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IN THE SUPREME COURT OF FLORIDA

RANDALL EVAN RITCHIE,

Appellant,

v. CASE NO. 85,358

STATE OF FLORIDA,

Appellee.

______________________________/

RESPONDENT'S BRIEF ON THE MERITS

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

DOUGLAS GURNIC
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0000063

JAMES W. ROGERS
BUREAU CHIEF - CRIMINAL APPEALS
FLORIDA BAR NO. 0325791

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT

TABLE OF CONTENTS

	PAGE(S)
TABLE OF CONTENTS	i
TABLE OF CITATIONS	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF ARGUMENT	3
ARGUMENT	4
ISSUE (CERTIFIED QUESTION)	
WHETHER A CHILD, CHARGED WITH AN OFFENSE PUNISHABLE BY DEATH OR LIFE IMPRISONMENT, BUT FOUND GUILTY OF A LESSER INCLUDED OFFENSE, PUNISHABLE BY A TERM OF YEARS NOT EXCEEDING LIFE, MUST BE SENTENCED AS AN ADULT WITHOUT THE PROCEDURAL SAFEGUARDS AFFORDED BY SECTION 39.059(7)(c), FLORIDA STATUTES?	4
CONCLUSION	13
CERTIFICATE OF SERVICE	13
APPENDIX	14

TABLE OF CITATIONS

CASES	PAGE(S)
Duke v. State, 541 So. 2d 1170 (Fla. 1989)	7,8
Forsythe v. Longboat Key Beach Erosion, 604 So. 2d 452 (Fla. 1992)	5
In Re Order on Prosecution of CR. APP., 561 So. 2d 1130 (Fla. 1990)	5
Kazakoff v. State, 642 So. 2d 596 (Fla. 2d DCA 1994)	9
Kneale v. Kneale, 67 So. 2d 233 (Fla. 1953)	4
Ritchie v. State, 20 Fla. L. Weekly D508 (Fla. 1st DCA, February 21, 1995)	1,4,11
State v. Perez, 531 So. 2d 961 (Fla. 1988)	6
State v. Webb, 398 So. 2d 820 (Fla. 1981)	6
Tomlinson v. State, 589 So. 2d 362 (Fla. 2d DCA 1991) rev. denied, 599 So. 2d 1281 (Fla. 1992)	9
Town of Lake Park v. Karl, 642 So. 2d 823 (Fla. 1st DCA 1994)	5
Washington v. State, 642 So. 2d 61 (Fla. 3d DCA 1994)	9
Williams v. State, 492 So. 2d 1051 (Fla. 1986)	6

OTHER AUTHORITIES	PAGE(S)
Florida Constitution Article V Section 3(b)(4)	4

TABLE OF CITATIONS

(Continued)

OTHER AUTHORITIES	PAGE(S)
1990 Florida House of Representatives Committee on Children and Youth as revised by the Committee on Appropriations and Rules and Calendar, Staff Analysis and Economic Impact Statement for CS/HB 3681, § 39.059, F.S., May 16, 1990.	7
Fla. R. Crim. P. 3.390	7
Fla. R. Crim. P. 3.490	7
Fla. R. Crim. P. 3.510	7
Section 39.022(5)(c)1, Fla. Stat.	7
Section 39.022(5)(c)3, Fla. Stat. (1993)	passim
Section 39.059(7)(c), Fla. Stat.	4,5,8,11
Section 39.111, Fla. Stat. (1985)	8
Section 787.01(2), Fla. Stat. (1993)	12

PRELIMINARY STATEMENT

Petitioner, RANDALL EVAN RITCHIE, defendant below, will be referred to herein by name or as "petitioner." Respondent, the State of Florida, will be referred to herein as "the State." The decision of the lower court, which has been reported as Ritchie v. State, 20 Fla. L. Weekly D508 (Fla. 1st DCA, February 21, 1995), is attached as an appendix. References to the record on appeal will be by the use of the symbol "R" followed by the appropriate page number(s). References to the transcript of proceedings will be by the use of the symbol "T" followed by the appropriate page number(s).

STATEMENT OF THE CASE AND FACTS

The State is in substantial agreement with the petitioner's version of the case and facts. However, the State corrects the petitioner's significant misstatement that he "was charged by amended information with premeditated first degree murder with a firearm of Timothy R. Ritchie, his adoptive father (R-3)". (Petitioner's brief on the merits, Page 2). The record clearly shows that the petitioner was charged by grand jury indictment. (R 1-4).

SUMMARY OF ARGUMENT

Section 39.022(5)(c)3, Florida Statutes (1993), mandates that juveniles found guilty of offenses punishable by death or life imprisonment be sentenced as adults. Petitioner's urged interpretation of the section, creating exceptions to this clear mandate, creates conflict within the section and leads to illogical results. Interpreting the section as a whole leads to the logical conclusion that trial courts need only make suitability determinations for adult sanctions of juveniles when juveniles are convicted of lesser included offenses of the indicted offense which are not punishable by death or life imprisonment. Consequently, this Court should answer the certified question in the affirmative.

ARGUMENT

ISSUE (CERTIFIED QUESTION)[1]

> WHETHER A CHILD, CHARGED WITH AN OFFENSE PUNISHABLE BY DEATH OR LIFE IMPRISONMENT, BUT FOUND GUILTY OF A LESSER INCLUDED OFFENSE, PUNISHABLE BY A TERM OF YEARS NOT EXCEEDING LIFE, MUST BE SENTENCED AS AN ADULT WITHOUT THE PROCEDURAL SAFEGUARDS AFFORDED BY SECTION 39.059(7)(c), FLORIDA STATUTES?

The First District Court of Appeal certified the preceding question as one of great public importance, and this Court accepted jurisdiction to review Ritchie v. State, 20 Fla. L. Weekly D508 (Fla. 1st DCA February 21, 1995), pursuant to article V section 3(b)(4) of the Florida Constitution. This Court should answer the certified question in the affirmative because section 39.022(5)(c)3, Florida Statutes (1993) requires that juveniles found guilty of offenses punishable by death or life imprisonment be sentenced as adults. Based upon the logical interpretation of the statutory section as a whole and the case law on point, juveniles indicted for an offense punishable by death or life imprisonment and convicted of a lesser-included offense, also punishable by life imprisonment, must be sentenced as adults. Consequently, there is no need for trial courts to make the

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[1] The State's issue statement reflects the First District Court's of Appeals certified question which embodies, in a neutral statement, the point of law to be adjudicated by this Court. See Kneale v. Kneale, 67 So. 2d 233, 234 (Fla. 1953)("every question should be cast in concise, direct language without duplication, it should embody nothing but the point of law or fact that is brought to the attention of, and to be adjudicated by, the Court.")(emphasis added). In contrast, the petitioner restated the certified question before this Court as a legal conclusion favorable to his position.

determination as to the suitability of adult sanctions as required by section 39.059(7)(c), Florida Statutes (1993).

The issue in the instant case turns on the statutory construction of section 39.022(5)(c)3, which reads as follows:

> 3. If the child is found to have committed the offense punishable by death or life imprisonment, the child shall be sentenced as an adult. If the child is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he was indicted as a part of the criminal episode the court may sentence as follows:
>
> a. Pursuant to the provisions of s. 39.059;
> b. Pursuant to the provisions of chapter 958, notwithstanding any other provisions of the chapter to the contrary; or
> c. As an adult, pursuant to the provisions of s. 39.059(7)(c).

Legislative intent is the polestar by which courts must be guided in interpreting statutory provisions. In Re Order on Prosecution of CR. APP., 561 So. 2d 1130 (Fla. 1990). "It is axiomatic that all parts of a statute must be read **together** in order to achieve a consistent whole." Forsythe v. Longboat Key Beach Erosion, 604 So. 2d 452, 459 (Fla. 1992)(citations omitted)(emphasis in original). Further, "[w]here possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another." Id. (citations omitted)(emphasis in original); see also Town of Lake Park v. Karl, 642 So. 2d 823, 825 (Fla. 1st DCA 1994)(holding that a subsection of a statute cannot be read in isolation but must be read to give effect to the statute as a

whole.). "The legislative intent is determined primarily from a statute's language." State v. Perez, 531 So. 2d 961, 962 (Fla. 1988)(citing St. Petersburg Bank and Trust v. Hamm, 414 So. 2d 1071, 1073 (Fla. 1982)). However, if following the literal plain meaning of the statutory language would lead to absurd or illogical results, such interpretation will not be followed. Perez at 962; see also Williams v. State, 492 So. 2d 1051, 1054 (Fla. 1986)(holding that "[i]t is a basic tenant of statutory construction that statutes will not be interpreted so as to yield an absurd result.") and State v. Webb, 398 So. 2d 820 (Fla. 1981)(holding that "construction of a statute which would lead to an absurd or unreasonable result or would render a statute purposeless should be avoided.").

The only harmonious and logical interpretation of section 39.022(5)(c)3, when read as a whole, is that trial courts are required to sentence juveniles as adults for offenses punishable by death or life imprisonment; trial courts are permitted to make suitability determinations of adult sanctions for juveniles only if all the convictions are for offenses not punishable by death or life imprisonment. Clearly, the first sentence indicates the legislature's intent that a juvenile found to have committed an offense punishable by death or life imprisonment will be sentenced as an adult. This is the rule. The second sentence only comes into operation if none of the convictions are punishable by death or life imprisonment.

This harmonious reading is consistent with section 39.022(5)(c)1 which provides that juveniles indicted for offenses punishable by death or life imprisonment "shall be tried and handled in every respect as if he were an adult."[2] It is also consistent with the standard jury instruction on lesser included offenses. The charged greater offense includes all necessarily lesser included offenses, including degree offenses. Rules 3.390, 3.490, and 3.510 Fla. R. Crim. P. The indictment for first-degree murder here included an indictment for second-degree murder, the offense for which a conviction was obtained. Second-degree murder is punishable by life imprisonment. Thus, there is total congruity between the first sentence of section 39.022(5)(c)3 and the judgement here.

Case law supports the above logical interpretation. In Duke v. State, 541 So. 2d 1170 (Fla. 1989), this Court addressed whether a trial court erred in failing to make a suitability determination of adult sanctions before imposing such sanctions on a juvenile convicted by indictment of aiding and abetting the commission of sexual battery, a life felony. Id. at 1170. This Court held that the legislature's intent was that "[c]hildren of any age who are convicted of offenses punishable by death or life

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[2] The last sentence of section 39.022 (5)(c)3 adds further support to this construction as it states that once a juvenile is sentenced as an adult for "any offense for which he was indicted as a part of the criminal episode, the child shall thereafter be handled in every respect as if he were an adult for any subsequent violation of the law". (emphasis added). This indicates the effect that being indicted for an offense punishable by death or life imprisonment has on classifying the juvenile as an adult for purposes of sentencing.

imprisonment **shall** be sentenced as adults. They shall not be sentenced as youthful offenders and are not subject to the provisions of section 39.111, Florida Statutes (1985)". Id. at 1171. (emphasis in original). Section 39.111, Florida Statutes (1985), was a precursor of section 39.059(7)(c) and contained the same language regarding the making of a suitability determination of adult sanctions now embodied in section 39.059(7)(c), Florida statutes, (1993).[3] Thus, this Court held in Duke that such precautions were not necessary for juveniles convicted of offenses punishable by death or life imprisonment.

The law as expressed in Duke remains valid, because it is consistent with the language of Section 39.022(5)(c)3 which states that "[i]f the child is found to have committed the offense punishable by death or by life imprisonment, the child shall be sentenced as an adult." Although the statute contains a requirement to adhere to Section 39.059(7)(c), Florida Statutes (1993), that did not exist at the time of the Duke opinion, the legislative intent regarding the issue in this case remains the same because the statutory reference to section 39.059(7)(c) is addressed to the determination of the suitability of adult sanctions for offenses not punishable by death or life imprisonment, as argued above.

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[3] See 1990 Florida House of Representatives Committee on Children and Youth as revised by the Committee on Appropriations and Rules and Calendar, Staff Analysis and Economic Impact Statement for CS/HB 3681, § 39.059, F.S., May 16, 1990. (stating that section 39.059, Florida Statutes, tracks section 39.111, Florida Statutes).

The district court below reached the same conclusion as did the Second District Court of Appeal. In Tomlinson v. State, 589 So. 2d 362 (Fla. 2d DCA 1991); rev. denied, 599 So. 2d 1281 (Fla. 1992), the appellate court came to the conclusion that the legislature intended for a juvenile, indicted for first-degree murder and subsequently convicted of the lesser-included offense of second-degree murder, be sentenced as an adult, and therefore, was not subject to having the suitability of adult sanctions being determined. Id. at 363-364. The appellate court reasoned that because the juvenile was convicted of an offense punishable by life imprisonment, the clear language of the statute that juveniles found guilty of offenses punishable by life imprisonment shall be punished as adults, was controlling and therefore, the trial court's discretionary sentencing authority, under the second sentence, was never reached. Id. at 363. Hence, based on the logical interpretation of the statute as a whole and the case law on point[4] , this Court should answer the certified question in the affirmative.

Contrarily, the petitioner's argument for interpreting section 39.022(5)(c)3 would both create conflict within the statute and lead to absurd and illogical results. The Petitioner interprets the second sentence of the section to require that

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[4] The petitioner correctly points out that the decisions in Washington v. State, 642 So. 2d 61 (Fla. 3d DCA 1994), and Kazakoff v. State, 642 So. 2d 596 (Fla. 2d DCA 1994) were decided on other statutes which were controlling of their issues and therefore, are not helpful to this determination. Notably both cases distinguished their factual situation from that of Tomlinson, and thus, the instant case.

trial court's make a finding of suitability of adult sanctions for juveniles who are found to have committed offenses punishable by life imprisonment, if the offense happens to be a lesser included of the indicted offense. This interpretation of the second sentence of the section is in direct conflict with the plain language of the first sentence of the section. To follow the petitioner's interpretation would require the plain language of the first sentence, mandating adult sentencing for such offenses, to be disregarded. Because the petitioner's interpretation would create conflict within the statute when read as a whole, his interpretation should not be followed. Beyond the petitioner's interpretation creating conflict within the statute it also leads to illogical and absurd results.

A clear example of the absurd and illogical results of the petitioner's argued interpretation was given by Judge Wolf in his concurring opinion in the instant case on review and is as follows:

> While I agree that the statute is not a model of clarity, the result we reach is the only logical way to interpret the statute. If we were to accept the arguments submitted by (petitioner), a person originally indicted for a more severe offense (first-degree murder) and later found guilty of a lesser-included offense (second-degree murder with a firearm), would be entitled to greater protection from being sentenced as an adult than a person who was originally indicted for and found guilty of second-degree murder with a firearm. The only difference in the two situations is that the grand jury would have found the first person to be more culpable. It does not make good common sense to provide the more culpable person with greater procedural protections prior to adult sentencing.

Ritchie, 20 Fla. L. Weekly D508, D509 (Fla. 1st DCA, February 21, 1995)

The legislative intent to exclude juveniles convicted of offenses punishable by death or life imprisonment from the requirements of section 39.059(7)(c) is further demonstrated by the illogical result obtained by applying petitioner's interpretation to the remainder of the language in the second sentence of section 39.022(5)(c)3. The pertinent language reads that if the juvenile "is found to have committed a lesser included offense or any other offense for which he was indicted as a part of the criminal episode" the trial courts must adhere to the requirements of section 39.059(7)(c) in order to sentence the juvenile as an adult. (emphasis added). It would be illogical to conclude that the legislature intended that the category of "any other offense for which [the juvenile] was indicted as a part of the criminal episode" would include a juveniles conviction for other offenses punishable by death or life imprisonment, because the plain language in the first sentence of the section states that a juvenile convicted of these offenses "shall be sentenced as an adult".

The following example demonstrates the illogical results of the petitioner's position. If the grand jury indicted a juvenile for both first-degree murder and kidnapping arising from one episode and he was convicted on both counts, under the petitioner's interpretation, the trial court would have to make a suitability determination before sentencing him as an adult on

the kidnapping count[5] even though kidnapping is a crime punishable by life imprisonment,[6] and which, under the direction of the first part of the section, is an offense for which the juvenile must be sentenced as an adult. This result undercuts the statutes plain language that a juvenile convicted of an offense punishable by life imprisonment "shall be sentenced as an adult." Thus, the petitioner's interpretation reaches illogical results not intended by the legislature. Because the State's interpretation of section 39.022(5)(c)3, Florida Statutes (1993) is the only reasonable, harmonious, and logical interpretation that can be made, this Court should answer the certified question in the affirmative.

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[5] Further confusion would be had under the petitioner's interpretation as it would have to be determined which offense to use as the primary offense and which to use as the "other offense" for purposes of deciding which offense requires the suitability determination. For purposes of this example the State arbitrarily chose kidnapping as the "other offense".

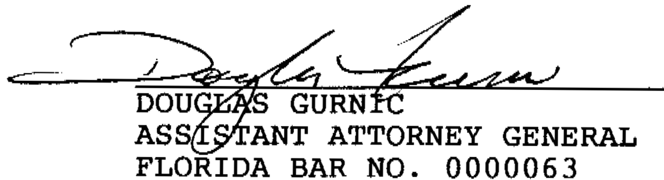
[6] § 787.01(2), Fla. Stat. (1993).

CONCLUSION

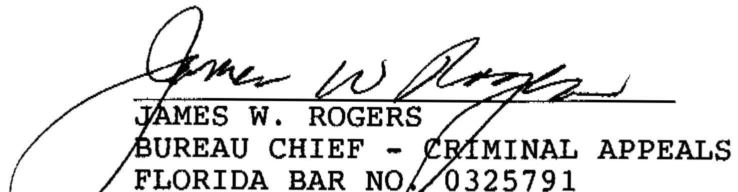
Based on the foregoing arguments, reasoning, and cited legal authorities the State respectfully requests this Honorable Court answer the certified question in the affirmative.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



DOUGLAS GURNIC
ASSISTANT ATTORNEY GENERAL
FLORIDA BAR NO. 0000063



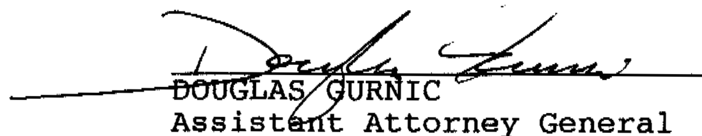
JAMES W. ROGERS
BUREAU CHIEF - CRIMINAL APPEALS
FLORIDA BAR NO. 0325791

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FL 32399-1050
(904) 488-0600

COUNSEL FOR RESPONDENT
TCR 95-110485

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to SAUNDRA G. SWIFT, Assistant Public Defender, Leon County Courthouse Fourth Floor North, 301 South Monroe Street, Tallahassee, Florida 32301, this 25th day of May, 1995.



DOUGLAS GURNIC
Assistant Attorney General

IN THE SUPREME COURT OF FLORIDA

RANDALL EVAN RITCHIE,

Appellant,

v. CASE NO. 85,358

STATE OF FLORIDA,

Appellee.

_____________________________/

APPENDIX TO RESPONDENT'S BRIEF ON THE MERITS

Opinion of the First District Court of Appeal dated February 21, 1995 affirming the decision of the trial court below.

Docketed
2-22-95
Florida Attorney General

94-11098/TTR
B.

IN THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT, STATE OF FLORIDA

RANDALL EVAN RITCHIE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.
_______________________________/

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

CASE NO. 94-1866

93-3427A

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CRIMINAL APPEALS
DEPT. OF LEGAL AFFAIRS

Opinion filed February 21, 1995.

An appeal from the Circuit Court for Escambia County.
Michael Jones, Judge.

Spiro T. Kypreos, Pensacola, for Appellant.

Robert A. Butterworth, Attorney General, Douglas Gurnic, Assistant Attorney General, Office of the Attorney General, Tallahassee, for Appellee.

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Division of General Legal

ERVIN, J.

Appellant, Randall Evan Ritchie, contends that his sentence for second degree murder is invalid, because the trial court failed to comply with the statutory requirements provided in section 39.059(7)(c), Florida Statutes (1993), for sentencing him as an adult. We hold that because appellant was convicted of a lesser offense to that charged, which is punishable by a maximum sentence

of life imprisonment, the trial court was not required to comply with the sentencing criteria of section 39.059(7)(c), pertaining to the child's suitability for the imposition of adult sanctions, and, therefore, we affirm Ritchie's sentence.

Ritchie was charged by amended information with the premeditated first degree murder of his adoptive father, which occurred on July 5, 1993, when Ritchie was 16 years old. He was thereafter tried as an adult, and the jury found him guilty of the lesser included offense of second degree murder with a firearm. Ritchie was sentenced as an adult to 20 years in prison, with a mandatory minimum of three years for use of a firearm, followed by ten years of probation. The court entered no oral findings or written order concerning the imposition of adult sanctions.

Section 39.022(5)(c), Florida Statutes (1993), was in effect at the time of the offense in this case. That statute provides, in pertinent part, as follows:

> 3. If the child is found to have committed the offense punishable by death or by life imprisonment, the child shall be sentenced as an adult. If the child is not found to have committed the indictable offense but is found to have committed a lesser included offense or any other offense for which he was indicted as a part of the criminal episode, the court may sentence as follows:
>
> a. Pursuant to the provisions of s. 39.059;
>
> b. Pursuant to the provisions of chapter 958 [as a youthful offender], notwithstanding any other provisions of that chapter to the contrary; or
>
> c. As an adult, pursuant to the provisions of s. 39.059(7)(c).

The determination of the issue on appeal turns on the proper interpretation of the language of subsection (5)(c)(3): whether appellant's sentence falls under the first portion of the above subsection, *i.e.*, he was convicted of an offense punishable by death or life imprisonment, for which he "shall be sentenced as an adult," or whether his sentence is controlled by the remaining portion thereof, that is, he was found not to have committed the indictable offense, but rather a lesser included offense thereof, for which he may be sentenced "[a]s an adult, pursuant to the provisions of s. 39.059(7)(c)."

Ritchie contends that his sentence for second degree murder is governed by the latter part of the statute as he was convicted of a lesser included offense; therefore, under the clearly stated language of the statute, the trial court was required to sentence him in accordance with the provisions of section 39.059(7)(c), Florida Statutes (1993), mandating that the court make written findings regarding the specific statutory criteria and give reasons for the imposition of adult sanctions.

The state, on the other hand, argues that Ritchie's sentence is governed by the first part of section 39.022(5)(c)(3), and even though he was not convicted of the indictable offense (first degree premeditated murder), he nevertheless was convicted of an offense punishable by life imprisonment (second degree murder) and

therefore was properly sentenced as an adult without the necessity of any written findings for the imposition of adult sanctions.

The state relies on Tomlinson v. State, 589 So. 2d 362 (Fla. 2d DCA 1991), review denied, 599 So. 2d 1281 (Fla. 1992), which involved a similar fact pattern wherein the defendant was indicted for first degree murder, but found guilty of the lesser included offense of second degree murder. That defendant was sentenced as an adult and complained on appeal that the court failed to comply with the procedural safeguards for imposing adult sanctions. The Second District rejected that argument, concluding from its examination of the statute that the legislature intended for all children convicted of offenses punishable by death or life imprisonment to be sentenced as adults without entitlement to the special provisions of chapter 39. Id. at 363 (citing Duke v. State, 541 So. 2d 1170 (Fla. 1989)).

Although Ritchie attempts to distinguish Tomlinson, because it dealt with the 1989 version of section 39.022(5)(c)(3), which did not reference section 39.059(7)(c),[1] a close reading of Tomlinson indicates that the defendant was sentenced pursuant to the first sentence of section 39.022(5)(c)(3), not the remainder, which refers to the court's "discretionary sentencing power." Thus,

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[1]Prior to 1991, section 39.02(5)(c)(3)(c) provided the court could sentence the child "[a]s an adult," but in 1991 the statute was renumbered and amended to add the reference to section 39.059(7)(c), *i.e.*, "[a]s an adult, pursuant to the provisions of s. 39.059(7)(c)." See generally Tomlinson; § 39.02(5)(c)(3)(c) & 39.022(5)(c)(3)(c), Fla. Stat. (1989 & 1991).

Tomlinson is directly on point and supports affirmance. Moreover, we note that the result in Tomlinson is consistent with the following statement in Duke v. State, 541 So. 2d 1170, 1171 (Fla. 1989), observing that "[c]hildren of any age who are convicted of offenses punishable by death or life imprisonment *shall* be sentenced as adults. They shall not be sentenced as youthful offenders and are not subject to the provisions of section 39.111 [now 39.059(7)(c)]." (Emphasis in original.)

Although we elect to follow Tomlinson and affirm Ritchie's sentence, we have some doubt as to whether Tomlinson appropriately interpreted section 39.022(5)(c)(3). Specifically, we are concerned about certain language in the latter portion of section 39.022(5)(c)(3), namely, that the child was not found to have committed "the indictable offense but [was] found to have committed a lesser included offense." (Emphasis added.) Ritchie was not found guilty of "the indictable offense" (first degree premeditated murder), but was found guilty of "a lesser included offense" (second degree murder). Given the strict construction generally accorded to penal statutes and the fact that the Second District did not expound on "the indictable offense" language cited above in Tomlinson, we find merit in Ritchie's contention that his sentence is controlled by the latter portion of the statute; therefore, the court was required to comply with section 39.059(7)(c) and make written findings to support the imposition of adult sanctions.

Because we have difficulty in concluding that this penal statute is free from ambiguity, we certify the following question to the supreme court as one of great public importance:

> WHETHER A CHILD, CHARGED WITH AN OFFENSE PUNISHABLE BY DEATH OR LIFE IMPRISONMENT, BUT FOUND GUILTY OF A LESSER INCLUDED OFFENSE, PUNISHABLE BY A TERM OF YEARS NOT EXCEEDING LIFE, MUST BE SENTENCED AS AN ADULT WITHOUT THE PROCEDURAL SAFEGUARDS AFFORDED BY SECTION 39.059(7)(c), FLORIDA STATUTES?

AFFIRMED.

MINER, J. CONCURS. WOLF, J., SPECIALLY CONCURS WITH OPINION.

WOLF, J., specially concurring.

While I agree that the statute is not a model of clarity, the result we reach is the only logical way to interpret the statute. If we were to accept the arguments submitted by appellant, a person originally indicted for a more severe offense (first-degree murder) and later found guilty of a lesser-included offense (second-degree murder with a firearm), would be entitled to greater protection from being sentenced as an adult than a person who was originally indicted for and found guilty of second-degree murder with a firearm. The only difference in the two situations is that the grand jury would have found the first person to be more culpable. It does not make good common sense to provide the more culpable person with greater procedural protections prior to adult sentencing.