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II. Section 794.0115, Florida Statutes Amendment Chart

Year	1999	2002	2003	2006	2014
Title	Repeat sexual batterers; definition; procedure; enhanced penalties.	Same as 1999	Dangerous sexual felony offender; mandatory sentencing.	Same as 2003	Same as 2003
Mandatory Minimum	Mandatory minimum of 10 years' imprisonment.	Same as 1999	Mandatory minimum term of 25 years' imprisonment up to, and including, life imprisonment.	Same as 2003	Same as 2003 except if offense committed on or after October 1, 2014, mandatory minimum term of 50 years' imprisonment up to, and including, life.
Offenses and Statutory Maximums	All enumerated felonies punishable by life, or punishable by up to fifteen years as a second degree felony. Only attempted violation of 794.11(5) would constitute a third degree felony.	Same as 1999.	Enumerated felonies include third degree, second degree, first degree, first degree punishable by life, and capital felonies. Statutory maximum for some offenses include 5 years, and 15 years.	Same as 2003.	Same as 2003.
Subsection 6	N/A	N/A	Requiring that if the mandatory minimum exceeded the maximum sentence under s. <u>775.082</u> , the mandatory minimum term of imprisonment under this section must be imposed, and if less than the sentence that could be imposed under s. <u>775.082</u> , the sentence imposed must include the mandatory minimum term of imprisonment.	Same as 2003	Same as 2003

III. *Wilkerson v. State*, 143 So. 3d 462 (Fla. 5th DCA 2014)

KeyCite Yellow Flag - Negative Treatment
Disagreed With by Williams v. State, Fla.App. 1 Dist., April 12, 2016

143 So.3d 462
District Court of Appeal of Florida,
Fifth District.

Jacob Alexander WILKERSON, Appellant,
v.
STATE of Florida, Appellee.

No. 5D12-2023.
|
July 25, 2014.

Synopsis

Background: Defendant was convicted in the Circuit Court, Marion County, Hale Ralph Stancil, J., of lewd or lascivious battery on a 14-year old child. Defendant appealed.

[Holding:] The District Court of Appeal, Orfinger, J., held that life sentence was unauthorized.

Reversed and remanded with instructions.

West Headnotes (5)

^[1] **Criminal Law** ⇨ Review De Novo

District Court of Appeal reviews the trial court's interpretation of sentencing statutes de novo.

Cases that cite this headnote

^[2] **Statutes** ⇨ Intent

Legislative intent is the polestar that guides a court's statutory interpretation.

Cases that cite this headnote

^[3] **Statutes** ⇨ Language and intent, will, purpose, or policy

To discern legislative intent, courts look to the statute's language, since the statute's text primarily determines legislative intent.

Cases that cite this headnote

^[4] **Sentencing and Punishment** ⇨ Purpose of statute or regulatory provision

Purpose of Dangerous Sexual Felony Offender Act is to provide enhanced sentences for repeat sex offenders. West's F.S.A. § 794.0115.

Cases that cite this headnote

^[5] **Infants** ⇨ Molestation and exploitation in general; indecent liberties
Sex Offenses ⇨ Sex offenses against minors

Life sentence was unauthorized for defendant who was convicted of lewd or lascivious battery on a 14-year old child; maximum sentence was 25 years. West's F.S.A. §§ 775.082, 794.0115(6).

Cases that cite this headnote

Attorneys and Law Firms

*462 James S. Purdy, Public Defender, and Susan A. Fagan, Assistant Public Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Lori N. Hagan, Assistant Attorney General, Daytona Beach, for Appellee.

Opinion

ORFINGER, J.

Jacob A. Wilkerson appeals his conviction and sentence for lewd or lascivious battery on a fourteen-year-old child. Wilkerson raises several issues on appeal, only one of which merits discussion. Following his conviction, Wilkerson was classified a dangerous sexual felony offender pursuant to section 794.0115(2), Florida Statutes (2012). While he does not challenge that designation, he contends his life sentence, with a mandatory minimum term of twenty-five years imprisonment, is illegal.¹ We agree and reverse for resentencing.

^[1] ^[2] ^[3] We review the trial court's interpretation of sentencing statutes de novo. *E.g.*, *Paul v. State*, 129 So.3d 1058, 1061 (Fla.2013). Legislative intent is the polestar that guides a court's statutory interpretation. *Bautista v. State*, 863 So.2d 1180, 1185 (Fla.2003). To discern legislative intent, courts look to the statute's language since the statute's text primarily determines legislative intent. *Anderson v. State*, 87 So.3d 774, 777 (Fla.2012); *State v. D.C.*, 114 So.3d 440, 441 (Fla. 5th

DCA 2013).

*463 ¹⁴¹ The purpose of section 794.0115 is to provide enhanced sentences for repeat sex offenders such as Wilkerson. *Felder v. State*, 116 So.3d 605, 606 (Fla. 5th DCA 2013); *State v. Mason*, 979 So.2d 301, 303 (Fla. 5th DCA 2008). Section 794.0115(2)(e) requires that an individual found to be a dangerous sexual felony offender “be sentenced to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment.”² Section 794.0115(6) further provides:

(6) Notwithstanding s. 775.082(3), chapter 958, any other law, or any interpretation or construction thereof, a person subject to sentencing under this section must be sentenced to the mandatory term of imprisonment provided under this section. **If the mandatory minimum term of imprisonment imposed under this section exceeds the maximum sentence authorized under s. 775.082, s. 775.084, or chapter 921, the mandatory minimum term of imprisonment under this section must be imposed.** If the mandatory minimum term of imprisonment under this section is less than the sentence that could be imposed under s. 775.082, s. 775.084, or chapter 921, the sentence imposed must include the mandatory minimum term of imprisonment under this section.

(Emphasis added).

¹⁵¹ Here, Wilkerson was convicted under section 800.04(4)(b), a second-degree felony, generally punishable by a term of imprisonment of up to fifteen years. *See* § 775.082, Fla. Stat. (2012). Section 794.0115(6) provides that when, as here, the mandatory minimum under section 794.0015 (twenty-five years) exceeds the maximum sentence authorized under section 775.082 (fifteen years), the mandatory minimum must be imposed. Thus, while we conclude the trial court was required to impose the twenty-five year minimum sentence, the life sentence was unauthorized.

For these reasons, we affirm Wilkerson’s conviction, but remand for correction of sentence. Since the only lawful sentence that can be imposed under the circumstances is the twenty-five year minimum mandatory prison term required by section 794.0115(6), Wilkerson need not be present at resentencing.

AFFIRMED in part; REVERSED in part; REMANDED for correction of sentence.

TORPY, C.J., and EVANDER, J., concur.

All Citations

143 So.3d 462, 39 Fla. L. Weekly D1558

Footnotes

¹ The sentencing issue was preserved by the filing of a timely motion under Florida Rule of Criminal Procedure 3.800(b)(2).

² Section 794.0115(2)(e) was recently amended to require a fifty-year minimum mandatory, but that amendment is not applicable here. Ch. 2014–4, § 4, at 7, Laws of Fla. (effective Oct. 1, 2014).

IV. *Williams v. State*, 189 So. 3d 288 (Fla. 1st DCA 2016)

189 So.3d 288
District Court of Appeal of Florida,
First District.

Tyrone WILLIAMS, Appellant,
v.
STATE of Florida, Appellee.

No. 1D15-5716.

|
April 12, 2016.

Synopsis

Background: Defendant moved to correct an illegal sentence, after being convicted of sexual battery by use of force not likely to cause serious personal injury and sentenced to life imprisonment under the Dangerous Sexual Felony Offender Act. The Circuit Court, Alachua County, Mark W. Moseley, J., denied the motion. Defendant appealed.

Holding: The District Court of Appeal, Lewis, J., held that a minimum mandatory life sentence is authorized by the Act regardless of the statutory maximum of the crime.

Affirmed; conflict certified.

Makar, J., filed concurring opinion.

West Headnotes (1)

[1] **Sentencing and Punishment**—Sex offenses, incest, and prostitution

Under the Dangerous Sexual Felony Offender Act, there is no restriction on the length of the minimum mandatory that may be imposed, other than that it must be between 25 years and life; thus, a minimum mandatory life sentence is authorized by the Act regardless of the statutory maximum of the crime. West's F.S.A. §§ 775.082, 794.0115(2, 6).

Cases that cite this headnote

*289 An appeal from an order of the Circuit Court for Alachua County. Mark W. Moseley, Judge.

Attorneys and Law Firms

Tyrone Williams, pro se, Appellant.

Pamela Jo Bondi, Attorney General, and Michael McDermott, Assistant Attorney General, Tallahassee, for Appellee.

Opinion

LEWIS, J.

Appellant, Tyrone Williams, appeals the denial of his motion to correct illegal sentence filed pursuant to Florida Rule of Criminal Procedure 3.800(a). For the reasons discussed below, we affirm the order denying relief and certify conflict with the Fifth District's opinion in *Wilkerson v. State*, 143 So.3d 462 (Fla. 5th DCA 2014).

Appellant was convicted of sexual battery by use of force not likely to cause serious personal injury, a second-degree felony punishable by up to fifteen years' imprisonment. §§ 775.082(3)(c); 794.011(5)(a), Fla. Stat. (2009). Appellant was sentenced to life imprisonment as a dangerous sexual felony offender ("DSFO") pursuant to section 794.0115, Florida Statutes (2009). Appellant contends that his life sentence as a DSFO¹ is illegal. He relies on *Wilkerson v. State*, 143 So.3d 462 (Fla. 5th DCA 2014), which held that pursuant to section 794.0115(6), where the minimum mandatory required by section 794.0115, Florida Statutes (2009), exceeds the maximum sentence authorized by section 775.082(3)(c), the trial court is limited to imposing a twenty-five-year minimum mandatory, and a life sentence is not authorized. However, based upon the plain language of section 794.0115, we disagree with the Fifth District's holding in *Wilkerson*. See *Williams v. State*, 121 So.3d 524, 530 (Fla.2013) (noting that the plain and ordinary meaning of the words of a statute must control and that when a statute is clear, a court need not look behind the statute's plain language for legislative intent or resort to rules of statutory construction to ascertain intent).

Section 794.0115(2), Florida Statutes (2009), states that a DSFO "must be sentenced to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment." Section 794.0115(6) mandates that if the minimum mandatory term of section 794.0115 exceeds the statutory maximum authorized by section 775.082, the minimum mandatory term must be imposed. The plain language of the statute makes the DSFO minimum mandatory sentence *any* term between twenty-five years and life in prison, as the statute specifically states that the minimum mandatory is "25 years imprisonment up to, and including, life imprisonment." § 794.0115(2), Fla. Stat. (2009) (emphasis added). There is no restriction on the length of the minimum mandatory that may be imposed, other *290 than that it must be between twenty-five years and life. Thus, a minimum mandatory life sentence is authorized by section 794.0115 regardless of the statutory maximum of the crime.

This Court has read a similar "25 to life" provision, section 775.087(2)(a)3., Florida Statutes, to permit the imposition of a life sentence for a second-degree felony. In *Flowers v. State*, 69 So.3d 1042, 1044 (Fla. 1st DCA 2011), this Court held that pursuant to the 10–20–life statute, which requires a minimum mandatory term of "not less than 25 years and not more than a term of imprisonment of life in prison" when a defendant discharges a firearm and causes great bodily harm or death, the trial court could impose any minimum mandatory term between twenty-five years and life for a defendant convicted of a second-degree felony. This Court specifically rejected the argument that section 775.087(2)(a)3. limits the minimum mandatory period to twenty-five years for a second-degree felony. *Id.* This Court's reasoning in *Flowers* applies to section 794.0115 as well. Appellant's minimum mandatory life sentence as a dangerous sexual felony offender is legal as it is specifically authorized by section 794.0115. We recognize that this holding conflicts with the Fifth District's opinion in *Wilkerson*, and we certify conflict with that decision.

AFFIRMED; CONFLICT CERTIFIED.

THOMAS, J., concurs; MAKAR, J., concurs with opinion.

MAKAR, J., concurring.

I concur fully, noting that the Fifth District's decision in *Wilkerson v. State*, 143 So.3d 462 (Fla. 5th DCA 2014), cannot stand unless our supreme court revisits and changes course from its decision in *Mendenhall v. State*, 48 So.3d 740, 750

(Fla.2010), whose holding our court applied to validate the trial court's discretionary imposition of a "minimum mandatory life term" in *Flowers v. State*, 69 So.3d 1042, 1044 (Fla. 1st DCA 2011). Reasonable alternative interpretations of the sentencing statutes at issue in these cases exist, resulting in the 4–3 decision in *Mendenhall* as well as the interpretive conflict between this case and *Wilkerson* (which did not mention *Mendenhall*). Absent resolution of the conflict, trial judges across Florida will lack uniform guidance on their sentencing discretion resulting in geographically incongruous results as a comparison of this case with *Wilkerson* demonstrates.

All Citations

189 So.3d 288, 41 Fla. L. Weekly D898

Footnotes

¹ Appellant does not challenge his DSFO designation.