

IN THE SUPREME COURT OF FLORIDA

JASON A YEGGE, :
 Petitioner, :
 vs. : Case No. SC2015-770
 STATE OF FLORIDA, :
 Respondent. :
 _____ :

DISCRETIONARY REVIEW OF DECISION OF THE
 DISTRICT COURT OF APPEAL OF FLORIDA
 SECOND DISTRICT

INITIAL BRIEF OF PETITIONER ON THE MERITS

HOWARD (REX) DIMMIG II
 PUBLIC DEFENDER
 TENTH JUDICIAL CIRCUIT

ALISA SMITH
 Assistant Public Defender
 FLORIDA BAR NUMBER 0794805

Public Defender's Office
 Polk County Courthouse
 P. O. Box 9000--Drawer PD
 Bartow, FL 33831
 (863) 534-4200

ATTORNEYS FOR PETITIONER

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STATEMENT OF THE CASE AND FACTS

Yegge was sentenced as a youthful offender on armed burglary with a firearm, and he later violated his youthful offender probation by committing a new law violation (introducing contraband into jail). (V2/R. 238, 104, 114, 118). The trial judge revoked Yegge's youthful offender status, applied Florida's 10-20-Life law, and sentenced Yegge to a minimum mandatory term of ten years in prison. (V2/R. 135). By pro se motion to correct sentencing error, Yegge challenged his sentence. (V2/R. 238-41). The trial judge denied the motion, and Yegge appealed (pro se) that decision to the Second District. The Second District agreed that the trial judge erred by revoking Yegge's youthful offender status, but without any discussion held that "Yegge's ten-year mandatory minimum [sentence] was not illegal." (V2/R. 239); *Yegge v. State*, 88 So. 3d 1058, 1059 (Fla. 2d DCA 2012).

On remand and consistent with the Second District's opinion, the trial judge re-imposed the youthful offender status and left intact the mandatory-minimum sentence. (V2/R. 242-44). Acting pro se Yegge appealed his sentence (again). He requested counsel, and the public defender's office was appointed. (V2/R. 267-72). On appeal to the Second District, Yegge argued his sentence was illegal because the youthful offender law prohibited the imposed minimum mandatory term under the 10-20-Life statute. See *Yegge v. State*, 2015 WL 1650293, 2D12-4193, -- So. 3d --, 40 Fla. L. Weekly D874 (Fla. 2d DCA April 15, 2015; Appendix A). The Second

District, in essentially a split decision, held that the "ten-year mandatory minimum sentence [was] not illegal, despite [Yegge's] youthful offender status." *Id.* (Appendix A) Judges Wallace and Crenshaw reasoned that the trial judge had discretion to impose the mandatory term because the plain language of the statute subjected a youthful offender, who substantively violated probation, to a sentence that could have been imposed under s. 948.06. *Id.* (Appendix A)

Judge Davis, in a specially concurring decision, was constrained to join the opinion because the majority did not reverse its previous decision, in *Yegge v. State*, 88 So. 3d 1058, 1059-60 (Fla. 2d DCA 2012). *Id.* (Davis, J., specially concurring) (Appendix A). Judge Davis wrote, however, to disagree with the majority's holding and reasoning; he believed the court should recede from *Yegge* because as a youthful offender the statutory maximum sentence does not include enhanced penalties, including the 10-20-Life enhancement. *Id.* He reasoned that (1) sentencing enhancements do not apply to youthful offender sentences at the time of the original sentencing, (2) the Florida Supreme Court's reasoning, in *State v. Arnette*, 604 So. 2d 482 (Fla. 1992), is instructive, applies and supports reversal because the language of section 958.14 did not specifically authorize applying adult sanctions to youthful offenders, and (3) the second sentence of section 958.14, which requires that "no youthful offender shall be' resentenced "for a substantive violation for

period longer than the maximum sentence for the offense for which he or she was found guilty" modifies the first sentence, constraining the sentencing options under 948.06 to the maximum statutory sentence (not maximum exposure as found by the majority). (Appendix A)

Judges Wallace and Crenshaw noted conflict with the Fourth District's decision in *Blacker v. State*, 49 So. 3d 785 (Fla. 4th DCA 2010), which also conflicted with *Goldwire v. State*, 73 So. 3d 844 (Fla. 4th DCA 2011). Yegge filed a notice seeking discretionary jurisdiction to resolve the direct conflict, and this Court granted review.

SUMMARY OF THE ARGUMENT

Youthful offenders are treated differently than adults with separate and distinct sentencing provisions. Once designated as a youthful offender that designation cannot be revoked, even after the youthful offender violates probation. Section 958.14 authorizes trial judges to impose a period of incarceration no longer than the maximum sentence for violating probation.

Contrary to the Second District Court's holding, section 958.14 does not authorize the imposition of unlimited adult sentencing enhancements, including the mandatory enhancement under the 10-20-Life Statute. The plain meaning of the youthful offender law precludes sentencing enhancements. The legislature has not "clearly" stated that unlimited adult penalties may be imposed on youthful offenders who violate probation. Florida's youthful offender law supercedes that of general sentencing provisions, and youthful offenders are not subject to a sentence encompassing their "maximum exposure" under the law, only to the maximum sentence for the offense.

Although the length of Yegge's sentence was legal, the imposed mandatory-minimum sentencing enhancement under the 10-20-Life statute was not. The Second District erred by misinterpreting the statute and allowing trial judges' discretion to impose sentencing enhancements on youthful offenders. The decision below should be reversed with directions that the imposed mandatory term be struck.

ARGUMENT

I. Youthful offenders are not subject to enhanced criminal and adult sentencing penalties, including the minimum mandatory term under the 10-20-Life Statute,¹ even when they substantively violate probation.

Trial judges have discretion to impose an alternative sentencing structure on defendants who qualify as youthful offenders. Yegge received the benefit of that sentencing, and he was designated as a youthful offender. The legislature clearly and unambiguously intended for youthful offenders to be treated differently from adults. Fla. Stat. § 958.021 (2003). The youthful offender law is intended to "improve the chances of correction and successful return to the community" by providing enhanced programming opportunities and limited interaction with "more experienced criminals" during confinement. Fla. Stat. § 958.021 (2003). The legislature specifically provided "additional sentencing alternatives to be used in the discretion of the court," *Id.*, and these alternatives are imposed "[i]n lieu of other criminal penalties authorized by law. . . ." Fla. Stat. § 958.04(2) (2003).

After serving the confinement portion of his sentence, Yegge was placed on youthful offender probation. He violated that probation by committing a new law violation. Yegge was sentenced to ten years in prison, and he is not challenging the length of

¹ Fla. Stat. § 775.087(2) (2003) (providing a ten-year mandatory term of imprisonment for possessing a firearm during the commission of a listed felony, including burglary).

his prison term. The narrow question here is whether the trial judge properly imposed the sentencing enhancement of a "mandatory" ten years under the 10-20-Life Statute.

This question turns on the interpretation of Florida section 958.14 (2002), which provides the limits for sentencing youthful offenders who violate probation:²

958.14 Violation of probation or community control program. – A violation or alleged violation of probation or the terms of a community control program shall subject the youthful offender to the provisions s. 948.06. However, 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 or she was found guilty, with credit for time served while incarcerated, or for a technical or nonsubstantive violation for a period longer than 6 years or less, with credit for time served while incarcerated.

Statutory interpretation involves questions of law reviewed de novo. *Daniel v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla. 2005); *Mendenhall v. State*, 48 So.3d 740, 747 (Fla. 2010).

Yegge urges this Court to adopt the well-reasoned, specially concurring decision, by Judge Davis, in *Yegge v. State*, 40 Fla. L. Weekly D874 (Fla. 2d DCA April 15, 2015), and reject the majority holding and reasoning because (1) the youthful offender sentencing scheme is imposed in lieu of other criminal penalties, (2) the

² Since 1997, this law was amended twice, but only cosmetically. See Laws 2004, c. 2004-373 § 38, eff. July 2, 2004 and Laws 2007, c. 2007-2, §8, eff.

legislature has not "clearly stated"³ that unlimited, adult penalties and sentencing enhancements may be imposed on youthful offenders who violate probation, and (3) the plain meaning of section 958.14 limits imposed sentences to the "maximum sentence" not "maximum exposure" under the law.

(A) Youthful offender sentences are imposed "in lieu of other criminal penalties," and youthful offenders retain that designation, even if they violate probation.

Youthful offender sentencing is provided by a separate statutory scheme, and the discretionary designation and alternative sentencing scheme are imposed "[i]n lieu of other criminal penalties authorized by law. . . ." § 958.021, Fla. Stat. (2002). It is well settled that enhanced sentencing does not apply to the youthful offender. *Christian v. State*, 84 So. 3d 437, 442 (Fla. 5th DCA 2012), rev. denied, 134 So. 3d 446 (Fla. 2014) (citing *Mendez v. State*, 835 So. 2d 348, 349 (Fla. 4th DCA 2003) (holding that three-year mandatory terms did not apply to the original youthful offender sentence) (quoting § 958.04(2), Fla. Stat. 2001)); *State v. Wooten*, 782 So. 2d 408 (Fla. 2d DCA 2001) (holding that 10-20-Life sentencing enhancements did not apply to the youthful offenders sentence at the time of the original sentencing). As such, once designated as a youthful offender, minimum-mandatory penalties do not apply because youthful offenders retain that designation even after violating

(..continued)
March 12, 2007.

probation. Cf. *State v. Arnette*, 604 So. 2d 482, 484 (Fla. 1992) (“Unless the legislature clearly states otherwise, youthful offenders maintain youthful offender status even when they violate a condition of community control.”); see also *Yegge v. State*, 88 So. 3d 1048, 1059 (Fla. 2012).

The Second District’s opinion, relying on *Mendenhall v. State*, 48 So. 3d at 750 (Fla. 2010), was wrong. The *Mendenhall* decision concerned the sentencing of an adult offender over the statutory maximum sentence for committing a criminal offense with a firearm. The *Mendenhall* Court concluded that the specific provisions of the 10-20-Life law prevailed over the general provisions of the statutory maximum provisions. *Id.* at 748. In arriving at this conclusion, the *Mendenhall* Court relied on a “well settled rule of statutory construction” that

a special statute covering a particular subject matter is controlling over a general statutory provision covering the same and other subjects in general terms. In this situation ‘statute relating to the particular part of the general subject will operate as an exception to or qualification of the general terms of the more comprehensive statute to the extent only of the repugnancy, if any.’

Id. (quoting *McDonald v. State*, 957 So. 2d 605, 610 (Fla. 2007) (quoting *Adams v. Culver*, 111 So. 2d 665, 667 (Fla. 1959))). Applying that same reasoning here, the specific provisions of the youthful offender law prevail over the more general provisions of

(..continued)

³ *State v. Arnette*, at 484.

the adult sentencing enhancement laws, including the 10-20-Life provision, therefore youthful offenders are not subject to sentencing enhancements.

(B) The legislature has not "clearly stated" that unlimited adult penalties may be imposed on youthful offenders who violate probation, and therefore trial judges do not have discretion to impose enhanced penalties.

Contrary to the Second District's decision, dismissing the reasoning in *Arnette*, youthful offenders are treated differently from adults unless the legislature clearly states otherwise:

It has always been clear that the legislature intended to treat youthful offenders differently than adults. Unless the legislature clearly states otherwise, youthful offenders maintain youthful offender status even when they violate a condition of community control. Section 958.14 did not specifically authorize applying adult sanctions to a youthful offender. . . .

Even though the *Arnette* Court interpreted the previous version of the youthful offender section 958.14, which capped sentencing for probation violations to six years in prison for both substantive and nonsubstantive violations, the subsequent change by the legislature did not expressly authorize applying unlimited adult criminal penalties to youthful offenders. The legislature expressly removed the six-year cap on the sentencing of youthful offender probation violators, who commit substantive violations of probation, but maintained 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 or she was found guilty. . . ." § 958.14, Fla. Stat. (2002).

Under the previous version, Arnette's sentence was capped at six years. Only the length of the prison term, which authorized trial judges to impose up to the "maximum sentence" was changed by the legislature in 1997. The legislature did not expressly authorize the imposition of any and all adult penalties, including minimum mandatory sentencing enhancements on youthful offenders who commit substantive law violations. Without that authorization and under the reasoning of Arnette, youthful offenders are not subject to sentencing enhancements. See *Blacker v. State*, 49 So. 3d 785, 789 (Fla. 4th DCA 2011).

(C) The plain meaning of section 958.14 limits youthful offender sentencing to a period no longer than "the maximum sentence" and thereby precludes the discretionary imposition of enhanced penalties.

The plain meaning of section 958.14 does not authorize, as held by the Second District, trial judges to use discretion to impose adult sentencing enhancements on youthful offenders. The statute does not provide "discretion," nor does the statute expressly authorize enhanced penalties, and it certainly does not authorize trial judges to use discretion in imposing "mandatory" enhancements. Cf. *Yegge*, 40 Fla. L. Weekly D874; *Goldwire* 73 So.

3d 844 (Fla. 4th DCA 2011) (holding the trial judge had discretion to impose a minimum mandatory term and a non-youthful offender sentence):

The Second District in *Yegge* and the Fourth District, in *Goldwire*, erroneously concluded that the first sentence of section 958.14 was "unqualified" and therefore authorized adult sentencing enhancements. The Second District arrived at the wrong result because it ignored the qualifying second sentence of the statute, which limits that discretion:

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. However, 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 or she was found guilty"

Fla. Stat. § 958.14 (2002) (emphasis added): The word "however" is significant, and the word must be construed in a manner that gives the word effect. *Mendenhall*, 48 So. 3d at 749 (observing that statutes must be construed consistent with the "elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage") (citations omitted). "The first sentence of section 958.14 serves to sever the restraints of the original youthful offender sentencing caps of section 958.04(2),

but the second sentence dictates the boundaries for resentencing after substantive violation." *Yegge*, 40 Fla. L. Weekly D874 (Davis, J., specially concurring).

The limiting nature of the second sentence was recognized by *Arnette*, which interpreted the very same language: "In 1984, section 958.14, Florida Statutes (1983) read: 'A violation or alleged violation of the terms of community control program shall subject the youthful offender to the provisions of s. 948.06(1).'

" *Arnette*, 604 So. 2d at 483 (quoting section 948.14, Florida Statutes (1983)). Identical to the current version of s. 948.06, the *Arnette* Court noted that the 1984 statute provided "that, if community control is revoked because of a violation, the court may "impose any sentence which it might have originally imposed before placing the probationer or offender on probation or into community control.'" *Id.* As interpreted by *Arnette*, the second sentence of section 958.14 constrained trial judges sentencing options to that which could have originally been imposed upon the *youthful offender* sentence. Under the previous version, at issue in *Arnette*, the maximum sentence for a youthful offender for violating probation was six years in prison. *Arnette*, 604 So. 2d at 483-84. The Court reasoned that once designated as a youthful offender, the designation cannot be revoked, and the trial judge was limited to sentences that might have originally been imposed on a youthful offender up to six years. Today, trial judges may impose up to the statutory maximum sentence for substantive law

violation consistent with the legislative intent of the youthful offender law (to treat youthful offenders differently) and the specific youthful offender provision for those who substantively violate probation. § 958.14, Fla. Stat. (2003).

The legislature has had many opportunities, since 1992, to modify the youthful offender law. It has chosen not to modify the law, or clearly state that youthful offenders, who violate probation, may be subject to enhanced penalties or the maximum "exposure" under the law.⁴ This long-term inaction by the legislature "amounts to legislative approval or acceptance of [] judicial construction." *Goldenberg v. Sawczak*, 792 So. 2d 1078, 1081 (Fla. 2001). In fact, the legislature has not acted since the Fourth District's decision in *Blacker*, which directly held that minimum mandatory enhancements did not apply to youthful offenders who substantively violated probation. 49 So. 3d at 785 (Fla. 4th DCA 2010). "Because the legislature has failed to make any substantive changes to the pertinent statutory language [it] must [be] assumed[d] that it has no quarrel with these holdings." *State v. Hall*, 641 So. 3d 403, 405 (Fla. 1994) (upholding judicial interpretation of probation violation statutes due to legislative inaction) (later superseded by statutory change), *statutory change recognized by Harper v. State*, 955 So. 2d 617 (Fla. 5th DCA 2007).

⁴ Under the Second District's construction, youthful offenders who violate probation with nonsubstantive violations could also be subject to minimum mandatory terms of less than six years, e.g., a three-year minimum mandatory

Finally, defendants' maximum sentences are not the same as defendants' maximum exposure under the law. The plain language of the youthful offender law subjects youthful offender probation violators to the "maximum sentence" not their maximum exposure. Maximum sentences for offenses are determined by the legislature, where as defendants' "maximum exposure is determined by the statutory maximum sentence combined with other specific factors as related to the particular defendant or the specific circumstances of the commission of the offense." *Yegge*, 40 Fla. L. Weekly D874 (Davis, J., specially concurring) (citing e.g., §§ 775.082(9)(a), .084, and 087)). Since, the "courts are not at liberty to add words to statutes that were not placed there by the Legislature" *Cf. Hayes v. State*, 750 So. 2d 1, 4 (Fla. 1999); *Christian v. State*, 84 So. 3d at 440, youthful offenders may not be subjected to more than the maximum sentence. See *Daniels v. Fla. Dep't of Health*, 898 So. 2d at 64 ("When the statute is clear and unambiguous, courts will not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent.")

(..continued)
for a drug offense.

CONCLUSION

The Second District erred by misinterpreting the youthful offender statute and holding that trial judges have discretion to impose sentencing enhancement penalties on youthful offenders who substantively violate probation. The Second District ignored the plain meaning and intent of the youthful offender law, as well as the reasoning of this Court, in Arnette. Since the Legislature has not expressly authorized the imposition of sentencing enhancements, like minimum mandatory terms, on youthful offenders, trial judges are precluded from exercising discretion to impose those enhancements. The Second District's decision to the contrary should be reversed with directions that Yegge's imposed mandatory term, under Florida's 10-20-Life Statute, be struck from his otherwise lawful youthful offender sentence.

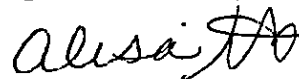
CERTIFICATE OF SERVICE

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Respectfully submitted,



HOWARD (REX) DIMMIG II
Public Defender
Tenth Judicial Circuit
(863) 534-4200

/S/ALISA SMITH
Assistant Public Defender
Florida Bar Number 0794805
P. O. Box 9000 - Drawer PD
Bartow, FL 33831
appealfilings@pd10.org
asmith@pd10.org
cclark@pd10.org

Ams