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IN THE SUPREME COURT OF FLORIDA

CHARLES LEE,	:	
Petitioner,	:	
vs.	:	Case No. SC14-416
STATE OF FLORIDA,	:	
Respondent.	:	
	:	

ON DISCRETIONARY REVIEW FROM THE
SECOND DISTRICT COURT OF APPEAL

REPLY BRIEF OF PETITIONER

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ARGUMENT

ISSUE I

PETITIONER IS ENTITLED TO BE RESENTENCED PURSUANT TO THE PROVISIONS OF CHAPTER 2014-220, LAWS OF FLORIDA.

In its brief, the State argues that "[t]he aims expressed in Kelsey, entitlement to review after the passage of time to consider the question of a defendant's 'maturation and rehabilitation,' can be accomplished without a de novo sentencing hearing." (Respondent's Br. at 11-12.)

However, in Kelsey, this Court unequivocally "determine[d] that resentencing is the appropriate remedy." Kelsey v. State, 206 So. 3d 5, 11 (Fla. 2016). See also Johnson v. State, 42 Fla. L. Weekly S470 (Fla. Apr. 20, 2017) (citing Kelsey and noting that "resentencing pursuant to the new juvenile sentencing guidelines" remains the appropriate remedy).

This case remains indistinguishable from Kelsey, and, like Kelsey, Mr. Lee is entitled to be resentenced pursuant to the provisions of chapter 2014-220, Laws of Florida. Petitioner relies on the initial brief in response to Respondent's remaining arguments.

ISSUE II

THE TRIAL COURT MUST CONSIDER AN UPDATED PRESENTENCE INVESTIGATION REPORT.

Petitioner relies on the initial brief in response to Respondent's arguments.

ISSUE III

THE 25-YEAR MINIMUM MANDATORY TERM VIOLATES THE EIGHTH AMENDMENT.

Petitioner relies on the initial brief in response to Respondent's arguments.

ISSUE IV

THE TRIAL COURT ERRONEOUSLY IMPOSED THE 25-YEAR MINIMUM MANDATORY TERM BECAUSE THE INFORMATION DOES NOT ALLEGE GREAT BODILY HARM.

The State maintains that Petitioner "argues that the evidence presented at trial did not support imposition of a twenty-five-year minimum mandatory sentence." (Respondent's Br. at 24.)

This issue in this case, however, is that the information fails to allege that Mr. Lee caused great bodily harm; the issue is not related to the sufficiency of the evidence presented. Further, because the information does not allege great bodily harm, the 25-year minimum mandatory term remains unlawful. (Petitioner notes that this Court recently addressed defects in charging documents in Martinez v. State, 211 So. 3d 989 (Fla. 2017). See also Robinson v. State, 42 Fla. L. Weekly D758 (Fla. 1st DCA Apr. 4, 2017). However, unlike this case, Martinez and Robinson address whether a sentence is subject to correction under Florida Rule of Criminal Procedure 3.800(a). These cases, therefore, remain inapposite.)

Petitioner relies on the initial brief in response to Respondent's remaining arguments.

CERTIFICATE OF SERVICE

I certify that a copy has been served via the portal to CERESE TAYLOR, A.A.G., at Cerese.Taylor@myfloridalegal.com and CrimappTPA@myfloridalegal.com, on this 14th day of June, 2017.

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Respectfully submitted,

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