

IN THE SUPREME COURT OF FLORIDA

TERRY CARSON,

Petitioner,

Case No. SC10-1294

v.

STATE OF FLORIDA,

Respondent.

JURISDICTIONAL BRIEF OF RESPONDENT

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## PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, Frederick Grice, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

A bold typeface will be used to add emphasis. Italics appeared in original quotations, unless otherwise indicated.

## STATEMENT OF THE CASE AND FACTS

The pertinent history and facts are set out in the decision of the lower tribunal, attached hereto and found at Carson v. State, 37 So. 3d 884 (Fla. 1<sup>st</sup> DCA 2010).

### SUMMARY OF ARGUMENT

An examination of the operative facts and principles of law, as contained in the "four corners" of the DCA's decision in this case, reveals no express or direct conflict with the decisions in Haggerty v. State, 632 So. 2d 668 (Fla. 4<sup>th</sup> DCA 1994), Williams v. State, 500 So. 2d 501 (Fla. 1986), Epperson v. State, 955 So. 2d 642 (Fla. 4<sup>th</sup> DCA 2007), or Thomas v. State, 932 So. 2d 1221 (Fla. 5<sup>th</sup> DCA 2006). Petitioner has not established a constitutional basis for this Court to exercise its conflict jurisdiction. Therefore, jurisdiction should be declined.

## ARGUMENT

### ISSUE I

WHETHER THIS COURT HAS JURISDICTION TO HEAR  
THIS CASE? (Restated)

Petitioner contends that this Court has jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv), which parallels Article V, § 3(b)(3), Fla. Const. The constitution provides:

The supreme court ... [m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.

The conflict between decisions "must be express and direct" and "must appear within the four corners of the majority decision." Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986). Accord Dept. of Health and Rehabilitative Services v. Nat'l Adoption Counseling Service, Inc., 498 So. 2d 888, 889 (Fla. 1986)(rejecting "inherent" or "implied" conflict and dismissing the petition). Neither the record, nor a concurring opinion, nor a dissenting opinion can be used to establish jurisdiction. See Reaves, supra; Jenkins v. State, 385 So. 2d 1356, 1359 (Fla. 1980)("regardless of whether they are accompanied by a dissenting or concurring opinion").

In Ansin v. Thurston, 101 So. 2d 808, 810 (Fla. 1958), this Court explained:

It was never intended that the district courts of appeal should be intermediate courts. The revision and modernization of the Florida judicial system at the appellate level was prompted by the great volume of cases reaching the Supreme Court and the consequent delay in the administration of justice. The new article embodies throughout its terms the idea of a Supreme Court which functions as a supervisory body in the judicial system for the State, exercising appellate power in certain specified areas essential to the settlement of issues of public importance and the preservation of uniformity of principle and practice, with review by the district courts in most instances being final and absolute.

Accordingly, the determination of conflict jurisdiction distills to whether there is express and direct conflict with decisions cited by Petitioner.

**The decision below is not in "express and direct" conflict with the cases cited by Petitioner.**

The majority opinion in the current case reflected alternate bases for rejecting Petitioner's claim. First, the majority rejected Petitioner's claim stating:

We now conclude that our order was premature and should not have been issued, because Appellant's motion was facially insufficient due to his failure to disclose his plea agreement with the State. It is not the duty of the State, the trial court, or this court to assist Appellant in his plea for relief under rule 3.800(a). We affirm the summary denial of Appellant's motion based on his failure to file a facially sufficient claim.

Carson, 37 So. 3d at 885-86. The court made its finding based upon what it learned from Petitioner's own reply brief, that he had in fact entered into a negotiated plea agreement. See id. at 885. Even though the court found Petitioner's claim to be insufficiently pled, the court then proceeded to reject Petitioner's claim on the merits.

In rejecting Petitioner's claim on the merits, the First District stated:

In the State's response to our show cause order, it correctly cited this court's case law holding that a person who "bargained for [an] obligation [has] thereby waived any objection to the legality of the sentence containing [a] condition of probation." Allen v. State, 642 So. 2d 815, 816 (Fla. 1st DCA 1994). The State further cited case law holding that because a plea agreement is a contract, Appellant contracted for drug offender probation. See Gutierrez, 10 So. 3d at 159 (holding that trial court is without authority to mitigate sentence imposed pursuant to negotiated plea); see also State v. Simons, 22 So. 3d 734 (Fla. 1st DCA 2009) (holding that it is a settled principle of criminal procedure that courts may force the government to honor a plea agreement). As we stated in Allen, "Having accepted the benefits of his plea bargain, [Appellant] will not be relieved of his burdens under the contract." 642 So. 2d at 816.

Once a defendant receives the very real benefit of probation in a plea agreement and then violates that probation, it is too late to consider an argument that he should not have received the probationary sentence. In our view, it is not "illegal" to allow a defendant to agree to serve a special type of probation, e.g., because of a substance abuse problem, even though the trial



court could not *impose* such a condition on an unwilling defendant convicted at trial. Ackermann, 962 So. 2d at 408. As the State noted in its response, courts have recognized that "once a defendant has enjoyed the benefits of probation without challenging the legality of [the] sentence, the defendant is thereafter precluded from an order revoking probation." Matthews v. State, 736 So. 2d 72, 75 (Fla. 4th DCA 1999) (quoting Gaskins v. State, 607 So. 2d 475 (Fla. 1st DCA 1992), *overruled on other grounds*, State v. Powell, 703 So. 2d 444 (Fla. 1997)). In Gaskins, we stated in clear terms that a defendant who accepts the benefits of a probationary sentence will not be heard to claim the sentence was improper after the probationary sentence is revoked. Id. at 476.

Id. at 886.

Petitioner cites the decision of Haggerty v. State, 632 So. 2d 668 (Fla. 4<sup>th</sup> DCA 1994), as conflicting with the First District's decision in his case. In Haggerty, the Fourth District reversed and remanded a case for further proceedings because the trial court had not attached the necessary documents to refute the defendant's claims. In the present case, the First District did not reach a decision contrary to Haggerty. The First District found that Petitioner's claim was in effect refuted by his own pleadings. Thus, this is not a proper basis for conflict jurisdiction.

Petitioner next claims that the First District's decision in the current case conflicts with the decision in Williams v. State, 500 So. 2d 501 (Fla. 1986). In Williams, 500 So. 2d at

503, this Court held that a plea agreement could not confer upon the court power to impose an illegal sentence. The sentence at issue in Williams was a departure sentence during the period of time during which the sentencing guidelines were in place. See id. at 501-02. Williams plea agreement reflected that Williams would be sentenced under the guidelines if he met three conditions, one of which required his appearance at sentencing on a specific date. See id. at 502. Williams failed to appear for sentencing. See id. The trial court sentenced Williams to the statutory maximum periods of incarceration for each of his crimes, even though the guidelines provided for any non-state prison sanction. See id. This Court determined that the sentence imposed involved a departure sentence for which there was not a clear and convincing reason. See id. at 503. As a result, this Court found the sentence to be illegal. See id.

In Quarterman v. State, 527 So. 2d 1380, 1382 (Fla. 1988), this Court receded from its holding in Williams, 500 So. 2d. This Court stated:

Since our decision in Williams, this Court has recognized that a plea bargain can constitute a valid reason for departure. Holland v. State, 508 So.2d 5, 6 (Fla. 1987). Our decision in Williams should not be read to hold to the contrary. The trial court in Williams based departure solely on Williams failure to appear. In the instant case, departure was not only based on Quarterman's failure to appear but was also based on the plea

agreement itself. Further, as noted by the district court, the conditions which Quarterman agreed to were not imposed after the plea bargain had been accepted, see Pumphrey v. State, 502 So. 2d 982 (Fla. 1st DCA 1987); Moore v. State, 489 So. 2d 1215 (Fla. 2d DCA 1986), but were accepted as "an integral part of the bargain itself." 506 So. 2d at 51. We agree with the court below that, under these circumstances, the plea bargain itself serves as a clear and convincing reason for departure and recede from any language in Williams to the contrary.

See id. at 1382.

In this case, Petitioner admitted in his pleadings that he was sentenced to the term about which he now complains pursuant to his negotiated plea agreement. Therefore, there is no conflict with Williams as set forth in and explained by this Court's controlling decision in Quarterman.

Petitioner cites as an additional basis for conflict jurisdiction Epperson v. State, 955 So. 2d 642 (Fla. 4<sup>th</sup> DCA 2007). In Epperson, 955 So. 2d at 643-44, the holding of the court was that the trial court failed to attach portions of record sufficient to refute the defendant's claim. The Fourth District continued in *dicta* to state that "[a] court may not impose drug offender probation other than for the violation of a drug related offense listed in the drug offender probation statute." Id. at 643. This secondary statement is not the decision of the court. The holding of the court was that

insufficient records had been attached, thus, there is no express or direct conflict between the decision of the First District Court of Appeal and the decision of the Fourth District in Epperson. Finally, there is no conflict with Epperson, because the court's holding in this case is that Petitioner failed to sufficiently plead his Florida Rule of Criminal Procedure 3.800(a) motion. Therefore, the additional language in the decision is surplusage, as the court could not find the claim to be insufficiently pled and rule on the merits of Petitioner's motion.

Finally, Petitioner alleges that First District's decision in his case is in express and direct conflict with the decision of the Fifth District in Thomas v. State, 932 So. 2d 1221 (Fla. 5<sup>th</sup> DCA 2006). Petitioner alleges that Thomas declares that he met the pleading requirements imposed by Florida Rule of Criminal Procedure 3.800(a). The decision in Thomas makes no determination related to the pleading requirements for Florida Rule of Criminal Procedure 3.800(a) motions. Thomas involved the imposition of sentence where the crime could not be legally reclassified to permit the aggravation of the offense from a first to a second degree felony because the use of the weapon was an essential element of the charge. See id. at 1223-24. As a result, there is no express and direct conflict between the

First District decision in this case and the Thomas court's decision.

#### CONCLUSION

Based on the foregoing reason, the State respectfully requests this Honorable Court decline to exercise jurisdiction.

SIGNATURE OF ATTORNEY AND CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to TERRY CARSON, DC# 313553, Baker Correctional Institution Annex, 20706 U.S. Hwy. 90 West, Sanderson, Florida 32087, by MAIL on this 16th day of August, 2010.

Respectfully submitted and served,

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[AGO# L10-1-18192]

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the font requirements of Fla. R. App. P. 9.210.

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IN THE SUPREME COURT OF FLORIDA

TERRY CARSON,

Petitioner,

Case No. SC10-1294

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STATE OF FLORIDA,

Respondent.

APPENDIX

Carson v. State, 37 So. 3d 884 (Fla. 1<sup>st</sup> DCA 2010)



District Court of Appeal of Florida,  
First District.  
Terry **CARSON**, Appellant,  
v.  
STATE of Florida, Appellee.  
**No. 1D09-5698.**

April 26, 2010.  
Rehearing Denied June 17, 2010.

**Background:** Defendant who agreed to serve three years of drug offender probation as part of his negotiated plea to battery on a pregnant woman moved for correction of illegal sentence. The Circuit Court, Duval County, L.P. Haddock, J., summarily denied the motion, and defendant appealed.

**Holdings:** The District Court of Appeal, Thomas, J., held that:

- (1) motion to correct sentence was facially insufficient, and
- (2) sentence was not illegal.

Affirmed.

Davis, J., filed dissenting opinion.

West Headnotes

**[1] Sentencing and Punishment 350H ⚡ 2277**

350H Sentencing and Punishment

350HXII Reconsideration and Modification of Sentence

350HXII(C) Proceedings

350HXII(C)1 In General

350Hk2274 Motion or Application

350Hk2277 k. Sufficiency. Most Cited Cases

Defendant's motion to correct illegal sentence was facially insufficient, where defendant failed to disclose that the sentence being challenged was the result of his negotiated plea agreement with the State. West's F.S.A. RCrP Rule 3.800(a).

**[2] Sentencing and Punishment 350H ⚡ 1887**

350H Sentencing and Punishment

350HIX Probation and Related Dispositions

350HIX(D) Factors Related to Offender

350Hk1887 k. Plea bargain or other agreement. Most Cited Cases

Once a defendant receives the very real benefit of probation in a plea agreement and then violates that probation, it is too late to consider an argument that he should not have received the probationary sentence.

**[3] Sentencing and Punishment 350H ⚡ 1887**

350H Sentencing and Punishment

350HIX Probation and Related Dispositions

350HIX(D) Factors Related to Offender

350Hk1887 k. Plea bargain or other agreement. Most Cited Cases

It is not illegal to allow a defendant to agree to serve a special type of probation, e.g., because of a substance abuse problem, even though the trial court could not impose such a condition on an unwilling defendant convicted at trial.

#### **[4] Sentencing and Punishment 350H ↪ 809**

350H Sentencing and Punishment

350HIV Sentencing Guidelines

350HIV(F) Departures

350HIV(F)1 In General

350Hk803 Grounds for Departure

350Hk809 k. Bargain, agreement, consent, or waiver. Most Cited Cases

What would constitute an unlawful departure sentence under the sentencing guidelines becomes a lawful sentence pursuant to a negotiated plea that is accepted by the trial court.

#### **[5] Sentencing and Punishment 350H ↪ 60**

350H Sentencing and Punishment

350HI Punishment in General

350HI(C) Factors or Purposes in General

350Hk60 k. Plea bargain or other agreement. Most Cited Cases

A court may lawfully impose a negotiated sentence that does not exceed the statutory maximum term, but includes terms that the court could not otherwise impose on a defendant without his acquiescence, and a defendant cannot later collaterally attack his own negotiated sentence.

#### **[6] Sentencing and Punishment 350H ↪ 1887**

350H Sentencing and Punishment

350HIX Probation and Related Dispositions

350HIX(D) Factors Related to Offender

350Hk1887 k. Plea bargain or other agreement. Most Cited Cases

Sentence that included three years of drug offender probation for defendant who pled guilty to battery on a pregnant woman was not an illegal sentence that exceeded the statutory maximum, where defendant agreed to the probation under negotiated plea agreement. West's F.S.A. RCrP Rule 3.800(a).

\*885 Terry Carson, pro se, Appellant.

Bill McCollum, Attorney General, Ian M. Cotner, Assistant Attorney General, Tallahassee, for Appellee.

THOMAS, J.

In this case, we address an important issue, to wit: May a criminal defendant who accepts the benefits of a negotiated plea bargain collaterally attack his negotiated sentence years later as “illegal” under Florida Rule of Criminal Procedure 3.800(a)?

Our answer is no, because Appellant's felony drug offender probationary sentence does not exceed the maximum term authorized by the legislature for the second-degree felony of battery on a pregnant woman.

We hold that Appellant's motion is without merit on both substantive and procedural grounds. To allow Appellant to accept the benefits of a plea bargain, and then years later collaterally attack his own negotiated sentence, would seriously compromise finality, discourage the use of negotiated pleas in the trial courts, deplete judicial resources, and “discourage the state from entering into future plea bargains with other defendants.” State v. Gutierrez, 10 So.3d

158, 159 (Fla. 3d DCA 2009).

In 2007, Appellant agreed to serve three years of drug offender probation as part of his negotiated plea to battery on a pregnant woman, a second-degree felony punishable by up to 15 years in prison. In his motion filed under Florida Rule of Criminal Procedure 3.800(a), Appellant attaches no documents regarding his plea and sentence, but asserts that on the “face of his record,” he was sentenced to one year in the county jail followed by three years of drug offender probation for his “alleged crime.” Based on Appellant's reply to the State's response to his motion, however, we know that Appellant pled guilty to this offense when he finally disclosed that he did in fact enter a negotiated plea.

The trial court summarily denied Appellant's motion filed under Florida Rule of Criminal Procedure 3.800(a), and Appellant filed a notice of appeal. This court ordered the State to respond and to show cause “why the summary denial of the appellant's claim that his drug offender probation is illegal should not be reversed and remanded,” and cited Ackermann v. State, 962 So.2d 407 (Fla. 1st DCA 2007) (holding that defendant may not be sentenced to drug offender probation unless he has been convicted of an enumerated chapter 893 offense *or* he has specifically agreed to such probation in a plea agreement).

[1] We now conclude that our order was premature and should not have been \*886 issued, because Appellant's motion was facially insufficient due to his failure to disclose his plea agreement with the State. It is not the duty of the State, the trial court, or this court to assist Appellant in his plea for relief under rule 3.800(a). We affirm the summary denial of Appellant's motion based on his failure to file a facially sufficient claim.

We also reject Appellant's claim on the merits. In the State's response to our show cause order, it correctly cited this court's case law holding that a person who “bargained for [an] obligation [has] thereby waived any objection to the legality of the sentence containing [a] condition of probation.” Allen v. State, 642 So.2d 815, 816 (Fla. 1st DCA 1994). The State further cited case law holding that because a plea agreement is a contract, Appellant contracted for drug offender probation. *See* Gutierrez, 10 So.3d at 159 (holding that trial court is without authority to mitigate sentence imposed pursuant to negotiated plea); *see also* State v. Simons, 22 So.3d 734 (Fla. 1st DCA 2009) (holding that it is a settled principle of criminal procedure that courts may force the government to honor a plea agreement). As we stated in Allen, “Having accepted the benefits of his plea bargain, [Appellant] will not be relieved of his burdens under the contract.” 642 So.2d at 816.

[2][3] Once a defendant receives the very real benefit of probation in a plea agreement and then violates that probation, it is too late to consider an argument that he should not have received the probationary sentence. In our view, it is not “illegal” to allow a defendant to agree to serve a special type of probation, e.g., because of a substance abuse problem, even though the trial court could not *impose* such a condition on an unwilling defendant convicted at trial. Ackermann, 962 So.2d at 408. As the State noted in its response, courts have recognized that “once a defendant has enjoyed the benefits of probation without challenging the legality of [the] sentence, the defendant is thereafter precluded from an order revoking probation.” Matthews v. State, 736 So.2d 72, 75 (Fla. 4th DCA 1999) (quoting Gaskins v. State, 607 So.2d 475 (Fla. 1st DCA 1992), *overruled on other grounds*, State v. Powell, 703 So.2d 444 (Fla.1997)). In Gaskins, we stated in clear terms that a defendant who accepts the benefits of a probationary sentence will not be heard to claim the sentence was improper after the probationary sentence is revoked. Id. at 476.

[4] Appellant cites Williams v. State, 500 So.2d 501 (Fla.1986), and Wright v. State, 743 So.2d 103 (Fla. 1st DCA 1999), in his reply, arguing that he could not enter a plea to an unlawful sentence. These holdings are neither controlling nor persuasive. In Quarterman v. State, 527 So.2d 1380, 1382 (Fla.1988), the supreme court receded from its perceived holding in Williams that a court could not exceed the then-controlling sentencing guidelines based on a legitimate plea bargain. The court explained that the facts of Quarterman presented a different issue, to wit: Can the trial court depart from the sentencing guidelines based solely on the defendant's failure to appear? Id. The court explained that any reference to departures based on plea agreements in Williams was dicta: “Since our decision in Williams, this Court has recognized that a plea bargain can constitute a valid reason for departure.” Id. Thus, what would constitute an unlawful departure sentence under the guidelines becomes a lawful sentence pursuant to a

negotiated plea that is accepted by the trial court because “the conditions which Quarterman agreed to were not imposed after the plea bargain had been accepted, but were accepted as ‘an integral \*887 part of the bargain itself.’ ” *Id.* (citations omitted).

In *Wright*, this court held that a defendant who pled guilty to cocaine trafficking could not receive a sentence of 17 years' imprisonment as an habitual offender. 743 So.2d at 103. We held that section 893.135(1)(b), Florida Statutes, required that such an offense “shall be sentenced pursuant to the sentencing guidelines.” *Id.* We further held that Wright's “habitual offender sentence for a violation of this section fails to comport with statutory limitations and constitutes an illegal sentence.” *Id.* Citing *Williams*, we then stated, “A trial court is not authorized to impose an illegal sentence, even pursuant to a plea agreement.” *Id.* This court failed to note that in *Quarterman*, the Florida Supreme Court *receded* from this proposition in *Williams*. Thus, our decision in *Wright* is not controlling on this statement of law because it directly conflicts with the contrary statement the Florida Supreme Court pronounced in *Quarterman* ten years earlier.

Here, the dissenting opinion states that our opinion “misstates the holding” of *Quarterman* because that opinion only receded from the view that a plea bargain cannot constitute a valid departure from sentencing guidelines and does not address an “illegal” sentence. We quote from the *Williams* decision that *Quarterman* receded from: “Nor are we persuaded that the defendant's ‘acquiescence’ to the conditions imposed by the trial judge makes a difference. A trial court *cannot impose an illegal sentence pursuant to a plea bargain.*” *Williams*, 500 So.2d at 503 (emphasis added). Thus, in *Williams*, the Florida Supreme Court held that it is an illegal sentence to impose a departure sentence pursuant to a plea bargain that requires the defendant to appear at sentencing. *Id.* In *Quarterman*, the Florida Supreme Court receded from this principle, stating that “the plea bargain itself serves as a clear and convincing reason for departure and [we] recede from any language in *Williams* to the contrary.” 527 So.2d at 1382.

[5] While a departure sentence challenged on direct appeal does not equate to a collateral challenge to an illegal sentence filed under Florida Rule of Criminal Procedure 3.800(a), the principle is the same, to wit: May a court lawfully impose a negotiated sentence that does not exceed the statutory maximum term, but includes terms that the court could not otherwise impose on a defendant without his acquiescence? We think that a trial court has that authority, and we think that the State and the defendant can agree to such terms. Thus, a defendant cannot later collaterally attack his own negotiated sentence.

[6] The dissenting opinion also cites *Larson v. State*, 572 So.2d 1368, 1371 (Fla.1991), for the proposition that a defendant cannot plead to an “illegal sentence.” However, even the cited proposition in *Larson* notes that the Florida Supreme Court's statement refers to a sentence that would “exceed the penalties established by law.” *Id.* The dissenting opinion here does not apparently disagree with this court's recognition, long after the *Larson* decision, that felony drug offender probation can be imposed on a defendant who would otherwise not qualify for such a sentence, if the defendant *asks to receive that probationary sentence*. *Ackermann*, 962 So.2d at 408. In our view, such a sentence is not an “illegal sentence” that exceeds the statutory maximum, such that it can be collaterally attacked *at any time* under Florida Rule of Criminal Procedure 3.800(a). Furthermore, in *Larson*, the issue was whether the contemporaneous objection rule applied at sentencing where a trial court \*888 imposed an illegal condition. *Larson*, 572 So.2d at 1370. Because the court found the condition was not unlawful, it found the rule applied. *Id.* This holding does not establish a rule that a criminal defendant can agree to receive felony drug offender probation as part of a negotiated sentence and then collaterally attack such a sentence at any time.

This case raises the issue of whether a criminal defendant can ask for and receive a type of probation that assists those with substance abuse problems and then, years later, collaterally attack his own negotiated sentence, draining limited public resources. To make matters worse, Appellant was not even honest and forthcoming about his own negotiated sentence, forcing the State and this court to expend considerable resources to review his meritless claim and discover the truth. The public does not have unlimited financial wealth to countenance such unprincipled exploitation of its judiciary, which deprives more deserving criminal defendants and other litigants of the proper review that they deserve under the law.

We AFFIRM the summary denial of Appellant's motion filed under Florida Rule of Criminal Procedure 3.800(a).

KAHN, J., concurs; DAVIS, J., dissents with written opinion.

DAVIS, J., dissenting.

I respectfully dissent. The issue in this case is not whether a defendant may enjoy the benefits of probation and later complain about its burdens. The issue before this Court is whether there is sufficient evidence in the record on appeal to determine whether the trial court properly denied Appellant's claim of an illegal sentence.

Pursuant to Florida Rule of Criminal Procedure 3.800(a), Appellant filed a motion alleging that the imposition of drug offender probation was improper because he was not convicted of the purchase or possession of a controlled substance. The trial court summarily denied Appellant's motion without making any factual findings or legal conclusions and without attaching any portions of the record conclusively refuting Appellant's claim. Contrary to the assertion in the majority opinion, Appellant asserted a facially sufficient claim that his sentence was illegal.

"In order to allege a facially sufficient rule 3.800(a) motion, the appellant must allege: (1) he is serving an illegal sentence; (2) the error appears on the face of the record; and (3) how and where the record demonstrates an entitlement to relief." Lauramore v. State, 949 So.2d 307, 308 (Fla. 1st DCA 2007); *see also* Teague v. State, 26 So.3d 616, 617 (Fla. 1st DCA 2009). Appellant alleged that his drug offender probation was illegal, that the illegality of the sentence was apparent from the face of the record, and that his conviction for aggravated battery showed that he did not qualify for drug offender probation. Thus, Appellant's claim is facially sufficient. Beals v. State, 14 So.3d 286, 287 (Fla. 4th DCA 2009) (holding that the issue of whether a trial court has the authority to impose drug offender probation is cognizable in a rule 3.800(a) motion). However, it is impossible to determine from the record on appeal whether Appellant's claim is meritorious.

The only items included in the record on appeal were Appellant's two-page motion for relief, the lower court's order denying the motion without any explanation, and the notice of appeal. This Court has long held that the trial court is required to attach portions of the record conclusively refuting facially sufficient claims for relief in rule 3.800(a) motions. Webb v. State, 642 So.2d 782, 783 (Fla. 1st DCA 1994). The lack of any record attachments in this case is the sole reason this Court was forced to "expend considerable resources" \*889 to review Appellant's motion. Without the plea colloquy or a written plea agreement, it is impossible to determine whether Appellant's claim has merit. Thus, as conceded by the State, this case should be remanded back to the trial court with directions to attach portions of the record to conclusively refute Appellant's claim or for resentencing.

Contrary to the majority's assertion, if the court imposed statutory drug offender probation, even pursuant to a negotiated plea, then Appellant's claim would have merit. Epperson v. State, 955 So.2d 642, 643 (Fla. 4th DCA 2007). A trial court may order a probationer to complete a drug treatment program as a special condition of ordinary probation, as a condition of drug offender probation pursuant to sections 948.034 and 948.20, Florida Statutes, or as part of a treatment based drug court program pursuant to section 397.334, Florida Statutes. Lawson v. State, 969 So.2d 222, 231 (Fla.2007). Appellant alleged that he was sentenced to statutory drug offender probation which, if true, would be an illegal sentence because he was not convicted of one of the enumerated chapter 893 offenses. §§ 948.034(1), 948.20, Fla. Stat. (2006); Ellis v. State, 816 So.2d 759, 762 (Fla. 4th DCA 2002). While Appellant could have agreed to special conditions of probation similar to those imposed in drug offender probation, the trial court did not attach relevant portions of the record to establish that this was the case. *See* Beals, 14 So.3d at 287 (reversing the imposition of drug offender probation, but remanding with leave for the trial court to substitute, for the drug offender probation, a term of probation with or without special conditions related to substance abuse); Andrew v. State, 988 So.2d 158 (Fla. 4th DCA 2008) (same).

The majority also misstates the holding and application of the supreme court's decision in Quarterman v. State, 527 So.2d 1380 (Fla.1988), when it asserts that the supreme court has receded from its holding that a trial court is not authorized to impose an illegal sentence pursuant to a plea agreement. In Quarterman, the defendant agreed to appear for sentencing at a later date as a part of his plea agreement because he wanted to visit a sister who was hospitalized. *Id.* at 1381. When the defendant failed to appear for sentencing, the trial court imposed a sentence

greater than the agreed upon sentence and in excess of the recommended guidelines range. Id. The trial court provided multiple reasons for departure, including the defendant's failure to appear for sentencing. Id. The supreme court held that the plea bargain was a clear and convincing reason for a departure sentence because the defendant's presence at a later date was an integral part of the agreement. Id. at 1382. The supreme court distinguished the facts in Quarterman from its previous decision in Williams v. State, 500 So.2d 501 (Fla.1986), by stating that it perceived the issue in Williams to be whether it was permissible to deviate from the guidelines based on the defendant's failure to appear, which was a crime for which the defendant was not convicted. Id. Thus, the court clarified that under the circumstances in Quarterman, the plea bargain itself served as a clear and convincing reason for departure and the court receded from any language in Williams contrary to that proposition. Id.

The statement in Williams that a trial court cannot impose an illegal sentence pursuant to a plea bargain is not contrary to the holding in Quarterman because a departure sentence is not necessarily an illegal sentence. White v. State, 816 So.2d 820, 821 (Fla. 5th DCA 2002) (holding that a departure sentence is not an illegal sentence as long as the sentence does not exceed the statutory guidelines). Moreover, the definition of an illegal sentence is not limited to when the sentence exceeds \*890 the statutory maximum. The supreme court has defined an illegal sentence as "one that imposes a punishment or penalty that no judge under the entire body of sentencing statutes and laws could impose under any set of factual circumstances." Williams v. State, 957 So.2d 600, 602 (Fla.2007). Thus, when the supreme court receded from its holding in Williams that implied that a plea bargain could not be a valid reason for a departure sentence, it did not recede from its previous holding that a defendant cannot plead to an illegal sentence.

The majority also overlooks the fact that in a more recent opinion the supreme court reaffirmed its statement in Williams that a defendant cannot plead to an illegal sentence. Larson v. State, 572 So.2d 1368, 1371 (Fla.1991) ("A defendant cannot confer on others a right to do something the law does not permit. For example, a defendant cannot by agreement confer on a judge authority to exceed the penalties established by law."). Additionally, the supreme court has favorably cited to Williams to support its holding that a trial court cannot impose an illegal sentence pursuant to a plea bargain. Bates v. State, 750 So.2d 6, 11 (Fla.1999). The entry of a plea agreement does waive some of a defendant's constitutional rights; however, it does not waive a defendant's right to challenge an illegal sentence. Amendments to Florida Rules of Appellate Procedure, 685 So.2d 773 (Fla.1996) (holding that one of the issues that may be raised on appeal after a defendant pleads guilty or no contest is the illegality of a sentence). Additionally, the majority also disregards numerous cases from this Court and all of the other districts holding that a plea bargain cannot justify the imposition of an illegal sentence. See generally Darling v. State, 886 So.2d 417, 418 (Fla. 1st DCA 2004) (holding that a defendant cannot plead to an illegal sentence); Bruno v. State, 837 So.2d 521, 523 (Fla. 1st DCA 2003) (same); Wright v. State, 743 So.2d 103, 103 (Fla. 1st DCA 1999) (same); Taylor v. State, 899 So.2d 1191, 1192 (Fla. 1st DCA 2005) (same); Leavitt v. State, 810 So.2d 1032, 1033 (Fla. 1st DCA 2002) (same); Kinney v. State, 808 So.2d 1285, 1285 (Fla. 1st DCA 2002) (same); Debord v. State, 802 So.2d 528 (Fla. 1st DCA 2001) (same); Blanchette v. State, 620 So.2d 258 (Fla. 1st DCA 1993) (same); Hebert v. State, 600 So.2d 1293, 1294 (Fla. 1st DCA 1992) (same); see also Walters v. State, 812 So.2d 457, 458 (Fla. 5th DCA 2002) (holding that a defendant may not plead to an illegal sentence); Hollybrook v. State, 795 So.2d 1012, 1013 (Fla. 2d DCA 2001) (same); Gifford v. State, 744 So.2d 1046, 1048 (Fla. 4th DCA 1999) (same); Brister v. State, 622 So.2d 552, 553 (Fla. 3d DCA 1993) (same).

In this case, it is unclear from the record whether Appellant's sentence is illegal. I, therefore, would reverse the trial court's summary denial of Appellant's motion and remand for the attachment of portions of the record conclusively refuting Appellant's allegations or for resentencing.

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