

**IN THE SUPREME COURT OF FLORIDA**

TYRONE WILLIAMS,

Petitioner,

v.

CASE NO.: SC16-785

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

STATE OF FLORIDA,

Respondent.

\_\_\_\_\_ /

---

PETITIONER'S REPLY BRIEF

---

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

ROCCO J. CARBONE, III  
ATTORNEY AT LAW  
599 Atlantic Boulevard, Suite 6  
Atlantic Beach, Florida 32233  
(904) 247-6565 telephone  
(904) 247-6535 facsimile  
E-Mail: [rocco.carbone@comcast.net](mailto:rocco.carbone@comcast.net)  
Florida Bar No.: 0095544  
*Attorney for Petitioner*

RECEIVED, 02/09/2017 11:58:29 PM, Clerk, Supreme Court

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i

TABLE OF CITATIONS ..... ii

PRELIMINARY STATEMENT..... 1

SUMMARY OF REPLY ARGUMENT ..... 1

ARGUMENT ..... 4

    ISSUE I: PLAIN MEANING ANALYSIS ..... 4

    ISSUE II: AMBIGUITY AND THE CANONS  
    OF STATUTORY CONSTRUCTION ANALYSIS ..... 8

    ISSUE III: MENDENHALL AND ITS  
    APPLICATION TO SECTION 794.0115, FLORIDA STATUTES ..... 12

CONCLUSION ..... 16

CERTIFICATE OF SERVICE..... 16

CERTIFICATE OF COMPLIANCE ..... 17

## TABLE OF CITATIONS

### Cases

<i>American Home Assur. Co. v. Plaza Materials Corp.</i> , 908 So.2d 360 (Fla. 2005).....	1
<i>Baxter v. State</i> , 206 So. 3d 150 (Fla. 2d DCA 2016).....	5
<i>Coicou v. State</i> , 39 So. 2d 237, 243 (Fla. 2010).....	2, 15
<i>English v. State</i> , 191 So. 3d 448 (Fla. 2016).....	2, 12
<i>Gaulden v. State</i> , 195 So. 3d 1123 (Fla. 2016).....	2, 12
<i>Linehan v. State</i> , 476 So. 2d 1262, 1265 (Fla. 1985).....	15
<i>Mendenhall v. State</i> , 48 So. 3d 750 (Fla. 2010).....	<i>passim</i>
<i>Saenz v. Campos</i> , 967 So. 2d 1114 (Fla. 4th DCA 2007).....	4
<i>Scurry v. State</i> , 521 So. 2d 1077 (Fla.1988).....	15
<i>State v. Mason</i> , 979 So. 2d 301 (Fla. 5th DCA 2008).....	3, 5
<i>United States v. Missouri Pac. R.R.</i> , 278 U.S. 269 (1920).....	4, 7
<i>Warner v. City of Boca Raton</i> , 887 So. 2d 1023 (Fla. 2004).....	6
<i>Wilkerson v. State</i> , 143 So. 3d 462 (Fla. 5th DCA 2014).....	<i>passim</i>
<i>Williams v. State</i> , 189 So. 3d 288 (Fla. 1st DCA 2016).....	<i>passim</i>

### Statutes

§ 775.082, Fla. Stat.....	3, 6, 8
§ 775.087, Fla. Stat.....	1
§ 787.025(2)(c), Fla. Stat.....	3

§ 794.0115, Fla. Stat.....	<i>passim</i>
§ 794.0115(2)(e).....	<i>passim</i>
§ 794.0115(2)(e), Fla. Stat. (2003).....	10
§ 794.0115(2)(e), Fla. Stat. (2009).....	3
§ 794.0115(2)(e), Fla. Stat. (2014).....	3
§ 794.0115(3)(a), Fla. Stat. (1999).....	10
§ 794.0115(6), Fla. Stat.....	<i>passim</i>
§ 800.04(4)(b), Fla. Stat.....	10
18 U.S.C.A. § 2241(c).....	10

**Florida Rules of Procedure**

Fla. R. App. P. 9.210(a)(2).....	17
----------------------------------	----

**Other Authorities**

Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Text</i> (2012).....	3, 4
Webster’s New World Dictionary 2d Ed. 336 (2002).....	6

## 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. Petitioner’s Initial Brief on the Merits will be designated as “IB” with the corresponding page number. Respondent’s Answer Brief on the Merits will be designated as “RAB” with the corresponding page number. Petitioner’s Appendix is cited as “Pet.’s App” with the corresponding Roman numeral.<sup>1</sup>

## SUMMARY OF REPLY ARGUMENT

To some extent, this case could be called “*Mendenhall 2.0*”. In the answer brief, Respondent aptly described section 794.0115, the Dangerous Sexual Felony Offender Act (“DSFO” statute), as “virtually identical” to section 775.087 (“10-20-Life statute”). [RAB. 9; 17]. The arguments by both Petitioner and Respondent generally track the *Mendenhall* opinions in both substance and (at times) order of arguments. So, the question becomes: Why should *Williams* be decided differently than *Mendenhall*? The answer: Because *Mendenhall* was incorrectly decided when

---

<sup>1</sup> In Respondent’s Statement of the Case and Facts section of its answer brief, it states, “Respondent moves to strike Petitioner’s Statement of Case and Facts as argumentative.” [RAB. 1]. However, it never expounded on this point. Petitioner requests this Court deny this motion because it is conclusory.

the Court used rules of statutory construction to reach its holding while also holding the language of the statute was unambiguous.

What is critically important in this case, (beyond the interests of the parties which are substantial for Mr. Williams) is encapsulated in the first line of Petitioner’s initial brief: “The issues before the Court implicate the core principles and method of statutory interpretation in the State of Florida.” [IB. 1]. Petitioner submits that Respondent’s repeated reliance on *Mendenhall* and its arguments, and thus the principle of *stare decisis*, should not be outright dispositive in this case for several reasons.

The two paths to 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 that control; or, the statute is ambiguous and the court may rely on rules of statutory construction to determine legislative intent. *See, e.g., English v. State*, 191 So. 3d 448, 449 (Fla. 2016); *Gaulden v. State*, 195 So. 3d 1123 (Fla. 2016). Courts cannot do both—find a statute unambiguous and then rely on rules of statutory construction to reach its holding. *Id.* However, in *Mendenhall*, that’s exactly what happened. *Mendenhall*, 48 So. 3d at 742. This Court has held that, while it is always mindful of the principle of *stare decisis*, overruling its own precedent may be “necessary to vindicate other principles of law or to remedy

continued injustice.” *See e.g., Coicou v. State*, 39 So. 2d 237, 243 (Fla. 2010). This is such a case.

In their respective briefs, both Petitioner and Respondent argued that the plain meaning should control and their respective court’s interpretation was correct. [IB. 10-11; RAB. 7-13]. However, while the plain meaning “doctrine is essentially sound [it is] largely unhelpful, since determining what is unambiguous is eminently debatable.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Text* 436 (2012). As has been demonstrated by both parties’ briefs in this case (and the *Mendenhall* opinion) this statement is indeed accurate.

Even despite this interpretive disagreement, the parties can agree on one thing: the Florida Legislature wanted to punish individuals designated as DSFOs more harshly than non-DSFOs. *See State v. Mason*, 979 So. 2d 301, 303 (Fla. 5th DCA 2008). It succeeded. *See, i.e.*, §§ 794.0115(2)(e), Fla. Stat. (2009) (authorizing a trial court to impose a twenty-five-year minimum mandatory sentence based on a third-degree felony (punishable by a maximum of five years) when designated as a DSFO); 787.025(2)(c) (a third degree felony DSFO triggering offense).<sup>2</sup>

At stake is something clearly important to the parties; namely, the integrity of the State’s sentence and Mr. Williams’ life. For the parties, this is a question of

---

<sup>2</sup> Under the current version of the DSFO statute, (not applicable to Petitioner) the lowest permissible sentence is a fifty-year minimum mandatory. § 794.0115(2)(e), Fla. Stat. (2014).

justice. But this case also regards an issue of vindicating a principle of law. Specifically, the core principles and method of statutory interpretation in the State of Florida. Because it is “necessary to vindicate other principles of law” and to “remedy continued injustice”, Petitioner respectfully submits that *Mendenhall* was incorrectly decided, and this Court should recede from *Mendenhall*, apply the rule of lenity in the instant case, vacate Petitioner’s life sentence, and remand to the trial court to impose a twenty-five-year minimum mandatory sentence.

**ARGUMENT**  
**ISSUE I: PLAIN MEANING ANALYSIS**

A plain meaning analysis is the “doctrine that if the text of a statute is unambiguous, it should be applied by its terms without recourse to policy arguments, legislative history, or any other matter extraneous to the text—unless this application leads to an absurdity.” Reading Law: The Interpretation of Legal Text 436. Put more simply, “the words employed are to be taken as the final expression of the meaning intended.” *Id.* (quoting *United States v. Missouri Pac. R.R.*, 278 U.S. 269, 278 (1920) (per Butler, J.)). Where the words employed are not clear, or there is a conflict in the meaning of the statute as applied, an uncertainty in meaning occurs that could rise to the level of an ambiguity. The late Justice Antonin Scalia and Bryan A. Garner define an ambiguity 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.*” Reading Law: The

Interpretation of Legal Texts 425 (emphasis added); *see also Saenz v. Campos*, 967 So. 2d 1114, 1117 (Fla. 4th DCA 2007).

In his initial brief, Petitioner argued that the Fifth District’s reading of section 794.0115 in *Wilkerson v. State*, 143 So. 3d 462 (Fla. 5th DCA 2014), based on the statute’s plain meaning, was correct. [IB. 10-11]. In response, Respondent cited the First District’s plain meaning analysis of the same statute in *Williams v. State*, 189 So. 3d 288 (Fla. 1st DCA 2016), as the correct interpretation. [RAB. 7-13].<sup>3</sup> Both courts, and both parties, came to opposite conclusions based on a review of the same language. Petitioner submits that a plain meaning analysis cannot be the basis for resolving this case.

The language of the statute creates an inherent uncertainty of meaning based on the ambiguities within the statute. [IB. 12-29]; *Infra* Issue II. The uncertainty is not whether a DSFO must receive a harsher sentence than a non-DSFO. *See Mason*, 979 So. 2d at 303, *reh’g denied, review denied*, 990 So. 2d 1059 (Fla. 2008) (“The obvious intent of the Act is to provide enhanced sentences for repeat sex offenders.”). Rather, the uncertainty is how harsh of a sentence can a DSFO receive considering the charged offense’s statutory maximum as explicitly referenced in

---

<sup>3</sup> During the pendency of this case, the Second District certified conflict with *Wilkerson* agreeing with the First District’s decision in *Williams*. *See Baxter v. State*, 206 So. 3d 150 (Fla. 2d DCA 2016).

section 794.0115(6), *see* § 775.082(3), Fla. Stat., and the interplay with the DSFO minimum mandatory. § 794.0115(2)(e), Fla. Stat.

In its answer brief, Respondent unequivocally stated that the 10-20-Life statute contains “language that’s *virtually identical* to the language in the Dangerous Sexual Felony Offender Act”, [RAB. 9] (emphasis added), and “the issue in the instant case is virtually identical to the one presented in *Mendenhall*”. [RAB. 17]. Respondent’s arguments throughout the answer brief demonstrate this position because, immediately following these points, Respondent goes on to extol the virtues *Mendenhall* with comparisons between the 10-20-Life Statute and section 794.0115. [RAB. 9-12; 17-18]. Respondent’s arguments nearly (and in some points explicitly) mirror the *Mendenhall* decision. [RAB. 9-11]. However, respectfully, Respondent misses the point by saying a plain meaning analysis should control in this case.

Respondent argues that Petitioner’s position, and the Fifth District’s decision in *Wilkinson*, “are totally inconsistent with this Court’s construction of Florida’s 10–20–Life statute” and like section 794.0115 “*involves an interplay* between the statutory maximums for the charged offense under section 775.082 and the minimum mandatory term mandated by a sentence enhancement statute.” [RAB 9] (emphasis added). “Interplay” is generally defined as “influence on each other or one another.” Webster’s New World Dictionary 2d Ed. 336 (2002). If there is an “interplay” between the statutory maximum of the charged offenses and section 794.0115,

Respondent has not identified it. Rather, Respondent simply argues that section 794.0115 always trumps the statutory maximum of the charged offense. [RAB. 16]. Based on Respondent's interpretation, there is not an "interplay" at all, but an interpretation that renders the legislature's reference to the general sentencing statutes meaningless. *See Warner v. City of Boca Raton*, 887 So. 2d 1023, 1033 n. 9 (Fla. 2004) ("This Court has stated that a statutory provision should not be construed in such a way that it renders the statute meaningless or leads to absurd results.").

In Respondent's reliance on *Mendenhall*, the ambiguities in both the 10-20-Life statute and section 794.0115 is clear. If both statutes are "virtually identical" then the language at issue is ambiguous in virtually the same way. *Mendenhall* was decided 4-3 based on an interpretation where four justices held the language of the statute was clear and unambiguous (although while relying on rules of statutory construction) and the three remaining justices found the language was so ambiguous that the rule of lenity should apply. *Mendenhall*, 48 So. 3d at 751 (Canady, C.J. and Lewis, Polston, and Labarga, JJ., concur.; Pariente, J., dissents with an opinion, in which Quince and Perry, JJ., concur). By definition, none of the justices relied on a plain meaning analysis when the words interpreted were not simply "taken as the final expression of the meaning intended" because of the reliance on rules of statutory construction. *See Missouri Pac. R.R.*, 278 U.S. at 278; *Mendenhall*, 48 So. 3d at 742.

In interpreting the language of section 794.0115, and in referencing the “virtually identical” language of the 10-20-Life statute, Judge Makar noted that “*Reasonable alternative interpretations of the sentencing statutes at issue in these cases exist* resulting in the 4-3 decision in *Mendenhall ...*” *Williams*, 189 So. 3d at 290 (Makar, J., concurrence) (emphasis added). These reasonable alternative interpretations between the First and Fifth District demonstrates why a plain meaning analysis cannot control and why this statute (and the 10-20-Life statute) is indeed ambiguous. Like *Mendenhall*, this Court is confronted with statutory language that can at first blush appear plain on its face – but ultimately allows for “reasonable alternative interpretations” that give rise to “two or more quite different but almost equally plausible interpretations.” As such, a plain meaning analysis cannot control this case.

## **ISSUE II: AMBIGUITY AND THE CANONS OF STATUTORY CONSTRUCTION ANALYSIS**

Petitioner argued section 794.0115 is ambiguous based on the interplay between sections (2)(e), section (6), and section 775.082. [IB. 12-29]. This interplay gives rise to at least two ambiguities. *Id.* First, when interpreting the statutory mandatory minimum term provided in section 794.0115(2)(e), and the statutory maximums of section 775.082, a sentence of at least twenty-five years must be imposed as a minimum mandatory sentence in all circumstances; however, it is not clear whether the trial court can impose a minimum mandatory term in excess of

twenty-five years when the minimum mandatory is greater than the statutory maximum of the charged offense. [IB. 14-15]. Second, the language of section 794.0115(2)(e) demonstrates the phrase “the mandatory minimum sentence” in 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 includes a life sentence for every charged offense. [IB. 15].

Based on these two ambiguities, and as also demonstrated by the various amendments from the statute’s inception until its current version, Pet.’s App. II, the legislature recognized that the maximum statutory caps for a charged offense play a role in the application of this statute, but it is not clear *how* based on the various parties’ interpretation.

Petitioner identified numerous rules of statutory construction to assist in clarifying the meaning from these ambiguities. [IB. 21-29]. Ultimately, like the *Mendenhall* dissent, Petitioner argued the rule of lenity should apply because two or more reasonable results are possible from analyzing this statute. [IB. 28-29]. Respondent made its arguments to rebut each of Petitioner’s points. [RAB. 13-21]. However, after reviewing both Petitioner and Respondent’s arguments, with few exceptions, the parties just appear to be rehashing the *Mendenhall* opinion.

Respondent is rearguing the points made in the majority opinion, often explicitly, and Respondent is rearguing the points made in the dissenting opinion,

with a few additional rules of statutory construction thrown in. The only major distinction relates to an issue raised by Petitioner that Respondent failed to even discuss; namely, the amendments to section 794.0115 through the years and the addition of subsection (6). [IB. 16-21].

Section 794.0115's minimum mandatory appears to be continually increasing. Originally, starting at ten-years, the statute's minimum mandatory has shot up to fifty years to life. *See* §§ 794.0115(3)(a), Fla. Stat. (1999); 794.0115(2)(e), Fla. Stat. (2014); Pet.'s App. II. Notably, under the earliest version of the statute that included a ten-year minimum mandatory, subsection (6) was not enacted. *See* § 794.0115(3)(a), Fla. Stat. (1999). (Subsection (6) references the general sentencing statute, and thus the statutory maximum for the charged offense. Importantly, subsection (6) was enacted only *after* the minimum mandatory increased from ten years to twenty-five years. § 794.0115(2)(e), Fla. Stat. (2003). Thus, by increasing the floor of the minimum mandatory to a number greater than ten years the lowest permissible minimum mandatory exceeded several of the statutory maximums for the potential chargeable offenses. *See* Pet.'s App. II; *e.g.*, § 800.04(4)(b), Fla. Stat. (second degree felony punishable by fifteen years). This demonstrates the legislature at least believed the statutory maximum should have some "interplay" with the minimum mandatory at issue. However, the extent of that "interplay" is not clear. If the legislature did not intend for there to be an interplay, it could have simply not

referenced section 775.082(3). *See* 18 U.S.C.A. § 2241(c) (sentencing statute not referencing the general statutory maximum for a charged offense but authorizing a mandatory minimum for a defendant to be “imprisoned for not less than 30 years or for life.”). However, it did.

When reviewing the amendments, one may be tempted to analyze the legislative history for clarity as well. However, as stated in Petitioner’s initial brief, and as referenced by Respondent, it is not clear how helpful this will be in this (or any other) case. The trial court’s order cited the legislative staff analysis reports that state a DSFO minimum mandatory sentence may be imposed anywhere from twenty-five years to life. [IB. 20-21; RAB. 18; R. 21]. But also as noted by Respondent, this is far from “determinative” of legislative intent. [RAB. 18]. As the trial court’s footnote to this sentence 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. 21-22 n. 1]. More to the point, rather than simply being not determinative, prior justices of this Court have noted that legislative staff analysis “add *nothing* to an investigation of legislative intent.” *American Home Assur. Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 376 (Fla. 2005) (Cantero, J., concurring in part and dissenting in part) (emphasis added).

Based on the foregoing, and the Petitioner’s initial brief, Petitioner submits that the statutory language is ambiguous and the rule of lenity should apply and the

Petitioner should receive the more favorable interpretation of this statute, i.e. a twenty five year minimum mandatory. *Mendenhall*, 48 So. 3d at (Pariente, J., dissenting) (“As this Court has stated, 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.’”) (citations omitted).

**ISSUE III: MENDENHALL AND ITS  
APPLICATION TO SECTION 794.0115, FLORIDA STATUTES**

Judge Makar first noted the need to reconcile *Mendenhall* with section 794.0115. *Williams*, 189 So. 3d at 290 (Makar, J., concurrence). In noting this, Petitioner argued that *Mendenhall* was incorrectly decided and this Court should recede from it because, although the Court held the 10-20-Life statute was unambiguous, it still relied on rules of statutory construction to reach its holding. [IB. 30-32]. Petitioner submitted that such an analysis and holding is inconsistent with Florida’s jurisprudence on statutory interpretation. [IB. 31].<sup>4</sup> In response, Respondent relies on two arguments.

First, Respondent argued that Petitioner’s point is essentially irrelevant because the sole conflict issue in this case involves section 794.0115, not the 10-20-

---

<sup>4</sup> See, e.g., *English*, 191 So. 3d at 451 (“[W]e conclude that the language of section 316.605(1) is clear and unambiguous. Accordingly, this 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.”).

Life statute. [RAB. 21]. However, Respondent cited to *Mendenhall* to support its arguments in interpreting section 794.0115 over thirty times in its answer brief, and described the language at issue in both statutes as “virtually identical.” [RAB. 9; 17]. While *Mendenhall* may not have interpreted the same statute, for the Respondent to make the argument it is irrelevant negates much (if not all) of its own arguments.

Second, Respondent unequivocally states that the Court in *Mendenhall* did not rely on rules of statutory construction when reaching its decision: “Employing rules of statutory construction while finding the ‘10-20-Life’ statute unambiguous was *merely an implicit acknowledgement* by this Court that even *assuming* the statute was ambiguous, the legislative intent could readily be determined by applying traditional canons of statutory construction.” [RAB. 22] (emphasis added). A reading of *Mendenhall* shows otherwise.

In *Mendenhall*, the majority stated, “*we hold the specific provisions of the 10-20-Life statute with regard to mandatory minimums control over the general provisions of section 775.082 regarding statutory maximums.*” *Mendenhall*, 48 So. 3d at 742 (emphasis added). Later in the opinion, in discussing its reasoning for this holding, the Court noted it had previously held: “[I]t is 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.” [RAB. 15] (citing *Mendenhall*, 48 So. 3d at 748) (additional citations

omitted) (emphasis added). The Court went on to say, “*Under this principle of statutory construction, section 775.087(2)(a)(3) ... prevails over section 775.082(3)(b)[.]*” *Id.* (emphasis added). Even while explicitly relying on this rule of statutory construction in reaching its holding, the Court also held the language of the statute was unambiguous. *Mendenhall*, 48 So. 3d at 750.<sup>5</sup> Unlike Respondent’s interpretation, this is not an “implicit” acknowledgment of the rules; instead, this is the Court’s holding.

In support of this argument, Respondent stated that “it was necessary for this Court to [implicitly acknowledge these rules of statutory construction] in order to address Mendenhall’s claim ‘. . . that this Court should apply the rule of lenity.’” [RAB. 5-6]. That’s because the ‘. . . rule of lenity is a canon of last resort and only applies if the statute remains ambiguous *after* consulting traditional canons of statutory construction.’” [RAB. 6]. Again, this argument is not supported by the Court’s holding, or any of the reasoning outlined in the case. If the Court had in fact merely discussed these rules as a basis to counter Mendenhall’s position the Court would have stated that was its intention. It did not. As such, because of the Court’s

---

<sup>5</sup> (“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).

holding and its reasoning, the reliance on the principle of *stare decisis* in this case should not control.

In *Coicou*, 39 So. 2d at 237, this Court receded from its own decisions in two other cases, *see Linehan v. State*, 476 So. 2d 1262, 1265 (Fla. 1985), and *Scurry v. State*, 521 So. 2d 1077, 1078 (Fla.1988), when it held that attempted second-degree murder is not a necessary lesser included offense of first-degree felony murder. *Id.* at 39 So. 3d at 242-43. In doing so, the Court noted that while it was not “unmindful of the principle of *stare decisis*,” overruling its own precedent was “necessary to vindicate other principles of law or to remedy continued injustice.” *Id.* at 243 (quoting *Allstate Indem. Co. v. Ruitz*, 899 So. 2d 1121, 1131 (Fla. 2005)) (citation omitted) (quoting *Haag v. State*, 591 So. 2d 614, 618 (Fla. 1992)). Similarly, this is a case that supports the Court overruling its own precedent.

Here, the principle of law in need of vindication is the method of statutory interpretation in the State of Florida; namely, the use of a plain meaning analysis when interpreting a statute. Additionally, an injustice needs to be remedies. This Court should recede from *Mendenhall* because of the continued injustice of individuals sentenced under both the 10-20-Life statute and section 794.0115 receiving harsher sentences than they would otherwise if the rule of lenity applied to these ambiguous statutes. *Mendenhall*, 48 So. 3d at 754 (Pariente, J., dissenting) (“We should err on the side of applying the rule of lenity when the alternative

construction of an ambiguous statute would result in such harsh consequences ... To allow a trial judge unfettered discretion to impose a mandatory minimum sentence of *life* for an offense such as Mendenhall's without express legislative authorization, but rather by judicial construction of the statute, works an injustice and is contrary to our doctrine of separation of powers.”). Because the language at issue is “virtually identical”, receding from *Mendenhall* is “necessary to vindicate other principles of law” and to “remedy continued injustice”.

### **CONCLUSION**

Petitioner requests this Court reverse the First District’s decision, vacate Petitioner’s life sentence, and remand with directions for the trial court to impose a twenty-five-year mandatory minimum sentence.

Respectfully submitted,

*/s/ Rocco J. Carbone, III*  
ROCCO J. CARBONE, III  
ATTORNEY AT LAW  
599 Atlantic Boulevard, Suite 6  
Atlantic Beach, Florida 32233  
(904) 247-6565 telephone  
(904) 247-6535 facsimile  
E-Mail: [rocco.carbone@comcast.net](mailto:rocco.carbone@comcast.net)  
Florida Bar No.: 0095544  
*Attorney for Petitioner*

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, via electronic mail on this 9<sup>th</sup> day of February 2017.

PAMELA JO BONDI  
ATTORNEY GENERAL  
Tallahassee, Florida

Trisha Meggs Pate  
Assistant Attorney General  
Florida Bar No.: 45489  
Address: 400 S. Moro St. # PL-01  
[Trisha.pate@myfloridalegal.com](mailto:Trisha.pate@myfloridalegal.com)

Michael McDermot  
Assistant Attorney General  
Florida Bar No.: 0593151  
OFFICE OF THE ATTORNEY GENERAL  
PL-01, THE CAPITOL  
TALLAHASSEE, FL 32399-1050  
(850) 414-3300  
(850) 992-6674 (FAX)  
Service: [crimapptlh@myfloridalegal.com](mailto:crimapptlh@myfloridalegal.com)

*Counsel for Respondent*

**CERTIFICATE OF COMPLIANCE**

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

Respectfully submitted,

*/s/ Rocco J. Carbone, III*  
ROCCO J. CARBONE, III