

**IN THE SUPREME COURT OF FLORIDA**

**CORTEZ HATTEN,**

Petitioner,

v.

**CASE NO.: SC15-22**

Lower Tribunal No(s): 1D12-5504;  
202010CF000239XXAXMX

**STATE OF FLORIDA,**

Respondent.

\_\_\_\_\_ /

ON REVIEW FROM THE FIRST DISTRICT COURT OF APPEAL

**PETITIONER'S REPLY BRIEF**

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AND CIVIL REGIONAL COUNSEL  
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RECEIVED, 02/03/2016 02:58:50 PM, Clerk, Supreme Court

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## **I. PRELIMINARY STATEMENT**

Cortez Hatten was the defendant in the circuit court, the appellant in the District Court of Appeal, and is the Petitioner in the case that is now before this Court. He will be referred to in this brief as “Petitioner.” References to Respondent’s Answer Brief are by “AB” followed by the page number, all in parentheses.

## **II. SUMMARY OF THE ARGUMENT**

The trial court erred as a matter of law by sentencing Hatten to forty years with a twenty-five-year mandatory minimum pursuant to section 775.087(2), Florida Statutes, the 10-20-Life statute. Under the general sentencing provisions of Chapter 775, the maximum sentence for a first degree felony is thirty years. Section 775.087(2)(c), Florida Statutes, specifically outlines the manner in which the 10-20-Life statute should interact with general statutory maximum sentences. The First District Court of Appeal's reading of section 775.087(2), Florida Statutes, is incorrect; the 10-20-Life statute does not provide the sentencing court with additional authority to impose, in addition to a mandatory minimum sentence, any total or general sentence it wishes without regard to the applicable statutory maximum.

### III. ARGUMENT

**The First District Court of Appeal erred as a matter of law in ruling that section 775.087(2), Florida Statutes, permits a sentencing court to impose a sentence in excess of the applicable statutory maximum when the court imposes a mandatory minimum term that is less than the applicable statutory maximum.**

In Petitioner’s appeal, the First District Court of Appeal (hereinafter “First DCA”) held that section 775.087(2)(b), Florida Statutes, permits a trial court to “impose a sentence in addition to its selected mandatory minimum sentence without regard to whether additional statutory authority for such an additional sentence exists.” Hatten v. State, 152 So. 3d 849, 850 (Fla. 1st DCA 2014) (citing Kelly v. State, 137 So. 3d 2 (Fla. 1st DCA 2014)). Respondent asserts, in the Answer Brief, that the plain language of the statute supports the First DCA’s holding. (AB. 6.) Respondent further asserts that if this Court were to disagree with the First DCA’s holding, it would mean that “a clear statutory ambiguity” exists and that “the First District’s interpretation lends credence.” (AB. 6.) Respondent suggests that if this Court were to find section 775.087(2), Florida Statutes, ambiguous, “the appropriate remedy would be to adopt the reasoning set out by the First District.” (AB. 13.) In making this suggestion, Respondent appears to be asking this Court to ignore the rule of lenity, which requires this Court to construe any ambiguity “most favorably to the accused.” § 775.021(1), Fla.

Stat. Petitioner encourages this Court to decline Respondent’s invitation to ignore relevant and controlling law. Furthermore, to the extent the First DCA’s “interpretation lends credence” to the position asserted by Respondent, Petitioner must point out that the overwhelming majority of Florida’s district courts of appeal have interpreted the relevant statute in a way that “lends credence” instead to Petitioner’s position. If this Court were to resolve an ambiguity simply by deferring to the opinions and interpretations of Florida district courts of appeal, Petitioner’s position would clearly be the stronger and more supported position. See Levine v. State, 162 So. 3d 106 (Fla. 4th DCA 2014); Antoine v. State, 138 So. 3d 1064 (Fla. 4th DCA 2014); Martinez v. State, 114 So. 3d 1119 (Fla. 2d DCA 2013); Sheppard v. State, 113 So. 3d 148 (Fla. 2d DCA 2013); Prater v. State, 113 So. 3d 147 (Fla. 2d DCA 2013); Walden v. State, 121 So. 3d 660 (Fla. 4th DCA 2013); Roberts v. State, 158 So. 3d 618 (Fla. 5th DCA 2013); Wooden v. State, 42 So. 3d 837 (Fla. 5th DCA 2010); McLeod v. State, 52 So. 3d 784 (Fla. 5th DCA 2010).

When all provisions of section 775.087(2) are read together and in conjunction with this Court’s opinion in Mendenhall v. State, 48 So. 3d 740 (Fla. 2010), it becomes clear that the First DCA’s interpretation in Petitioner’s case is inconsistent with both the plain language of section

775.087(2), Florida Statutes, and with Mendenhall. In Mendenhall, this Court concluded “that the Legislature intended for trial courts to have discretion to impose a mandatory minimum under section 775.087(2)(a)[3.] in the range of a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.” 48 So. 3d at 750 (internal quotation omitted). The First DCA’s and Respondent’s reading of section 775.087(2)(b), Florida Statutes, is inconsistent with this Court’s holding that the language in section 775.087(2)(a)3., requiring that “the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison” *unambiguously* gave the trial court “discretion to impose a mandatory minimum within the range of twenty-five years to life.” Mendenhall, at 750. The First DCA and Respondent appear to rely on section 775.087(2)(a)3., as statutory authority for imposing *both* a minimum mandatory within the range of twenty-five years to life *and also* a total sentence up to life. If this Court is correct regarding the meaning of the unambiguous language in section 775.087(2)(a)3., Florida Statutes, as described in Mendenhall, it cannot now be said that that subsection also provides authority to impose a total sentence up to life. In making a distinction between general and specific sentencing statutes, this Court held

that the 10-20-Life statute specifically “addresses the mandatory minimum sentences for enumerated crimes involving the use or possession of a firearm.” Mendenhall, 48 So. 3d at 748. If that is indeed so, the First DCA’s and Respondent’s interpretation of the 10-20-Life statute must fail, because their interpretation relates to non-mandatory sentences, which are not contemplated or addressed in the 10-20-Life statute.

The statutory provision that the subsections of 10-20-Life requiring minimum mandatory sentences do “not prevent a court from imposing a longer sentence of incarceration *as authorized by law* in addition to the minimum mandatory sentence[,]” section 775.087(2)(b), Florida Statutes (emphasis added), simply makes clear that if the trial court imposes a mandatory minimum under 10-20-Life that is less than the sentence the trial court could have imposed notwithstanding 10-20-Life, the trial court may still impose any sentence it could have imposed under general sentencing statutes, even where that sentence exceeds the required minimum mandatory. Without such a provision, the 10-20-Life statute could render absurd results. For example, where a defendant is convicted of carjacking with a finding that he carried a firearm in the course of committing the offense, the general sentencing scheme authorizes “imprisonment for a term of years not exceeding life imprisonment.” See § 812.133(2)(a), Fla. Stat. If,

in the same case, the jury also found that the defendant actually possessed and discharged a firearm during the commission of the carjacking, the 10-20-Life statute would require “a minimum term of imprisonment of 20 years.” All that the language “as authorized by law” in section 775.087(2)(b) means is that in this circumstance, the trial court would not be prevented from imposing the 20-year minimum mandatory under 10-20-Life to be served as a part of the statutorily authorized general sentence of “imprisonment for a term of years not exceeding life imprisonment.” See § 812.133(2)(a), Fla. Stat. Essentially, the use of “as authorized by law” in section 775.087(2)(b) ensures that the specific provisions of the 10-20-Life statute do not completely override the general sentencing scheme chosen by the Legislature; in the example provided, if the specific provision were to override the general provision, the defendant would be rewarded (with a lesser sentence) for having discharged the firearm during the commission of the armed carjacking. Such a result would be inconsistent with “the Legislature’s intent to punish those offenders who possess or use firearms to the fullest extent of the law.” Mendenhall, 48 So. 3d at 742.

Without elaboration or citation, Respondent suggests that the First DCA’s holding in Kelly is “that a trial court has the discretion to impose a minimum mandatory of up to life, plus the maximum of 30 additional

years.” (AB. 12.) This is certainly not explicit in the Kelly opinion or the First DCA’s opinion in Petitioner’s appeal; it appears to be a novel interpretation unsupported by Florida statutory or case law. The First DCA’s *explicit* holding in Kelly was that section 775.087(2)(b), Florida Statutes, permits the trial court to “impose a sentence in addition to its selected mandatory minimum sentence without regard to whether *additional* statutory authority for such an *additional* sentence exists.” 137 So. 3d at 6-7 (emphasis added). It is that explicit holding that the First DCA cited as its basis for affirming Petitioner’s conviction and sentence on appeal. Hatten, 152 So. 3d at 850.

In Kelly, the First DCA opined that “if, pursuant to Mendenhall, a trial court may impose a mandatory minimum that exceeds the maximum sentence that would otherwise apply but for the 10-20-Life statute, it seems logical that the court could also impose a total sentence that exceeds the otherwise applicable maximum sentence.” 137 So. 3d at 6. Petitioner does not comprehend how this conclusion could be considered “logical” and urges this Court to reject it. To expand Mendenhall in this way would be to write into the 10-20-Life statute provisions that are simply not there and that were neither intended nor stated by the Legislature. Unfortunately, neither the First DCA’s opinions in Kelly and Hatten nor Respondent’s Answer

Brief attempt to explain this logic. Petitioner finds the First DCA's interpretation not merely *illogical*, but nearing the absurd. The Mendenhall court relied on the explicit language of the 10-20-Life statute to conclude that the statute permitted a trial court "to impose a sentence anywhere within the range of twenty-five years to life[,]" even if that sentence exceeds the statutory maximum of thirty years where a jury found that the defendant discharged a firearm and caused great bodily harm during the commission of a second degree murder. It was not "logic" but rather explicit and unambiguous statutory authority that led this Court to decide Mendenhall as it did.

Respondent cites the following language from Mendenhall as supporting its position: "[W]e hold that the specific provisions of the 10-20-Life statute with regard to mandatory minimums control over the general provisions of section 775.082 regarding statutory maximums." (AB. 12-13.) Petitioner does not agree that this holding supports Respondent's position in any way. It tends, instead, to support Petitioner's position that the 10-20-Life statute is a specific sentencing statute that relates only to the minimum mandatory portion of a sentence and does not provide authority to impose a sentence that is non-mandatory. If section 775.087(2)(b) were intended to authorize both a minimum mandatory sentence and a non-mandatory

sentence, the statute would contain self-referential language and would provide that the minimum mandatory requirement “does not prevent a court from imposing a longer sentence of incarceration *as authorized by this statute* in addition to the minimum mandatory sentence.” Instead, in place of the italicized words, the statute uses the words “as authorized by law.” This simply indicates that where a sentence is authorized by law in Florida, that sentence may also be imposed in conjunction with the minimum mandatory that was imposed pursuant to 10-20-Life.

Petitioner submits that section 775.082, Florida Statutes, prohibits the sentence imposed in his case because once a twenty-five-year minimum mandatory is imposed, the total sentence cannot exceed the statutory maximum of thirty years for a first degree felony. The Second and Fourth DCAs have reached the same conclusion in indistinguishable sentencing circumstances. See Prater, at 147; Antoine, at 1078; Walden, at 661. On the same reasoning, the Second and Fifth DCAs have reversed sentences of life, including a mandatory minimum terms of twenty-five years under 10-20-Life, for first degree felonies. See Martinez, at 1120; McLeod, 52 So. 3d at 786. In the remaining certified-conflict cases, reviewing courts have held that if a sentencing court imposes a twenty-five-year mandatory minimum under 10-20-Life, it may not also impose a total term-of-years sentence that

exceeds the applicable statutory maximum in section 775.082. See Levine, at 107; Sheppard, at 148-49; Roberts, 158 So. 3d 618; Wooden, 42 So. 3d 837.

## CONCLUSION

Petitioner respectfully submits that this Court should resolve the conflict between the First DCA<sup>1</sup> and the Second,<sup>2</sup> Fourth,<sup>3</sup> and Fifth<sup>4</sup> DCAs regarding the sentencing authority provided for in section 775.087(2)(b), quash the ruling of the First DCA in Hatten, and remand his case to the trial court for resentencing consistent with the reasoning in the certified-conflict cases from the Second, Fourth, and Fifth DCAs.

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<sup>1</sup> Hatten, 152 So. 3d 849; Kelly, 137 So. 3d 2.

<sup>2</sup> Martinez, 114 So. 3d 1119; Sheppard, 113 So. 3d 148; Prater, 113 So. 3d 147.

<sup>3</sup> Wiley, 125 So. 3d 235; Levine, 162 So. 3d 106; Antoine, 138 So. 3d 1064; Walden, 121 So. 3d 660.

<sup>4</sup> Roberts, 158 So. 3d 618; Wooden, 42 So. 3d 837; McLeod, 52 So. 3d 784.

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically served on Trisha Meggs Pate, Assistant Attorney General, counsel for the State of Florida, crimappthl@myfloridalegal.com, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050; and has been furnished by U.S. Mail to Appellant, Cortez Hatten, DC# X53106, Holmes Correctional Institution, 3142 Thomas Drive, Bonifay, Florida 32425-0190, on this date, February 3, 2016.

## **CERTIFICATE OF FONT SIZE**

I HEREBY CERTIFY that, pursuant to Florida Rule of Appellate Procedure 9.210(a)(2), this brief was typed in Times New Roman 14 Point.

Respectfully submitted,

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