

IN THE SUPREME COURT OF FLORIDA

JASON A. YEGGE,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC15-770

ON DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL,
SECOND DISTRICT OF FLORIDA

ANSWER BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

Petitioner was charged with (1) armed burglary with a firearm (a first degree felony punishable by life), (2) manufacture of marijuana (a third degree felony), and (3) possession of drug paraphernalia (a first degree misdemeanor). (V1:R3-5) Petitioner pled guilty. (V1:R6-7) The trial court sentenced him as a youthful offender, withheld adjudication on Counts 1 and 2, adjudicated him guilty on Count 3, and sentenced him to six years of probation on Count 1, five years of probation on Count 2, and time served on Count 3. (V1:R33-40)

Petitioner was first charged with violating his probation by committing a new crime and by using drugs after his urine sample tested positive for illegal drugs. (V1:R52) Petitioner admitted the violations. (V1:R58-59) The trial court continued his probation. (V1:R62)

Petitioner was charged with violating his probation a second time by committing a new crime and by leaving his county of residence without permission after he was arrested outside his county for driving under the influence. (V1:R63) Petitioner admitted the violations. (V2:R75-76) The trial court sentenced Petitioner to ten mandatory minimum years in prison and he filed a motion to modify/reconsider sentence. (V2:R81-82) The trial court vacated the judgment and sentence and continued his probation with a nunc pro tunc order. (V2:R79-80, 84)

Petitioner was charged with violating his probation a third time by committing a new crime after he was arrested for introduction of contraband into a detention facility, by committing a new crime after his urine sample tested positive for illegal drugs, by refusing to submit to a random urinalysis after he provided a tampered specimen, and by failing to report to his probation officer. (V1:R101, 104, 114) Petitioner admitted the violations. (V1:R118-19, 136-44) The trial court revoked his probation, adjudicated him guilty on Counts 1 and 2, and sentenced him to ten mandatory minimum years in prison on Count 1 and time served on Count 2. (V1:R122-27, 129-30, 146-48) For Petitioner's new offense, the trial court adjudicated him guilty of the lesser included offense of possession of cocaine and consecutively sentenced him to five years of probation with a five year suspended prison sentence. (V1:R146-48, V2:R197-98)

Petitioner filed a motion to correct illegal sentence, asserting that he did not lose his youthful offender status even after his substantive violation of probation and arguing that his sentence was therefore illegal because mandatory minimum statutes do not supersede youthful offender sentencing provisions. (V2:R168-72) The postconviction court denied the motion, ruling that the trial court had the authority to revoke Petitioner's youthful offender status because he was charged and convicted with a new substantive offense. (V2:R174-202)

Upon appeal, the Second District Court of Appeal reversed and remanded for amendment of Petitioner's sentence to reflect his youthful offender status, holding that his sentence was legal because it was less than the maximum allowable for the original offense but that his youthful offender status could not be revoked even after his substantive violation of probation. Yegge v. State, 88 So. 3d 1058 (Fla. 2d DCA 2012). (V2:R237-41)

On remand, the postconviction court granted, in part, Petitioner's motion to correct illegal sentence and amended his sentence to reflect that he was sentenced as a youthful offender. (V2:R242-58, 259-63) Petitioner then appealed the order granting, in part, his motion. (V2:R264-65)

Upon appeal, Petitioner asserted that the ten year mandatory minimum prison term was illegal because sentencing enhancements did not apply to youthful offender sentences. Yegge v. State, 40 Fla. L. Weekly D874, *1 (Fla. 2d DCA April 15, 2015). The Second District Court of Appeal affirmed Petitioner's sentence, holding that trial courts are required to continue a youthful offender's status after a substantive violation of probation but are not precluded from imposing an enhanced sentence under the Youthful Offender Act. Id. at *2. The Second District recognized that the Fourth District Court of Appeal expressed a contrary view in Blacker v. State, 49 So. 3d 785, 789 (Fla. 4th DCA 2010), by holding that drug trafficking mandatory minimum sentences could

not be imposed on youthful offenders who substantively violate probation. Id. at *4. The Second District also noted that the Fourth District later held in Goldwire v. State, 73 So. 3d 844, 846 (Fla. 4th DCA 2011), that trial courts have discretion to impose non-youthful offender sentences, such as minimum mandatory sentences, after substantive violations of probation. Id. The Second District agreed with the analysis in Goldwire and certified conflict with Blacker.

SUMMARY OF ARGUMENT

Although trial courts are precluded by section 958.04(2), Florida Statutes, from imposing mandatory minimum sentences upon youthful offenders as an initial sentence, they are not precluded from imposing such sentences upon revocation of probation after offenders violate probation. Since violations of probation are governed by a separate statute, the limitations and restrictions of section 958.04(2) do not apply. Violations of probation are governed by section 958.14, Florida Statutes, which allows for the imposition of any sentence which might have originally been imposed up to the maximum sentence for the offense for substantive violations. Mandatory minimum sentences shorter than the maximum sentence for the offense do not violate the plain language of section 958.14. Furthermore, by modifying section 958.14 to allow of imposition of the original maximum penalty, the legislature has indicated that youthful offenders who substantively violate probation lose their youthful offender status. Therefore, the limitations and restrictions of the youthful offender designation no longer apply to offenders who substantively violate their probation.

ARGUMENT

ISSUE: ARE YOUTHFUL OFFENDERS WHO SUBSTANTIVELY VIOLATE PROBATION SUBJECT TO MANDATORY MINIMUM SENTENCING PROVISIONS? (RESTATED)

Trial courts have the discretion to sentence adult defendants under the age of 21 as youthful offenders if they have not previously been classified as youthful offenders and have not been convicted of a capital or life felony. §958.04(1), Fla. Stat. (2003). Defendants initially sentenced as youthful offenders may not be sentenced to more than six years of probation, community control, incarceration, or combination thereof. §958.04(2), Fla. Stat. (2003).

Youthful offender sentencing provisions are imposed in lieu of other criminal penalties authorized by law. §958.04(2), Fla. Stat. (2003). Hence, mandatory minimum sentencing provisions cannot be imposed on a youthful offender's initial sentence. See Mendez v. State, 835 So. 2d 348, 349 (Fla. 4th DCA 2003) (holding that drug trafficking mandatory minimum provisions were not applicable because defendant was classified as a youthful offender, which precluded imposition of other sanctions) and State v. Wooten, 782 So. 2d 408, 409-10 (Fla. 2d DCA 2001) (holding that 10/20/Life minimum mandatory provisions were not applicable because defendant was sentenced as a youthful offender and the 10/20/Life provisions did not supersede youthful offender sentencing).

1. Upon violating probation, youthful offenders are sentenced under section 958.14, Florida Statutes, which does not preclude mandatory minimum sentencing provisions.

Sentencing for a youthful offender who violates probation is governed by section 958.14, Florida Statutes (2006). By enacting a separate statute for violations of probation by youthful offenders, the legislature explicitly provided sentencing provisions independent from the sentencing provisions for initial disposition of a youthful offender's charges. Thus, the sentencing provisions and limitations of section 958.04(2) do not apply after a violation of probation. Section 958.14 would be wholly superfluous if section 958.04(2) still applied after a youthful offender violated probation. "[A] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." Corley v. U.S., 556 U.S. 303, 314 (2009) (citations and quotation marks omitted); see also Marx v. General Revenue Corp., 133 S.Ct. 1166, 1178 (2013) ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme.") (citation omitted). The interpretation that trial courts are no longer limited by section 958.04(2) after a youthful offender violates probation is further apparent after reviewing the language of section 958.14 because it specifically invokes sentencing provisions outside of the youthful offender statutes.

"[T]he starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive." Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980). "A violation or alleged violation of probation... shall subject the youthful offender to the provisions of s. 948.06," the statute which governs standard adult violations of probation. §958.14, Fla. Stat. (2006) (emphasis added). Thus, if a trial court revokes a youthful offender's probation, it may "impose any sentence which it might have originally imposed before placing the probationer on probation..." §948.06(2)(b), Fla. Stat. (2006); §948.06(2)(e), Fla. Stat. (2006) (emphasis added). However, the trial court may not sentence the offender to incarceration for more than six years if he committed only a technical violation. §958.14, Fla. Stat. (2006). On the other hand, the trial court may order up to the maximum sentence for the offense for which the offender was found guilty if he committed a substantive violation. §958.14, Fla. Stat. (2006). Therefore, a youthful offender who committed a substantive violation of probation is no longer entitled to the six year limit on incarceration.¹

¹ The defendant is also not entitled to be sentenced as a youthful offender on his new charges. Christian v. State, 84 So.

"[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." Connecticut Nat. Bank v. Germain, 503 U.S. 249, 253-54 (1992) (citations omitted). Section 958.14 clearly provides that a youthful offender who violates probation may be given any sentence that may have originally been imposed. Therefore, the trial court has the discretion to impose standard adult sanctions on a youthful ofender after a violation of probation.

While section 958.14 provides the exception that a youthful offender who substantively violates probation may not be incarcerated for longer than the maximum for the original offense, it does not provide any other exceptions. "[W]here the Legislature made one exception clearly, if it had 'intended to establish other exceptions it would have done so clearly and unequivocally.'" Citizens Property Ins. Corp. v. Perdido Sun Condominium Ass'n, Inc., 40 Fla. L. Weekly S265, *3 (Fla. May 14, 2015), quoting Dobbs v. Sea Isle Hotel, 56 So. 2d 341, 342 (Fla. 1952). Since the legislature did not provide for an exception to enhancements in section 958.14, it is clear that it did not intend to prohibit them after violations of probation.

3d 437, 444 (Fla. 5th DCA 2012); Lee v. State, 67 So. 3d 1199, 1202 (Fla. 2d DCA 2011); Blacker v. State, 49 So. 3d 785, 788 (Fla. 4th DCA 2010); Boynton v. State, 896 So. 2d 898, 899 (Fla. 3d DCA 2005).

Moreover, section 958.04(2) precludes all enhancements for youthful offenders at initial sentencing by specifying that it applies in lieu of other sentencing provisions while section 958.14 contains no clause that precludes other sentencing provisions. Indeed, section 958.14 specifically invokes sentencing provisions outside the youthful offender statutes. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." Russello v. United States, 464 U.S. 16, 23 (1983) (citation omitted). Since the legislature did not explicitly exclude other sentencing provisions in section 958.14 even though it did so in section 958.04(2), it is clear that it did not intend to categorically exclude other applicable sentencing provisions to a youthful offender's sentence after a violation of probation.

Based on the clear language of section 958.14, a youthful offender who substantively violates probation may be given any sentence that could have originally been imposed. The only exception is that the sentence may not exceed the maximum for the original offense. Section 958.14 not only overrides the prison term limitation in section 958.04(2) but also overrides the provision that youthful offender sentencing is imposed in lieu of other sentencing provisions. Therefore, section 958.14

does not preclude enhancements that do not exceed or increase the maximum sentence for the original offense but does preclude any enhancements that do exceed or increase the maximum sentence. Accordingly, mandatory minimum sentencing provisions are not entirely precluded when sentencing a youthful offender for a violation of probation.

Petitioner relies extensively on cases that hold that mandatory minimum enhancements are precluded during a youthful offender's initial sentencing. However, these cases do not address mandatory minimum enhancements during sentencing for a violation of probation and therefore are not controlling.

Petitioner also argues that section 958.14 is qualified by case law that requires retention of youthful offender designation after a violation of probation. However, section 958.14 is clear and unambiguous and the judicial inquiry is therefore complete. Rubin v. U.S., 449 U.S. 424, 430 (1981) ("When we find the terms of a statute unambiguous, judicial inquiry is complete, except in rare and exceptional circumstances." (citations and quotation marks omitted)).

Petitioner further argues that section 958.14 does not specifically authorize standard adult sanctions or sentencing enhancements. Petitioner misconstrues the statute by asserting that it must specifically articulate the sentencing provisions available to the trial court upon a youthful offender's

violation of probation. Section 958.14 explicitly gives the trial court broad discretion in sentencing a youthful offender who violates his probation by invoking section 948.06, which authorizes any sentence which may have originally been imposed. Since the statute grants broad discretion, the availability of all applicable sentencing provisions is clear and they need not be specified. Conversely, limitations to sentencing options must be explicit rather than implied. Section 958.14 only imposes limitations to the maximum incarceration term. Therefore, standard adult sanctions and sentencing enhancements are clearly authorized as long as they do not increase or exceed the maximum sentence for the original offense.

2. Upon substantively violating probation, youthful offenders lose their youthful offender designation and mandatory minimum sentencing provisions are no longer precluded.

Petitioner argues that mandatory minimums are precluded even after violations of probation because this Court stated, in State v. Arnette, 604 So. 2d 482, 484 (Fla. 1992), that “[u]nless the legislature clearly states otherwise, youthful offenders maintain youthful offender status even when they violate a condition of community control.” Arnette held that the six year incarceration limit for youthful offenders who commit violations of probation enacted in 1985 applied retroactively because it was evidence of the legislature’s prior intent. Id. However, it did not address the application of mandatory minimum

sentencing provisions to youthful offender sentences, either at initial sentencing or upon violation of probation. Therefore, it is not instructive on the issue presented in this case.

Furthermore, the legislature has indeed indicated that youthful offenders who substantively violate probation lose their youthful offender status. This indication becomes apparent when considering the statutory history of section 958.14.

When the Florida Youthful Offender Act was originally enacted, it provided simply that “[a] violation or alleged violation of probation or the terms of a community control program shall subject the youthful offender to the provisions of s. 948.06(1)...” Ch. 78-84, §14, at 123, Laws of Fla. This Court confirmed that this provision allowed a trial court, upon revoking an offender’s community control, to treat him as though it had never placed him in community control and sentence him in accordance with the then-existing version of section 948.06(1). Brooks v. State, 478 So. 2d 1052, 1053 (Fla. 1985).

The legislature subsequently modified section 958.14 to provide that “no youthful offender shall be committed to the custody of the department for such violation for a period longer than 6 years or for a period longer than the maximum sentence for the offense for which he was found guilty, whichever is less...” Ch. 85-288, §24, at 1821, Laws of Fla. This Court agreed

with the conclusion in Watson v. State, 528 So. 2d 101, 102 (Fla. 1st DCA 1988), which held:

[T]he only logical conclusion is that the legislature intended to change the case law interpretation of §958.14, or in any event to change the law, so that once the circuit court has given a defendant youthful offender status and has sentenced him as a youthful offender, it must continue that status and only resentence the defendant as a youthful offender for a violation of the probation or community control portion of his youthful offender sentence.

State v. Watts, 558 So. 2d 994, 997-98 (Fla. 1990). This Court also recognized that the previous version of section 958.14 permitted trial courts to treat a youthful offender who violates community control as if he had never been placed on community control. Watts, 558 So. 2d at 997. Essentially, this Court held that the provision of a six year incarceration limit after violation of probation indicated that the legislature intended for youthful offenders to maintain their youthful offender status after violating probation.

The legislature subsequently modified section 958.14 again to provide that "no youthful offender shall be committed to the custody of the department for a substantive violation for a period longer than the maximum sentence for the offense for which he was found guilty", while retaining the previous limit for technical or non-substantive violations. Ch. 90-208, §19, at 1161, Laws of Fla. Applying the analysis in Watts, which derived the maintenance of youthful offender status from the maintenance of the six year incarceration limit, it is clear that the

legislature has indicated that youthful offenders lose their youthful offender status if they substantively violate probation but retain their youthful offender status if they technically violate probation. Moreover, although Arnette was decided after the 1990 modification to section 958.14, it did not interpret or even refer to the 1990 modification. See Johnson v. State, 678 So. 2d 934, 934-35 (Fla. 3d DCA 1996) (recognizing that "the holding of Arnette was based upon the pre-1990 version of section 958.14"). Therefore, the language in Arnette that youthful offenders maintain their youthful offender status even after violating probation is no longer controlling with respect to substantive violations of probation. Since offenders lose their youthful offender designation after substantively violating probation, mandatory minimum sentencing provisions are not precluded when sentencing them for their violation.

Revoking youthful offender status after revocation of probation for a substantive violation is also consistent with the legislative intent behind the Florida Youthful Offender Act. The purpose of the Act is to improve a youthful offender's chances of correction and successful return to the community by providing enhanced services and preventing association with more experienced criminals. §958.021, Fla. Stat. (2003).

Once a youthful offender substantively violates his probation by committing a new criminal offense, he demonstrates diminished

capability for correction and successful return to the community. In other words, the enhanced services and isolation from experienced criminals were futile. Therefore, the purpose of the Act would not be fulfilled by continuing to provide the protections and privileges of youthful offender status. Moreover, the legislature's modification of the violation of probation provisions to allow for imposition of the original maximum penalty after substantive violations indicated their recognition that the protections and privileges provided to those designated as youthful offenders were not successful if the offender committed new crimes.

The diminished capability for correction and return to the community is especially evident in the instant case because Petitioner repeatedly violated his probation substantively, was given multiple opportunities to reform, and failed to do so. Permitting youthful offenders that exhibit such a propensity to commit new crimes despite protective and preventative measures to continue to receive those privileges would constitute an unnecessary reward after the initial discretionary exercise of leniency. In fact, it may deter trial courts from exercising their discretion to treat youthful offenders with leniency because it would remove their accountability for failing to capitalize upon the opportunity to reform.

Furthermore, maintenance of youthful offender status after revocation of probation after a substantive violation would lead to other absurd results. "[I]nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 575 (1982) (citations omitted). According to Petitioner's interpretation, a youthful offender sentenced for a first degree felony punishable by life, such as in the instant case, could be lawfully sentenced to life in prison upon revocation of his probation for a substantive violation but would still be entitled to protections and privileges designed to facilitate an offender's successful return to the community. Such absurd results would be inconsistent with the corrective purpose of the Youthful Offender Act. On the other hand, treating repeat criminal offenders more harshly than first time youthful offenders would be entirely consistent with legislative intent.

After Petitioner admitted that he substantively violated his probation, the trial court revoked his probation, revoked his youthful offender designation, and sentenced him to a ten year mandatory minimum prison sentence in accordance with section 775.087, Florida Statutes (2002). The sentence did not violate the plain language of section 958.14, Fla. Stat. (2006), or section 948.06(2)(b), Fla. Stat. (2006), because it was less

than the maximum sentence of life in prison for armed burglary with a firearm and it could have originally been imposed before Petitioner was placed on probation. Furthermore, the mandatory minimum sentence was not precluded by section 958.04(2), Florida Statutes (2003), because Petitioner was not sentenced under that section and because he lost his youthful offender designation upon substantively violating probation. Therefore, the Second District Court of Appeal correctly held that the mandatory minimum sentence was lawful. However, the Second District Court of Appeal incorrectly held that the youthful offender designation must be maintained.

CONCLUSION

Based on the foregoing discussions, Respondent respectfully requests this Honorable Court to approve the decision of the Second District Court of Appeal to affirm Petitioner's ten year mandatory minimum sentence and quash the decision of the Second District Court of Appeal to reverse the revocation of Petitioner's youthful offender status.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to Alisa Smith, Public Defender's Office, Polk County Courthouse, P.O. Box 9000 - Drawer PD, Bartow, FL 33831, asmith@pd10.state.fl.us, by e-mail on July 23, 2015.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

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