

(863) 534-4200

ATTORNEYS FOR PETITIONER

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ARGUMENT

ISSUE

WHETHER IT WAS ERROR TO INCLUDE AS "ADDITIONAL
OFFENSES" ON PETITIONER'S CPC SCORESHEET OFFENSES THAT
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The State argues that offenses that are no longer pending before the court for sentencing must nonetheless still be scored as additional offenses at a VOP sentencing in order to prevent defendants from receiving "an unearned windfall," i.e., the lowest permissible sentence will be lower. AB, p. 9. This may be a good policy reason for adopting such a rule, but the plain language of the applicable rules and statutes provides otherwise.

It is not clear whether the State is invoking section 948.06(1) as authority for its proposed rule but that statute does not establish such a rule. Regardless of whether we score the third-degree felonies as additional offenses or prior record, at the VOP sentencing the trial court could have "impose[d] any sentence which it might have originally imposed before placing the probationer on probation," i.e., 15 years on each offense, to run consecutive. The fact that the lowest permissible sentence is slightly lower does not change this fact.

Attempting to avoid the ramifications of the plain language in the statutes and rules, the State argues: "when defining the terms [in the statutes and rules], the Legislature and this Court were contemplating the original sentencing hearing not a subsequent re-sentencing hearing as a result of a revocation of

probation" AB, p. 12. The State cites no authority for this proposition. As discussed in the initial brief, the statutes and rules contemplate the contrary: Every sentencing, VOP or original, is a de novo sentencing that requires the production of a new scoresheet, to be prepared using the same definitions. IB, pp. 19-21.

Petitioner further relies on the argument in the initial brief.

CERTIFICATE OF SERVICE

I certify that a copy has been mailed to Bill McCollum, Concourse Center #4, 3507 E. Frontage Rd. - Suite 200, Tampa, FL 33607, (813) 287-7900, on this _____ day of December, 2009.

CERTIFICATION OF FONT SIZE

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Respectfully submitted,

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