AMENDED TRIAL AND SENTENCING ORDER

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

COMMONWEALTH OF VIRGINIA,

v. Case No. CR05002683-00

WELLYN FLORES CHAN, DEFENDANT.

This comes before the Court on the defendant's petition, filed by her counsel, Trey R. Kelleter, for Writ of *Audita* Querela or in the Alternative, *Coram Nobis*. Upon consideration thereof, and for good cause shown, the Court amends, *nunc pro tunc* to September 29,2005, those portions of its Trial and Sentencing Order, originally entered on September 29, 2005, as relate to sentencing. Specifically, the defendant's sentence on the conviction for misdemeanor Assault and Battery is amended as follows:

CASE NUMBER	OFFENSE DESCRIPTION AND INDICATOR (F/M)	OFFENSE DATE	VA. CODE SECTION
CR05002683-00	Assault and Battery (M)	06/07/05	18.2-57

Incarceration in the **Norfolk City Jail** for the term of ~~364~~ 360 **days**. The Court **SUSPENDS** ~~364~~ 360 **days** of the sentence, for a period of one year, for a total suspension of ~~364~~ 360 **days**. All other conditions of sentencing shall remain as originally stated in the Trial and Sentencing Order dated September 29, 2005.

The Commonwealth and the Court are advised that the Court's original order for payment of $208 of costs has been satisfied, and that the defendant has met all other conditions as originally set out by the Court in its order of September 29, 2005.

October 2, 2009 *nunc pro tunc*
September 29, 2005

10/2/09
DATE

JUDGE

DEFENDANT IDENTIFICATION:
Alias: **n/a**
SSN: [redacted] DOB: [redacted] Sex: **Female**

SENTENCING SUMMARY:
TOTAL SENTENCE IMPOSED: **364 Days**
TOTAL SENTENCE SUSPENDED: **364 Days**

Seen and objected to: for the reasons stated on the record

Margaret A O'Shea
Assistant Commonwealth Attorney

ASSIGNMENT OF ERRORS

I. THE TRIAL COURT ERRED IN HOLDING THAT IT POSSESSED JURISDICTION TO MODIFY A CRIMINAL DEFENDANT'S SENTENCE OVER FOUR YEARS AFTER THE TRIAL COURT'S ENTRY OF THE FINAL SENTENCING ORDER IN THE CASE, WHERE THE 21-DAY PERIOD PROSCRIBED BY RULE 1:1 HAD ELAPSED AND WHERE THERE WERE NO APPLICABLE EXCEPTIONS TO THE RULE.

II. THE TRIAL COURT ERRED IN HOLDING THAT THE TRADITIONAL EQUITABLE WRIT OF ERROR *AUDITA QUERELA* IS AN AVAILABLE REMEDY IN CRIMINAL CASES.

III. EVEN IF THE WRIT OF ERROR *AUDITA QUERELA* IS APPLICABLE TO CRIMINAL PROCEEDINGS, THE TRIAL COURT ERRED IN ISSUING A WRIT OF ERROR *AUDITA QUERELA* UNDER THE CIRCUMSTANCES OF THIS CASE BECAUSE IT HAS PROVIDED THE DEFENDANT WITH A SECONDARY, NON-STATUTORY REMEDY FOR INEFFECTIVE ASSISTANCE OF COUNSEL.

IV. ASSUMING, *ARGUENDO*, THAT THE TRIAL COURT RELIED UPON THE ALTERNATIVE RELIEF REQUESTED, THE TRIAL COURT ERRED IN MODIFYING THE DEFENDANT'S FINALIZED SENTENCE THROUGH A WRIT OF ERROR *CORAM VOBIS*.