

Supreme Court of Florida

No. SC07-484

IN RE: AMENDMENTS TO FLORIDA RULES OF CRIMINAL PROCEDURE—RULE 3.704 AND RULE 3.992.

[April 19, 2007]

PER CURIAM.

The Supreme Court Criminal Court Steering Committee (Committee) has filed an emergency petition proposing amendments to the Florida Rules of Criminal Procedure to conform the rules to recent legislation.¹ We have jurisdiction. See art. V, § 2(a), Fla. Const.

In chapter 2007-2, section 5, Laws of Florida, as part of the Anti-Murder Act, effective March 12, 2007, the Legislature amended section 921.0024(1)(b), Florida Statutes, to mandate the assessment of community sanction violation points for violations occurring on or after March 12, 2007, of probation or community control by a violent felony offender of special concern as defined in section

1. The proposed amendments conform the rules to chapter 2007-2, section 5, Laws of Florida (amending section 921.0024(1)(b), Florida Statutes).

948.06, Florida Statutes (2006). Specifically, twelve community sanction violation points must be assessed for violations by qualifying offenders, other than violations that involve a failure to pay costs or fines or to make restitution or that include a new felony conviction. Twenty-four community sanction violation points must be assessed for a violation by a qualifying offender based upon a new felony conviction.

The Committee proposes amendments to rule 3.704, The Criminal Punishment Code, and having consulted with the Florida Department of Corrections,² to rule 3.992, Criminal Punishment Code Scoresheets. Rule 3.704(d)(16) governs the assessment of community sanction violation points. The amendment to rule 3.704(d)(16) adds the two new alternative provisions for imposition of community sanction points as established by chapter 2007-2, section 5, Laws of Florida, for violations occurring on or after March 12, 2007. The proposed amendments to rule 3.992(a) add the two new alternative provisions to the Criminal Punishment Code Scoresheet, revise the “Effective Date” footer on the scoresheet, and include several technical changes. The proposed amendment to

2. Section 921.0024(4), Florida Statutes (2006), requires that the Department of Corrections develop and submit the revised Criminal Punishment Code Scoresheet to the Court for approval by June 15 of each year, as necessary, in consultation with the Office of the State Courts Administrator, state attorneys, and public defenders.

rule 3.992(b), the Supplemental Criminal Punishment Scoresheet, is limited to revising the “Effective Date” footer.

After considering the Committee’s proposals and reviewing the relevant legislation, we adopt the proposed amendments with minor modifications. Accordingly, we adopt rule 3.704(d)(16) and the criminal punishment code scoresheets found at rules 3.992(a) and 3.992(b), as reflected in the appendix to this opinion. New language is indicated by underscoring, and deleted language is struck through. The amendments shall become effective immediately upon release of this opinion. However, because the Court did not publish the amendments for comment prior to their adoption, interested persons shall have sixty days from the date of this opinion in which to file comments with the Court.³

It is so ordered.

LEWIS, C.J., and WELLS, ANSTEAD, PARIENTE, QUINCE, CANTERO, and BELL, JJ., concur.

3. An original and nine paper copies of all comments must be filed with the Court on or before June 19, 2007, with a certificate of service verifying that a copy has been served on the Committee Chair, Honorable O. H. Eaton, Jr., Circuit Judge, Eighteenth Judicial Circuit, 101 Bush Blvd., Sanford, Florida 32773, as well as separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until July 10, 2007, to file a response to any comments filed with the Court. Electronic copies of all comments and responses also must be filed in accordance with the Court’s administrative order In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND
IF FILED, DETERMINED.

Original Proceeding – Florida Rules of Criminal Procedure

The Honorable O. H. Eaton, Jr., Chair, Criminal Court Steering Committee, Circuit
Judge, Eighteenth Judicial Circuit, Sanford, Florida,

for Petitioner

APPENDIX

RULE 3.704 THE CRIMINAL PUNISHMENT CODE

(a)-(c) [No Change]

(d) **General Rules and Definitions**

(1)-(15) [No Change]

(16) Community sanction violation points occur when the offender is found to have violated a condition of:

(A) Probation;

(B) Community Control; or

(C) Pretrial intervention or diversion.

Community sanction violation points are assessed when a community sanction violation is before the court for sentencing. Six community sanction violation points must be assessed for each violation or if the violation results from a new felony conviction, 12 community sanction violation points must be assessed. For violations occurring on or after March 12, 2007, if the community sanction violation that is not based upon a failure to pay fines, costs, or restitution is committed by a violent felony offender of special concern as defined in s. 948.06, twelve community sanction violation points must be assessed or if the violation results from a new felony conviction, 24 community sanction points must be assessed. Where there are multiple violations, points may be assessed only for each successive violation that follows a continuation of supervision, or modification or revocation of the community sanction before the court for sentencing and are not to be assessed for violation of several conditions of a single community sanction. Multiple counts of community sanction violations before the sentencing court may not be the basis for multiplying the assessment of community sanction violation points.

(17)-(28) [No Change]

Committee Notes
[No Change]

RULE 3.992 CRIMINAL PUNISHMENT CODE SCORESHEETS

(a) Criminal Punishment Code Scoresheet

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

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

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

II. ADDITIONAL OFFENSE(S): Supplemental page attached

DOCKET#	FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY A S C R	COUNTS	POINTS	TOTAL
_____ / _____ / _____				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x _____	_____ = _____	
DESCRIPTION _____							
_____ / _____ / _____				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x _____	_____ = _____	
DESCRIPTION _____							
_____ / _____ / _____				<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x _____	_____ = _____	
DESCRIPTION _____							
(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)							
Prior capital felony triples Additional Offense points <input type="checkbox"/>				Supplemental page points _____			

II. _____

III. VICTIM INJURY:

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

III. _____

IV. PRIOR RECORD: Supplemental page attached

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
_____ / _____ / _____			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	_____ = _____	
_____ / _____ / _____			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	_____ = _____	
_____ / _____ / _____			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	_____ = _____	
_____ / _____ / _____			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	_____ = _____	
_____ / _____ / _____			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	_____ = _____	
_____ / _____ / _____			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	_____ = _____	
_____ / _____ / _____			<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	_____ = _____	
				(Level = Points: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)	Supplemental page points _____		

IV. _____

Page 1 Subtotal: _____

- V. Legal Status violation = 4 Points V. _____
- VI. Community Sanction violation before the court for sentencing VI. _____
 - 6 points x each successive violation OR
 - New felony conviction = 12 points x each successive violation OR
 - 12 points x each successive violation for a violent felony offender of special concern OR
 - New felony conviction = 24 points x each successive violation for a violent felony offender of special concern
- VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 Points VII. _____
- VIII. Prior Serious Felony - 30 Points VIII. _____

Subtotal Sentence Points _____

IX. Enhancements (only if the primary offense qualifies for enhancement)

Law Enforcement Protection	Drug Trafficking	Grand Theft Motor Vehicle	Street Gang	Domestic Violence <small>(offenses committed on or after 10-1-97)</small>
____ x 1.5 ____ x 2.0 ____ x 2.5	____ x 1.5	____ x 1.5	____ x 1.5	____ x 1.5

Enhanced Subtotal Sentence Points **IX.** _____

TOTAL SENTENCE POINTS _____

SENTENCE COMPUTATION

_____ If total sentence points are less than or equal to 44, the lowest permissible sentence is any non-state prison sanction.

If total sentence points are greater than 44:

_____ minus 28 = _____ x .75 = _____

total sentence points lowest permissible prison sentence in months

The maximum sentence is up to the statutory maximum for the primary and any additional offenses as provided in s. 775.082, F.S., unless the lowest permissible sentence under the Code exceeds the statutory maximum. Such sentences may be imposed concurrently or consecutively. If total sentence points are greater than or equal to 363, a life sentence may be imposed.

maximum sentence
in years

TOTAL SENTENCE IMPOSED

- | | | | |
|--|--------------------------------------|--------|-------|
| | Years | Months | Days |
| <input type="checkbox"/> State Prison | <input type="checkbox"/> Life | _____ | _____ |
| <input type="checkbox"/> County Jail | <input type="checkbox"/> Time Served | _____ | _____ |
| <input type="checkbox"/> Community Control | | _____ | _____ |
| <input type="checkbox"/> Probation | | _____ | _____ |

Please check if sentenced as habitual offender, habitual violent offender, violent career criminal, prison releasee reoffender, or a mandatory minimum applies.

Mitigated Departure Plea Bargain

Other Reason _____

JUDGE'S SIGNATURE _____

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

(b) Supplemental Criminal Punishment Code Scoresheet

NAME (LAST, FIRST, MI.)	DOCKET #	DATE OF SENTENCE
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II. ADDITIONAL OFFENSES(S):

DOCKET#	FEL/MM DEGREE	F.S#	OFFENSE LEVEL	QUALIFY COUNTS A S C R	POINTS	POINTS
_____ / _____	_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x _____ = _____	
DESCRIPTION _____						
_____ / _____	_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x _____ = _____	
DESCRIPTION _____						
_____ / _____	_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x _____ = _____	
DESCRIPTION _____						
_____ / _____	_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x _____ = _____	
DESCRIPTION _____						
_____ / _____	_____ / _____	_____ / _____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ x _____ = _____	

(Level - Points: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

II. _____

IV. PRIOR RECORD

FEL/MM DEGREE	F.S.#	OFFENSE LEVEL	QUALIFY: A S C R	DESCRIPTION	NUMBER	POINTS	TOTAL
_____ / _____	_____ / _____	_____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____ = _____		
_____ / _____	_____ / _____	_____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____ = _____		
_____ / _____	_____ / _____	_____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____ = _____		
_____ / _____	_____ / _____	_____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____ = _____		
_____ / _____	_____ / _____	_____ / _____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____ = _____		

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

IV. _____

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

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

Pursuant to 921.0026(3) the defendant's substance abuse or addiction does not justify a downward departure from the lowest permissible sentence.

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