IN THE SUPREME COURT OF FLORIDA

CASE NO. 66,352

THE STATE OF FLORIDA,

Petitioner,

-vs-

LIVINGSTON MILBRY,

Respondent.

ON APPLICATION FOR DISCRETIONARY REVIEW

RESPONDENT'S BRIEF ON THE MERITS

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INTRODUCTION

The respondent, Livingston Milbry, was the appellant in the Third District Court of Appeal and the defendant in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. The petitioner, the State of Florida, was the appellee and the prosecution in those same courts. The parties will be referred to in this brief as they stand before this Court. The symbol "A" will be used to refer to portions of the petitioner's appendix. All emphasis is supplied unless the contrary is indicated.

STATEMENT OF THE CASE

The respondent accepts the petitioner's Statement of the Case as being an accurate account of the proceedings below.

QUESTION PRESENTED

WHETHER THE TRIAL COURT ERRED IN COMMITTING THE RESPONDENT TO THE DEPARTMENT OF CORRECTIONS AS A YOUTHFUL OFFENDER FOR A PERIOD THAT EXCEEDED THE MAXIMUM AUTHORIZED BY LAW FOR THE OFFENSE OF SECOND DEGREE GRAND THEFT?

SUMMARY OF ARGUMENT

Upon the respondent's conviction for second degree grand theft, a third degree felony, the trial court classified the respondent as a youthful offender and committed the respondent to the Department of Corrections for a period of six years. On appeal, the Third District Court of Appeal correctly held that the respondent's sentence unlawfully exceeded the five-year statutory maximum for third degree felonies provided in Section 775.082(3)(d), Florida Statutes.

The District Court's decision is consistent with both fundamental principles of statutory construction and with the lenient, rehabilitative purposes of the Youthful Offender Act. By reading the provisions of Chapters 958 and 775 in pari materia, the Legislative purposes behind both chapters can be realized. To construe the provisions of Chapter 958 as suggested by the petitioner, is to permit more severe punishment of youthful offenders than their adult counterparts. In light of the rehabilitative purpose of Chapter 958, its apparent that the Legislature could not have intended such an unreasonably harsh result.

ARGUMENT

THE TRIAL COURT ERRED IN COMMITTING THE RESPONDENT TO THE DEPARTMENT OF CORRECTIONS AS A YOUTHFUL OFFENDER FOR A PERIOD THAT EXCEEDED THE MAXIMUM AUTHORIZED BY LAW FOR THE OFFENSE OF SECOND DEGREE GRAND THEFT.

As petitioner concedes, in Florida, it is well settled that a court may not impose a sentence or a combination of incarceration and probation that exceeds the maximum authorized by law for an offense. State v. Holmes, 360 So.2d 380 (Fla. 1978); McGraw v. State, 404 So.2d 817 (Fla. 1st DCA 1981); Gonzalez v. State, 392 So.2d 334 (Fla. 3d DCA 1981); Corraliza v. State, 391 So.2d 330 (Fla. 3d DCA 1980); Skinner v. State, 366 So.2d 486 (Fla. 3d DCA 1979) and Watts v. State, 328 So.2d 223 (Fla. 2d DCA 1976). In this case, the Third District Court of Appeal found that the trial court had violated this fundamental rule, when, upon the respondent's conviction for second degree grand theft, the trial court committed the respondent to the Department of Corrections for a period of six years.[1] In so holding, the Third District rejected the petitioner's argument that the respondent's sentence was within the parameters intended by the Legislature for youthful offender/third degree felons, and opined that the Youthful Offender Act was "obviously designed to impose more lenient sanctions on a youthful offender who meets

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1 Second degree grand theft has been classified by the Legislature as a third degree felony which bears as a maximum punishment a sentence of five years incarceration. Sections 812.014(a)(b) and 775.082(3)(d), Florida Statutes (1981).

the statutory requirements, not to aggravate the sanctions which would ordinarily apply." (A. 2).

Before this Court, the petitioner again asserts that the Legislature intended to preempt all of the general sentencing provisions, including the statutory maximum sentences established in Chapter 775, when it created the sentencing alternatives permitted by the Youthful Offender Act. (Petitioner's Brief p. 5, 11, 12). It is the respondent's position that a construction of Chapter 958 that would permit imposition of six-year, youthful offender commitments for third degree felons, is not only inconsistent with fundamental principles of statutory construction, but is directly contrary to the purposes of the Youthful Offender Act itself.

It is a fundamental principle of statutory construction that statutes which relate to the same or a closely related subject are regarded as in pari materia and should be construed together and in harmony with each other, even though the statutes were not enacted at the same time. Wakulla County v. Davis, 395 So.2d 540 (Fla. 1981); Miami Dolphins Ltd v. Metropolitan Dade County, 394 So.2d 981 (Fla. 1981); Ferguson v. State, 377 So.2d 709 (Fla. 1979) and Alachua County v. Powers, 351 So.2d 32 (Fla. 1977). "Courts, in construing a statute, must, if possible, avoid such construction as will place a particular statute in conflict with other apparently effective statutes covering the same general field." Wakulla County v. Davis, 395 So.2d at 542; Howarth v. City of DeLand, 117 Fla. 692, 701, 158 So. 294, 298 (1934). Moreover, courts should avoid literal interpretations of statutes

which give rise to unreasonable or harsh results. State v. Webb, 398 So.2d 820 (Fla. 1981); Martin v. State, 367 So.2d 1119 (Fla. 1st DCA 1979) and In the Interest of D.F.P., 345 So.2d 811 (Fla. 4th DCA 1977).

In enacting the Florida Youthful Offender Act, the Legislature recognized that certain young adults might have their chances, for a successful return to the community improved if they were to be incarcerated in institutions where association with older, criminal adults would be prevented. Sections 958.021 and 958.11, Florida Statutes (1981). To promote this purpose,[2] the Legislature provided that first, second or third degree felons who meet the requirements of Section 958.04, may be committed to the Department of Corrections for a period not to exceed six years. Section 958.05(2), Florida Statutes (1981).

When the penalty provisions of Chapter 958 are read in pari materia and in harmony with the penalty provisions of Chapter 775, the legislative purposes of both chapters are served. By limiting the commitment of first and second degree felons to a maximum of six years in Section 958.05(2), the Legislature has eliminated the possibility that the qualifying youthful offender will suffer the lengthy incarcerations reserved for first and second degree adult felons; a purpose that is consistent with the rehabilitative intent of the Act. By providing that imposition

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2 As a second purpose for the Youthful Offender Act, the Legislature indicated that the Act was intended to provide more severe sanctions for offenders who no longer could be handled as juveniles, but who presumably do not require the sanctions reserved for adults. Section 958.021, Florida Statutes (1981).

of the six-year commitment is non-mandatory, the Legislature implicitly recognized the five-year maximum sentence limitation reserved for third degree felons. Section 775.082(3)(d), Florida Statutes (1981).

To hold that the six-year commitment period authorized by Section 958.05(2) is applicable to youthful offender/third degree felons, is to single out that group of third degree felons for more severe treatment, without any compelling justification. The same rehabilitative and corrective purposes that inspired the Youthful Offender Act is certainly applicable to juvenile third degree felons, yet juveniles may not be committed in excess of the five-year statutory maximum provided by general law. Section 39.11(3), Florida Statutes (1981). Similarly, the interest in protecting the public, which also inspired the Youthful Offender Act, is even more prevalent in the incarceration of adult third degree felons, yet adult offenders may not be subjected to confinement in excess of the five-year maximum provided by general law. State v. Holmes, supra. To construe Section 958.05 in the manner suggested by the petitioner, is to render that section constitutionally suspect; instead, this Court has a duty to construe the section to avoid the unreasonably harsh result advocated by the petitioner and in favor of the section's constitutionality. State v. Lick, 390 So.2d 52 (Fla. 1980); Brown v. State, 358 So.2d 16 (Fla. 1978).

Relatedly, punishment of a youthful offender for a period in excess of that reserved for adult offenders is inconsistent with the lenient, rehabilitative purpose of Chapter 958. Youthful

Offenders are classified as such after application of the criteria set forth in Section 958.04. Included among the factors which must be considered are the defendant's emotional attitude, sophistication, maturity and pattern of living, the defendant's previous record and the likelihood that the defendant will be successfully rehabilitated. Section 958.04(d), (e), (f), Florida Statutes (1981). Presumably, those defendants classified as youthful offenders are the best candidates the criminal justice system has to avoid recidivism. With that in mind, it seems highly improbable that the Legislative would have intended that those offenders be subjected to greater punishment than their adult counterparts, for whom the system may hold no rehabilitative hope.

The decision of the Third District Court of Appeal in this case is consistent with both the legislative purpose behind the Youthful Offender Act and with established precedent. This Court should therefore affirm the decision of the district court and direct that this case be remanded to the trial court for re-sentencing in accordance with the provisions of Chapter 958 and Section 775.082(3)(d).

CONCLUSION

Bases on the cases and authorities cited herein, the respondent respectfully requests this honorable Court to affirm the decision of the district court.

Respectfully submitted,

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BY: _____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was delivered by mail to the Office of the Attorney General, Suite 820, 401 N.W. 2nd Avenue, Miami, Florida 33128, this 6th day of April, 1985.

RORY S. STEIN
Assistant Public Defender