

IN THE CIRCUIT COURT,
FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO.: 16-2011-CF-07425-AXXX-MA

DIVISION: CR-E

STATE OF FLORIDA,

v.

FREDERICK L. WADE, Defendant.

ORDER DENYING IN PART AND GRANTING IN PART DEFENDANT'S MOTION
TO CORRECT SENTENCING ERROR PURSUANT TO RULE 3.800(b)(2),
FLORIDA RULES OF CRIMINAL PROCEDURE

This matter came before this Court on Defendant's Motion to Correct Sentencing Error, filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) on June 20, 2013. On April 27, 2012, following a jury trial, Defendant was convicted of one count of Murder in the Second-Degree. (Ex. "A.") The jury also found that Defendant actually possessed and discharged a firearm causing great bodily harm or death during the commission of the offense. (Ex. "B.") On August 8, 2012, the court imposed a sentence of life with a life minimum mandatory pursuant to section 775.087, Florida Statutes, (2011). (Ex. "A.") Defendant has taken an appeal to the First District Court of Appeal and the initial brief has yet to be filed. (Ex. "C.") This Court has jurisdiction. See Fla. R. Crim. P. 3.800(b)(2).

In the instant Motion, Defendant raises two grounds for relief stating that his sentence is illegal. First, Defendant alleges that the court erred in sentencing Defendant without considering a Youthful Offender sentence. Defendant alleges he was eligible for a Youthful Offender sentence because he was twenty years old at the time of sentencing and convicted of Murder in

the Second-Degree, which is a first-degree felony punishable by life, but is not a "life felony." Second, Defendant asserts that the court erred in sentencing Defendant to a life minimum mandatory. Defendant avers the State misadvised the court that imposing a life sentence mandated a mandatory life sentence. Defendant also argues the Youthful Offender statute trumps the 10-20-Life statute, so even the 25 year minimum mandatory is not required if the court chooses to sentence Defendant as a Youthful Offender.

Ground One:

In Defendant's first ground for relief, Defendant asserts the court erred in failing to consider the Youthful Offender sentence. Specifically, Defendant argues that reclassification to a life felony does not preclude sentencing as a Youthful Offender without reclassification, Defendant's Murder in the Second-Degree is a first-degree felony punishable by life, but is not a "life felony." Therefore, Defendant argues he was eligible for Youthful Offender.

Florida Statute Section 958.04 governs the Youthful Offender sentencing scheme. The statute specifically states:

[T]he court may sentence as a youthful offender any person who is at least 18 years of age . . . found guilty of . . . a felony if the offender is younger than 21 years of age at the time sentence is imposed . . . who has not previously been classified as a youthful offender under the provisions of this act . . . however, a person who has been found guilty of a capital or life felony may not be sentenced as a youthful offender under this act.

§ 958.04(1), Fla. Stat. (2011).

In the instant case, Defendant was charged with and convicted of Murder in the Second-Degree with a firearm, which after reclassification is a life felony. See §§ 775.087(1), 782.04(2), Fla. Stat. (2011). However, Defendant argues that reclassification to a life felony does not preclude consideration of Youthful Offender sentencing. In this regard, Defendant relies on Ruth v. State, 949 So. 2d 288, 290 (Fla. 1st. DCA 2007). In Ruth, the lower court determined

that the defendant was not eligible for youthful offender because his conviction for armed robbery was reclassified to a life felony. Ruth, 949 So. 2d at 289. However, the appellate court held that the trial court erred when it reclassified the defendant's first-degree felony to a life felony pursuant to section 775.087(1), Florida Statutes (2003), because the use of a firearm or weapon was an essential element of armed robbery. Ruth, 949 So. 2d at 289; see also §775.087(1), Fla. Stat. (2011) (providing that whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant . . . uses . . . any weapon or firearm . . . the felony for which the person is charged shall be reclassified . . . in the case of a felony of the first degree, to a life felony). Therefore, the appellate court concluded Defendant was eligible for Youthful Offender. Ruth, 949 So. 2d at 290.

Defendant also relies on <u>Betancourt v. State</u>, 804 So. 2d 313 (Fla. 2001), to show that a first-degree felony punishable by life should be treated as a first-degree felony, not a life felony. Defendant's reliance on <u>Betancourt</u>, however, is misplaced because Defendant's conviction for Murder in the Second-Degree was converted from a first-degree felony punishable by life to a *life felony* according to section 775.087(1), Florida Statutes (2011).

Moreover, unlike in Ruth, the reclassification of Defendant's offense was proper. Defendant was charged and convicted of Murder in the Second-Degree murder with the use of a firearm. First, the use of a weapon or firearm is *not* an essential element of Murder in the Second-Degree. See §782.04(2), Fla. Stat. (2011). Second, the jury found that Defendant actually possessed and discharged a firearm causing great bodily harm or death during the commission of the offense. (Ex. "A.") Therefore, Defendant's conviction was properly reclassified from a first-degree felony punishable by life, to a life felony. See §775.087(1), Fla.

Stat. (2011). Therefore, according to section 958.04, Florida Statutes (2011), Defendant *may not* be sentenced as a Youthful Offender. Thus, Defendant's first ground for relief is denied.

Ground Two:

In Defendant's second ground, Defendant alleges that the court erred in sentencing Defendant to mandatory life imprisonment when advised by the State that life was the minimum mandatory. Specifically, Defendant points to the following exchange that occurred at the sentencing hearing:

THE COURT:

How much credit does he have?

THE CLERK:

404 days.

THE COURT:

And, Mr. Wade, I sentence you to life in prison,

with the minimum mandatory of 25 years and credit

for 404 days.

MR. THOMPSON:

Your, Honor, based on your sentence, the life

sentence is the minimum mandatory.

THE COURT:

Okay. Then mandatory life.

(Ex. "D" at 39.)

The State's above assertion was incorrect because the trial court had discretion to enter a minimum mandatory sentence in the range of twenty-five years to life. Case law is clear that section 775.087(2)(a)(3), Florida Statutes (2011), gives the trial court discretion to impose a mandatory minimum in the *range* of "a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison." Mendenhall v. State, 48 So. 3d 740 (Fla. 2010); see also Flowers v. State, 69 So. 3d 1042 (Fla. 1st DCA 2011); Dean v. State, 58 So. 3d 322 (Fla. 1st DCA 2011). Because it appears the judge may have been misled as to the

applicable minimum mandatory sentence, Defendant is entitled to be resentenced. Therefore, Defendant's second ground for relief is granted.

In view of the above, it is:

ORDERED AND ADJUDGED that Defendant's Motion to Correct Sentencing Error is hereby **DENIED** in part as to ground one and **GRANTED** in part as to ground two. Defendant shall be resentenced in accordance with this Order at a hearing, the time and date of which shall be set forth in a separate order.

DONE AND ORDERED in Chambers, in Jacksonville, Duval County, Florida, on this

16th day of August

Tatiana Salvador, Circuit Court Judge

CERTIFICATE OF SERVICE

I do hereby certify that a coby hereof has been furnished to Defendant by United States

Copies to:

Office of the State Attorney **Division CR-E**

William Mallory Kent Florida Bar No. 0260738 California Bar No. 92776 1932 Perry Place Jacksonville, Florida 32207-3443

Case No.:

16-2011-CF-07425-AXXX-MA

Attachments: Exhibits: A-D.

/swb

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			IN THE CIR	CUIT COU	RT, FOUR	TH
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		FILED				
		AUG 0 8 2012	CASE: 16-2	011-CF-007	'425-AXX	(-MA
		AUG U 6 ZUIZ	DIVISION:	CR-E		
STA	TE OF FLORIDA	Lin Fullen				
VS.		CLERK CIRCUIT COURT		n Violator hity Control \	/iolator	
FRF	DERICK LEE WADE,	DEENDANT	<u> </u> Retrial		riolatoi	
1 1166		DEFENDANT	☐ Resenter	nce		
		JUDGMEN		e e e e e e e e e e e e e e e e e e e		
	The defendant FRE	EDERICK LEE WADE hoing a	araanalli, kafaa 11			
by	R. Bethea	EDERICK LEE WADE, being po	ersonally before th	is court, rep	resented	
by		the attorney of record	I, and the state bei	ng represen	ted	
		1, and having:				
	_ entered a plea of	ound guilty by jury/by court of the guilty to the following crime(s)	e following crime(s	s)		
	entered a plea of	f nolo contendere to the following	ng crime(s)			
Count		Crime		-		
			Offenses Statute Number(s)	Degree Of Crime	Case Number	OBTS Number
1	Murder in the second	degree	782.04(2)	Life		
						
· · · · · · · · · · · · · · · · · · ·					-	
··						
☑ and the de	d no cause being show fendant is hereby AD.	wn why the defendant should no JUDICATED GUILTY of the abo	ot be adjudicated gove crime(s).	puilty, IT IS (ORDERED	that
defend	iooo oi adiddication. I	ed or found guilty of, or having on on any felony offense, as provide to submit two blood specimens ment.	ad in Clavida Ctatut			•
and	good cause being sh	own; IT IS ORDERED THAT A	DJUDICATION OF	F GUILT BE	WITHHEL	.D.

Page _____ of ____5

EXHIBIT A.

6. Left Thumb

STATE OF FLORIDA FREDERICK LEE WADE, DEFENDANT CASE: 16-2011-CF-007425-AXXX-MA Imposition of Sentence The Court hereby stays and withholds the imposition of sentence as to count(s) Staved and Withheld and places the Defendant on probation/community control for a period (Check if Applicable) under the supervision of the Department of Corrections (conditions of probation/community control set forth in a separate order). FINGERPRINTS OF DEFENDANT 1. Right Thumb 2. Right Index 3. Right Middle 4. Right Ring 5. Right Little

8. Left Middle

9. Left Ring

10. Left Little

Name: Mr. M. Graw 66077 Title: 0.0.

7. Left Index

I HEREBY CERTIFY that the above and foregoing are the fingerprints of the defendant, **FREDERICK LEE WADE**, and that they were placed thereon by the defendant in my presence in open court on this date.

DONE AND ORDERED in open court at Jacksonville, Duval County, Florida, this 8th day of August , 2012.

Judge

Page 2 of 5

FREDERICK LEE WADE, Case Number: 16-2011-CF-007425-AXXX-MA OBTS Number: 1602243343

	SENTENCE
	(Asto Count)
Ine defi	endant, being personally before this court, accompanied by the defendant's attorney of record
defendant an on	and having been adjudicated guilty herein, and the court having given the portunity to be heard and to offer matters in mitigation of sentence, and to show cause why the defendant
should not be se	entenced as provided by law, and no cause being shown:
Mand 1	the court having on 4-27-12 deferred imposition of sentence until this data
☐ and t	the court having on 4-27-12deferred imposition of sentence until this date. the court having previously entered a judgment in this case onnow resentences
the defendant.	now resemblences
☐ and t	the court having placed the defendant on probation/community control and having subsequently revoked
the defendant's	probation/community control.
It is The Senten	nce Of The Court That:
☐ The defendar	nt pay a fine of \$, pursuant to section 775.083, Florida Statutes plus \$at the 5%
Surcharge requir	red by 938.04, Florida Statutes. In the statutes of the Department of Corrections.
The defendar	nt is hereby committed to the custody of the Sheriff of Duval County, Florida.
☐ The defendar	nt is sentenced as a youthful offender in accordance with section 958.04, Florida Statutes.
	ed (Check one; unmarked sections are inapplicable):
•	
For a term of	Life/Life hun man
For a term of	Lite / Lite Mun man
Said SENTE	NCE SUSPENDED for a period of subject to conditions set forth in this order.
	e, complete the appropriate paragraph. a period of on probation/community control under the supervision of the
Department of C	on probation/community control under the supervision of the corrections according to the terms and conditions of Supervision set forth in a separate order entered
herein.	
☐ However, after	er serving a period of, the imprisonment in, the entence shall be suspended and the defendant shall be placed on probation/community control for a
balance of the se	entence shall be suspended and the defendant shall be placed on probation/community control for a
period of conditions of pro	under the supervision of the Department of Corrections according to the terms and bation/community control set forth in a separate order entered herein.
In the event the	defendant is ordered to serve additional split sentences, all incarceration portions shall be satisfied
before the defen	dant begins service of the supervision terms.
	OTHER PROVISIONS
Retention of Jurisdiction	The court retains jurisdiction over the defendant pursuant to section 947.16(4), Florida Statutes.
Jali Credit	It is further ordered that the defendant shall be allowed a total of days as credit for time incarcerated before imposition of this sentence.
Prison Credit	☐ It is further ordered that the defendant be allowed credit for all time previously served on this count in the Department of Corrections prior to resentencing.
Consecutive/ Concurrent As To Other	It is further ordered that the sentence imposed for this count shall run (check one) consecutive to concurrent with the sentence set forth in count of this case.

Page 3 of 5

FREDERICK Law WADE, Case Number: 16-2011-0007425-AXXX-MA
OBTS Number: 1602243343

	ELECTION AND ALIGNMENT TO SEE A PROVINCIA DE LA COMPANION DE L
By appropriate no	otation,∕ the following provisions apply to the sentence imposed:
Firearm	
	In the section 775.087, Florida Statutes, is hereby imposed for the sentence specified in this count.
Drug Trafficking	☐ It is further ordered that themandatory minimum imprisonment provisions of section 893.135(1), Florida Statutes, is hereby imposed for the sentence specified in this count.
Controlled Substanc within 1,000 feet of School	e ∐It is further ordered that the 3-year minimum imprisonment provisions of section 893.13(1)(c)1, Florida Statutes, is hereby imposed for the sentence specified in this count.
Habitual Felony Offender	☐ The Defendant is adjudicated a habitual felony offender and has been sentenced to an 'extended term in accordance with the provisions of section 775.084(4)(a), Florida Statutes. The requisite findings by the court are set forth in a separate order or stated on the record in open court.
Habitual Violent Felony Offender	☐ The Defendant is adjudicated a habitual violent felony offender and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(b), Florida Statutes. A minimum term of year(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
Violent Career Criminal	The Defendant is adjudicated a violent career criminal and has been sentenced to an extended term in accordance with the provisions of section 775.084(4)(d), Florida Statutes. A minimum term ofyear(s) must be served prior to release. The requisite findings of the court are set forth in a separate order or stated on the record in open court.
Prison Release Re-Offender	☐ The Defendant is adjudicated a prison released re-offender in accordance with the provisions of section 775.082(9), and must serve 100 percent of the court imposed sentence.
Law Enforcement Protection Act	☐It is further ordered that the defendant shall serve a minimum of year(s) before release in accordance with section 775.0823, Florida Statutes.
Capital Offense	☐It is further ordered that the defendant shall serve no less than 25 years in accordance with the provisions of section 775.082(1), Florida Statutes.
Short-Barreled Rifle, Shotgun,Machine Gu	☐It is further ordered that the 5 year minimum provisions of section 790.221(2), Florida Statutes, are hereby imposed for the sentence specified in this count.
Continuing Criminal Enterprise	☐ It is further ordered that the 25 year minimum sentence provisions of section 893.20, Florida Statutes, are hereby imposed for the sentence specified in this count.
DUI Provisions	☐It is further ordered that the 4 year minimum mandatory sentence pursuant to the provisions of section 316.193(3)(c)3, Florida Statutes, are hereby imposed for the sentence specified in this count.
Dangerous Sexual Felony Offender	The Defendant is adjudicated a dangerous sexual felony offender and has been sentenced to an extended term in accordance with the provisions of section 794.0115, Florida Statutes. A mandatory/minimum term ofyear(s) must be served. The requisite findings of the court are set forth in a separate order or stated on the record in open court.

Page____4__of___5_

FREDERICK LEE WADE, Case Number: 16-2011-CF-007425-AXXX-MA OBTS Number: 1602243343

	OTHER PROVISIONS	
Consecutive/ Concurrent As To Other Convictions	It is further ordered that the composite term of all sentences this order shall run (check one) any active sentence being served. specific sentences:	imposed for the counts specified in rent with the following: (check one)
County, Florida is Corrections at the	nt the above sentence is to the Department of Correct hereby ordered and directed to deliver the defendan facility designated by the department together with a other documents specified by Florida Statute.	t to the Department of
notice of appeal v	dant in open court was advised of the right to appeal to within 30 days from this date with the clerk of this coucounsel in taking the appeal at the expense of the Sta	urt and the defendant's right to
In imposin	g the above sentence, the court further recommends:	
DONE AND ORD	ERED in open court at Jacksonville, Duval County, Fl., 20 [2].	lorida, this 8th day of
	Judge	

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

CASE NO .:

162011CF007425AXXXMA

DIVISION:

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STAT	E OF	FLO	RIDA
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VS.

FREDERICK LEE WADE

FILED

APR 2 7 2012

SLERK CIRCUIT COURT

VERDICT

We, the jury, find the Defendant guilty of Murder in the Second Degree, as charged in the information.

If you find the defendant guilty of this offense, you must also choose one of the following findings:

We find that the Defendant actually possessed and discharged a firearm causing great bodily harm or death during the commission of the offense.

We find that the Defendant actually possessed and discharged a firearm without causing great bodily harm or death during the commission of the offense.

We find that the Defendant actually possessed a firearm during the commission of the offense.

We find that the Defendant did not actually possess or discharge a firearm during the commission of the offense.

We, the jury, find the Defendant guilty of Manslaughter, a lesser-included offense.

If you find the defendant guilty of this offense, you must also choose one of the following findings:

We find that the Defendant actually carried, displayed, used, threatened to use or attempted to use a firearm during the commission of the offense.

We find that the Defendant did not actually carry, display, use, threaten to use or attempt to use a firearm during the commission of the offense.

We, the jury, find the Defendant not guilty.

SO SAY WE ALL.

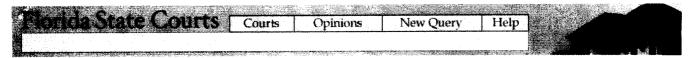
DONE at Jacksonville, Duval County, Florida.

FOREPERSON

4/27/12

EXHIBIT

Richard M. Fegeley



Florida First District Court of Appeal Docket

Case Docket

Case Number: 1D12-4310

Final Criminal Judgment and Sentence Notice from Duval County

Fredrick Lee Wade vs. State of Florida

Lower Tribunal Case(s): 2011-CF-4725-AXXX

Date Docketed	Description	Date Due	Filed By	Notes
09/07/2012	ORD-L.T. INSOLVENCY OR INDIGE.	2000 1200	, 1104 29	
09/07/2012	Notice of Appeal Filed		Robert F. Bethea 310344	
09/10/2012	Notice of Appeal / Acknowledgement letter			
09/13/2012	Notice of Appearance		Richard B. Gordon, A. P. D. 0107050	
09/18/2012	Docketing Statement			AA Richard B. Gordon, A. P. D. 0107050
10/05/2012	Received Records			1 volume *SEALE*
10/05/2012	Received Records			6 volumes scanned ftp
10/08/2012	Designation of 2nd Public Defender			
10/09/2012	Received Exhibits			1 brn env (physical evidence) scanned ftp-see corr file
10/17/2012	Notice of Appearance		William Mallory Kent 0260738	
10/17/2012	Motion For Substitution of Counsel		William Mallory Kent 0260738	
11/02/2012	Grant Substitution of Counsel-31A			The motion filed October 17, 2012, seeking leave to substitute William Mallory Kent as counsel for appellant in this cause, is granted. The Office of the Public Defender. Fourth Judicial Circuit, is hereby discharged from any further responsibility in this proceeding.
11/06/2012	Mot. for Extension of time to file Initial Brief		William Mallory Kent 0260738	·
11/08/2012	Grant Initial Brief Extension-1A	12/07/2012		Appellant's motion filed November 6, 2012, for extension of time for service of the initial brief is granted in part. Appellant's brief shall be served on or before December 7 2012.
12/07/2012	Motion To File Supplemental Record		William Mallory Kent 0260738	
12/10/2012	Grant Motion to Supplement the Record-30	01/09/2013		Appellant's motion filed December 7, 2012, seeking to supplement the record on appeal with transcripts of the proceedings held April 3, 2012, is granted. Counsel for movant shall ensure preparation and transmittal of the supplemental record on or before January 9, 2012, and the time for service of the initial brief is extended to 30 days following transmittal of the supplemental record.

EXHIBIT C.

01/09/2013	Supplemental Records			1 volumes scanned ftp
02/01/2013	Motion To File Supplemental Record		William Mallory Kent 0260738	
02/04/2013	Grant Suppl Red-30 dys Transmit/30 dys brf-30A	03/06/2013		Appellant's motion filed February 1, 2013, seeking to supplement the record on appeal with transcripts of the proceedings held January 18, 2012, January 19, 2012, January 31, 2012, February 22, 2012, March 31, 2012, April 2, 2012, April 16, 2012, April 23, 2012, June 18, 2012, June 22, 2012 and August 6, 2012, is granted. Counsel for movant shall ensure preparation and transmittal of the supplemental record on or before March 6, 2013, and the time for service of the initial brief is extended to 30 days following transmittal of the supplemental record.
03/06/2013	Motion for Extension of Time		William Mallory Kent 0260738	to file supp record and initial brief
03/08/2013	Grant EOT Record and Brief-28C	04/01/2013		Appellant; s motion filed March 6, 2013, is granted. Counsel shall ensure completion of the record on or before April 1, 2013. Appellant; s initial brief shall be filed within 45 days of completion of the record.
04/04/2013	Notice		Hon. Ronnie Fussell, Clerk duval	of inability to complete rec
04/04/2013	Supplemental Records			1 volume scanned ftp
05/14/2013	Mot. for Extension of time to file Initial Brief		William Mallory Kent 0260738	
05/16/2013	Grant Initial Brief Extension-1A	06/19/2013		Appellant/s motion for extension of time filed on May 14, 2013, is granted in part. The initial brief shall be filed on or before June 19, 2013.
06/19/2013	Notice of Filing		William Mallory Kent 0260738	3.800 (b) (2) motion noted

List of Abbreviations

Printer Friendly View

1 2	IN THE CIRCUIT COURT, FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA.
3 4	CASE NO.: 2011-CF-7425 DIVISION: CR-E
5	STATE OF FLORIDA
6	FREDERICK LEE WAST
7	Defordant
8	Detendant. CLERK US OF COURT
9	
10	TESTIMONY AND PROCEEDINGS before the
11	Honorable TYRIE BOYER, Circuit Judge, Courtroom. No.
12	308, at the Duval County Courthouse, 501 West Adams
13	Street, Jacksonville, Duval County, Florida, on
14	Wednesday, August 8th, 2012, commencing at 11:00 a.m.,
15	reported by Sharron A. McLendon, Court Reporter.
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1	mitigation after you have that act following the
2	violence, following a violent life that this
3	particular person has lived.
4	Accordingly, I'm going to waive the fines and
5	cost.
6	How much credit does he have?
7	THE CLERK: 404 days.
8	THE COURT: And, Mr. Wade, I sentence you to
9	life in prison, with a minimum mandatory of 25
10	years and credit for 404 days.
11	The court is in recess.
12	MR. THOMPSON: Your Honor, based on your
13	sentence, the life sentence is the minimum
14	mandatory.
15	THE COURT: Okay. Then mandatory life.
16	(Whereupon, the proceedings were concluded.)
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1	$\underline{C} \ \underline{E} \ \underline{R} \ \underline{T} \ \underline{I} \ \underline{F} \ \underline{I} \ \underline{C} \ \underline{A} \ \underline{T} \ \underline{E}$
2	STATE OF FLORIDA)
3	COUNTY OF DUVAL)
4	
5	I, Sharron Ann McLendon, certify that I was
6	authorized to and did stenographically report the
7	foregoing proceedings and that the transcript is a true
8	and complete record of my stenographic notes.
9	DATED this 10th day of September, 2012.
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12	1
13	Sharron A. McLendon
14	Court Reporter
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