IN THE SUPREME COURT OF FLORIDA

TYRONE WILLIAMS,

Petitioner, CASE NO.: SC16-785

v. L.T. CASE NO.: 1D15-5716

STATE OF FLORIDA,

Respondent.
_____/

PETITIONER'S INITIAL BRIEF ON THE MERITS

On Review from the District Court of Appeal, First District
State of Florida

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PRELIMINARY STATEMENT

Petitioner, TYRONE WILLIAMS, will be referred to herein by name or as "Petitioner." Respondent, State of Florida, will be referred to herein by name or as "Respondent." References to the record on appeal will be designated by reference to the record on appeal page number, as set forth in brackets. All emphases in quoted materials are supplied unless otherwise indicated. Petitioner's Appendix is cited as "Pet.'s App."

INTRODUCTION

The issues before the Court implicate the core principles and method of statutory interpretation in the State of Florida. In this case, the First and the Fifth District Courts interpreted section 794.0115(2)(e), that requires 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" as well as subsection 794.0115(6) that references the general sentence statute 775.082, Florida Statutes. The Fifth District held the plain meaning of this statute limits a trial court to imposing a twenty-five-year mandatory minimum sentence when the sentence exceeds the statutory maximum of the charged offense. The First District held that, also based on a plain reading, a trial court may impose any sentence within the range of twenty-five years to life. This dual interpretation demonstrates the ambiguity at issue within the statute, and also implicates the court's prior decision of *Mendenhall*

v. State, 48 So. 3d 740, 750 (Fla. 2010). In the case before the Court, the very process for how a court should use the rules of statutory construction, and whether the court can apply rules of statutory interpretation when a statute is unambiguous, is at issue.

STATEMENT OF CASE AND FACTS

Petitioner was charged and convicted of sexual battery by use of force not likely to cause serious personal injury. [R. 6-8]. Prior to trial, Petitioner was noticed as a dangerous sexual felony offender under section 794.0115, Florida Statutes. [R. 26]. The trial court sentenced him to life imprisonment as a dangerous sexual felony offender ("DSFO"). § 794.0115, Fla. Stat. (2009); [R. 6-8]. Petitioner filed a motion before the trial court, pursuant to Florida Rule of Criminal Procedure 3.800(a), arguing his life sentence was illegal and the trial court was limited to sentencing him to a mandatory minimum twenty-five-year sentence. [R. 1-11]. Petitioner's argument to the trial court relied on the Fifth District's interpretation of this statute in *Wilkerson v. State*, 143 So. 3d 462 (Fla. 5th DCA 2014). [R. 1-5].

In *Wilkerson*, the defendant was convicted of violating section 800.04(4)(b), Florida Statutes a second degree felony, generally punishable by a term of imprisonment up to fifteen years. *Id.* at 462. Following his conviction, the defendant received an enhanced sentence as a DSFO pursuant to section 794.0115(2)(e), Florida Statutes (2012). *Id.* Wilkerson received a twenty five year mandatory minimum and life sentence as a DSFO. *Id.* Wilkerson challenged the legality of the

DSFO sentence, and based on its plain reading of the statute, the Fifth District stated the following:

> 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." 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).
>
> 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.

Wilkerson, 143 So. 3d at 462–63 (footnote omitted). Based on *Wilkerson*, Petitioner argued his life sentence as a DSFO, pursuant to section 794.0115(6), is illegal because his sentence exceeds the maximum authorized by section 775.082(3)(c), Florida Statutes. [R. 1-11].

The trial court denied Petitioner's motion. [R. 18-38]. In denying the Petitioner's motion, the trial court noted the legislative staff reports regarding amendments to this statute wherein the mandatory minimum under a previous version of the statute was ten years, but was then amended to a twenty five year mandatory minimum. [R. 20-21]. However, the trial court noted these reports did not "reflect the intent or official position of the bill's sponsor." [R. 21-2 n. 1]. Following the trial court's denial of his motion, Petitioner appealed to the First District. [R. 41-42].

In reviewing the trial court's denial of Petitioner's motion, the First District held the imposition of a life sentence was legal based on its interpretation of the plain language of section 794.0115, Florida Statutes. *Williams v. State*, 189 So. 3d 288 (Fla. 1st DCA 2016). The First District held the plain reading of section 794.0115 demonstrates the following:

> 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 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.

Id. 289–90 (emphasis maintained). The First District went on to expressly certify conflict with the Fifth District's decision in *Wilkerson*. *Id.*

Judge Makar wrote a concurring opinion in *Williams*. In this concurring opinion, he noted that

> [*Wilkerson*] cannot stand unless our supreme court revisits and changes course from its decision in *Mendenhall v. State*, 48 So. 3d at 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*).

Williams, 189 So. 3d at 290 (Makar, concurrence).

In *Mendenhall v. State*, this Court addressed the issue of "whether the mandatory minimum terms of twenty-five years to life provide the trial judge with discretion to

impose a mandatory minimum of twenty-five years to life without regard to the statutory maximum for the crime contained in section 775.082, Florida Statutes (2004)." 48 So. 3d at 740, 742 (Fla. 2010). This Court held and "conclude[d] that the trial court has discretion under section 775.087(2)(a)(3) to impose a mandatory minimum of twenty-five years to life, even if that mandatory minimum exceeds the statutory maximum provided for in section 775.082." *Id.*[1] Applying *Mendenhall,* in *Flowers v. State*, the First District was confronted with "whether imposition of a minimum mandatory life term is permissible under the 10–20–Life statute." 69 So. 3d 1042, 1044 (Fla. 1st DCA 2011). The First District held "the trial court had the discretion under section 775.087(2)(a)3 to impose a minimum mandatory term anywhere within the range of twenty-five years to life in prison. This it could have done even if the minimum mandatory term exceeded the statutory maximum for the offense." *Id.* at 1044.

Both the First District in *Williams* and the Fifth District in *Wilkerson* relied on a plain reading of the statutes reaching opposite results. The First District interpreted the language of the statute to include a range of a mandatory minimum of twenty years to life, while the Fifth District held the mandatory minimum did not include a range, and rather, twenty-five years was the mandatory minimum

[1] Recently, this Court affirmed this holding in *Hatten v. State*, 41 Fla. L. Weekly S352 (Fla. Aug. 25, 2016).

authorized as a matter of law. On May 10, 2016, the First District issued the mandate in this case.

Petitioner sought this Court's discretionary jurisdiction to review the *Williams* decision of the First District Court that was expressly certified as in conflict with the Fifth District's decision in *Wilkerson*. Art. V, (b)(3) Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv). Upon seeking review, the Respondent joined Petitioner's request that this Court accept jurisdiction. This Court granted review on August 24, 2016, and this appeal followed.

SUMMARY OF ARGUMENT

A plain reading of the statute demonstrates the Fifth District correctly decided this issue in *Wilkerson*. However, if this Court finds this statute is ambiguous, ultimately the rule of lenity compels that the interpretation of this statute warrants Petitioner receive the more favorable interpretation, *i.e.*, a twenty-five-year mandatory minimum sentence rather than a life sentence. In support of this position, Petitioner argues that the language of the section 794.0115, Florida Statutes is ambiguous in two ways, and the amendments to this statute demonstrate this ambiguity as well. Based on these ambiguities, rules of statutory construction may be used by the Court to interpret the language of the statute. Ultimately, even when utilizing these rules, the Legislative intent regarding the mandatory minimum is still unclear. As such, the rule of lenity should apply.

In Judge Makar's concurrence in *Williams,* he noted that *Mendenhall* cannot stand if the *Wilkerson* opinion stands. Petitioner respectfully argues that Judge Makar is correct, and this Court should recede from *Mendenhall* because this Court previously misapplied the principles of statutory construction when it held that any sentence within the range of twenty-five years to life may be imposed, regardless of the statutory maximum. This Court's majority's opinion in *Mendenhall* determined (despite the defendant's arguments otherwise) that section 775.087, Florida Statutes was unambiguous; however, the Court still used rules of statutory construction in interpreting the statute. As detailed more fully below, Petitioner respectfully argues that this Court should recede from *Mendenhall*, and its progeny, because the jurisprudence is clear: either a statute is unambiguous and a court must interpret the statute based on its plain or ordinary meaning, or it is ambiguous, and the court may rely on rules of statutory construction. The analysis is mutually exclusive.

Petitioner respectfully requests this Court hold the Fifth District's decision in *Wilkerson* controls this case, or in the alternative, the statute is ambiguous, and the rule of lenity should apply limiting the Petitioner to a twenty-five-year mandatory minimum sentence as a DSFO.

ARGUMENT

Issues presented.

I. Whether the Fifth District's decision in *Wilkerson v. State*, 143 So. 3d 462 (Fla. 5th DCA 2014) correctly held a plain reading of section 794.0115, Florida Statutes limits the trial court to imposing a mandatory minimum term to twenty five years when the mandatory minimum exceeds the maximum sentence authorized for the charged offense by section 775.082(3)(c), Florida Statutes?

II. Whether the First District's decision in *Williams v. State*, 189 So. 3d 288 (Fla. 1st DCA 2016) correctly held a plain reading of section 794.0115, Florida Statutes allows a trial court to impose any mandatory minimum term of imprisonment anywhere in the range between twenty-five years to life?

III. Whether section 794.0115, Florida Statutes is ambiguous, and the rules of statutory construction must be relied upon to interpret the Legislature's intent? If so, how should this statute be interpreted when relying on these rules?

IV. Whether this Court should recede from *Mendenhall v. State*, 48 So. 3d 740 (Fla. 2010) because the Court found the statute was unambiguous and still used rules of statutory construction to decide the case?

Preliminary matters.

i. Jurisdiction. The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal in which a conflict is expressly certified with another district court in a majority opinion Art. V, (b)(3) Fla. Const.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

ii. Standard of review. A court's interpretation of a sentencing statute is reviewed *de novo*. *Paul v. State*, 129 So. 3d 1058, 1061 (Fla. 2013).

Merits.

I. Under the plain language of section 794.0115, Florida Statutes, when the statutory maximum of a charged offense is fifteen years, the maximum sentence that a trial court can impose is a twenty five year mandatory minimum.

Sexual battery by use of force not likely to cause serious personal injury is a second degree felony punishable by up to fifteen years in prison. § 775.082(3)(c), Fla. Stat. The State of Florida filed a notice informing Petitioner it would seek an enhancement at sentencing under section 794.0115, Florida Statutes (1999). Section 794.0115(2)(e) requires that an individual found to be a DSFO "be sentenced to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment." Section 794.0115(6), Florida Statutes further provides: "*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."* (Emphasis added). The Petitioner's sentence exceeds the maximum sentence under the relevant statutes listed in subsection (6), specifically, 775.082, which limited his possible exposure to fifteen years. Because Petitioner's "mandatory minimum" exceeded the statutory maximum sentence authorized by the listed statutes, the

"mandatory minimum" sentence must be imposed, 794.0115(6), which is twenty-five years, the least (thus the *minimum*) sentence authorized by section 794.0115(2)(e). The classification as a DSFO does not specifically provide that a second degree felony is punishable by more than the mandatory minimum, as such, Petitioner could only receive a sentence of twenty five years in this case.

The above interpretation is consistent with the Fifth District's decision in *Wilkerson*. Under the First District's interpretation in *Williams* authority the mandatory minimum for any number in the range between twenty-five years to life, but this interpretation does not fully acknowledge the implications of section 794.0115(6) referencing the statutory maximums of the charged offenses. If the Legislature intended to authorize a mandatory minimum anywhere within the range of 25 years to life, the Legislature would not have referenced the statutory maximums. *See* 18 U.S.C.A. § 2241(c) (a mandatory minimum sentencing statute not referencing the statutory maximum for a charged offense, but rather stating the mandatory minimum requires a defendant be "*imprisoned for not less than 30 years or for life*.") (emphasis added). Therefore, based on a plain reading of section 794.0115, Florida Statutes, the maximum sentence Petitioner should have received under section 794.0115, Florida Statutes is twenty-five years.

II. In the alternative, if this Court finds section 794.0115, Florida Statutes is ambiguous, this Court should use the rules of statutory construction to hold that Petitioner's mandatory minimum sentence is limited to twenty-five years.

When a court is called upon to interpret the meaning of a word, or phrase in a statute, it must first look to the actual language of the statute itself, and only if the language is ambiguous may a court then rely on rules of statutory construction to assist in interpreting the meaning of the statute. *See, e.g., Gaulden v. State*, 195 So. 3d 1123 (Fla. 2016). This Court has often relied on this analysis when interpreting statutes and has stated:

> 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. *See Lee County Elec. Coop., Inc. v. Jacobs*, 820 So.2d 297, 303 (Fla. 2002). In such instance, the statute's plain and ordinary meaning must control, unless this leads to an unreasonable result or a result clearly contrary to legislative intent. *See State v. Burris*, 875 So.2d 408, 410 (Fla. 2004). When the statutory language is clear, "courts have no occasion to resort to rules of construction—they must read the statute as written, for to do otherwise would constitute an abrogation of legislative power." *Nicoll v. Baker*, 668 So.2d 989, 990–91 (Fla. 1996).

Koile v. State, 934 So. 2d 1226, 1230–31 (Fla. 2006) (citing *Daniels v. Florida Dept. of Health*, 898 So. 2d 61, 62-5 (Fla. 2005)). A court may only rely on statutory rules of construction *after* the court deems the statutory language ambiguous. *See, e.g.*, *English v. State*, 191 So. 3d 448, 451 (Fla. 2016) ("[T]his Court need only consider

the actual language of the statute and need not resort to canons of statutory construction to effectuate the intent of the Legislature.").

Here, the statute is ambiguous. Section 794.0115, Florida Statutes is ambiguous based on the interplay between sections (2)(e), section (6) and section 775.082, Florida Statues. Additionally, the amendments regarding the mandatory minimums, and inclusion of section (6) in subsequent amendments demonstrate the ambiguity of section 794.0115, Florida Statutes regarding the mandatory minimum sentence.

A. The subsections of section 794.0115, Florida Statutes creates ambiguities.

Ambiguity is defined as an "uncertainty of meaning based not on the scope of a word or phrase but on a semantic dichotomy that gives rise to any of two or more quite different but almost equally plausible interpretations." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 425 (2012); *see also Saenz v. Campos*, 967 So. 2d 1114, 1117 (Fla. 4th DCA 2007) ("So, what then constitutes an ambiguity? Ambiguity is defined as 'the condition of admitting more than one meaning.'") (quoting *The Random House College Dictionary* 42 (revised ed. 1980)). Only after a court determines a statute is ambiguous may it use rules of statutory construction to aid in interpreting the statute. *Gaulden*, 195 So. 3d at 1123.

Here, Petitioner submits that section 794.0115, Florida Statutes is ambiguous in at least two ways based on the language of the statute.

First, an ambiguity arises when interpreting the statutory mandatory minimum term provided in section 794.0115(2)(e), Florida Statutes, and the statutory maximums of section 775.082, Florida Statutes. When applying section 794.0115(2)(e), which provides for a range, subsection (2)(e) provides that a person who is a DSFO must "be sentenced to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment." The ambiguity occurs because it is clear that a sentence of *at least* twenty-five years must be imposed as a minimum in all circumstances; however, it is not clear whether the trial court can impose a minimum term in excess of the statutory maximum of the charged offense beyond the number of years that falls within the range based on the statutory maximum of the charged offense. For example, for a fifteen-year statutory maximum, because the mandatory minimum exceeds the maximum, it is not clear whether twenty-five years must be imposed, whether a greater sentence be imposed. Additionally, if a defendant is facing a thirty year mandatory minimum, it is not clear whether a mandatory minimum beyond thirty years may be imposed. This "uncertainty of meaning" is evidenced by the Fifth District's decision in *Wilkerson* that concluded a trial court must impose a twenty-five-year sentence when the mandatory minimum exceeds the statutory maximum, as compared to the First

District's interpretation in this case that any number between twenty-five years to life may be imposed.

Second, the language of section 794.0115(2)(e) demonstrates the phrase "the mandatory minimum sentence" as used in subsection (2)(e) and as applied to subsection (6) is ambiguous because it is not clear whether it refers only to the absolute minimum sentence that must be imposed (twenty-five years) or to the entire range. Subsection (6) requires that, "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." Additionally, this section states that, "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." Based on this language, it is not clear exactly what mandatory minimum means in this context, and whether the mandatory minimum may be affected by the statutory maximum of the charged offense.

Based on these two ambiguities, the Court should rely on rules of statutory construction to assist in interpreting this statute. However, prior to Petitioner's proposed application of these rules, the various amendments to section 794.0115,

Florida Statutes demonstrates the ambiguity regarding the mandatory minimum language in this statute as well.

B. The statutory amendments to section 794.0115, Florida Statutes confirms the statute is ambiguous regarding the mandatory minimum sentence.

In 1999, the Florida Legislature first enacted section 794.0115, Florida Statutes. The statute was titled the "Repeat sexual batterers; definition; procedure; enhanced penalties" and provided that when a defendant qualified as a repeat sexual batterer under the statute, the trial court "must sentence the repeat sexual batterer to a mandatory minimum term of 10 years imprisonment." § 794.0115(3)(a), Fla. Stat. (1999). Notably, under this version of the statute, subsection (6) was not enacted.

Under this version of the statute, for each of the potential underlying offenses, all the statutory maximums, except for one[2], were greater than the ten-year

[2] Under section 794.0115(a)1.-2., Florida Statutes (1999), a defendant could qualify to be a "repeat sexual offender" if:

> The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:
>
> > 1. Any felony offense *in violation of s. 794.011*(2)(b), (3), (4), or *(5), or an attempt or conspiracy to commit the felony offense*.
> >
> > 2. A qualified offense as defined in s. 775.084(1)(e), if the elements of the qualified offense are substantially similar to the elements of a felony offense in violation of

mandatory minimum. *See, e.g.*, §§ 794.011 (2)(b), (3), (4), or (5), Fla. Stat. (1999); Pet.'s App. II. Specifically, the lowest statutory maximum that could trigger a ten-year mandatory minimum was a second degree felony (15-year maximum sentence). As such, on the face of the statute, (except for the one exception), there was not a need to reference the general sentencing statute of 775.082, because the ten-year mandatory minimum sentence, that could be imposed would fall within the range of any potential sentence without the enhancement, and without exceeding any of the cited statute's statutory maximums. *See* Pet.'s App. II. However, regardless of the

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> s. *794.011*(2)(b), (3), (4), or *(5), or an attempt or conspiracy to commit the felony offense*.

(Emphasis added).

Based on the fact an *attempt* to commit any of these felonies constitutes a basis to receive an enhancement under this statue, conceivably, a defendant could have previously been convicted for a prior attempt of section 794.011(5), punishable as a second degree felony, and again was charged with an attempt to commit a violation of section 794.011(5), Florida Statute (1999), the defendant's potential exposure would be limited to a third degree felony, punishable by five years rather than fifteen years imprisonment. § 777.04(d)(1), Fla. Stat. (1999) ("[I]f the offense attempted … is a: Felony of the second degree … the offense of criminal attempt…is a felony of the third degree[.]" However, this appears to be the only situation that the mandatory minimum ten years would exceed the statutory maximum based on the 1999 version of section 794.0115, Florida Statutes. Additionally, following the amendment of the statute, an attempt of any of these crimes did not constitute a basis for an enhancement under section 794.0115, Florida Statutes based on the 2003 amendment, which was also amended to include subsection (6). *See Felder v. State*, 116 So. 3d 605 (Fla. 5th DCA 2013).

mandatory minimum, a trial court could still impose a sentence greater than the ten-year mandatory minimum as noted in the statute, "Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law." 794.0115(3)(b), Fla. Stat. (1999). Following its enactment, the statue was amended again in 2002, substantially in 2003, and 2014.

In 2003, the Legislature subsequently amended section 794.0115, Florida Statutes by renaming the statute the "Dangerous Sexual Felony Offender; Mandatory Sentencing" and expanding the types of offenses that would bring someone into the statute, while also increasing the mandatory minimum of the statute. *See* § 794.0115, Fla. Stat. (2003).[3] Additionally, in 2003, the Legislature increased the mandatory

[3] William H. Burgess, III, Chapter 6. Alternatives to Criminal Punishment Code Sentencing, Enhancements, Reclassifications, and Special Sanctions, § 6:110. Enhancements of penalty and reclassification of offense- Dangerous sexual felony offender describes the triggering offenses as follows:

> A Dangerous Sexual Felony Offender (DSFO) is any person who is convicted of a violation of section 787.025(2)(c); section 794.011(2), (3), (4), (5), or (8); section 800.04(4) or (5); section 825.1025(2) or (3); section 827.071(2), (3), or (4); or section 847.0145; or of any similar offense under a former designation, which offense the person committed when he or she was 18 years of age or older, and the person: (a) caused serious personal injury to the victim as a result of the commission of the offense; (b) used or threatened to use a deadly weapon during the commission of the offense; (c) victimized more than one person during the course of the criminal episode applicable to the offense; (d) committed the offense while under the jurisdiction of a court for a felony offense under the laws of this state, for an offense that is a felony in another jurisdiction, or for an offense that would be a

minimum from 10 years to a "term of 25 years imprisonment up to, and including, life imprisonment." § 794.0115(2)(e), Fla. Stat. (2003). Importantly, in this version of the statute, the Legislature added subsection 6, which creates the ambiguity in this statute. § 794.0115(6), Fla. Stat. (2003).

In 2014, the Legislature amended this statute, again, and the Legislature increased the former mandatory minimum term from a "term of 25 years imprisonment up to, and including, life imprisonment" to a term of "50 years imprisonment up to, and including, life imprisonment." § 794.0115(2)(e), Fla. Stat. (2014).[4]

Petitioner submits that based on these amendments, the Legislature's intention regarding when the statute's mandatory minimum must be imposed when the statutory maximum of the charged offense exceeds the minimum within the range provided by section 794.0115, Florida Statutes. Based on the initial version of the

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> felony if that offense were committed in this state; *or* (e) has previously been convicted of a violation of section 787.025(2)(c); section 794.011(2), (3), (4), (5), or (8); section 800.04(4) or (5); section 825.1025(2) or (3); section 827.071(2), (3), or (4); section 847.0145; of any offense under a former statutory designation which is similar in elements to an offense described in this paragraph; or of any offense that is a felony in another jurisdiction, or would be a felony if that offense were committed in Florida, and which is similar in elements to an offense described in section 794.0115(3).

16 Fla. Prac., Sentencing § 6:110 (2016-2017 ed.) (footnotes omitted).

[4] Petitioner is not subject to the newly amended version of this statute.

statute, wherein all but one offense's statutory maximum exceeded the ten-year mandatory minimum, there was no need to reference the statutory maximums. However, once the mandatory minimum exceeded the statutory maximums, the Legislature included subsection (6), specifically referencing the statutory maximums for the charged offenses. It appears the Legislature did mean the statutes to be read together based on the addition of subsection (6) to the statute in the 2003 amendment.

Admittedly, as noted by the trial court in its order, the legislative staff analysis reports regarding the amendments to this statute state that a sentence may be imposed anywhere within the range of twenty-five years to life. [R. 21]. In the trial court's denial of the Petitioner's motion it stated that, "In amending the mandatory minimum under section 794.0115 from ten years to twenty-five years to life imprisonment, it appears that the Florida Legislature intended the mandatory minimum be twenty-five years to life for second-degree felonies." [R. 21]. However, the trial court's footnote to this sentence also states, "This Court acknowledges that Senate Staff Analyses do not reflect the intent or official position of the bill's sponsor or the Florida Senate." [R. 21-2 n. 1].

Importantly, the trial court's acknowledgement of uncertainty regarding legislative intent demonstrates the ambiguity at issue. Additionally, this Court has previously noted that such reports have not been conclusive as to legislative intent. *See Kasischke v. State*, 991 So. 2d 803, 810 (Fla. 2008) ("This Court is not unified

in its view of the use of legislative staff analyses to determine legislative intent.") (quoting *GTC, Inc. v. Edgar*, 967 So. 2d 781, 789 n. 4 (Fla. 2007); *see also White v. State*, 714 So. 2d 440, 443 n. 5 (Fla.1998) (recognizing that staff analyses are not determinative of legislative intent, but are only "one touchstone of the collective legislative will" (quoting *Sun Bank/South Fla., N.A. v. Baker*, 632 So. 2d 669, 671 (Fla. 4th DCA 1994)); *American Home Assur. Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 376 (Fla. 2005) (Cantero, J., concurring in part and dissenting in part) (proposing that "legislative staff analyses add nothing to an investigation of legislative intent")). As such, the amendments to section 794.0115, only reinforces the ambiguity of the statute.

C. Based on an application of the rules of statutory construction, the mandatory minimum in this case should be twenty-five years.

The issue in this case is one of statutory construction that involves the interplay between section 794.0115(2)(e), which authorizes mandatory *minimum sentences* for certain crimes, and section 775.082, which authorizes a *maximum sentence* of fifteen years for the conviction of a second-degree felony. Petitioner submits that the answer to the statutory construction question cannot be resolved by a plain reading of section 794.0115(2)(e). The Legislature could have indicated that section 794.0115(2)(e) overrode all statutory maximums provided in 775.082; it did not. To interpret this statute, the rules of statutory construction must be applied.

Petitioner asserts the language within subsection (2)(e) does not demonstrate that mandatory minimum may always include a life sentence for a defendant who is DSFO. The cannon of construction "Presumptions of Nonexclusive 'Include'" that states, "The verb *to include* introduces examples, not an exhaustive list." *Reading Law: The Interpretation of Legal Texts* 132 (2012), *see also Alabama Educ. Ass'n v. State Superintendent of Educ.*, 746 F.3d 1135, 1151 n. 13 (11th Cir. 2014) ("[T]he United States Court of Appeals for the District of Columbia Circuit has stated that "[i]t is hornbook law that the word 'including' indicates that the specified list ... that follows is illustrative, not exclusive." *Puerto Rico Maritime Shipping Auth. v. I.C.C.*, 645 F.2d 1102, 1112 n. 26 (D.C.Cir.1981) (quoted in Bryan A. Garner, *Garner's Dictionary of Legal Usage* 439 (3d ed.2011)); *see also In re B.R.C.M.*, 182 So. 3d 749, 752 (Fla. 3d DCA 2015) (citing *Include, Black's Law Dictionary* (10th ed.2014) ("include *vb.* (15c) To contain as a part of something. • The participle *including* typically indicates a partial list ....").

Here, 794.0115(2)(e), Florida Statutes requires a defendant who is a DSFO to "be sentenced to a mandatory minimum term of 25 years imprisonment up to, *and including, life imprisonment.*" The "including, life imprisonment" demonstrates this is only "illustrative" of what may be imposed, and not a sentence that must be imposed as part of the mandatory minimum. Additionally, the cannon of

construction that "punctuation is a permissible indicator of meaning" can also clarify this language. *Reading Law: The Interpretation of Legal Texts* 161 (2012).

Previously, this Court noted that the presence or absence of a comma is instructive to determining meaning because

> commas are used to set off expressions that provide additional but *nonessential* information about a noun or pronoun immediately preceding. Such expressions serve to further identify or explain the word they refer to." William A. Sabin, *The Gregg Reference Manual* 34 (10th ed.2005). These expressions are parenthetical, meaning that the sentence can stand alone without them. When an expression is *essential* to the sentence, however, it is not separated with commas. *Id.* at 35; *see also State v. Tunney,* 77 Wash.App. 929, 895 P.2d 13, 16 (1995) ("Under the rules of punctuation, appositives which serve a nonrestrictive (parenthetic) function are set off by commas; appositives which serve a restrictive (necessary) function are not."), *aff'd,* 129 Wash.2d 336, 917 P.2d 95 (1996); *Xcel Corp. v. Dir., Div. of Taxation,* 4 N.J.Tax 85, 89, 1982 WL 628231 ("It is an elementary rule of grammar that commas are used to set off nonrestrictive appositives, which are nouns that immediately follow and provide additional but nonessential information about another noun in the sentence."), *aff'd,* 5 N.J.Tax 480, 1982 WL 628299 (Super.Ct.App.Div.1982). "Evidence that a qualifying phrase is supposed to apply to all antecedents instead of only to the immediately preceding one may be found in the fact that it is separated from the antecedents by a comma." Singer & Singer, *supra,* § 47:33.

Kasischke, 991 So. 2d at 811–13.

Here, section 794.0115(2)(e) requires that an individual found to be a DSFO must "be sentenced to a mandatory minimum term of 25 years imprisonment up to, and including, life imprisonment." The inclusion of the comma demonstrates the "*nonessential* information about a noun or pronoun immediately preceding" and that

the "life imprisonment" is "parenthetical, meaning that the sentence can stand alone without [it]". *Id.* This language can be interpreted to mean that a life sentence is not necessary inclusive of the mandatory minimum that must be imposed, or authorized to be imposed, for every defendant who is designated as a DSFO. Beyond the language within subsection (2)(e), subsection (6), and the other relevant statutes, should be analyzed.

Section 794.0115 is not a self-contained sentencing scheme. The doctrine of *in pari materia* is a "principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." *Fla. Dep't of State v. Martin*, 916 So.2d 763, 768 (Fla. 2005). Similarly, "related statutory provisions must be read together to achieve a consistent whole, and ... '[w]here possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.'" *Larimore v. State,* 2 So.3d 101, 106 (Fla. 2008) (quoting *Heart of Adoptions, Inc. v. J.A.,* 963 So.2d 189, 199 (Fla. 2007)).

Here, the statute demonstrates an interplay between itself and other statutes; namely, section 775.082, Florida Statutes. In drafting this statute, the Legislature provided guidance as to how the statute should be read together with section 775.082 based on section 794.0115(6), Florida Statutes which explicitly addresses situations where the mandatory minimum is either more or less than the statutory maximums

provided for in section 775.082. Thus, this Court should read section 794.0115(2)(e) and (6) together with section 775.082. In reading these statutes together, as demonstrated above, there is not a clear indication on how this statute should be interpreted. As such, additional rules of construction should be used.

The principle that a specific or special statute controls over the general is also applicable. This Court has previously stated 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 the 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.

Mendenhall, 48 So. 3d at 748 (citations omitted). Here, the trial court may still impose a mandatory minimum sentence based on section 794.0115, Florida Statutes when a defendant is designated and found to be a DSFO. However, the issue is whether the mandatory minimum may be any greater than the twenty five year sentence when the mandatory minimum exceeds the statutory maximum.

Specifically, where one is designated a DSFO, the potential mandatory minimum under the DSFO statute should apply over the general sentencing statute. However, the statutes still address different things and are meant to be read together as indicated by section 794.0115(6)—section 794.0115(2)(e) specifies mandatory *minimums* whereas section 775.082 specifies statutory *maximums.* Although section 794.0115 is specific as to statutory minimums, it is *not* specific as to statutory

maximums. Under section 794.0115(6), if the "*mandatory minimum* terms of imprisonment imposed pursuant to this section *exceed the maximum sentences* authorized by s. *775.082,* s. 775.084, or the Criminal Punishment Code under chapter 921, then the *mandatory minimum* sentence must be imposed." § 794.0115(6), Fla. Stat. (emphasis added). Additionally, if the "*mandatory minimum* terms of imprisonment ... are *less than the sentences* that could be imposed as *authorized by s. 775.082,* s. 775.084, or the Criminal Punishment Code under chapter 921, then the sentence imposed by the *court must include the mandatory minimum term of imprisonment* as required in this section." *Id.* (emphasis added). Based on section 794.0115(6), the minimum sentence to be imposed under 794.0115(2)(e) does not trump the statutory maximum provided in 775.082, unless the minimum sentence exceeds the statutory maximum. It does not change the statutory maximum or negate it all together. Petitioner submits that utilizing these rules of statutory construction does not clarify a reading of this statute and additional rules of construction should be relied upon as well.

An additional rule of construction includes that a statute should not render any phrase of the statute meaningless, because it is one of 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." *Mendenhall*, 48 So. 3d at 749 (citing *Sch. Bd. of*

Palm Beach Cnty. v. Survivors Charter Sch., Inc., 3 So.3d 1220, 1233 (Fla.2009) (quoting *Gulfstream Park Racing Ass'n v. Tampa Bay Downs, Inc.*, 948 So.2d 599, 606 (Fla. 2006)). Under the *Wilkerson* opinion, Petitioner submits this interpretation utilizes subsection (6) fully, and thus all sections of section 794.0115 are used. Alternatively, Petitioner submits the First District's interpretation in *Williams* renders the language of subsection (6) meaningless. The First District's interpretation allowing the trial court to have discretion to impose a mandatory minimum sentence of twenty-five years to life, irrespective of the maximum penalty on the underlying charge under section 775.082 nullifies the statutory maximums of section 775.082, without any indication that the Legislature intended for this nullification to occur beyond the mandatory minimum twenty five years.

Here, Williams was convicted of a second-degree felony and he was designated a DSFO that authorized a mandatory minimum sentence. The phrase "and including, life imprisonment" should not apply to this case because he cannot be punished with a life sentence. § 794.0115(2)(e), Fla. Stat. (2009) (emphasis added). However, there are situations where the phrase would apply. For example, if a defendant is convicted of a first-degree felony that is enhanced as a DSFO, the maximum sentence would then be life imprisonment. *See* § 775.082(3)(a)(3), Fla. Stat. In that situation, sections 794.0115(2)(e) and (6) would allow the trial court to impose a mandatory minimum sentence up to life. While the phrase "up to, and

including, life imprisonment" would not apply in this case, there are situations in which it would apply, and this interpretation of the statute does not render any phrase in the statute meaningless.

The Legislature has not evinced a clear intent for section 794.0115 to override all statutory maximums beyond the lowest portion of the range under section (2)(e) when the statutory maximum exceeds this mandatory minimum. Instead, the Legislature gave guidance as to how section 794.0115 should be read together with section 775.082, which is a clear indication that statutory maximums were meant to play some role in sentencing under the statute. However, Petitioner submits this guidance is unhelpful and ambiguous when applied to subsection (2)(e). Because the statute is ambiguous as to legislative intent regarding statutory maximums, Petitioner submits the statue must be construed most favorably to Williams.

The rule of lenity "is not just an interpretive tool, but a statutory directive. The rule requires that '[a]ny ambiguity or situations in which statutory language is susceptible to differing constructions *must* be resolved in favor of the person charged with an offense.'" *Kasischke,* 991 So.2d at 814. Petitioner acknowledges that the rule of lenity is a canon of last resort and only applies if the penal statute remains ambiguous after consulting traditional canons of statutory construction, *Paul*, 129 So. 3d at 1058. However, based on the foregoing arguments, it is Petitioner's position that the rule should apply in this case.

The Court should err on the side of applying the rule of lenity when the alternative construction of an ambiguous statute would result in this consequence. Williams was convicted of a second-degree felony, which carries a maximum sentence of fifteen years. *See* § 775.082(3)(c), Fla. Stat. (2009). His conviction was enhanced by section 794.0115(2)(e). The application of section 794.0115 requires an absolute minimum mandatory sentence of twenty-five years to be imposed, meaning that Williams will serve *at least* twenty-five years because the DSFO statute provides that a defendant is not eligible for gain-time or any other form of discretionary early release prior to serving the minimum sentence. Petitioner submits that the enhancement of twenty-five-year mandatory minimum, where the mandatory minimum is significantly harsher than the charged crime's statutory maximum unenhanced sentence of fifteen years, is in keeping with the legislative intent expressed in punishing DSFO's more harshly. *See Felder*, 116 So. 3d at 606. Applying the rule of lenity to this ambiguous statute requires this Court to interpret it most favorably to Williams. If the Legislature intended to allow trial courts the discretion to impose a minimum mandatory sentence of life even if the statutory maximum is much less, it was the Legislature's responsibility to make that intent clear.

III. This Court should recede from the majority's position in *Mendenhall v. State*, 48 So. 3d at 740 (Fla. 2010) and adopt Justice Pariente's dissent because of the Court's use of rules of statutory construction when the majority held the statute was unambiguous.

In *Williams*, Judge Makar's concurrence stated that *Wilkerson* "cannot stand unless our supreme court revisits and changes course from its decision in *Mendenhall v. State*[.]" *Williams*, 189 So. 3d at 290 (Makar, concurrence). Petitioner submits that Judge Makar is correct, and this Court should recede from *Mendenhall* because it is inconsistent with the State of Florida's jurisprudence regarding statutory interpretation.

In *Mendenhall*, the majority held the language it was interpreting, *i.e.*, the range where a possible sentence exceeded the statutory maximum of the charged offense, was not ambiguous. *Mendenhall*, 48 So. 3d at 750 ("Mendenhall contends that the statute is ambiguous and that this Court should apply the rule of lenity. *There is certainly nothing ambiguous about the statute's language 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.*'" § 775.087(2)(a)(3), Fla. Stat.") (emphasis added). Rather than holding the statute, or specifically this subsection was unambiguous, and a plain reading allows for the sentencing judge to impose any sentence in a range from twenty five years to life, in justifying its decision, the Court relied on rules of statutory construction.

Specifically, the Court relied on the rule that a special statute covering a particular subject matter is controlling over a general statute, *Mendenhall*, 48 So. 3d at 748, and the "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." *Id.* at 749 (citing *Sch. Bd. of Palm Beach Cnty. v. Survivors Charter Sch., Inc.*, 3 So.3d 1220, 1233 (Fla.2009) (quoting *Gulfstream Park Racing Ass'n v. Tampa Bay Downs, Inc.*, 948 So.2d 599, 606 (Fla.2006)). In finding the statute was unambiguous, but relying on rules of statutory construction to decide the case, *Mendenhall* is an outlier as it relates to similar cases related to statutory interpretation.

Based on this Court's own precedent, the two means of interpreting a statute are mutually exclusive: Either a statute is unambiguous, and based on a plain reading of the statute, the statute is interpreted by its plain terms, or, alternatively, the statute is deemed ambiguous, and then the court may rely on rules of statutory interpretation to determine the Legislature's intent. *See, e.g.*, *English*, 191 So. 3d at 449; *Gaulden*, 195 So. 3d at 1123; *Lee County Elec. Coop., Inc. v. Jacobs*, 820 So. 2d 297, 303 (Fla. 2002). This Court should recede from this decision, because it is an outlier in the court's precedent.

The Petitioner respectfully submits that Justice Pariente's dissent, joined by Justice Quince and Justice Perry, is the correct holding if this Court recedes from

Mendenhall. Specifically, the dissent asserted the language of section 775.087, Florida Statutes is ambiguous, and ultimately, the Court should have applied "the rule of lenity to this ambiguous statute [and] require[d it] to interpret it most favorably to Mendenhall." *Mendenhall*, 48 So. 3d at 754–55 (Pariente, J., dissenting). As aptly noted in Judge Makar concurring opinion in *Williams*, "Reasonable alternative interpretations of the sentencing statutes at issue in these cases exist[.]" *Williams*, 189 So. 3d at 290 (Makar, concurrence). Because the Court in *Mendenhall* found the statute was unambiguous, and the Court used rules of statutory construction to come to its decision, this Court should recede from *Mendenhall* and adopt the dissent's position applying the rule of lenity.

CONCLUSION

Petitioner requests this Court reverse the First District's decision, vacate Petitioner's life sentence, and impose a twenty-five-year mandatory minimum sentence based on the precedent and arguments as detailed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, via electronic mail on this 13th day of October 2016.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rules of Appellate Procedure Rule 9.210(a)(2), of the Florida.

Respectfully submitted,

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