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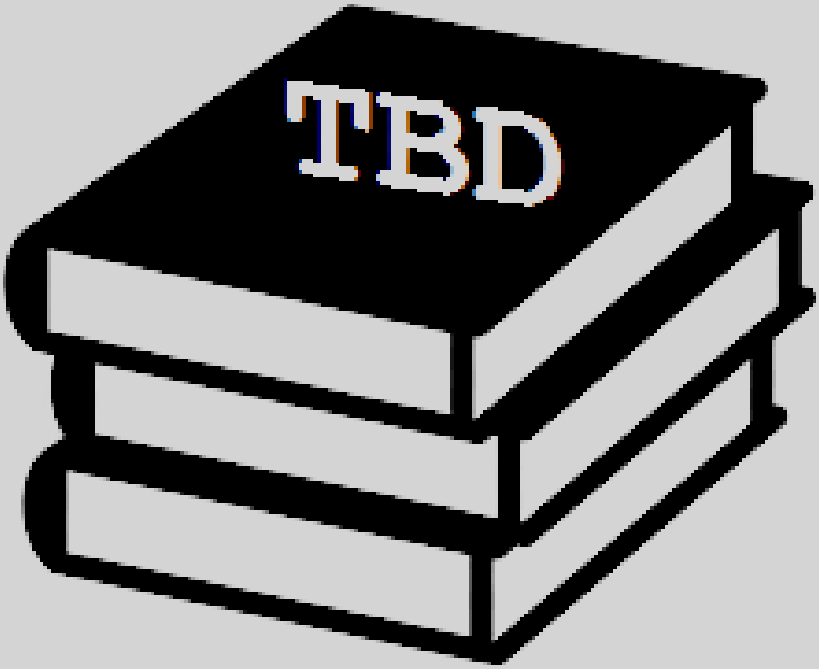

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PROVIDED TO OKEECHOBEE CORRECTIONAL INSTITUTION ON 12-21-18 FOR MAILING BY

IN THE SUPREME COURT
STATE OF FLORIDA

FRANCHILOR DEVALON,
Petitioner,

V.

ANNE MARIE CRAFT,
FLORIDA BAR COUNSEL, et al.,
Respondent.
_____/

Case No.: _____
Fla. Bar File No.: 2019-30,043(19B)
Case No.: 4D16-3930

FILED
JOHN A. TOMASINO
DEC 27 2018
CLERK, SUPREME COURT
BY

PETITION FOR WRIT OF MANDAMUS[1]

COMES NOW, Petitioner, Franchilor Devalon, pro se pursuant to Rule 1.630, Fla. R. Civ. P. and hereby respectfully moves this Honorable Court for an order, issuing writ of mandamus, wherewith the Florida Bar may discipline attorney James Regan for evident violations of Fla. Bar Rules 4-1.11 (c), 4-1.7 and denial of the due process and equal protection clauses of the Fourteenth Amendment and right to counsel of the Sixth Amendment to the U.S. Constitution. In support thereof, Petitioner would respectfully show as follows:

STATEMENT OF THE CASE AND FACTS

Petitioner Devalon filed a Florida Bar Inquiry/Complaint form on July 18, 2018 against attorney James Regan. The issue presented involved Rules of

[1] Although ineffective assistance of counsel is apparent, a Rule 3.850 Motion will present it comprehensively. Thus, this Petition is intended to enforce known legal rights equally and authoritatively.

Professional Conduct which were violated when Mr. Regan, a former assistant State Attorney, who prosecuted Mr. Devalon in a previous case, failed to disclose this fact to Mr. Devalon's family in assuring a procedural safeguard against the Special Conflict of interest of which he spoke October 10, 2016:

"THE COURT: Okay, so this is Devalon, Franchilor Devalon, 2012-1437. Go ahead.

MR. REGAN: Judge, it has become apparent to me when I went to go see him up there that a conflict has arisen that prevents me from continuing as his counsel because I can't say why... Otherwise it would violate privilege.

THE COURT: Okay, so what do you want me to do?

MR. REGAN: Well, I – my belief is I should withdraw, uh, move to withdraw. I don't believe I can effectively represent him anymore."

Petitioner hereby presents as sufficient evidence Mr. Regan's testimony thereon: "Judge, I, my client, I believe uh believes that we now have irreconcilable differences and, uh, I think he would like to terminate my services." (Nelson Hearing, pages 14-15), contrary to the Florida Bar's opinion. See Exhibit-A.

Petitioner's charges and lawyer-client privilege was considered by Mr. Regan to be an issue throughout the proceeding. It was discussed at length but was not raised by Mr. Regan until the sentencing hearing. However, the issue Sub Judice, i.e., conflict of interest, was made part of the record which the Petitioner now relies upon in preliminarily refuting claims of insufficiency of the evidence from the materials provided both throughout the said Florida Bar

proceeding and the present one. See Exhibit-B (Highlighted testimony).

The known legal rights in question are of a constitutional nature which were safeguarded by a proposal which amended rule 4-1.7 (conflict of interest) to include language regarding a current client's consent to representation despite a potential conflict. The Bar's proposal was modified to permit a client to both confirming the client's consent in writing and by clear statements made on the record at a hearing.

In the instant case, Mr. Regan's later admission and Mr. Devalon's vehement, continuous and nonstop efforts establishes the conflict of interest that is currently the subject of this action:

On July 31, 2018, Florida Bar Counsel, Anne Marie Craft, ordered a response from Mr. Regan by August 15, 2018.

On August 22, 2018, Mr. Devalon submitted a reply, refuting Mr. Regan's defense that the Court's ruling was in any way indicative, based on the retainment of this lawyer by Mr. Devalon's family,[2] to suggest that such decision by said family negates the Florida Bar's said requirements, especially when conflict representation was acknowledged at sentencing after Mr. Devalon's failed attempt to fire Mr. Regan.

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[2] It should be noted that an attorney's interests (or the lack thereof) and any remote possibility of a conflict, is not readily apparent to such family member when consulting with an attorney in the retainment process.

Mr. Devalon's conviction of 2008, ipso facto, was a subject that became a main feature of the trial in question, because the Jury is bound to his "convicted felon" status and may not have returned with any verdict that Mr. Regan may have defended him against ethically, effectively, nor successfully, inasmuch as the "convicted felon" status was obtained by Mr. Regan. Thus, the said complaint was intended to shed light on a question of great public importance that is of first impression. I.e., Mr. Devalon was indeed a "convicted felon" but he had opted to present every adversarial challenges available to him through the type of representation suggested by the Sixth Amendment to the U.S. Constitution, but could not because Mr. Regan ignored his amicus curiae role (officer of the Court).

Mr. Devalon's known legal rights, for which he seeks a writ of mandamus to enforce is indeed a right to a trial, a right to conflict free representation, and the right to equal protection and due process of the law, none of which is evident in the process Sub Judice.

Therefore, the said Bar's denial of the relief sought should be weighed against the actual facts, in context with the laws in relation to said Bar Rules.

ARGUMENT - POINT I

Petitioner hereby avers that the Sixth Amendment, the fourteenth Amendment, and Strickland v. Washington, 466 U.S. 668, 695 (1984) are well established laws of the land, of which he has the known rights that may be

enforced by issuance of writ of mandamus. However, the distinguishable factor between the issues presented hereby and those which may be presented by Rule 3.850, Fla. R. Crim. P., motion is the acts/omissions of the Attorney in question as it relates to the Rules of the Florida Bar relied upon herein, and, whether the violation in question can so easily be negated as shown in the attached denial by the Florida Bar and allow the attorney to act with impunity/lawless.

First and foremost, the acts in question were Mr. Regan's acceptance of payment to defend a Defendant in a trial that he knew or should have known that he was not going to be able to, without risking bringing into the horizon of such defense the plea which resulted in the said 2008 conviction, which he had secured. Then there's the defense itself, which was suppose to convince a jury that Mr. Devalon was not a convicted felon (in accordance with the Statute) in lieu of the actual facts. Inferences from the 2008 conviction made Mr. Regan's representation unlawful to the extent that the Jury's instruction negates any such defense as nothing more than a useless charade. E.g., the petitioner's status as a convicted felon, winning trial, a lawyer remaining perfunctory yet non-adversarial in the process, presented an irrefutable conflict that a layman in law would have never been able to ascertain before retaining Mr. Regan, i.e., without the disclosure of the possibility or even the occasion that the parties interests may be conflict, insofar as it involves a defense Mr. Regan would not be interested in presenting on behalf of

the Petitioner that may be harmful to his 2008 success. See Strickland, 466 U.S. 692. (Principle of Judicial estoppel).

ARGUMENT - POINT II

Petitioner herein cites as support, **In re Amendments to Rules Regulating Fla. Bar,** 933 So. 2d 417 (Fla. 2006) based upon the irrefutable fact that Mr. Regan actively represented the State of Florida and was successful in obtaining a conviction, then conflictingly switching interests. Petitioner further argues that he is entitled to issuance of writ of mandamus for enforcement of his clear legal right to the equal protection of the Florida laws which empowers its citizens to file complaints against professionals who deviates from well established business practices. Const. Amend. Fourteen. See McFarland v. Yukins, 356 F. 3d 688, 707-11 (6th Cir. 2004).

Similarly, the conflict of interest involving the same attorney, the same defendant, but different interests from that of the initiating process, would inevitably cause "obvious and strong defense" to not be pursued, because either outcome would hurt one and help the other. Thus, upon careful consideration of the attorney's potential effectiveness and the lack of competence (or enthusiasm) displayed by this attorney, the petitioner **did** attempt to fire Mr. Regan to no avail. However, the Bar touted the Petitioner's unsuccessful attempt to fire Mr. Regan, during two years of representation, as a form of acquiescence that waives the

process initiated by the filing of the said "Florida Bar Inquiry/Complaint Form," and Fla. Bar rule 4-1.7.

Therefore, it is respectfully urged that, notwithstanding the Bar's claim that there is insufficient evidence from the materials provided, that this Honorable Court takes compulsory Judicial Notice of the actual evidences relied upon by the Petitioner due to the fact that Mr. Regan's Response and the limited evidence **he** provided only concerns itself with safeguarding its capricious and arbitrary disregard of the facts, as it relates to the well established rules that forbids such unethical, improper and unlawful conduct by an attorney in such criminal proceeding. 446 U.S. 335, 350 (representation of two sides). A potential win for Mr. Regan no matter the verdict is prima facie, hence a conflict.

ARGUMENT - POINT III

Petitioner hereby contends that an attorney is an officer of the court who must first believe in his/her client's innocence or the State's inability to prove the case against him/her. See Reynolds v. Chapman, 253 F. 3d 1337, 1347 (11th Cir. 2001).

In the instant case, the conflict of interest had an adverse effect on the specific aspect of counsel's performance as it involves an offense which the attorney himself helped prosecute. Thus, the Florida Bar's cited Rules in question should be examined in considering whether, first, there's an obligation for lawyers

to disclose possible appearance of conflicting interests; second, whether such Rule delegates such responsibility equally on a retainer of such attorney; third, whether the Florida Bar may seek to discipline such attorney, and, lastly, whether the burden of proof standard of this Honorable Court for criminal proceeding is applicable in this proceeding[3] as maintained by the said Bar. Petitioner submits the actual facts, which may be supported by the records, and the attorney's contradictory statements throughout the complaint process, which touts the Jury's verdict of **Guilty** to a lesser included offense of attempted murder and **Guilty** of possession of firearm by a convicted felon as a victory indicative of his innocence of conducts proscribed by this Honorable Court. Moreover, Mr. Regan himself acknowledged petitioner's displeasure and his concern as to the conflict Sub Judice during the sentencing phase of the proceeding but the Court's intrusion provided him one of the defenses relied upon by both himself and the Florida Bar in the afore said denial of the relief sought. This was an error which may not remain unresolved. See United State v Schwimmer, 924 F. 2d 443, 446-47 (2d Cir. 1991).

Additionally, Petitioner argues that the Florida Bar's claims in the attached Exhibit-A disregards the many prima facie showings included in the pro se pleadings, including but not limited to **Nelson hearing** transcript, the Petitioner's

[3] The Florida Bar mistakenly applied a burden of proof standard which may only be considered by a trier of facts in a criminal proceeding while maintaining the civil nature of the case advantageously.

own sworn statements and the said subsequent deficient performance based upon the attorney's conflicted interests (i.e., leaving his conviction undisturbed[4] versus acquittal). See Haines v. Kerner, 404 U.S. 519, 520 (1972) (Pro se complaint to be liberally construed).

Lastly, it is respectfully submitted herein that the Petitioner is entitled to a writ of mandamus which is the only remedy available to effect the clients' consent and lawyers disclosural of the information in question, whereby they may not later present a revelation of facts which may be grounds for the action such as that Sub Judice, i.e., potential conflict of interest. See **In Re Amendments,** supra.

Therefore, inasmuch as the said Florida Bar Rules 4-1.4-2 requires full disclosure of the act or process of previous confliction position(s) or stance(s) taken by its members, Petitioner's family was indeed deceived by Mr. Regan upon his failure to initially disclose the facts, the laws and the special circumstances which forbids such representation. See Cuyler v. Sullivan, 446 U.S. 335 at 348 (a show of Sixth Amendment violation).

---

[4] Competent argument by Mr. Regan may have been cause for a Court to find that the plea deal of 2008 was involuntary, unknowing and without establishment of factual basis.

CONCLUSION

WHEREFORE, based on the foregoing facts, arguments and authorities, Petitioner prays that this Honorable Court grants the relief prayed for together with all further relief deemed just and proper.

Respectfully Submitted,

/s/ _____
Franchilor Devalon petitioner pro se

UNNOTARIZED OATH

I SWEAR UNDER THE PENALTY OF PERJURY that the foregoing facts are true and correct.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition has been furnished to the office of the Attorney General, at the Capitol PL-01, Tallahassee, Fl. 32399, on this 21 day of December 2018, by legal-mail staff at Okeechobee C. I..

Dated December 21, 2018

/s/ _____
Franchilor Devalon DC K75220
Okeechobee Correctional Institution
3420 N.E. 168th Street
Okeechobee Fla. 34972

Exhibit A

THE CLERK: Do you want me to tell him to hold any that Judge McCann -

THE COURT: Yeah, I told him that on Friday. I sent him an email, but you can say it again.

THE CLERK: Okay.

THE COURT: Just remember, don't let any jurors out of the courthouse until we are clear. That's fine.

Okay, number two, and I think I know the answer, but I'm just asking so the record is clear. Is there a plea offer ever made in this case?

MR. BRUIN: Uh, no, sir.

MR. REGAN: No.

THE COURT: Okay. Okay, I just wanted everything to be clear on the record what we are doing here along that line.

Okay, we'll come back at 1:00 once again and we'll have at least 50, 48 or 50, maybe more. I'd like to get more and we'll see what we can do. Okay, thank you.

(Off Record - On Record)

THE COURT: Okay, now going back to our case, Franchilor Devalon, 2012 - and those that are here for the drug court meeting, we'll get to it. Uh, we've got plenty of time and we're fine.

2012-1437. Okay, uh, Mr. Devalon is here again and the attorneys are present. What's going on now, Mr. Regan?

MR. REGAN: Judge, I, my client, I believe, uh, believes

Irreconcilable Differences

that we now have irreconcilable differences and, uh, I think he would like to terminate my services.

THE COURT: Okay. Swear in the defendant, please.

THE CLERK: Sir, raise your hand, please. Do you swear or affirm the evidence that you're about to give will be the truth, the whole truth and nothing but the truth?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Your full name, please.

THE DEFENDANT: Franchilor Devalon.

THE COURT: Okay. We are now conducting a Nelson Hearing, uh, for the record to be clear.

Uh, what are you asking me to do, sir?

THE DEFENDANT: (Uh, as of right now, I don't, uh, I don't - I don't prefer Mr. Regan on my case. Me and family members, we need - we need to hire another attorney for the - for my benefit, for the good of my benefit and as of right now, I don't see him fitting in that role, sir).

THE COURT: Okay, and why do you want to discharge Mr. Regan from your case? Tell me.

THE DEFENDANT: (As he said, uh, Your Honor, we - we not seeing - we not seeing eye to eye, sir. It's - I can't have him on my case. I don't feel like he's rep- he - he's gonna represent me to full potential, sir).

MR. REGAN: I'm sorry, may I interrupt, judge? I was retained, not appointed.

THE COURT: Okay, that's irrelevant.

MR. REGAN: Okay.

THE COURT: I mean, to me. I appreciate the clarification for the record. To me it's irrelevant though.

MR. BRUIN: Judge, sorry, for a Nelson Hearing though, that's to have someone discharged. He can get rid of Mr. Regan if he wants if he hired him.

THE DEFENDANT: I hired him.

MR. BRUIN: So there's a difference.

THE COURT: Okay, okay, but my decision is whether we're going to try this case today. That's what I need to go into.

MR. BRUIN: Okay.

THE COURT: I understand a Nelson Hearing and I appreciate that, but let me continue on with the questioning, okay?

Okay, sir, so you say the lack of, I don't want to misphrase this. You said lack of communication, not seeing eye to eye, uh, and, uh, what else, sir? And I'm not asking that there has to be more, I just want to make sure you get everything, once again -

THE DEFENDANT: Sir, I just -

THE COURT: - clearly on the record.

THE DEFENDANT: I would - I would like this - this - this trial to be postponed until we have another attorney that will represent me. As of right now, I don't - I don't

feel like we could go to trial today. Me and my family will attempt to hire another attorney, but until then, I would ask the Court can they appoint me a counsel, a public defender until me and my family hire a private attorney, sir?

THE COURT: Okay. So what you're asking me to do, uh, first, a Nelson Hearing we are determining the competency of, uh -

THE DEFENDANT: No, Your Honor, Your Honor -

THE COURT: You're not going to let me talk, so I'll let you talk. Go ahead now.

THE DEFENDANT: No, I just wanted to mention, excuse me, Your Honor, I apologize.

THE COURT: Okay, go ahead.

THE DEFENDANT: (But I just wanted to mention we retained him, so I would - I would think being that I don't feel he would represent me in the best of - in the best of my interest, I feel like I should have - well, me and my family should have the power to release him also.)

THE COURT: Okay, thank you.

Okay, based on, I'm trying to see when you came into the case, Mr. Regan. Do you know when you filed your notice of appearance? Oh, here it is. Latest appearance, let me see if this is you or someone else. Give me a moment. Okay, here it is.

Notice of appearance was filed by this attorney July 15,

2014. That's two years ago and a month ago, uh, a little over a month. So it's about 25 months ago he's been on the case.

Since that time, Mr. Regan, has - what preparation have you done for the case, sir?

MR. REGAN: Well, judge, I have my records in this case because, uh, it has always been slightly adversarial. Uh, I've done - he's given me, on multiple occasions, lists of case law to look up that were not, you know, one day three hours pulling cases. Not one of them helped his cause whatsoever and this was on multiple occasions. I've gone out to visit with him.

I don't have a - I didn't - I haven't written down all the phone calls from the family, which must be in the hours.

Uh, I've gone over the depositions, I've scanned them so I could find them at the - at the - so if I wanted to search a deposition for the word "gun" I can do that immediately without flipping through my pages.

Uh, he's talked to me about wanting to move for a motion to dismiss. I told him that he would have to swear to all the facts, which he cannot do.

Uh, he doesn't under- I told him that I, at the close of the State's evidence that I would move for a judgment of acquittal. He wants me to file for one before we start evidence, which is not possible.

Uh, I - I've examined the matter for a motion to suppress. There's nothing to suppress.

So, I - I've - I think I have been overly diligent knowing that this particular client is very demanding, uh, and that's why I kept time records, which I - which I don't usually do in a criminal case.

THE COURT: Okay. How many times have you met with the defendant?

MR. REGAN: Uh -

THE COURT: Approximately, approximately.

MR. REGAN: One, at least two, I - I would say at least four, judge. I can pull that from the jail. It's at least four, maybe five.

THE COURT: Okay. Did the, Mr. Devalon is - is right in one sense and so is Mr. Bruin regarding that issue. Uh, this doesn't even require a Nelson Hearing when the defendant seeks to discharge a privately retained attorney. Jackson v. State, 979 So.2d 442 stated that.

Uh, there's also no basis here for a discharge of, uh, there's no issue about competency or, uh, or preparedness of the attorney from the record here.

So, here's the point. We're going to try this case. We're going -

THE DEFENDANT: Your Honor, I don't -

THE COURT: - to try -

THE DEFENDANT: - want him on my case.

THE COURT: Okay, okay, then I'll be - the public defender is here and they can represent you and try the case. We're gonna start the trial -

THE DEFENDANT: Your Honor -

THE COURT: - today though.

THE DEFENDANT: Your Honor, can I say something?

THE COURT: You have been.

THE DEFENDANT: Can I please -

THE COURT: Go head.

THE DEFENDANT: - say something?

THE COURT: The last thing, go ahead.

THE DEFENDANT: So, you - you saying I - I can't just - just, this trial in this court, can't be postponed -

THE COURT: You can't -

THE DEFENDANT: - until we have - until I find another attorney?

THE COURT: Correct. This is the second oldest, I believe, case in the entire circuit. It's a 2012 case. I have an obligation to do my job to get these cases tried.

Now you're putting it on the record why we shouldn't try it. Once again -

THE DEFENDANT: So, I'm forced -

THE COURT: - let me finish, okay? You've got to let me finish or we have no chance here. You've got to let me

finish. I've let you talk, I think a lot. Let me talk, that's all I'm asking, okay?

Okay, the bottom line is, when I finish, I'll say, give me your response. Okay?

Okay, this case is a 2012 case and it is now 2016. This attorney has been on the case for over two years. He's prepared the case. He is ready for trial and we're ready for trial today. We have a jury here. The case has been prepared. The State has witnesses here. I - I, uh, have prepared and said date certain and we set a long time ago. It was changed once or twice already for various reasons and we're going to try the case this week. It is ready to go to trial. We are trying this case is what it comes down to. The Court is ready, the time is ready, it is here today.

Now the defendant says he doesn't want to try this case this week. I'm trying to make the record clear, so if I'm ~~wrong~~, somebody will review it and tell me I was wrong, sir. That's what it comes down to. But we are going to try this case.

Now whether you try the case with Mr. Regan or you try it with a public defender, it doesn't matter to me. I'm fine with that. I don't care. The State probably doesn't care. We'll just try the case.

So I'll ask the Public Defender's Office here if you want to step in and take the case, we can try the case this

week. That's what it comes down to.

THE DEFENDANT: Sir -

THE COURT: Yes?

THE DEFENDANT: - that would be, the public defender don't know nothing about my case, so how would I put someone on my case who knows nothing of it?

THE COURT: I don't think you should. I think Mr. Regan should try the case. He's -

THE DEFENDANT: But I'm also being forced to go to trial with an attorney I no longer want on my case.

THE COURT: Correct.

THE DEFENDANT: So I feel it's not prepared and ready to present me at trial. You are basically telling me to commit suicide.

THE COURT: No, I'm not telling you anything. I'm telling you -

THE DEFENDANT: Not literally -

THE COURT: Okay.

THE DEFENDANT: - sir.

THE COURT: Okay, I understand, I understand your position.

So, Mr. Bruin?

MR. BRUIN: Judge, may I ask if you just make a finding that this continuance request is done for the purpose of delay, which I think it clearly is.

THE COURT: I - I will make a finding on the record, as I've said and maybe I wasn't clear, I appreciate it.

Is - is that the, uh, first of all, no Nelson Inquiry, uh, hearing was required by law. I did one in an abundance of caution.

After the Nelson Hearing is conducted, a lack of communication with counsel or with appointed counsel is not grounds for incompetency and that's in Addison v. State, 989 So.2d 1252 the First DCA, 2008 case.

Uh, general dissatisfaction with appointed counsel is also not reason. Clayton v. State, Williams v. State and Clayton is 953 So.2d 758, Fifth DCA, 2007. Williams v. State is 24 So.3d 729 a Third DCA case, 2009.

Uh, so therefore, that's all with appointed counsel.

As I said, the privately retained counsel, uh, there is no need for a Nelson Hearing under Jackson, 979 So.2d 442, a Fourth DCA of 2008.

Uh, but I went ahead and did the Nelson Inquiry to see if anything jumped out at me and there's absolutely no issue here about any specifics or anything regarding competency. The attorney is competent and ready to try the case and well prepared for the case and ready to, uh, ready to - ready to try the case.

We have jurors here today. The case is four years old and we're going to try the case this week. That's - that's

what it comes down to over, over Mr. Devalon's objection. So it's on the record. If I'm wrong, it will be reviewed and they'll say, judge, you were wrong, you got to do it all over again if it - if there's a conviction or whatever it may be.

But we're going to try the case this week and as I said, I offered a public defender who is here in the courtroom. Uh, Mr. Devalon rightfully said he doesn't know a thing about the case, that would be ridiculous, and I can't argue with him. He has an attorney now who is well prepared and ready to go.

So, we're going to try this case and pick the jury at 1:00 o'clock.

Is there anything else we need to cover right now? Anything else, State?

MR. BRUIN: No, sir.

THE COURT: Anything else Defense?

MR. REGAN: No, Your Honor.

THE COURT: Okay. Mr. Devalon, keeping the record clear so it's completely on there, sir. Good luck to you. I'll see you at 1:00 o'clock.

(Off Record - On Record)

(Prospective Jurors Seated)

THE COURT: Good afternoon everybody, good afternoon.

(Bench Conference)

THE CLERK: Can the other jurors be released or do you

EXHIBIT "B"

OCTOBER 10, 2016:

THE COURT: Yes?

MR. REGAN: May we approach, Mr. Bruin and I?

THE COURT: Of course.

(Bench Conference)

THE COURT: Is this on the same case?

MR. REGAN: Mr. Devalon.

THE COURT: Okay, so this is Devalon, Franchilor Devalon, 2012-1437. Go ahead.

MR. REGAN: Judge, it has become apparent to me when I went to go see him up there that a conflict has arisen that prevents me from continuing as his counsel because I can't say why.

THE COURT: Okay.

MR. REGAN: Otherwise it would violate privilege.

THE COURT: Okay, so what do you want me to do?

MR. REGAN: Well, I - my belief is I should withdraw, uh, move to withdraw. I don't believe I can effectively represent him anymore.

THE COURT: What would you say?

MR. BRUIN: I don't really have a comment on that, judge. It's Mr. Regan's - if that's his opinion, then I can't really argue with that.

MR. REGAN: If I'm being, uh, I'm in a position where I - I can't say or do things, I can't say or do them. Uh, so I

don't know whether you want me to just put on the record. I - it would violate privilege then and I - I - I'd be in a - in a bind. I don't want to get in trouble.

THE COURT: No, I could just proceed with sentencing and you can put on the record that you don't feel comfortable, uh, because of things said to you proceeding with sentencing.

Well, does it involve a - does it involve a future crime?

MR. REGAN: No.

THE COURT: Okay.

MR. REGAN: Now he wants to talk to me again.

(End Of Bench Conference)

THE COURT: Okay, I'm going to break anyway for awhile.

The defendant has been fingerprinted in Mr. Regan's case and we'll take a break and come back in a few minutes. Thank you.

THE BAILIFF: All stand, please.

(Court Recessed And Reconvened)

THE COURT: State versus Franchilor Devalon, 2012-1437.

THE BAILIFF: Right up here, sir.

THE COURT: Good afternoon, everybody. Good afternoon, Mr. Bruin, Mr. Regan.

Are you Franchilor Devalon, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Good afternoon, sir.

We are here today for sentencing. It was continued once before. We are here today. Do we have a criminal punishment code scoresheet?

MR. BRUIN: Yes, Your Honor.

THE COURT: Okay. I have a scoresheet, a criminal punishment code scoresheet with 45.4 points. Is that agreed to as being accurate based upon the jury verdict? Mr. Regan?

MR. REGAN: Your Honor, uh, there are many arguments that I cannot make because I know that, uh, legally you are bound. I investigated that, number one, it's permissible and lawful for you to impose the 20-year mandatory minimum on the aggravated assault because the State did properly enunciate the language required in invoking the minimum statute and then the jury made a finding. Factually, it supports the imposition.

Uh, likewise with the, uh, possession of a firearm by a felon, judge, uh, so I can't - I can't in good faith or conscience make any arguments that you can't impose it.

THE COURT: Okay. Does your, from what I take from your statement to me just now, uh, and correct me if I'm wrong, that your client disagrees with that, the way the law is and wants to preserve the record in case the law changes at some point in time.

MR. REGAN: Yes, judge.

THE COURT: In which he can properly, and I've talked to

Mr. Devalon about this since the start of the trial that one of the purposes here is to make sure that the record is real clear so that when it's reviewed by people who are a lot better than me will make determinations. They want to have everything completely laid out so that Mr. Devalon can argue his arguments at any point in time in the future, uh, should the law change or should somebody disagree with your interpretation of the law. Is that a fair statement?

MR. REGAN: Yes, judge.

THE COURT: Okay.

MR. REGAN: Uh -

THE COURT: Okay, so legally there is no, the scoresheet is correct legally, uh, just that you believe that there are arguments that your client believes that makes the scoresheet improper. Is that a fair statement?

MR. REGAN: Well, not the scoresheet, but the application of the mandatory minimum.

THE COURT: Application of mandatory minimum, okay.

MR. REGAN: In the aggravated assault because of the change in the law, which is 2016 which is not retroactive in - in my estimation, judge, in my professional opinion.

THE COURT: Right, but Mr. Devalon who is your client disagrees with you?

MR. REGAN: Yes, judge.

THE COURT: And believes that it should be argued by you

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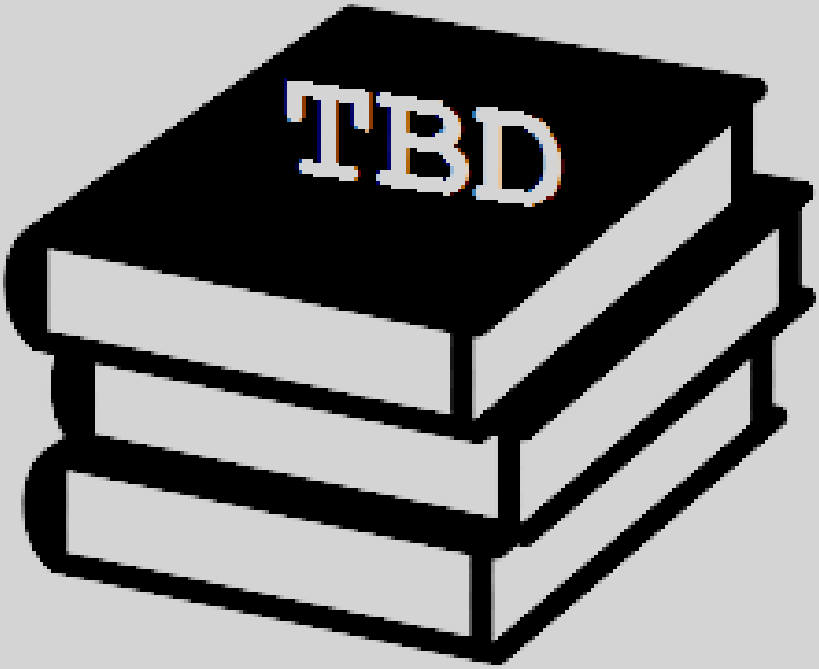

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