

Supreme Court of Florida

No. SC09-1186

IN RE: AMENDMENTS TO FLORIDA RULES OF CRIMINAL PROCEDURE 3.704 AND 3.986.

[September 10, 2009]

PER CURIAM.

The Criminal Procedure Rules Committee (Committee) filed an out-of-cycle report proposing amendments to Florida Rules of Criminal Procedure 3.704, The Criminal Punishment Code; and 3.986, Forms Related to Judgment and Sentence, to conform the rules to 2009 legislation.¹ We have jurisdiction. See art. V, § 2(a), Fla. Const.; Fla. R. Jud. Admin. 2.140(e).

1. The Committee's proposal also included an amendment to rule 3.800, Correction, Reduction, and Modification of Sentences, based upon decisional law from this Court. By order dated July 23, 2009, we severed rule 3.800 to be considered separately in In re Amendments to Florida Rule of Criminal Procedure 3.800, No. SC09-1306.

As discussed below, we adopt the Committee's proposed amendments to rules 3.704 and 3.986, which are based upon legislation that went into effect on July 1, 2009.

The Committee proposes amending rule 3.704 to add two additional provisions under subdivision (d), General Rules and Definitions, derived from chapter 2009-63, section 1, Laws of Florida. There, the Legislature amended section 775.082 to add subsection (10), affecting sentence computation:

(10) If a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third-degree felony but not a forcible felony as defined in s. 776.08, and excluding any third-degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.

The adoption of new subdivision (d)(29) in rule 3.704 gives effect to that change.

Under chapter 2009-63, section 2, Laws of Florida, the Legislature created a prison diversion program established under section 921.00241, Florida Statute. Rule 3.704(d)(28) as amended gives effect to that change. Former subdivision (d)(28) is renumbered. The Criminal Punishment Code Scoresheet recently was revised to reflect these statutory changes as well. See In re Amendments to Florida Rule of

Criminal Procedure 3.992(A) – Criminal Punishment Code Scoresheet, 34 Fla. L. Weekly S 457 (Fla. July 16, 2009).

The Committee further proposes amending rule 3.986 to reflect recent legislative changes that affect a number of forms under the rule. In chapter 2009-190, section 2, Laws of Florida, the Legislature amended section 943.325 pertaining to the collection of DNA samples from qualified offenders. The amendment to rule 3.986(b), Form of Judgment, reflects that change, in particular changing reference to specific offenses to the general “qualified offender” and changing “blood specimen” to “DNA samples.” The amendment to subdivision (c) provides for costs to be assessed to the offender. Subdivisions (d) and (e) are amended to reflect the Legislature’s amendments to section 948.014, requiring submission of DNA samples from offenders placed on probation or community control, respectively.

Accordingly, we hereby amend the Florida Rules of Criminal Procedure as set forth in the appendix to this opinion. New language is indicated by underscoring; deletions are indicated by struck-through type. The amendments shall become effective immediately upon issuance of this opinion. Because the amendments were not published 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.²

It is so ordered.

QUINCE, C.J., and PARIENTE, LEWIS, CANADY, POLSTON, LABARGA, and PERRY, JJ., concur.

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

Original Proceeding – Florida Rules of Criminal Procedure

Fleur J. Lobree, Chair, Florida Rules of Criminal Procedure Committee, Office of the State Attorney, Eleventh Judicial Circuit, Miami, Florida, and John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida,

for Petitioner

2. An original and nine paper copies of all comments must be filed with the Court on or before November 9, 2009, with a certificate of service verifying that a copy has been served on the Committee Chair, Honorable Fleur J. Lobree, 1350 NW 12th Ave., Room S-539, Miami, FL 33136-2102, 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 November 30, 2009, 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 In re Mandatory Submission of Electronic Copies of Documents, Fla. Admin. Order No. AOSC04-84 (Sept. 13, 2004).

APPENDIX

Rule 3.704. THE CRIMINAL PUNISHMENT CODE

(a)-(c) [No change]

(d) General Rules and Definitions

(1)-(27) [No change]

(28) If the lowest permissible sentence under the criminal punishment code is a state prison sanction but the total sentencing points do not exceed 48 points (or 54 points if six of those points are for a violation of probation, community control, or other community supervision that does not involve a new crime), the court may sentence the defendant to probation, community control, or community supervision with mandatory participation in a prison diversion program, as provided for in s. 921.00241, Florida Statutes, if the defendant meets the requirements for that program as set forth in section 921.00241.

(29) If the total sentence points equal 22 or less, the court must sentence the offender to a nonstate prison sanction unless it makes written findings that a nonstate prison sanction could present a danger to the public.

~~(28)~~(30) Sentences imposed after revocation of probation or community control must be imposed according to the sentencing law applicable at the time of the commission of the original offense.

Committee Note
[No change]

Rule. 3.986. FORMS RELATED TO JUDGMENT AND SENTENCE

(a) [No change]

(b) Form for Judgment.

- Probation Violator
- Community Control Violator
- Retrial
- Resentence

In the Circuit Court,
 _____ Judicial Circuit, in and
 for
 _____ County, Florida
 Division ____
 Case Number ____

State of Florida

v.

 Defendant

JUDGMENT

The defendant, _____, being personally before this court represented by _____, the attorney of record, and the state represented by _____, and having

- been tried and found guilty by jury/by court of the following crime(s)
- entered a plea of guilty to the following crime(s)
- entered a plea of nolo contendere to the following crime(s)

Count	Crime	Offense Statute Number(s)	Degree Of Crime	Case Number	OBTS Number
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

— and no cause being shown why the defendant should not be adjudicated guilty, IT IS ORDERED THAT the defendant is hereby ADJUDICATED GUILTY of the above crime(s).

— and ~~having been convicted or found guilty of, or having entered a plea of nolo contendere or guilty, regardless of adjudication, to attempts or offenses relating to sexual battery (ch. 794), lewd and lascivious conduct (ch. 800), or murder (s. 782.04), aggravated battery (s. 784.045), carjacking (s. 812.133), or home invasion robbery (s. 812.135), or any other offense specified in section 943.325~~being a qualified offender pursuant to s. 943.325, the defendant shall be required to submit ~~blood specimens~~DNA samples as required by law.

— and good cause being shown; IT IS ORDERED THAT ADJUDICATION OF GUILT BE WITHHELD.

DONE AND ORDERED in open court in _____ County, Florida, on(date).....

Judge

State of Florida

v.

Defendant

Case Number _____

FINGERPRINTS OF DEFENDANT

R. Thumb R. Index R. Middle R. Ring R. Little

- ___ A sum of \$___ pursuant to section 939.01, Florida Statutes (Prosecution/Investigative Costs).
- ___ A sum of \$___ pursuant to section 27.56, Florida Statutes (Public Defender Fees).
- ___ Restitution in accordance with attached order.
- ___ \$201 pursuant to section 938.08, Florida Statutes (Funding Programs in Domestic Violence).
- ___ A sum of \$ ___ for the cost of collecting the DNA sample required by s. 943.325, Florida Statutes.
- ___ Other

DONE AND ORDERED in open court in _____ County, Florida, on(date).....

Judge

(d) [No change]

(e) Form for Order of Probation

In the _____ Court
of _____ County, Florida
Case Number _____

State of Florida

v.

Defendant

ORDER OF PROBATION

This cause coming on this day to be heard before me, and you, the defendant, _____, being now present before me, and you having

(check one)

- ___ entered a plea of guilty to
- ___ entered a plea of nolo contendere to
- ___ been found guilty by jury verdict of
- ___ been found guilty by the court trying the case without a jury of the offense(s) of ___

SECTION 1: Judgment Of Guilt

___ The Court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that the imposition of sentence is hereby withheld and that you be placed on probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

___ Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Probation During Portion Of Sentence

It is hereby ordered and adjudged that you be

___ committed to the Department of Corrections

___ confined in the County Jail

for a term of _____ with credit for _____ jail time. After you have served _____ of the term you shall be placed on probation for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

___ confined in the County Jail

for a term of _____ with credit for _____ jail time, as a special condition of probation.

It is further ordered that you shall comply with the following conditions of probation during the probationary period.

- (1) Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.
- (2) You will pay the State of Florida the amount of \$_____ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
- (3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.

- (4) You will not possess, carry, or own any firearm. You will not possess, carry, or own any weapons without first procuring the consent of your officer.
- (5) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your probation.
- (6) You will not associate with any person engaged in any criminal activity.
- (7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- (8) You will work diligently at a lawful occupation, advise your employer of your probation status, and support any dependents to the best of your ability, as directed by your officer.
- (9) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site, or elsewhere, and you will comply with all instructions your officer may give you.
- (10) You will pay restitution, costs, and/or fees in accordance with the attached orders.
- (11) You will report in person within 72 hours of your release from confinement to the probation office in _____ County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at _____.
- (12) You shall submit to the drawing of blood or other biological specimens as required by s. 943.325, Florida Statutes.

SPECIAL CONDITIONS

___ You must undergo a (drug/alcohol) evaluation and, if treatment is deemed necessary, you must successfully complete the treatment.

___ You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.

___ You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.

___ You will not associate with _____ during the period of probation.

- ___ You will not associate with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.
- ___ You will not contact _____ during the period of probation.
- ___ You will attend and successfully complete an approved batterers' intervention program.
- ___ Other _____

(Use the space below for additional conditions as necessary.)

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your probation, or may extend the period of probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your probation, you may be arrested and the court may revoke your probation, adjudicate you guilty if adjudication of guilt was withheld, and impose any sentence that it might have imposed before placing you on probation or require you to serve the balance of the sentence.

It is further ordered that when you have been instructed as to the conditions of probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

It is further ordered that the clerk of this court file this order in the clerk's office and provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, on(date).....

Judge

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

.....(date)..... Probationer _____

Instructed by _____

Original: Clerk of the Court
 Certified Copies: Probationer
 Florida Department of Corrections,

(f) Form for Community Control.

In the _____ Court
of _____ County, Florida
Case Number _____

State of Florida

v.

Defendant

ORDER OF COMMUNITY CONTROL

This cause coming on this day to be heard before me, and you, the defendant,
_____, being now present before me, and you having

(check one)

- entered a plea of guilty to
- entered a plea of nolo contendere to
- been found guilty by jury verdict of
- been found guilty by the court trying the case without a jury of the offense(s) of _____

SECTION 1: Judgment of Guilt

The court hereby adjudges you to be guilty of the above offense(s).

Now, therefore, it is ordered and adjudged that you be placed on community control for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 2: Order Withholding Adjudication

Now, therefore, it is ordered and adjudged that the adjudication of guilt is hereby withheld and that you be placed on Community Control for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

SECTION 3: Community Control During Portion Of Sentence

It is hereby ordered and adjudged that you be

___ committed to the Department of Corrections

___ confined in the County Jail

for a term of _____ with credit for _____ jail time. After you have served _____ of the term, you shall be placed on community control for a period of _____ under the supervision of the Department of Corrections, subject to Florida law.

___ confined in the County Jail

for a term of _____ with credit for _____ jail time, as a special condition of community control.

It is further ordered that you shall comply with the following conditions of community control during the community control period.

- (1) Not later than the fifth day of each month, you will make a full and truthful report to your officer on the form provided for that purpose.
- (2) You will pay the State of Florida the amount of \$_____ per month toward the cost of your supervision, unless otherwise waived in compliance with Florida Statutes.
- (3) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
- (4) You will not possess, carry, or own any firearm. You will not possess, carry, or own other weapons without first procuring the consent of your officer.
- (5) You will live without violating the law. A conviction in a court of law shall not be necessary for such a violation to constitute a violation of your community control.
- (6) You will not associate with any person engaged in any criminal activity.
- (7) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
- (8) You will work diligently at a lawful occupation, advise your employer of your community control status, and support any dependents to the best of your ability as directed by your officer.

- (9) You will promptly and truthfully answer all inquiries directed to you by the court or your officer and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.
- (10) You will report to your officer at least 4 times a week, or, if unemployed full time, daily.
- (11) You will perform _____ hours of public service work as directed by your officer.
- (12) You will remain confined to your approved residence except for one half hour before and after your approved employment, public service work, or any other special activities approved by your officer.
- (13) You will pay restitution, costs, and/or fees in accordance with the attached orders.
- (14) You will report in person within 72 hours of your release from confinement to the probation office in _____ County, Florida, unless otherwise instructed by your officer. (This condition applies only if section 3 on the previous page is checked.) Otherwise, you must report immediately to the probation office located at _____.
- (15) You shall submit to the drawing of blood or other biological specimens as required by s. 943.325, Florida Statutes.

SPECIAL CONDITIONS

- ___ You must undergo a (drug/alcohol) evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.
- ___ You must undergo a mental health evaluation, and if treatment is deemed necessary, you must successfully complete the treatment.
- ___ You will submit to urinalysis, breathalyzer, or blood tests at any time requested by your officer, or the professional staff of any treatment center where you are receiving treatment, to determine possible use of alcohol, drugs, or controlled substances. You shall be required to pay for the tests unless payment is waived by your officer.
- ___ You will not associate with _____ during the period of community control.
- ___ You will not associate with other criminal gang members or associates, except as authorized by law enforcement officials, prosecutorial authorities, or the court, for the purpose of aiding in the investigation of criminal activity.
- ___ You will not contact _____ during the period of community control.
- ___ You will maintain an hourly accounting of all your activities on a daily log which you will submit to your officer on request.

- ___ You will participate in self-improvement programs as determined by the court or your officer.
- ___ You will submit to electronic monitoring of your whereabouts as required by the Florida Department of Corrections.
- ___ You will attend and successfully complete an approved batterers' intervention program.
- ___ Other _____

(Use the space below for additional conditions as necessary.)

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your community control, or may extend the period of community control as authorized by law, or may discharge you from further supervision or return you to a program of regular probation supervision. If you violate any of the conditions and sanctions of your community control, you may be arrested, and the court may adjudicate you guilty if adjudication of guilt was withheld, revoke your community control, and impose any sentence that it might have imposed before placing you on community control.

It is further ordered that when you have reported to your officer and have been instructed as to the conditions of community control, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability. (This paragraph applies only if section 1 or section 2 is checked.)

It is further ordered that the clerk of this court file this order in the clerk's office, and forthwith provide certified copies of same to the officer for use in compliance with the requirements of law.

DONE AND ORDERED, on(date).....

Judge

I acknowledge receipt of a certified copy of this order. The conditions have been explained to me and I agree to abide by them.

.....(date)..... Community controller _____

Instructed by _____

Original:

Clerk of the Court

Certified Copies: Community Controlee
Florida Department of Corrections,
Probation and Parole Services