

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR HIGHLANDS COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

Case No: 2009-CF-000627

KIEFER FILPPULA,

Defendant.

**MOTION TO CORRECT SENTENCE
PURSUANT TO RULES 3.800(a), 3.801 AND 3.850**

Defendant, KIEFER FILPPULA, by and through undersigned counsel, hereby moves this Court to correct a sentence imposed in this Court on April 15, 2013. In support thereof, Defendant respectfully alleges as follows:

1. On July 21, 2009, Defendant was charged, via Information, with: (1) possession of a prescription drug without a prescription, (2) possession of cannabis with intent to sell, (3) possession of alprazolam, (4) possession of drug paraphernalia, and (5) trafficking in hydrocodone over 28 grams. The State subsequently filed a notice of *nolle prosequi* to the trafficking in hydrocodone count, leaving only the four remaining charges in the Information.

2. On April 4, 2011, the defense filed a motion to suppress evidence, on grounds that law enforcement illegally searched a safe located in his bedroom. At an April 11, 2011 hearing, Defendant's former attorney abandoned his motion to suppress, and Defendant entered an open plea of guilty. This Court set sentencing for June 2, 2011.

3. At the sentencing hearing, this Court sentenced Defendant to five years imprisonment, Department of Corrections on Count # 2. Mr. Filppula was further sentenced to sixty days, county jail on Count # 1 and one year imprisonment on Count # 4, both to run concurrent to the five year

sentence on Count # 2. On Count # 3, possession of alprazolam (a third degree felony), Mr. Filppula was sentenced to two years imprisonment plus five years of probation, to be served consecutively to the five-year sentence imposed in Count # 2. In total, Defendant received an aggregate sentence of seven years imprisonment on all counts followed by five years of probation on Count # 3.

4. After unsuccessfully pursuing a Rule 3.800 motion in this Court, Defendant perfected an appeal to the Second District Court of Appeal, Case # 2D11-3274. That Court reversed the sentence on Count # 2 and 3, and remanded to this Court for resentencing in a written opinion dated February 1, 2013. *Filppula v. State*, 106 So.3d 45 (2013).

5. On April 15, 2013, Defendant appeared in this Court for resentencing. orally resented as follows: (1) 60 days on Count # 1; (2) 5 years on Count # 2 to be served concurrently to the sentences set forth in Count # 1 and Count # 4; (3) 5 years of probation on Count # 3 to run consecutively to the sentence set forth in Count # 2 with 2 years of incarceration to be a condition of the probation; and (4) 1 year on Count # 4 to be served concurrently with the sentences set forth in Counts # 1 and # 2. He was not given credit for time already served.

6. Defendant again appealed his sentence to the Second District Court of Appeal, Case # 2D13-2432. On March 14, 2014, the Second District Court of Appeal issued a written opinion, agreeing that the sentence on Count # 3 was unauthorized by statute, but did not reverse because no subsequent Rule 3.800 motion had been filed after the April 15, 2013 resentencing. *Filppula v. State*, 133 So.3d 1232 (2014). The opinion expressly left open the possibility for a motion pursuant to Rule 3.800(a) or Rule 3.850 to correct this error. This motion follows.

7. Under Florida law, when a defendant is given a sentence of incarceration followed by a period of probation, the combined periods cannot exceed the maximum period of incarceration

provided by statute for the offense charged. Fla. R. Crim. P. 3.702 (d)(19); *State v. Holmes*, 360 So. 2d

8. The statutory maximum permissible sentence on a third degree five years imprisonment. Fla. Stat. § 775.082(3)(d). If a court imposes a split sentence on a third degree felony, the period of incarceration cannot exceed 364 days. Fla. Stat. § 948.03(2), *Williams v. State*, 67 So. 3d 249 (Fla. 2d DCA 2010).

9. Here, the sentence imposed on Count # 3 is in excess of the maximum permitted by statute, and is therefore illegal.

10. Additionally, the Order of Probation entered after the April 15, 2013 resentencing contains a different term than that orally pronounced by this Court, which did not contain any sentence including probation for Count # 2. Under long-standing due process jurisprudence, the oral pronouncement of a sentence controls over the written document. *Ashley v. State*, 850 So. 2d 1265, 1268 (Fla. 2003). Defendant's sentence should be corrected to reflect the oral pronouncement of sentence.

11. Finally, the amended judgment of conviction and sentence entered on April 15, 2013 did not properly credit Defendant for time he had already served. This should be corrected to reflect the actual time he has spent incarcerated on this case.

12. Defendant was initially arrested on this matter and booked into the Highlands County Jail on June 30, 2009, and released after he posted bond on July 1, 2009.

13. Defendant was subsequently arrested on a different matter, 2009-CF-000791, and booked into the Highlands County Jail on August 15, 2009, and released the same day after he posted bond.

14. Defendant was then arrested on another matter, Case # 2009-CF-000120, and booked into the Highlands County Jail on December 10, 2009.

15. As stated above, Defendant was sentenced on the instant matter on June 2, 2011. However, Case # 2009-CF-000120 remained pending until he entered a plea of guilty and was sentenced in this Court on March 12, 2012 to 11 years concurrent with the sentence imposed on this case.

16. Thereafter, Defendant was released from the Highlands County Jail to the custody of the Florida Department of Corrections to begin serving his sentences on the instant case and Case # 2009-CF-000120 on March 30, 2012. He was received by the Florida Department of Corrections that same day.

17. Defendant was booked back into the Highlands County Jail on March 4, 2013, after the Second District Court of Appeal reversed and remanded for re-sentencing, as indicated above. He was re-sentenced on April 15, 2013, and released from the Highlands County Jail back to the Florida Department of Corrections on April 19, 2013. He has remained in custody since.

18. No other criminal charges were pending against Defendant between the April 15, 2013 resentencing and this case. Defendant did not waive any county jail credit on this matter at any time.

19. Upon his re-sentencing, Defendant was not credited the time he spent in the Highlands County Jail, to which he is entitled. As a result, this Court should correct the error in the judgment to award him credit for the time he has actually served.

20. The reason this motion is being filed at this time is because the Department of Corrections has prevented the Defendant from getting a verification notarized for several months. Yesterday, Defendant was finally permitted to see a notary, and mailed me his verification, which was received today.

WHEREFORE, Defendant respectfully requests that this Court grant the within motion, re-sentence him in accordance with the applicable statute and governing law of the case, and grant him such other and further relief as this Court deems just, proper and equitable.

Dated: Orlando, Florida
August 22, 2014

Respectfully submitted,

/s/ Patrick Michael Megaro, Esq.
Patrick Michael Megaro, Esq.
Appeals Law Group
33 East Robinson Street, Suite 210
Orlando, Florida 32801
Telephone: (407) 255-2165
Facsimile: (855) 224-1671
Pmegaro@appealslawgroup.com
Florida Bar ID # 738913
New Jersey Bar ID # 3634-2002
New York Bar ID # 4094983
North Carolina Bar ID # 46770
Texas Bar ID # 24091024
Post-Conviction Counsel for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via U.S. First Class Mail on August 22, 2014

Office of the State Attorney
411 S. Eucalyptus St.
Sebring, FL 33870

/s/ Patrick Michael Megaro, Esq.
Patrick Michael Megaro, Esq.

PROVIDED TO LAKE CI

ON 8-21-14 FOR MAILING.

INSPECTED BY: RP KF
OFFICERS SIGNATURE AND DATE

VERIFICATION

STATE OF FLORIDA

COUNTY OF Lake

Before me, the undersigned authority, personally appeared KIEFER FILPPULA, who first being duly sworn, says that he: (1) is the Defendant in the above-styled proceeding; (2) reads, writes and understands the English language; (3) the motion is filed in good faith and with a reasonable belief that it is timely filed, has potential merit, and does not duplicate previous motions that have been disposed of by the court; and, the facts contained in the motion are true and correct.

[Signature]
KIEFER FILPPULA

Subscribed and sworn to before me this

21 day of August, 2014

[Signature]
Notary Public



ROBIN PHILLIPS
MY COMMISSION # EE 023787
EXPIRES: September 7, 2014
Bonded Thru Budget Notary Services