

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

STATE OF FLORIDA

CRIMINAL DIVISION "S"

vs.

CASE NO. 1991CF011370AXX  
1992CF001942AXX

CHRISTOPHER REINHARDT,

Defendant.  
\_\_\_\_\_ /

**RESPONSE TO MOTION TO CORRECT SENTENCE**

THE STATE OF FLORIDA, by and through the undersigned Assistant State Attorney, pursuant to this Court's Order of September 19, 2007, files this Response to the defendant's Motion to Correct Sentence and states as follows:

**I. STATEMENT OF THE CASE**

1. In Case No. 91-11370 the defendant was charged by Information with Count 1 – Burglary Dwelling While Armed with Firearm; and Counts 2 and 3 – Grand Theft. (Exhibit "A", Information and probable cause affidavit)

2. On December 5, 1991 the defendant pursuant to a negotiated settlement agreement plea pled guilty to Burglary (Dwelling) (a lesser included offense of Count 1) and to Count 3 as charged. Adjudication was withheld and the defendant was placed on supervised probation for a period of 5 years on Counts 1 and 3, to run concurrently. The State nolle prossed Count 2. (Exhibit "B", court event form, pages 3-4; Exhibit "C", Negotiated Plea and Waiver of Rights; Exhibit "D", Judgment; Exhibit "E", Order Withholding Adjudication of Guilt and Placing Defendant on Probation)

3. The defendant was in Court on December 20, 1991 on his Motion to Modify

Probation, and the Court modified his probation. (Exhibit "F", court event form, page 4; Exhibit "G", Motion to Modify Probation)

4. In Case No. 92-1942 the defendant was charged by Information with Grand Theft. (Exhibit "A", Information and probable cause affidavit) On April 14, 1992 the defendant pled guilty as charged, was adjudicated guilty as charged and sentenced to 5 years in the Department of Corrections with credit for 143 days. This sentence was to run concurrently with case no. 91-11370CF A02.

5. As a result of the new charge, on April 14, 1992 the defendant was in Court for violation of probation in case no. 91-11370CF A02, at which time he was found and adjudicated guilty of violation of probation. The defendant was adjudicated guilty of Count 1 (Burglary (Dwelling)) and Count 3 (Grand Theft) and sentenced to 5 years in the Department of Corrections with credit for 143 days, both counts to run concurrently with each other and concurrently with case no. 92-1942CF A02. In conjunction with his sentencing, the Court accepted a "Guideline Sentence Waiver Presentencing Release Agreement" in which the defendant was allowed a 2-day furlough, and agreed in exchange that if he did not voluntarily return to Court as ordered, the Court had discretion to sentence him to 10 years instead of the 5 years and that he waived any legal argument to the contrary. (Exhibit "H", Judgment; Exhibit "I", Sentence; Exhibit "J", Commitment; Exhibit "K", court event form case no. 91-11370CF A02, page 6 / court event form case no. 92-1942CF A02, page 2; Exhibit "L", Transcript; Exhibit "M", Negotiated Plea and waiver of rights; Exhibit "N", Sentencing Guidelines Scoresheet; Exhibit "O", Guideline Sentence Waiver Presentencing Release Agreement)

5. The defendant appeared in Court April 16, 1992 for fulfillment of sentence at

which time the defendant surrendered and the Court lifted the stay on the execution of sentence and remanded the defendant to the custody of the Palm Beach County Sheriff to begin his prison term as ordered by Judge Mounts on April 14<sup>th</sup>. (Exhibit "P", Transcript of Fulfillment of Sentence)

6. On April 28, 1992 the defendant was in Court on State's Motion to Correct Sentence. The Court vacated and set aside the 5-year sentence imposed on April 14, 1992, over defense objection and reserved ruling on the issue of whether the defendant had committed a new crime. (Exhibit "Q", Transcript of Vacation of Sentence; Exhibit "R", court event form in case no. 91-11370CF A02, page 7/ court event form in case no. 92-1942CF A02, page 3; Exhibit "S", Motion for Correction of Sentence)

7. On June 11, 1992 the defendant was before the Court for correction of sentence and the Court proceeded with an evidentiary hearing. At the conclusion of the evidentiary hearing the court found the defendant guilty and vacated and set aside adjudication and sentence of April 14, 1992. The defendant was adjudicated guilty of Burglary (Dwelling) as to lesser of Count 1 and to Count 3 as charged. The defendant was sentenced to 10 years in the Department of Corrections as to Count 1 and to 5 years in the Department of Corrections as to Count 3 with credit for time served, each Count to run concurrent with each other and with the 5-year sentence imposed in case no. 92-1942CF A02. (Exhibit "T", court event form in case no. 91-11370CF A02, pages 7-9 / case no. 92-1942 page 4 and 5; Exhibit "U", Sentences; Exhibit "V", Judgment; Exhibit "W", Commitments; Exhibit "X", Transcript of Hearing Held June 11, 1992)

7. The defendant appealed his conviction of judgment and sentence and the Fourth District Court of Appeal per curiam affirmed and issued a Mandate May 14,

1993. (Exhibit "Y", 4DCA92-1990 Mandate and Opinion)

## **II. LEGAL ARGUMENT**

The defendant argues that the Court violated his double jeopardy rights when it vacated his 5-year sentences upon his violation of the furlough agreement, and imposed instead a 10-year sentence for Count 1 of Case No. 91-11370. It appears the defendant's motion is correct.

The defendant challenges his sentences on double jeopardy principles. Jeopardy "attaches when a court imposes a sentence, after which the double jeopardy clauses protect the defendant from receiving a punishment greater than the sentence already imposed." Joslin v. State, 826 So.2d 324, 326 (Fla. 2d DCA 2002). In Ingraham v. State, 842 So.2d 954 (Fla. 4<sup>th</sup> DCA 2003), the Court held that jeopardy attaches when the trial judge pronounces the sentence at a plea conference, and distinguished those situations where the court deferred sentencing until the defendant returned from his furlough. The court's stay and suspension of the sentence was ineffectual because jeopardy had already attached. Id. at 955.

Because this case appears controlled by the decision in Ingraham, the State requests the Court to vacate the 10 year sentence in 91-11370, and to re-impose the concurrent 5-year sentences as originally imposed on April 14, 1992.

WHEREFORE, the State of Florida respectfully requests this Honorable Court to grant the defendant's Motion and to re-sentence the defendant to the 5-year sentence originally imposed by the Court.

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Respectfully submitted,

BARRY E. KRISCHER  
State Attorney

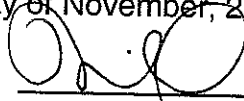


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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to William Mallory Kent, Esq., Attorney for defendant, 1932 Perry Place, Jacksonville, FL 32207-3443, on this 5<sup>th</sup> day of November, 2007.



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Assistant State Attorney