

PROVIDED TO MARION C.I. ON

*6.8.16*

**FOR MAILING. SUPREME COURT OF FLORIDA  
TALLAHASSEE, FLORIDA**

KENNETH L. GRIMSLEY

Petitioner,

v.

CASE NO. \_\_\_\_\_

SECRETARY, JULIE L. JONES,  
FLORIDA DEPARTMENT OF CORRECTIONS,  
and THE STATE OF FLORIDA,

Respondents.

CLERK, SUPREME COURT

BY

**EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS**

COMES NOW, the Petitioner Kenneth L. Grimsley, pursuant to Section 79.01, Florida Statute and Article I, Section 13, Florida Constitution and petitions this Honorable Court to correct the instant unlawful detention predicated upon illegal, void and unlawful detention orders, which, if corrected would entitle petitioner to immediate release.

As grounds thereof the Petitioner alleges that he is unlawfully detained, being deprived of his liberty and being held prisoner against his will in the Florida Department of Corrections in direct violation of his rights as set forth in Art. V; Art. VI and Art. XIV, U.S. Constitution and compositively Art. 1 § 2 and 9, Florida Constitution and the statutory and substantive case law dictum of the United States and the State of Florida.

FILED  
JOHN A. TOMASINO  
JUN 13 2016

## JURISDICTION

Pursuant to Article V, section 5(b) of the Florida Constitution; Florida Rule of Appellate Procedure 9.030(c)(3) and 9.100(a) and Florida Rule of Civil Procedure 1.630 the Petitioner invokes this Court's all writ jurisdiction in order to remedy the instant unconstitutional incarceration by now seeking an emergency habeas writ. This Court has jurisdiction and authority to issue the writ. See, *Sheriff v. Moore*, 781 So. 2d 1146 (Fla. 1st DCA 2001); *Frederick v. State*, 714 So. 2d 1043 (Fla. 4th DCA 1993); *McLeroy v. State*, 704 So. 2d 151 (Fla. 5th DCA 1997) (explaining that jurisdiction to correct an alleged unconstitutional conviction by habeas corpus remains in the Circuit Court of the county where the judgment under attack was entered) and *Thomas v. State*, 548 So. 2d 230 (Fla. 1989) ("Habeas Corpus is the proper remedy to challenge any unlawful conviction of deprivation of persons liberty").

Both Article V, Section 5(b) of the Florida Constitution and section 79.01, Florida Statutes, provide that a circuit court has concurrent jurisdiction with the district courts of appeal and the state supreme court to grant a writ of habeas corpus. See, State ex rel. *Scaldeferri v. Sandstrom*, 285 So. 2d 409, 412 (Fla. 1973).

## FACTS UPON WHICH PETITIONER RELIES

In the original proceedings in this cause the Petitioner was convicted and sentenced pursuant to guilty pleas in case no.(s): 90-2048-y; 90-2049-z; 90-2050-w to 4-1/2 years, Florida Department of Corrections followed by 3 years probation on October 24, 1990. The Petitioner was released from DOC to begin serving the probationary portion of the true split sentence.

The record indicates that on April 17, 1997 a probation revocation hearing was conducted by the Trial Court and the Florida Department of Corrections where detention/commitment orders were imposed for revocation of probation in case no.(s) 90-2048-y; 90-2049-z; 90-2050-w and 96-1003-z based on conduct never charged, filed or alleged in the affidavit of VOP and no warrant for VOP was issued for any crime committed under section 901.02 § 948.06(1), Florida Statute. See, Detention/Commitment Orders based on VOP, attached as Exhibit A dated June 2, 1997.

In Petitioner's original order of probation no condition of probation was provided that if Petitioner violated probation he would be subject to detention/commitment as a habitual violent felony offender as mandatorily imposed during the April 17, 1997 probation revocation hearing.

The Trial Court and the Florida Department of Corrections departed from the essential requirements of law when it imposed the current detention/commitment orders in the instant cases without authority.

The Petitioner was not advised of a willful and substantial violation of probation orally or in writing before or during the hearing; no written notice of the claimed violations was provided to Petitioner; disclosure of the evidence against Petitioner was not provided; opportunity to be heard in person and to present witnesses and documentary evidence was not provided; the right to confront and cross-examine adverse witnesses was not provided; and right for Petitioner to be represented by counsel was not provided. See, Transcript of VOP hearing, attached as Exhibit B dated April 17, 1997 case no.(s) 90-2048-y; 90-2049-z; 90-2050-w and 96-1003-z.

The record further reflects that the trial court and the Florida Department of Corrections committed fundamental error which created a manifest injustice and miscarriage of justice when it imposed the instant detention orders in the instant cases 90-2048-y; 90-2049-z; 90-2050-w and 96-1003-z based upon revocation of probation where no affidavit for VOP was filed and no warrant for VOP was issued for any crime committed under section, 901.02 § 948.06(1), Florida Statute rendering the June 2, 1997 detention/commitment orders void, illegal and unlawful in violation of Petitioner's guaranteed constitutional protection of substantial and

procedural DUE PROCESS of both the United States Constitutional Amendments, Amendment 5, 6 and 14 and the Florida Constitution Article I, Section 2 and 9.

The Petitioner does acknowledge that Administrative Remedy has been exhausted at the Institutional level and DENIED. See, Administrative Remedy Exhausted, attached as Exhibit C.

The instant EMERGENCY Petition for Writ of Habeas Corpus now follows and is the appropriate vehicle to challenge the unlawful detention in this cause in the interest of JUSTICE.

### **RELIEF SOUGHT**

The Petitioner seeks IMMEDIATE RELEASE from unlawful detention where he is being deprived of his liberty and being held against his will in the Florida Department of Corrections in direct violation of his constitutional rights of substantial and procedural DUE PROCESS of both the Florida and United States Constitution.

“[T]he rules of procedure applicable to petitions for the extraordinary writ of habeas corpus are set forth out in Chapter 79, Florida Statutes, and rule 1.630, Florida Rules of Civil Procedure. If the complaint states a prima facie grounds for relief, the trial court must issue the writ, requiring a response from the detaining authority. § 79.01, Fla. Stat.; Fla. R. Civ. P. 1.630 (d) (5). In order to state prima facie case for writ of habeas corpus, the complaint must allege: 1) that the petitioner is currently detained in custody; and show 2) “by affidavit or evidence probable cause to believe that he or she is

detained without lawful authority.” § 79.01, Fla. Stat. See also *Smith v. Kearney*, 802 So. 2d 387, 389 (Fla. 4th DCA 2001) (“To show prima facie entitlement to habeas relief, the petitioner must show that he is unlawfully deprived of his liberty and is illegally detained against his will.”)

*Quarles v. State*, 56 So. 3d 857 (Fla. 1st DCA 2011).

## ARGUMENT AND MEMORANDUM OF LAW

### I.

**THE TRIAL COURT AND THE FLORIDA DEPARTMENT OF CORRECTIONS LACKED SUBJECT MATTER JURISDICTION TO IMPOSE DETENTION ORDERS PURSUANT TO 944.17 AND 921.161, FLA. STAT. DATED JUNE 2, 1997 BASED ON CONDUCT NEVER CHARGED, FILED OR ALLEGED IN THE AFFIDAVIT FOR VOP CREATING FUNDAMENTAL ERROR RENDERING CURRENT DETENTION VOID, ILLEGAL AND UNLAWFUL.**

On April 17, 1997 a probation revocation hearing was held where the Trial Court and the Florida Department of Corrections imposed detention/commitment orders pursuant to 944.17 and 921.161, Fla. Stat. in case no.(s) 90-2048-y; 90-2049-z; 90-2050-w and 96-1003-z based on conduct never charged, filed or alleged in the affidavit of VOP and neither was a warrant issued for any crime committed under section 901.02 § 948.06(1), Florida Statute. See, Detention/Commitment Orders based on VOP, attached as Exhibit A dated June 2, 1997.

The Trial Court and the Florida Department of Corrections lacked subject matter jurisdiction to impose detention/commitment orders dated June 2, 1997 based on revocation of probation for conduct never charged, filed or alleged in the affidavit for VOP creating fundamental error rendering Petitioner's CURRENT DETENTION void, illegal and unlawful entitling Petitioner to IMMEDIATE RELEASE from unlawful custody.

Revocation of probation may not be based on violation not charged in affidavit. See, *Joseph v. State*, 615 So. 2d 833 (Fla. 4th DCA 1993) ("holding revocation of probation may not be based upon violation not charged in affidavit."); *Richardson v. State*, 694 So. 2d 147 (Fla. 1st DCA 1997) ("holding revocation of defendant's probation based on violation not alleged in charging document is deprivation of right to due process of law.")

Such error by the trial court and Florida Department of Corrections constitutes fundamental error. See, *Dulaney v. State*, 735 So. 2d 505 (Fla. 1st DCA 1999) ("Where there has been revocation of probation for conduct not charged, the State has conceded that the error is fundamental."); *Smith v. State*, 738 So. 2d 433, 435 (Fla. 1st DCA 1999) ("holding that revocation of probation on grounds never alleged in writing violates due process and is fundamental error."); *DeJesus v. State*, 848 So. 2d 1276 (Fla. 2d DCA 2003) ("holding that revocation of probation on grounds never alleged in writing violates due process and is fundamental

error.”) See also, *Wyns v. State*, 679 So. 2d 882 (Fla. 5th DCA 1996) and *Andrews v. State*, 693 So. 2d 1138, 1141 (Fla. 1st DCA 1997).

An order revoking probation should be vacated if no formal, charge of violation of probation has been filed and this issue may be raised for the first time on appeal. See, *Carmichael v. State*, 834 So. 2d 421 (Fla. 2d DCA 2003) citing *Johnson v. State*, 684 So. 2d 262 (Fla. 4th DCA 1996) (“Issue as to whether trial court’s order revoking probation should be vacated because no formal charge of violation of probation had been filed could be raised for the first time on appeal because it rose to the level of fundamental error”). See also, *Hopkins v. State*, 632 So. 2d 1372, 1374 (Fla. 1994) and *Sanford v. Rubin*, 237 So. 2d 134, 137 (Fla. 1990):

(“Fundamental error is “error which goes to the foundation of the case or goes to the merits of the cause of action.”)

The Trial Court and the Florida Department of Corrections lacked subject matter jurisdiction to impose detention/commitment orders pursuant to section 944.17 and 921.161, Fla. Stat. dated June 2, 1997 based on principle that when an affidavit for VOP is not filed absent a warrant issued for VOP for any crime committed for revocation of probation, the trial court’s jurisdiction is lost. See, Detention/Commitment Orders, attached as Exhibit (A); See also, Fla. Stat. § 901.02; Fla. Stat. § 948.06(1) (1997) and Fla. Stat. § 775.084(1)(b) (1997).



The official record of the April 17, 1997 probation revocation hearing transcript further establishes that the Petitioner was not advised of a willful and substantial violation; no written notice of the claimed violation was provided to Petitioner before or during the hearing; disclosure of the evidence against Petitioner was not provided; opportunity to be heard in person and to present witnesses and documentary evidence was not provided; the right to confront and cross-examine adverse witnesses was not provided to Petitioner; and the right to be represented by counsel in regard to the claimed violation was not provided to the Petitioner. The Petitioner was prejudice by the trial court and the Florida Department of Corrections creating a manifest injustice and miscarriage of justice. See, Transcript of VOP hearing, attached as Exhibit B dated April 17, 1997. See also, *Morrissey v. Brewer*, 408 U.S. 471, 33 L. Ed. 2d 484, 92 S. Ct. 2593 (1973); *Gagnon v. Scarpelli*, 411 U.S. 778, 36 L. Ed. 2d 656, 93 S. Ct. 1756 (1973).

The Petitioner's CURRENT DETENTION in the instant cases 90-2048-y; 90-2049-z; 90-2050-w and 96-1003-z dated June 2, 1997 (Exhibit A) were imposed in direct violation of his constitutional guaranteed procedural and substantial due process rights of the Florida Constitution Article I, Section 2 and 9 and the United States Constitutional Amendments, Amendments 5, 6 14.

The Petitioner is falsely imprisoned, unlawfully detained and deprived of his liberty and being held prisoner against his will in the Florida Department of

Corrections contrary to the Constitution of the State of Florida and the United States and is subject to IMMEDIATE RELEASE based on detention orders imposed by the Trial Court, State of Florida, and the Florida Department of Corrections on conduct never charged, filed or alleged in the affidavit for VOP creating fundamental error rendering CURRENT DETENTION/COMMITMENT void, illegal and unlawful in violation of statutory and constitutional law; Art. I, Section 2 and 9, Fla. Const.; Art. V; Art. VI and Art. XIV, U.S. Const.; Fla. Stat. 901.02 § 948.06(1) and 775.084(1)(b).

The trial court and the Florida Department of Corrections departed from the essential requirements of law creating a manifest injustice and miscarriage of justice when it imposed the CURRENT DETENTION/COMMITMENT ORDERS DATED JUNE 2, 1997, imposed in the instant case no.(s): 90-2048-y; 90-2049-z; 90-2050-w and 96-1003-z without authority.

The Petitioner further avers that Administrative Remedies have been exhausted in this cause and has been DENIED. The instant, EMERGENCY Petition for Writ of Habeas Corpus now follows. See, Administrative Remedies Exhausted, attached as Exhibit C. See also, *Bush v. State*, 945 So. 2d 1207 (Fla. 2006); *Pope v. State*, 898 So. 2d 253 (Fla. 3d DCA 2005) (“Prior to issuing an extraordinary writ, however, all administrative remedies must be exhausted.”); *Ashley v. Moore*, 767 So. 2d 491 (Fla. 1st DCA 2000) (“Circuit court departed

from the essential requirements of law when it denied Ashley's petition for writ of habeas corpus on grounds that the writ is properly used to determine the legality of a person's restraint, and Ashley failed to allege or show that he exhausted administrative remedies."); and *William v. Crews*, 124 So. 3d 422 (Fla. 1st DCA 2013) ("Under current law, habeas petitions are proper only to address issues regarding a defendant's incarceration, not the sentence leading to the incarceration.")

The Petitioner's CURRENT CONFINEMENT is illegal and to allow him to continue in service of an illegal incarceration would be "fundamentally unfair" which would result in a "manifest injustice." See, *State v. McBride*, 848 So. 2d 287 (Fla. 2003).

This Honorable Court has jurisdiction pursuant to Article 5, Section 5(b), Fla. Const. to release the Petitioner from confinement where the detention/commitment orders imposed in case no.(s) 90-2048-y; 90-2049-z; 90-2050-w and 96-1003-z dated June 2, 1997 were based on revocation of probation for conduct never charged, filed, or alleged in the affidavit for VOP and neither was a warrant issued in a court of law for any crime committed under section, 901.02 § 948.06(1), Florida Statutes. See also, *Newkirk v. Jenne*, 754 So. 2d 61 (Fla. 4th DCA 2000) stating:

"Circuit Court judge presiding over probationer's criminal case had full authority to order his release from

confinement for probation violation when no affidavit for violation was filed and no warrant for violation of probation was issued, even though writ of habeas corpus is civil in nature.”) West’s F. S. A. Const. Art. 5 § 5(b); West’s F. S. A. § 79.01.

A writ of habeas corpus should issue where the Petitioner is falsely imprisoned, unlawfully detained, being deprived of his liberty and being held prisoner against his will contrary to the Constitution of the State of Florida and the United States. See, *Alachua Reg. Juv. Det. Ctr. v. T. O.*, 684 So. 2d 814, 816 (Fla. 1996).

“The scope of the reviewing court’s inquiry is limited to whether the court that entered the [detention] order was without jurisdiction to do so or whether the order is void or illegal.”

See also, *Stang v. State*, 24 So. 3d 566 (Fla. 2d DCA 2009) rev. dismissed, 41 So. 3d 206 (Fla. 2010) stating:

“If the challenged detention order [is] determined to be in violation of Petitioner’s constitutional guarantee of due process then the order would clearly be “illegal” and not merely defective, irregular, or insufficient in form or substance.”

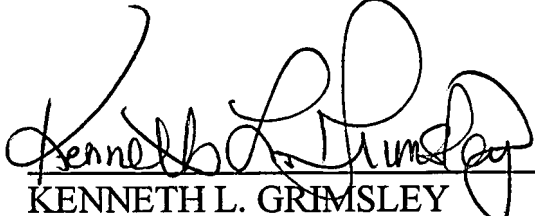
See also, *Jamason v. State*, 447 So. 2d 892 (Fla. 4th DCA 1983);

“If it appears to a court of competent jurisdiction that when a human is being illegally restrained of his liberty it is the responsibility of the court to brush aside formal technicalities and issue such orders as will do justice.” Citing *Anglin v. Mayo*, 88 So. 2d 918, 919 (Fla. 1956).

**CONCLUSION**

Based on the foregoing, the Petitioner, requests that this Honorable Court find that Petitioner's CURRENT DETENTION is illegal where he is unlawfully detained and being deprived of his liberty and being held against his will in the Florida Department of Corrections in direct violation of his constitutional rights entitling Petitioner to IMMEDIATE RELEASE.

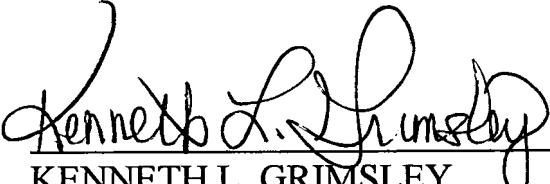
Respectfully submitted,

  
KENNETH L. GRIMSLEY  
Petitioner, Pro Se

**OATH**

Under the penalties of perjury, I declare that I have read the foregoing document and that the facts stated in it are true and correct.

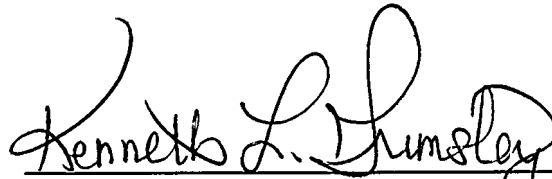
Executed this 8<sup>th</sup> day of June 2016.

  
KENNETH L. GRIMSLEY

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing  
EMERGENCY Petition for Writ of Habeas Corpus has been furnished by U.S.  
Mail to Secretary, Julie L. Jones, Florida Department of Corrections , 501 S.  
Calhoun St., Tallahassee, Florida 32399-2500; and Attorney General, Pamela Jo  
Bondi, The Capitol PL-01, Tallahassee, Florida 32399-1050 on this 8<sup>th</sup> day of June, 2016:

Respectfully submitted,



KENNETH L. GRIMSLEY, DC #121383  
Marion Correctional Institution  
P.O. Box 158 / F-2114-L  
Lowell, Florida 32663-0158

**APPENDIX TO EXHIBITS**

<u>Exhibit</u>	<u>Description</u>	<u>Date</u>
A	Detention / Commitment Orders imposed in case no.(s): 90-2048-y; 90-2049-z; 90-2050-w and 96-1003-z to Florida Department of Corrections	June 2, 1997
B	Transcript of Revocation of Probation Hearing case no.(s) 90-2048-y; 90-2049-z; 90-2050-w and 96-1003-z	April 17, 1997
C	Administrative Remedy Exhausted	November 5, 2014

# EXHIBIT A

A



STATE OF FLORIDA

vs.

In the Circuit Court of

Marion County, Florida

Kenneth Grimsley  
Defendant

Docket No. 90-2048-CF-A-Y  
Officer Jayne O'Berry  
D.C. No. 121383

ORDER OF REVOCATION OF  
Probation

THIS CAUSE coming to be heard before the Honorable Carven D. Angel, Judge, and it appearing that the defendant on the 24th day of October, A.D. 1990, was placed on probation for the offense of Robbery in the Circuit Court of Marion County for a term of four and one half (4½) years DOC, followed by three(3) years probation, in accordance with the provisions of chapter 948, Florida Statutes, and

It further appearing that the defendant has not properly conducted himself, but has violated the conditions of his supervision in a material respect by VIOLATION OF CONDITIONS: (1)(2)(4)(5)(5)(9)(10)(26):

In that, on April 17, 1997, the aforesaid appeared before the Honorable Thomas D. Sawaya in the Circuit Court of Marion County, Florida. At that time, this court terminated the aforesaid's supervision and sentenced him to seven(7) years in the Department of Corrections concurrent with Cs. #96-1003, #90-2049, #90-2050, and special conditions include monetary obligations made a Lien of Record.

IT, THEREFORE, IS ORDERED AND ADJUDGED that the probation of the defendant is hereby revoked in accordance with Section 948.06 Florida Statutes, and the said defendant is hereby ordered to remain in the custody of this Court for the imposition of sentence in accordance with the provisions of law.

DONE AND ORDERED, this 25th day of April A. D. 1997

/s/ Thomas D. Sawaya  
Judge Presiding

trb

CERTIFIED A TRUE COPY  
DAVID R. ELSPERIANN  
BY: [Signature] D.C.

Handwritten initials

COMMITMENT CHECKLIST

TO: Receiving Officer  
Department of Corrections

RE: KENNETH LOPEZ GRIMSLEY Case No. 90-2048-CFAY  
NAME

Pursuant to s. 944.17, the following documents/reports are submitted on the above named offender:

- Uniform commitment, judgment, and sentence as well as a certified copy of the indictment of information.
- Sheriff's certificate as described in s. 921.161.
- Copy of probable cause affidavit, or  
 A probable cause affidavit was not filed.
- Copy of sentencing guidelines scoresheet.
- Copy of restitution order, or (check one of the following):
- Restitution not applicable.
- Copy of court's statement as to why restitution was not ordered
- Name and address of victim(s), or  
 Victim's name and address not available per state attorney's office:
- Printout of current FCIC/NCIC criminal history, or
- 
- Printout provided with other commitment delivered with offender this date.
- Presentence investigation report, or  
 Presentence investigation report not made available.

By: A. MATHENA 639  
Deputy or Agent Badge/ID#

MARION County

JUNE 02, 1997  
Date

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS  
(ATTACH THIS CERTIFICATE TO COMMITMENTS)  
SHERIFF'S CERTIFICATE PER FLORIDA STATUTE 921.161

TO THE DEPARTMENT OF CORRECTIONS OF THE STATE OF FLORIDA:

I hereby certify KENNETH LOPEZ GRIMSLEY, the defendant named in the attached commitment, was processed by this office as follows:

- (1) Originally incarcerated in county jail \_\_\_\_\_ 082990/040896  
(Date)
- (2) Picked up from Department of Corrections on NA  
(Date)
- (3) Released on bond prior to trial \_\_\_\_\_ UNK  
(Date)
- (4) Returned from bond prior to trial \_\_\_\_\_ NA  
(Date)
- (5) Date of Conviction \_\_\_\_\_ 102490  
(Date)
- (6) Released on bond after conviction \_\_\_\_\_ NA  
(Date)
- (7) Returned from bond after conviction \_\_\_\_\_ NA  
(Date)
- (8) Date of sentence \_\_\_\_\_ 041797  
(Date)
- (9) Released on bond after sentence \_\_\_\_\_ NA  
(Date)
- (10) Returned from bond after sentence \_\_\_\_\_ NA  
(Date)
- (11) Released to \_\_\_\_\_ County \_\_\_\_\_ NA  
(Date)
- (12) Delivered to Department of Corrections \_\_\_\_\_  
(Date)
- (13) Offender-based Transaction System Number \_\_\_\_\_  
(Number)

The said defendant:

( ) is also serving a concurrent county jail sentence, or  
( ) was ordered to serve this sentence consecutive to county jail  
sentence which expired \_\_\_\_\_.

(XX) was not incarcerated in the county jail under said sentence for  
any period of time than those which are set forth above.

This the 03 day of JUNE, 1997.

KEN ERGLE  
Sheriff of MARION County, Florida  
By A. MATHENA #639

(PLEASE FURNISH IN DUPLICATE)

STATE OF FLORIDA  
vs.

Kenneth Grimsley  
Defendant

In the Circuit Court of

Marion County, Florida

Docket No. 90-2049-CF-A-Z

Officer Jayne O'Berry

D.C. No. 121383

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ORDER OF REVOCATION OF  
Probation

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THIS CAUSE coming to be heard before the Honorable Carven D. Angel, Judge, and it appearing that the defendant on the 24th day of October, A.D. 1990, was placed on probation for the offense of Robbery in the Circuit Court of Marion County for a term of four and one half(4½) years DOC, followed by three(3) years probation, in accordance with the provisions of chapter 948, Florida Statutes, and

It further appearing that the defendant has not properly conducted himself, but has violated the conditions of his supervision in a material respect by VIOLATION OF CONDITIONS: (1)(2)(4)(5)(5)(9)(10)(26):

In that, on April 17, 1997, the aforesaid appeared before the Honorable Thomas D. Sawaya in the Circuit Court of Marion County, Florida. At that time, the court terminated the aforesaid's supervision and sentenced him to seven(7) years Department of Corrections, concurrent with Cs. #96-1003, #90-2050, #90-2048, to include special conditions his monetary obligations are made a Lien of Record.

IT, THEREFORE, IS ORDERED AND ADJUDGED that the probation of the defendant is hereby revoked in accordance with Section 948.06 Florida Statutes, and the said defendant is hereby ordered to remain in the custody of this Court for the imposition of sentence in accordance with the provisions of law.

DONE AND ORDERED, this 25<sup>th</sup> day of April A. D. 1997

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/s/ Thomas D. Sawaya  
Judge Presiding

trb

CERTIFIED A TRUE COPY  
DAVID R. ELLSPERMANN  
BY: [Signature] D.C.

COMMITMENT CHECKLIST

TO: Receiving Officer  
Department of Corrections

RE: KENNETH LOPEZ GRIMSLEY \_\_\_\_\_  
NAME

Case No. 90-2049-CFAY

Pursuant to s. 944.17, the following documents/reports are submitted on the above named offender:

- Uniform commitment, judgment, and sentence as well as a certified copy of the indictment of information.
- Sheriff's certificate as described in s. 921.161.
- Copy of probable cause affidavit, or  
 A probable cause affidavit was not filed.
- Copy of sentencing guidelines scoresheet.
- Copy of restitution order, or (check one of the following):
- Restitution not applicable.
- Copy of court's statement as to why restitution was not ordered
- Name and address of victim(s), or  
 Victim's name and address not available per state attorney's office.
- Printout of current FCIC/NCIC criminal history, or
- 
- Printout provided with other commitment delivered with offender this date.
- Presentence investigation report, or  
 Presentence investigation report not made available.

By: A. MATHENA 639  
Deputy or Agent Badge/ID#

MARION \_\_\_\_\_ County

JUNE 02, 1997 \_\_\_\_\_  
Date

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS  
(ATTACH THIS CERTIFICATE TO COMMITMENTS)  
SHERIFF'S CERTIFICATE PER FLORIDA STATUTE 921.161

TO THE DEPARTMENT OF CORRECTIONS OF THE STATE OF FLORIDA:

I hereby certify KENNETH LOPEZ GRIMSLEY, the defendant named in the attached commitment, was processed by this office as follows:

- |   |               |
|---|---------------|
| (1) Originally incarcerated in county jail _____      | 082990/040896 |
|   | (Date)        |
| (2) Picked up from Department of Corrections on _____ | NA            |
|   | (Date)        |
| (3) Released on bond prior to trial _____             | UNK           |
|   | (Date)        |
| (4) Returned from bond prior to trial _____           | NA            |
|   | (Date)        |
| (5) Date of Conviction _____                          | 102490        |
|   | (Date)        |
| (6) Released on bond after conviction _____           | NA            |
|   | (Date)        |
| (7) Returned from bond after conviction _____         | NA            |
|   | (Date)        |
| (8) Date of sentence _____                            | 041797        |
|   | (Date)        |
| (9) Released on bond after sentence _____             | NA            |
|   | (Date)        |
| (10) Returned from bond after sentence _____          | NA            |
|   | (Date)        |
| (11) Released to _____ County _____                   | NA            |
|   | (Date)        |
| (12) Delivered to Department of Corrections _____     |               |
|   | (Date)        |
| (13) Offender-based Transaction System Number _____   |               |
|   | (Number)      |

The said defendant:

( ) is also serving a concurrent county jail sentence, or  
( ) was ordered to serve this sentence consecutive to county jail  
sentence which expired \_\_\_\_\_

(XX) was not incarcerated in the county jail under said sentence for any period of time than those which are set forth above.

This the 23 day of JUNE, 1997.

\_\_\_\_\_  
KEN ERGLE

Sheriff of MARION County, Florida

By A. MATHENA #639

(PLEASE FURNISH IN DUPLICATE)

STATE OF FLORIDA

vs.

Kenneth Grimsley  
Defendant

In the Circuit Court of

Marion County, Florida

Docket No. 90-2050-CF-A-W

Officer Jayne O'Berry

D.C. No. 121383

---

ORDER OF REVOCATION OF  
Probation

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THIS CAUSE coming to be heard before the Honorable Carven D. Angel, Judge, and it appearing that the defendant on the 24th day of October, A.D. 1990, was placed on probation for the offense of Robbery in the Circuit Court of Marion County for a term of four and one half(4½) years DOC, followed by three(3) years probation, in accordance with the provisions of chapter 948, Florida Statutes, and

It further appearing that the defendant has not properly conducted himself, but has violated the conditions of his supervision in a material respect by VIOLATION OF CONDITIONS: (1)(2)(4)(5)(5)(9)(10)(26):

In that, on April 17, 1997, the aforesaid appeared before the Honorable Thomas D. Sawaya in the Circuit Court of Marion County, Florida. At that time, the court terminated the aforesaid's supervision and sentenced him to seven(7) years Department of Corrections, concurrent with Cs. #96-1003, #90-2048, #90-2049, to include special conditions that his monetary obligations are to be made a Lien of Record.

IT, THEREFORE, IS ORDERED AND ADJUDGED that the probation of the defendant is hereby revoked in accordance with Section 948.06 Florida Statutes, and the said defendant is hereby ordered to remain in the custody of this Court for the imposition of sentence in accordance with the provisions of law.

DONE AND ORDERED, this 25th day of April A. D. 1997

---

/s/ Thomas D. Sawaya  
Judge Presiding

trb

CERTIFIED A TRUE COPY  
DAVID R. ELLSPERMAN

BY: [Signature] D.C.

*[Handwritten initials]*

COMMITMENT CHECKLIST

TO: Receiving Officer  
Department of Corrections

RE: KENNETH LOPEZ GRIMSLEY \_\_\_\_\_  
NAME

Case No. 90-2050-CFAY

Pursuant to s. 944.17, the following documents/reports are submitted on the above named offender:

- Uniform commitment, judgment, and sentence as well as a certified copy of the indictment of information.
- Sheriff's certificate as described in s. 921.161.
- Copy of probable cause affidavit, or  
 A probable cause affidavit was not filed.
- Copy of sentencing guidelines scoresheet.
- Copy of restitution order, or (check one of the following):
  - Restitution not applicable.
  - Copy of court's statement as to why restitution was not ordered
- Name and address of victim(s), or  
 Victim's name and address not available per state attorney's office.
- Printout of current FCIC/NCIC criminal history, or  
 Printout provided with other commitment delivered with offender this date.
- Presentence investigation report, or  
 Presentence investigation report not made available.

By: A. MATHENA 639  
Deputy or Agent Badge/ID#

MARION County

JUNE 02, 1997  
Date



STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS  
(ATTACH THIS CERTIFICATE TO COMMITMENTS)  
SHERIFF'S CERTIFICATE PER FLORIDA STATUTE 921.161

TO THE DEPARTMENT OF CORRECTIONS OF THE STATE OF FLORIDA:

I hereby certify KENNETH LOPEZ GRIMSLEY, the defendant named in the attached commitment, was processed by this office as follows:

- (1) Originally incarcerated in county jail 082990/040896  
(Date)
- (2) Picked up from Department of Corrections on NA  
(Date)
- (3) Released on bond prior to trial UNK  
(Date)
- (4) Returned from bond prior to trial NA  
(Date)
- (5) Date of Conviction 102490  
(Date)
- (6) Released on bond after conviction NA  
(Date)
- (7) Returned from bond after conviction NA  
(Date)
- (8) Date of sentence 041797  
(Date)
- (9) Released on bond after sentence NA  
(Date)
- (10) Returned from bond after sentence NA  
(Date)
- (11) Released to \_\_\_\_\_ County NA  
(Date)
- (12) Delivered to Department of Corrections \_\_\_\_\_  
(Date)
- (13) Offender-based Transaction System Number \_\_\_\_\_  
(Number)

The said defendant:

( ) is also serving a concurrent county jail sentence, or  
( ) was ordered to serve this sentence consecutive to county jail  
sentence which expired \_\_\_\_\_

(XX) was not incarcerated in the county jail under said sentence for any period of time than those which are set forth above.

This the 03 day of JUNE, 1997.

KEN ERGLE  
Sheriff of MARION County, Florida  
By A. MATHENA #639

(PLEASE FURNISH IN DUPLICATE)

COMMITMENT CHECKLIST

TO: Receiving Officer  
Department of Corrections

RE: KENNETH LOPEZ GRIMSLEY \_\_\_\_\_ Case No. 96-1003-CFAZ  
NAME

Pursuant to s. 944.17, the following documents/reports are submitted on the above named offender:

- Uniform commitment, judgment, and sentence as well as a certified copy of the indictment of information.
- Sheriff's certificate as described in s. 921.161.
- Copy of probable cause affidavit, or  
 A probable cause affidavit was not filed.
- Copy of sentencing guidelines scoresheet.
- Copy of restitution order, or (check one of the following):
  - Restitution not applicable.
  - Copy of court's statement as to why restitution was not ordered
- Name and address of victim(s), or  
 Victim's name and address not available per state attorney's office.
- Printout of current FCIC/NCIC criminal history, or  
 Printout provided with other commitment delivered with offender this date.
- Presentence investigation report, or  
 Presentence investigation report not made available.

By: A. MATHEA \_\_\_\_\_ 639 \_\_\_\_\_  
Deputy or Agent Badge/ID#  
MARION \_\_\_\_\_ County  
JUNE 02, 1997 \_\_\_\_\_  
Date

STATE OF FLORIDA  
DEPARTMENT OF CORRECTIONS  
(ATTACH THIS CERTIFICATE TO COMMITMENTS)  
SHERIFF'S CERTIFICATE PER FLORIDA STATUTE 921.161

TO THE DEPARTMENT OF CORRECTIONS OF THE STATE OF FLORIDA:

I hereby certify KENNETH LOPEZ GRIMSLEY, the defendant named in the attached commitment, was processed by this office as follows:

- (1) Originally incarcerated in county jail 031796  
(Date)
- (2) Picked up from Department of Corrections on NA  
(Date)
- (3) Released on bond prior to trial NA  
(Date)
- (4) Returned from bond prior to trial NA  
(Date)
- (5) Date of Conviction 041797  
(Date)
- (6) Released on bond after conviction NA  
(Date)
- (7) Returned from bond after conviction NA  
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- (8) Date of sentence 041797  
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- (9) Released on bond after sentence NA  
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- (10) Returned from bond after sentence NA  
(Date)
- (11) Released to \_\_\_\_\_ County NA  
(Date)
- (12) Delivered to Department of Corrections \_\_\_\_\_  
(Date)
- (13) Offender-based Transaction System Number \_\_\_\_\_  
(Number)

The said defendant:

- is also serving a concurrent county jail sentence, or  
 was ordered to serve this sentence consecutive to county jail  
sentence which expired \_\_\_\_\_.

was not incarcerated in the county jail under said sentence for any period of time than those which are set forth above.

This the 02 day of JUNE, 1997.

KEN ERGLE  
\_\_\_\_\_  
Sheriff of MARION County, Florida  
By A. MATHENA #639

(PLEASE FURNISH IN DUPLICATE)

# EXHIBIT B

B

1 IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT  
2 OF FLORIDA, IN AND FOR MARION COUNTY

3 STATE OF FLORIDA

4 vs.

Case No. 96-1003-Z

5 KENNETH GRIMSLY,

90-2048-Y

Defendant

90-2049-Z

90-2050-W

6 PROCEEDINGS: Sentencing

7 BEFORE:

8 The Honorable Thomas D. Sawaya  
9 Circuit Court Judge  
10 Fifth Judicial Circuit of Florida  
11 Ocala, Florida

12 DATE:

13 Thursday, April 17, 1997  
14 1:45 o'clock p.m.

15 PLACE:

16 Marion County Judicial Center  
17 Courtroom 4-D  
18 Ocala, Florida

19 REPORTED BY:

20 Karla Steed, R.P.R.  
21 Deputy Official Court Reporter  
22 Fifth Judicial Circuit of Florida

23 APPEARANCES:

24 Sarah Ritterhoff  
25 Assistant State Attorney  
Fifth Judicial Circuit of Florida  
State Attorney's Office  
19 Northwest Pine Avenue  
Ocala, Florida  
Attorney for State of Florida

Michael J. Gourley  
Assistant Public Defender  
Fifth Judicial Circuit of Florida  
Public Defender's Office  
204 Northwest 3rd Avenue  
Ocala, Florida 34475  
Attorney for Defendant

PLAINTIFF'S  
EXHIBIT

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Page

Statement - Ms. Ritterhoff

7

Statement - Mr. Gourley

7

Statement - Defendant

9

WITNESS:

Emma Gourley

Direct Examination by Mr. Gourley

10

Statement - Kenrich Diedrich

14

SENTENCING

19

Reporter's Certificate

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P R O C E E D I N G S

- - -

(The defendant, Kenneth Grimsly, was present when the Court advised a group of defendants as to the rights they would forfeit in entering into plea agreements, as follows:)

THE COURT: I need to talk to everybody here and tell all of you about your valuable legal rights. I understand that you may be interested in changing your plea from Not Guilty to Guilty or No Contest.

If you do so, you need to be aware of the fact that you are giving up or waiving some very valuable legal rights. What I'm going to do is explain to you what those legal rights are.

First, I need to tell you that a No Contest plea means you don't contest the charge, but it has the same effect as a Guilty plea.

By entering a plea of Guilty or No Contest, you are giving up the right to trial by jury. You are giving up the right to confront and cross-examine the State's witnesses; the right to call witnesses to testify in your own defense and compel their attendance and testimony by issuing them a subpoena.

You are presumed innocent until the State proves

800-626-6313

1 your guilt. The State must prove your guilt beyond  
2 and to the exclusion of every reasonable doubt.

3 If you are found guilty at trial, you have the  
4 right to appeal that finding of guilt to a higher  
5 court.

6 You have the right to remain silent and not  
7 incriminate yourself or, in the alternative, if you  
8 desire and choose, you have the right to testify in  
9 your own behalf. You have the right to present  
10 any legal defenses that you may have to the charges  
11 brought against you.

12 By entering a plea of Guilty or No Contest,  
13 you are giving up and waiving all of these valuable  
14 legal rights and you are not going to have a jury  
15 trial or any other kind of trial.

16 You still maintain your right, even if you  
17 enter a plea of Guilty or No Contest, to appeal the  
18 sentence of the Court if you feel the sentence is  
19 illegal. You will have thirty days after sentence  
20 is imposed in which to do that.

21 If you are not a citizen of the United States  
22 and are convicted of a criminal offense, you may be  
3 subject to deportation. You still maintain the  
right to collaterally attack the conviction at a  
later date if you feel your fundamental rights have



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been violated.

Does everybody understand all those valuable legal rights?

(Defendants indicate "yes.")

- - -

MS. RITTERHOFF: Your Honor, this is the "habitual felony offender" sentencing on Kenneth Grimsly, case number 96-1003-Z, and on his violation of probation cases, 90-2048-Y, 90-2049-X and 90-2050-Y.

THE COURT: I understand you qualify as a habitual felony offender. You need to understand that if you decide to enter a plea as a habitual felony offender, the guidelines do not apply and you are subject to enhanced penalties.

Do you understand that?

THE DEFENDANT: Yes.

MR. GOURLEY: Mr. Grimsly has already entered a plea.

THE COURT: He is here for sentencing?

MR. GOURLEY: Yes.. We ordered a P. S. I. and we have that. We also have several witnesses for mitigation that we would like to offer to the Court. The State has not filed the appropriate paperwork. However, we are prepared for them to do that.

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MS. RITTERHOFF: Also, the victim is present in the courtroom at this time. I would furnish to the Court a sentencing guideline score sheet and restitution notification paperwork.

Does the Defense acknowledge receipt of the State's notice to seek habitual felony offender or habitual violate felony offender treatment dated March 28, 1996?

MR. GOURLEY: Yes.

MS. RITTERHOFF: Furnishing a certification from the Office of Executive Clemency, stating that none of the defendant's convictions were set aside. Marion County, 90-2048-Y, attempted robbery. 90-2049-Z, robbery with a firearm. And 90-2050-W, robbery with a firearm.

Those are also, Your Honor, the cases that he is on probation for.

Has the Court had an opportunity to read the P. S. I. that has been prepared in this case?

THE COURT: Go ahead. Move whatever else you need to move in.

MS. RITTERHOFF: That is all of the paperwork that needs to be moved in.

The State made the defendant an offer of forty years Department of Corrections, with a 15-year

1 habitual violent felony offender minimum mandatory,  
2 ten years probation, thousand-dollar fine plus court  
3 costs, restitution. Do not return to the B. P.  
4 station or have any contact with the victim, Mr.  
5 Diedrich, who is in court today.

6 This is a case where Mr. Diedrich, who is the  
7 store owner, was robbed by the defendant who was  
8 armed with a firearm and was shot in the leg during  
9 the course of that robbery.

10 THE COURT: He entered his plea when?  
11 MS. RITTERHOFF: 1-16-97.

12 THE COURT: Is this a plea open?  
13 MR. GOURLEY: Yes. I believe it was 1-17.

14 THE COURT: What do you have in the way  
of mitigation?

MR. GOURLEY: Judge, first off, let me  
explain to the Court; Mr. Grimsly, from the very  
beginning, has admitted responsibility for this  
action. At the time when he was arrested, he gave  
a full taped statement concerning his actions in  
the case.

He has never tried to shirk his responsibility  
in any way. In fact, always wanted to come to court  
and enter a plea of guilty to this and accept  
responsibility for his actions.

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Since the time that he has been in the county jail, I had sort of a close-up or a chance to know Mr. Grimsly. And through the fact that currently his father is in jail -- they share the same jail cell -- I represented his father before this Court on a V. O. P. for possession of cocaine. His father is so addicted to cocaine that he had a heart attack.

This cocaine addiction has carried over to Mr. Grimsly. Mr. Grimsly made several statements to the police concerning this addiction, that he started using powder cocaine, then moved on to crack, which ultimately led to this action, which Mr. Grimsly is very sorry for. Has shown me great remorse as to his actions.

He would like to make a statement to the Court and to the victim about the charges. His mother is here. She would like to make a statement. She prepared a letter that is attached to the P. S. I.

I don't know if the Court has had a chance to have read that. Or the State.

THE COURT: I reviewed the P. S. I.

Do you have any objections or corrections?

MR. GOURLEY: No, I have no objections to the certified copies of conviction, either.

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THE COURT: They would be admitted into evidence. Go ahead.

MR. GOURLEY: Kenneth, what can you tell the Court concerning your actions?

THE DEFENDANT: First of all, I would like to thank God to be in the courtroom, due to the way the incident happened, because I could have been dead at the scene, you know. But I thank God.

I would like to apologize to Mr. Diedrich for the incident. I don't stand here trying to call myself to get out of trouble. I own up to this, because it was committed by me, the person in the flesh.

I ask that you just -- I have a problem. I ask for help about it. I has been truthful from day one. I'm not trying to cover nothing up. I own up to all this.

I was heading to church at the time this incident happened. That shows the evils that was in me. That's what got me to doing what I did.

MR. GOURLEY: It was an action that was in broad daylight right out of the blue. His girl-friend did not even know he left the house. He borrowed her car, and the robbery was committed, and he came back and she was still sleeping in her

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It was just one of those things where, you know, Mr. Grimsly was so under the influence and so out of the person that he is that he caused this action to take place.

But, you know, I haven't had many clients -- you know, when I talked to him I said, you know, "Kenneth, this is a serious case. You are facing a lot of time." And he recognized that. Wanted to take responsibility and wanted to step forward and admit that he actually did this crime; that he was ready and prepared to take the consequences.

So we would offer his willingness to come forward as mitigation, and his willingness not to try to hide anything or make excuses, but just to say that he is the man responsible for this crime.

Also, his mother is here. I know that she would like to address the Court.

Come on up, ma'am.

EMMA GRIMSLY

was called as a witness on behalf of the defendant and, having been first duly sworn to tell the truth, testified as follows:

DIRECT EXAMINATION

BY MR. GOURLEY:

Q State your name.

1 A Emma Grimsly.

2 Q What can you tell the Court concerning Kenneth's  
3 life? What kind of boy, what kind of son has he been to you?

4 A Well, he has been a good son. But he hung around  
5 with the wrong crowd and got on drugs real bad. He hung  
6 with the wrong crowd. But he is a good guy. But now since  
7 he has been in the county jail --

8 Q Have you seen a change in him since he has been in  
9 the county jail?

10 A Yes.

11 Q Has he been in the county jail before?

12 A For license.

13 Q Has he seemed to have changed any since being there  
14 this time?

15 A He sure has.

16 Q In what way?

17 A Well, from the letters that he has been writing.

18 Q Okay.

19 A So I can tell he has changed a lot.

20 Q Do you have anything you want to tell the Court as  
21 far as the sentence that Kenneth should receive?

22 A Well, I'm sorry he got in this particular  
23 predicament. We had went to the man that he robbed and we  
24 had said "sorry for anything."

25 MR. GOURLEY: Thank you.

1 MR. GOURLEY: Kenneth, is there anything  
2 that you would like to add?

3 THE DEFENDANT: Yes. I wrote Mr. Diedrich,  
4 when I first entered the county jail, about the  
5 incident. I don't know if he received it.

6 But, all I do is ask for forgiveness. I did  
7 wrong. I ask the same thing in the message of this  
8 Court today -- just forgiveness of the crime. You  
9 know, the man who committed them crimes deserves  
10 life in prison. I hope that you take it to heart  
11 and just let the record show for itself.

12 That's all I have to say, you know.

13 THE COURT: Well, he's got two priors.

14 MS. RITTERHOFF: Three priors. Well, two  
15 prior -- robbery with a firearm. One prior  
16 attempted robbery.

17 The victim is here, Your Honor. The  
18 defendant has been to prison on those robberies.  
19 He went for four and a half years. Was out on  
20 probation.

21 I bet, if we got the sentencing transcript  
22 back from October 29, 1990, he would have said the  
23 same thing then.

24 THE COURT: Does the victim have anything  
25 he would like to say?



1 MS. RITTERHOFF: Mr. Diedrich, do you want to  
2 come on up.

3 Do you want to tell the Court anything -- or  
4 the defendant -- about how it feels to try to earn  
5 a living and have somebody come in and shoot you?

6 THE COURT: I mean, I think anybody would  
7 basically understand that is not the most pleasant  
8 thing to go through. But I understand that you are  
9 the victim. What you have to say will carry a lot  
10 of weight in the sentence that I impose on this  
11 defendant.

12 I think you have the right to have your say.

13 In the score sheet, he faces up to 248 months  
14 in the Department of Corrections. Obviously, to  
15 sentence him as a habitual felony offender --  
16 not bound by the score sheet or the guidelines --  
17 you know, he can receive substantially greater  
18 prison time than that.

19 He has robbery with a firearm --

20 MS. RITTERHOFF: This is life.

21 THE COURT: -- possession of firearm by  
22 a felon.

23 MS. RITTERHOFF: Yes. He also qualifies  
24 under the Habitual Violent Felony Offender statute  
25 for a term of 15-year minimum mandatory, in light

1 of the three prior -- two prior robberies and  
2 attempted robbery that he was on probation for.

3 THE COURT: So, he said he wrote you a  
4 letter of apology. Did you receive that?

5 KENRICH DIEDRICH: Yes, sir.

6 MS. RITTERHOFF: He sent it to the victim,  
7 Your Honor. He turned it over to the State  
8 Attorney's Office.

9 THE COURT: You have not read it?

10 MR. DIEDRICH: No.

11 MS. RITTERHOFF: I was going to give it to  
12 him when it was over.

13 THE COURT: So, what would you like to  
14 say about the sentence, sir?

15 MR. DIEDRICH: Well, Your Honor, in the way  
16 in which this robbery took place. This man was  
17 sober, knew what he was doing. When he came into  
18 the store, he placed a few items on the counter.  
19 Then, as soon as I opened the cash register, he  
20 demanded that I put the money in a bag.

21 I turned to him and said, "What?" He placed  
22 the bag on the counter -- "Put the money in the bag."  
23 Then he made an other demand, he said, "Place your  
24 wallet in the bag." I said, "I'm sorry, but I don't  
25 carry a wallet." Which I don't.

1 He repeated it. I said, "I'm sorry." Just  
2 like that. He took the gun, point it -- bang --  
3 he shot me.

4 I felt, from that day until this day, I have  
5 gone through a lot of suffering. He put me and  
6 my family through some hard times. Basically, what  
7 I am here to ask is that, with the power invested  
8 in you, Your Honor, that you give Kenneth Grimsly  
9 the maximum penalty that the law allows for  
10 attempted murder on my life.

11 So that he will not get that opportunity to  
12 put some other poor unfortunate people in that  
13 hardship that he placed me in over the years.

14 THE COURT: You don't think that he  
15 deserves any consideration for the fact that he  
16 entered a plea?

17 MR. DIEDRICH: No, sir.

18 THE COURT: Didn't have a trial?

19 MR. GOURLEY: No.

20 THE COURT: Do you have anything else you  
21 want to say?

22 MR. DIEDRICH: Not that I want to see some  
23 other unfortunate person go through the same hardship  
24 that I went through. I am still suffering from my  
25 leg. I can't lift anything. I can't exercise.

1 I can't even climb steps.

2 THE COURT: You know, generally what we  
3 do is require that they pay for the medical  
4 expenses. But he is going to be incarcerated.  
5 You understand, it's going to be impossible for  
6 him to do that -- to order he do that while he is  
7 incarcerated.

8 You don't expect any type of restitution from  
9 him while he is in prison?

10 MR. DIEDRICH: I would scratch the  
11 restitution and let him stay where he belongs.

12 THE COURT: Well, I appreciate you coming.  
13 Thank you.

14 By the way, what type of business do you have?

15 MR. DIEDRICH: A convenience store.

16 THE COURT: Located where?

17 MR. DIEDRICH: In Ocala.

18 THE COURT: Okay. Thank you.

19 Do you have anything you want to say?

20 MS. RITTERhoff: No. I think Mr. Diedrich  
21 did pretty well.

22 THE COURT: All right. Anything else?

23 THE DEFENDANT: For one thing, he said he  
24 did not read the letter. So that tells me a lot  
25 right there. It's just "lock him up, throw away

1 the key." But still in my heart I still have love  
2 for you, Mr. Diedrich, either way it goes. I just  
3 pray for you.

4 THE COURT: All right. By the way,  
5 don't forget to pray for yourself, because you are  
6 going to need it.

7 What was your offer?

8 MS. RITTERHOFF: Forty years, with a 15-year  
9 habitual violent felony offender minimum mandatory.

10 MR. GOURLEY: The Department of  
11 Corrections and the P. S. I. recommended a 21-year  
12 D. O. C. term.

13 MS. RITTERHOFF: Department of Corrections  
14 won't go above guidelines even if it's a habitual.  
15 That is their policy. So they basically suggested  
16 the maximum that their policies allow.

17 THE COURT: When you made the 40-year  
18 offer did you consult with the victim?

19 MS. RITTERHOFF: Mr. Diedrich, did you --  
20 We discussed the 40-year offer?

21 MR. DIEDRICH: Yes.

22 THE COURT: What did he say about it at  
23 the time?

24 MS. RITTERHOFF: It was fine. He came up and  
25 said the maximum, which would be life -- which is

1 even more. Generally, Your Honor, when a violent --  
2 when a habitual violent felony offender has been  
3 using a gun and has shot someone, I have been  
4 offering forty years. I did the very same thing  
5 with other cases.

6 When did he get out of prison? Some four and  
7 a half year sentence in 1990. When did he get out?

8 THE DEFENDANT: August 10, 1994.

9 MS. RITTERHOFF: He got through March, 1996.

10 THE COURT: After the 15-year minimum  
11 mandatory, what did they calculate with the gain  
12 time?

13 MS. RITTERHOFF: 85 percent -- well, it  
14 depends on what the law is.

15 THE COURT: I am asking if you know.  
16 Do you know?

17 MR. GOURLEY: He has to serve the 15 years.

18 THE COURT: I know. But is the 15 years  
19 calculated in at 85 percent when they start?

20 MS. RITTERHOFF: Who knows what they are going  
21 to be doing in 15 years when we get to that point.

22 MR. GOURLEY: Well, I think the Legislature  
23 had made that clear by passing a law that he has to  
24 serve the 85 percent.

25 Judge, he is going to be -- even if the Court

1 gave him --

2 THE COURT: I didn't know on these whether  
3 they were saying forget about it, go the hundred  
4 percent, or whether they are giving him some gain time.

5 MR. GOURLEY: There is incentive gain time  
6 that he is eligible for.

7 THE COURT: It was my feeling, at the  
8 beginning, the offer she made was fair. It's my  
9 feeling now it's fair. So, I mean, I have not heard  
10 anything that would change my mind about that.

11 I mean I haven't heard one thing that would change  
12 my mind, that the 40 years with a 15-year minimum  
13 mandatory is unreasonable.

14 I mean, she said the victim originally agreed  
15 to it. I think I've got to give him some  
16 consideration for entering a plea. Had he gone to  
17 trial and lost, I would have had absolutely no  
18 hesitation at all about giving him a life sentence.

19 But why on earth would he want to do that and  
20 enter a plea if I am going to sentence him to the  
21 maximum? So it seems to me the fair sentence is a  
22 40-year sentence, with the 15-year minimum mandatory.  
23 That's the maximum mandatory that he can get.

24 MS. RITTERHOFF: Yes.

25 THE COURT: Nothing has changed?

1 MR. GOURLEY: There is a V. O. P. there,  
2 also, Judge.

3 MS. RITTERHOFF: I don't have objections to  
4 that being concurrent.

5 THE COURT: I was going to successfully  
6 terminate his supervision. I don't know if he has  
7 any restitution in this case.

8 I'm assuming that the victims are aware of the  
9 fact -- Mr. Diedrich is aware of the fact that he is  
10 not going to get restitution from this individual.  
11 It's highly unlikely.

12 So I think you are getting plenty of  
13 consideration for the plea that you entered.  
14 Because I will tell you right now: Had you gone  
15 to trial and gotten convicted under those facts  
16 as he outlined, and the State can show that,  
17 I would have no hesitation to sentencing you to  
18 the maximum sentence. Which would be life in prison.

19 I would not have even had to think about it  
20 much. It would be a matter of instinct that I  
21 would do that.

22 So, unsuccessfully terminate your supervision  
23 in the '90 cases. Sentence you to 40 years. Seven  
24 years will run concurrent on the V. O. P. 15-year  
25 minimum mandatory.



1 Is there a minimum fine?

2 MS. RITTERHOFF: I am not sure.

3 THE COURT: I am going to impose a  
4 thousand-dollar fine plus costs, to be made a  
5 lien of record.

6 Any financial obligations in the '90 case,  
7 the V. O. P. '90 cases are now made liens of record.

8 Mr. Diedrich, I'm sorry, but there is nothing  
9 I can do on the restitution. I mean he is going  
10 to be incarcerated for such a lengthy time.  
11 I will have a restitution hearing if you want,  
12 and I will order it.

13 But, he is going to be incarcerated. There  
14 is no way he is going to be able to pay it back.  
15 But if you want to have a restitution hearing,  
16 get with Ms. Ritterhoff, and I will reserve  
17 jurisdiction. The restitution award would have to  
18 be made a lien of record. At least it's something.

19 Had he been placed on supervision, I would  
20 require that he pay you back for your medical  
21 expenses.

22 MR. DIEDRICH: Thank you.

23 MS. RITTERHOFF: For the record, Your Honor,  
24 the 40-years D. O. C. is a habitual sentence and --

25 THE COURT: Yes. I need to go ahead and

1 make my findings on that first. The original plea  
2 offer was no supervision afterwards. I don't think  
3 that is part of the sentence heere, anyway.

4 Reserve jurisdiction to award restitution.  
5 That is obviously made a lien of record.

6 Based on the evidence before me, I do admit  
7 the evidence, all the documents that you presented.  
8 Mr. Gourley has made no objection to those documents  
9 coming into evidence.

10 I do find that you qualify as a violent  
11 habitual felony offender. Sentence you as a  
12 violent habitual felony offender. Sentence you  
13 to forty years, with a 15-year minimum mandatory.  
14 A thousand-dollar fine, plus court costs. Again,  
15 restitution to be made a lien of record.

16 The reason I am doing this is in consideration  
17 for your plea. As I said before, I would not have  
18 had any hesitancy about sentencing you to life in  
19 prison had you gone to trial. So you saved yourself  
20 the possibility of getting out some time in the  
21 future if you live that long.

22 But in any way, that would be the sentence of  
23 the Court. Those are the findings.

24 For the record, I have reviewed the P. S. I.  
25 That is in the court file. As to count three, run

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a concurrent.

MS. RITTERHOFF: Thank you, Your Honor.

- - -

(HEARING ADJOURNED)

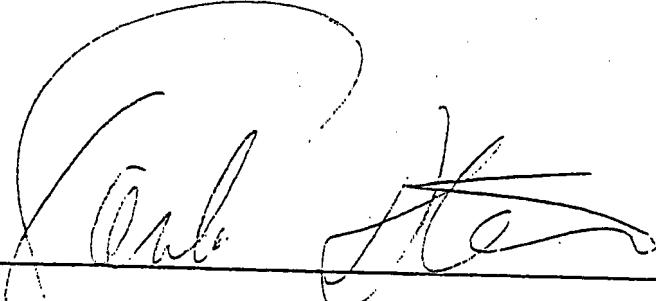
C E R T I F I C A T E

STATE OF FLORIDA )

COUNTY OF MARION )

I, Karla Steed, Registered Professional Reporter and Deputy Official Court Reporter, Fifth Judicial Circuit of Florida, do hereby certify that the foregoing proceedings in the case of State of Florida vs. Kenneth Grimsly, case numbers 96-1003-Z, etc., were held at the time and place set forth in the caption thereof; that I was authorized to and did report stenographically the proceedings, and that the foregoing pages, numbered 1 to 23, inclusive, constitute a true and correct record of same.

WITNESS MY HAND this 9 day of July, 1998, at Ocala, Marion County, Florida.



Karla Steed, R.P.R.  
DEPUTY OFFICIAL COURT REPORTER

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# EXHIBIT C

**C**

FLORIDA DEPARTMENT OF CORRECTIONS  
 REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

RECEIVED

SEP 23 2014

DEPARTMENT OF CORRECTIONS  
 INMATE GRIEVANCES

Third Party Grievance Alleging Sexual Abuse

TO:  Warden  Assistant Warden  Secretary, Florida Department of Corrections

From or IF Alleging Sexual Abuse, on the behalf of:

Grimsley, Kenneth L.  
 Last First Middle Initial

121383  
 DC Number

MARION  
 Institution

Part A - Inmate Grievance

14-6-30881

Grievant's Probation Officer of the State of Florida Department of Corrections and/or The Florida Parole and Probation Commission violated Grievant's constitutional guaranteed protection of DUE PROCESS and erred revoking probation at a Habitual Violent Felony Offender Revocation of Probation proceeding without RECORD evidence of a willful and substantial violation report.

The detention orders imposed in case no.(s): 90-2048-y; 90-2049-z; 90-2050-w and 96-1003-z dated April 17, 1997 at a HVFO Revocation of Probation proceeding are deemed void and illegal where Probation Officer of the State of Florida Department of Corrections and/or The Florida Parole and Probation Commission never filed an affidavit alleging a violation of probation pursuant to the detention orders imposed.

In essence, Grievant cannot be detained for something that he was not charged with by AFFIDAVIT of violation of probation. Grievant was never charged with a violation of probation by AFFIDAVIT of violation filed in a Court of law by Probation Officer of the State of Florida Department of Corrections and/or The Florida Parole and Probation Commission pursuant to Fla. Stat. §§ 948.06(1) (1997) which states:

[u]pon the filing of an affidavit alleging a  
 -continuation on next page-

September 18, 2014  
 DATE

Kenneth L. Grimsley 121383  
 SIGNATURE OF GRIEVANT AND D.C. #

\*BY SIGNATURE, INMATE AGREES TO THE FOLLOWING # OF 30-DAY EXTENSIONS:

0 / 1  
 # Signature

INSTRUCTIONS

This form is used for filing a formal grievance at the institution or facility level as well as for filing appeals to the Office of the Secretary in accordance with Rule 33-103.006, Florida Administrative Code. When an appeal is made to the Secretary, a copy of the initial response to the grievance must be attached (except as stated below).

When the inmate feels that he may be adversely affected by the submission of a grievance at the institutional level because of the nature of the grievance, or is entitled by Chapter 33-103 to file a direct grievance he may address his grievance directly to the Secretary's Office. The grievance may be sealed in the envelope by the inmate and processed postage free through routine institutional channels. The inmate must indicate a valid reason for not initially bringing his grievance to the attention of the institution. If the inmate does not provide a valid reason or if the Secretary or his designated representative determines that the reason supplied is not adequate, the grievance will be returned to the inmate for processing at the institutional level pursuant to F.A.C. 33-103.007 (6)(d).

Receipt for Appeals Being Forwarded to Central Office

Submitted by the inmate on: 9.18.14  
 (Date)

Institutional Mailing Log #: 09/16/14

S. Stone  
 (Received By)  
 304 MF 8a

DISTRIBUTION: INSTITUTION/FACILITY  
 INMATE (2 Copies)  
 INMATE'S FILE  
 INSTITUTIONAL GRIEVANCE FILE

CENTRAL OFFICE  
 INMATE  
 INMATE'S FILE - INSTITUTION/FACILITY  
 CENTRAL OFFICE INMATE FILE  
 CENTRAL OFFICE GRIEVANCE FILE

violation of probation or community control and following issuance of a warrant s. 901.02 the probationary period is tolled until the court enters a ruling on the violation.

In the instant case NO competent substantial evidence was presented by Probation Officer of the State of Florida Department of Corrections and The Florida Parole and Probation Commission to support revocation and NO affidavit for violation of probation <sup>was</sup> ever filed by Probation Officer of the State of Florida Department of Corrections and The Florida Parole and Probation Commission alleging what condition of probation Grievant violated at the HVFO Revocation of probation proceeding.

The Grievant was denied these minimum constitutional safeguards of DUE PROCESS at the HVFO Revocation of Probation proceeding rendering the Grievants current detention orders imposed in case no.(s): 90-2048-Y; 90-2049-Z; 90-2050-W and 96-1003-Z on April 17, 1997 unlawful and illegal, and entitling Grievant to IMMEDIATE RELEASE from UNLAWFUL DETENTION in the Florida Department of Corrections.

### RELIEF SOUGHT

The Grievant seeks all and any relief in the interest of JUSTICE in this cause upon a thorough investigation of the claim raised in this complaint.

Respectfully Submitted,  
Mr. Kenneth L. Drumley

PART C - RECEIPT (TO BE COMPLETED BY DC STAFF)

RETURN TO:

GRIMSLEY, KENNETH      121383      14-6-30881      MARION C.I.      E1118U  
NAME                      NUMBER      GRIEVANCE LOG NUMBER      CURRENT INMATE LOCATION      HOUSING LOCATION

I ACKNOWLEDGE RECEIPT THIS DATE OF A GRIEVANCE FROM THE ABOVE INMATE IN REGARD TO THE FOLLOWING SUBJECT:

08A (SENTENCE COMPUTATION (LEGAL))

9/18/14  
DATE

14-6-30881  
GRIEVANCE LOG NUMBER

APPENDIX A



MAILED/FILED  
WITH AGENCY CLERK  
REQUEST FOR ADMINISTRATIVE REMEDY OR APPEAL

MAN, PAGE 2

RE: Grimsley, Kenneth DC#121383

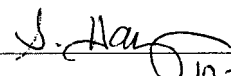
NOV 05 2014  
Department of Correction  
Inmate Grievance Appeal

APPEAL #: 13-6-30881

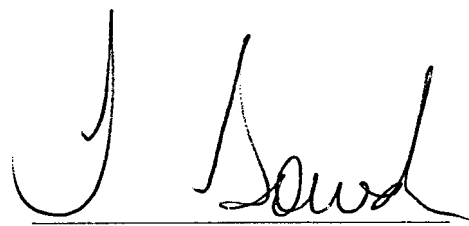
Your request for administrative remedy and/or appeal has been received, reviewed and evaluated.

The validity of the sentences imposed in cases 90-2048, 90-2049, 90-2050, and 96-1003 is something you will have to address with the sentencing court, not the Department.

Based on the foregoing, your request is denied.

  
10-14-14

Signature and Typed  
or Printed Name  
Employee Responding  
(S. Haynes)



Signature of Warden  
Asst. Warden, or  
Secretary's Representative

10/30/14

Date