENTENCING

Fee Totals:

- \$400.00 CR-2399 INVESTIGATIVE COSTS SAO REVENUE FS 938.27(8) FS AUTH: 938.27(8)
- \$1.00 CF-R202 FELONY - FEE DOMESTIC VIOL/RAPE CRISIS FS AUTH: 938.08 - 741.01
- \$115.00 CR-8092 FELONY BCC - COST OF INCARCERATION FS AUTH: 938.08 - 741.01
- \$85.00 CR-8331 DOMESTIC VIOLENCE SURCHARGE FS AUTH: 938.08 - 741.01
- \$200.00 CF-R252 ADDITIONAL COURT COST - CLERK - CIR CRIM FS AUTH: 938.05(1)(a)
- \$3.00 CF-RA20 CRIME STOPPERS TRUST FUND FEE FS AUTH: 938.06
- \$50.00 CR-8081 CRIME PREVENTION FS AUTH: 775.083(2)
- \$65.00 CR-8097 ADDITIONAL COSTS (BOCC) - PROGRAMS FS AUTH: 939.185(1)(a)/ORD 18-42(a)
- \$49.00 CR-8311 FCCA CRIMES COMPENSATION TRUST FUND FS AUTH: 938.03
- \$17.00 CR-A362 CRIME STOPPERS TRUST FUND FS AUTH: 938.06
- \$25.00 FS AUTH: 938.05(1)(a)
- \$1.00 CR-R617 CRIMES COMPENSATION FEE 938.03 FS AUTH: 938.03
- \$3.00 CR-2616 STATE ASSESSMENT (ADDL CRT COST CLEAR) 938.01 FS AUTH: 938.01
- \$2.00 CR-2629 HILLSBOROUGH COUNTY LOCAL ASSESSMENT FS AUTH: 938.15 318.18(11)(d)
- \$49.00 CR-2780 PD APP FEE - INDIGENT CRIMINAL TRUST FUND FS AUTH: 27.52(1)(b)
- \$0.20 CR-4005 PD APP ADDL FEE - CLERK OF COURT T.F./DOR/GEN FUND FS AUTH: 27.52(1)(b)
- \$0.80 IN-3991 PD APP FEE- INDIGENT CRIM TR FEE 2%- CLERKS OF CT TF FS AUTH: 27.52(1)(b)
- \$200.00 CR-2810 DOR - JAC INDIGENT CRIMINAL DEFENSE TRUST FUND FS AUTH: 938.29 - 27.562
- \$24.00 ND-R220 PROBATION SERVICE FEE AO S-1999-092 (CR) FS AUTH: 948.09(1)(a)
- \$150.00 CR-8338 RAPE CRISIS PROGRAM TRUST FUND FS AUTH: 938.085
- \$1.00 CR-R223 RAPE CRISIS PGM TRUST FEE 938.085 FS AUTH: 938.085
- \$6.00 CF-R229 FELONY PREP FEE FOR CRIMINAL JUDGMENT - 28.24(8) FS AUTH: FS 28.24(8)

ARMANDO RODRIGUEZ 17-CF-012198-A

SSN: NOT
AVAILABLE

- **\$1.00** CR-R229D FELONY PREP FEE FOR CRIMINAL JUDGMENT - 28.24(8) FS AUTH: FS 28.24(8)
- **\$6.00** CF-R228 FELONY PREP FEE FOR CRIM SATISFACTION - 28.24(8) FS AUTH: FS 28.24(8)
- **\$1.00** CR-R228D FELONY PREP FEE FOR CRIM SATISFACTION - 28.24(8) FS AUTH: FS 28.24(8)
- **\$9.00** TF-1100J RECORDING FEE FOR CRIMINAL JUDGMENT 28.24(12)(a)(b) FS AUTH: FS 28.24(12)(a)(b)
- **\$10.00** TF-1100S RECORDING FEE FOR CRIM SATISFACTN 28.24(12)(a)(b)(d) FS AUTH: FS 28.24(12)(a)(b)(d)

Fee Total : \$1474.00

****FEE TOTALS INCLUDE ALL OUTSTANDING FEES OWED ON THE CASE AT THE TIME OF THIS JUDGMENT, EXCEPT FOR COST OF SUPERVISION FEES. SEE ORDER OF PROBATION FOR DETAILS. THE ABOVE FEES INCLUDE THE ASSESSMENT OF JUDGMENT AND SATISFACTION FEES, AS APPLICABLE.**

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

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

In imposing the above sentence, the court further recommends:

DONE AND ORDERED in open court at Hillsborough County, Florida, on 11/21/2019

Nick Nazaretian
17-CF-012198-A 11/23/2019 9:19:31 F
17-CF-012198-A 11/23/2019 9:19:31 PM

Nick Nazaretian, Circuit Judge

CERTIFICATE OF SERVICE

I, PAT FRANK, Clerk of the Circuit and County Court of the County of Hillsborough, State of Florida, having by law the custody of the seal and all records, books, documents and papers of or appertaining to the County Court, do hereby certify that a true and correct copy of this document has been hand delivered, mailed or served electronically to the Office of the State Attorney, the Defense Attorney, and/or Defendant, if appearing Pro Se.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said County Court, this 25th day of November, 2019

PAT FRANK

As Clerk of the Circuit and County Court

Delilah Patterson

As Deputy Clerk

Delilah Patterson



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT,
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

STATE OF FLORIDA

v.

Case No. 17-CF-12198

ARMANDO RODRIGUEZ
_____ /

**ORDER GRANTING TERMINATION OF COMMUNITY CONTROL AND
PROBATION**

THIS CAUSE having come before me on March 12, 2020, and the court being fully advised in the premises, it is:

ORDERED AND ADJUDGED that this court's order entered January 20, 2020, placing defendant on Community Control II and probation is modified. Defendant's Community Control II and probation in this case are successfully terminated effective March 12, 2020.

DONE AND ORDERED in Chambers at Tampa, Hillsborough County, Florida this _____ day of _____, 2020.

Electronically Conformed 3/13/2020

~~Laura E. Ward~~ _____
Laura E. Ward
Circuit Judge

cc: -State Attorney
-Loren Rhoton
-FDOC/Probation