

IN THE SUPREME COURT OF THE STATE OF FLORIDA

LAVERNE BROWN,

Petitioner,

v.

CASE NO. SC18-323  
5th DCA No. 5D16-1045

STATE OF FLORIDA,

Respondent.

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ON DISCRETIONARY REVIEW FROM  
THE FIFTH DISTRICT COURT OF APPEAL

JURISDICTIONAL BRIEF OF RESPONDENT

PAMELA JO BONDI  
ATTORNEY GENERAL

WESLEY HEIDT  
ASSISTANT ATTORNEY GENERAL  
Fla. Bar. #0773026  
444 Seabreeze Blvd.  
5th Floor  
Daytona Beach, Florida 32118  
(386)238-4990  
(384)238-4997 (fax)  
[crimappdab@myfloridalegal.com](mailto:crimappdab@myfloridalegal.com)

COUNSEL FOR RESPONDENT

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STATEMENT OF CASE AND FACTS

The only facts relevant to this Court in determining whether to accept jurisdiction are those contained within the opinion of the district court.<sup>1</sup> The only issue addressed by the opinion of the Fifth District Court of Appeal (Fifth District) was the legality of Petitioner's sentence. See Brown v. State, 233 So. 3d 1262 (Fla. 5th DCA 2017). The main analysis of the district court was the relationship between section 775.082(10), Florida Statutes (2015), and Apprendi v. New Jersey, 530 U.S. 466 (2000). The Fifth District found that the statute was not unconstitutional and that Apprendi was not implicated. This was based on the fact the statute is not an upward departure statute but is instead a mitigation statute. Petitioner's sentence was not above the statutory maximum. The court continued in its opinion and wrote

[w]e need only consider the way section 775.082(10) operates to confirm that it is a mitigation statute. Section 775.082(10) never increases an offender's sentence. Rather, when an offender qualifies, it reduces the sentence from a five-year maximum in state prison to a nonstate sanction. Notably, unlike in Apprendi and Blakely, if the statute here were struck down as unconstitutional, then Appellant's sentence would stand because it is well within the maximum sentence authorized for the crime she committed. See, e.g., Woods v. State, 214 So.3d 803, 812 (Fla. 4th DCA 2017) (Makar, J., concurring in affirmance) (concluding that

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<sup>1</sup> Reaves v. State, 485 So. 2d 829, 830 (Fla. 1986).

"[s]ubsection 775.082(10) is unconstitutional under Apprendi and Blakely, and the appropriate remedy is to allow for resentencing under the prior version of the sentencing statute."). To be sure, if the trial court unconstitutionally enhanced Appellant's sentence above the statutory maximum as Appellant argues, striking the offending statute down should result in a lower sentence for Appellant (as in both Apprendi and Blakely). Yet, here it does not. Thus, we can be certain that section 775.082(10) is a mitigation statute, and not one that unconstitutionally allows an increase in the statutory maximum based upon judicial fact-finding.

(footnotes omitted).

SUMMARY OF THE ARGUMENT

This Court should decline to accept jurisdiction in the instant case. The lower court's decision does not conflict with any Florida precedent, and the district court simply construed the statute in a manner it deemed necessary to preserve its constitutionality.

ARGUMENT

THIS COURT SHOULD DECLINE TO  
EXERCISE ITS DISCRETIONARY  
JURISDICTION IN THIS CASE.

This Court “may” exercise jurisdiction under article V, section (3)(b)(3) of the Florida Constitution where a decision of a district court “expressly declares valid a state statute.” The district court did construe a statute in this case, but it simply did so by finding the statute did not violate the Constitution. Even if this Court *may* exercise jurisdiction here, it should decline to do so. The five district courts of appeal uphold statutes against constitutional challenges on a regular basis. If this Court decided to routinely review such cases, it would soon be overwhelmed.

The Fifth District found that the statute was constitutional and that the sentence imposed under it was legal. Of course, as noted by the opinion, without the statute, any sentence up to five years for the third-degree felony would be legal. A nonstate prison sanction is not the maximum nor is it the required sanction. It is a mitigation statute that allows the court discretion to imposed a legal, higher sentence if the facts warrant. Such analysis upholding a statute should not lead to additional review by this Court.

CONCLUSION

Based on the arguments and authorities presented herein, Respondent respectfully requests this Honorable Court decline to accept jurisdiction in this case.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Brief of Respondent has been delivered via electronic service to [appellate.efile@pd7.org](mailto:appellate.efile@pd7.org); and [funderburk.matthew@pd7.org](mailto:funderburk.matthew@pd7.org); this 22nd day of March 2018.

DESIGNATION OF EMAIL

I HEREBY DESIGNATE the following email addresses for purposes of service of all documents, pursuant to Rule 2.516, in this proceeding: [crimappdab@myfloridalegal.com](mailto:crimappdab@myfloridalegal.com) (primary) and [wesley.heidt@myfloridalegal.com](mailto:wesley.heidt@myfloridalegal.com) (secondary).

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief was typed in 12-point Courier New as required by Rule 9.210(a)(2).

Respectfully submitted,

PAMELA JO BONDI  
ATTORNEY GENERAL

*/s/ Wesley Heidt*

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WESLEY HEIDT  
BUREAU CHIEF  
444 Seabreeze Blvd.  
5th Floor  
Daytona Beach, Florida 32118  
(386)238-4990  
(384)238-4997 (fax)  
[crimappdab@myfloridalegal.com](mailto:crimappdab@myfloridalegal.com)  
[wesley.heidt@myfloridalegal.com](mailto:wesley.heidt@myfloridalegal.com)

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APPENDIX

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ATTORNEY GENERAL

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ASSISTANT ATTORNEY GENERAL  
Fla. Bar. #0773026  
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5th Floor  
Daytona Beach, Florida 32118  
(386)238-4990  
(384)238-4997 (fax)  
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