

IN THE SUPREME COURT OF FLORIDA

JOURDAN DANIEL PARKS,

Petitioner,

v.

Case No. SC23-1355

STATE OF FLORIDA,

Respondent.

_____ /

ON PETITION FOR DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The State charged Petitioner by second amended information with several felony crimes and a misdemeanor. (R. 128-29). He entered an open plea to the charges and, following a plea colloquy, was adjudicated guilty. (R. 137-38, 248-55). The trial court sentenced Petitioner as a habitual felony offender to a total of 25 years in prison and imposed \$1028 in costs and fines, an amount that included the minimum \$100 state attorney cost of prosecution. (R. 148-159). Petitioner appealed. (R. 211-12).

As the appeal was pending, Petitioner filed a motion to correct sentencing error in which he argued that the trial court erred in imposing certain fees and costs, including the \$100 minimum state attorney cost. (R. 329-36). He asserted that the \$100 minimum cost was improper because the State was required to, but did not, expressly request its imposition. (R. 331-34). The trial court granted the motion in part and struck certain fees, but found that the \$100 minimum state attorney cost was properly imposed. (R. 337-40).

Petitioner argued on appeal that imposition of the \$100 minimum state attorney cost without an express request was improper. (R. 30-

33). The First District affirmed, finding that the “\$100 cost for the state attorney is a minimum cost that is mandated by [section 938.27(8), Florida Statutes,] and not an ‘investigative’ cost incurred by an agency, as described in § 938.27(1), which can only be imposed ‘if requested’ by the agency.” Parks v. State, 371 So. 3d 392, 392-93 (Fla. 1st DCA 2023). The district court denied Petitioner’s motion for rehearing and rehearing en banc. (R. 72-73).

In affirming the sentence, the First District recognized a conflict on the issue between its decision and the decision in D.L.J. v. State, 331 So. 3d 227, 228 (Fla. 2d DCA 2021). Parks, 371 So. 3d at 394. The Second District in D.L.J. reiterated its earlier holdings that an express request is required to impose the \$100 state attorney cost. D.L.J., 331 So. 3d at 228. To resolve the conflict between the instant decision and the Second District’s decision in D.L.J., Petitioner sought to invoke this Court’s discretionary jurisdiction. This Court granted review.

SUMMARY OF THE ARGUMENT

The First District correctly determined that a request is not required by section 938.27(1), Florida Statutes, to impose a \$100 state attorney cost pursuant to section 938.27(8). The text of subsection (8) reflects a legislative determination that a state attorney's services are, at a minimum, valued at \$50 or \$100. The inclusion in subsection (8) of the word "must" connotes a command or requirement, rendering the minimum cost's imposition mandatory in "all" cases.

Notably, in contrast to subsection (1), subsection (8) contains no provision that requires a request to impose the minimum costs for the state attorney. This material variation in language strongly suggests that different meanings were intended. To an ordinary reader, then, section 938.27's plain meaning supports the instant decision of the First District. The \$100 state attorney cost is a minimum cost that is mandatory.

The structure and context of the statute's language points to the same meaning. For example, subsections (1) and (8) are separated by a number of subsections bearing on imposition and collection of costs, and resolution of cost disputes. The separation of the subsections reflects a legislative choice to distinguish between section 938.27's

broader provision for investigative costs and its narrower provision for the costs of the state attorney.

Moreover, insofar as the language requiring a request to impose investigation costs in subsection (1) conflicts with subsection (8)'s language mandating imposition of minimum costs for the state attorney, the narrower provision for state attorney costs prevails over the broader, more expansive provision for the costs described in subsection (1). The operation of the specific provision does not render the general one ineffective; the general provision continues to govern all other situations.

The Second District's decision in D.L.J. is unsound because it adheres to a reading of section 938.27 that predates legislative changes to subsection (8). By adhering to its original reading of section 938.27, the Second District construed the statute's meaning by looking to subsection (1) in isolation. The changed meaning caused by the addition of the state attorney costs language in subsection (8) was overlooked by the Second District because it did not consider the context provided by the different parts of the statute.

ARGUMENT

THE FIRST DISTRICT COURT OF APPEAL WAS CORRECT IN FINDING THAT A REQUEST IS NOT REQUIRED TO IMPOSE THE \$100 STATE ATTORNEY COST BECAUSE IT IS A MINIMUM COST MANDATED BY SECTION 938.27(8), FLORIDA STATUTES.

Standard of Review

Questions of statutory interpretation are reviewed *de novo*. Reeves v. State, 957 So. 2d 625, 629 (Fla. 2007).

Merits

Petitioner contends that an express request is required by section 938.27(1), Florida Statutes, to impose the \$100 state attorney cost pursuant to section 938.27(8). The State respectfully disagrees. The \$100 state attorney cost is a minimum cost that is mandated by section 938.27(8) and not an agency cost of the kind described in subsection (1), which requires a request. It follows from the text and structure of section 938.27 that because the minimum state attorney cost is mandatory, a request is not required to impose it. For these reasons, this Court should approve the instant decision of the First District and disapprove the Second District's decision in D.L.J. v. State, 331 So. 3d 227 (Fla. 2d DCA 2021).

A. Principles of Statutory Interpretation

This Court has explained that in interpreting statutes it follows the “‘supremacy-of-text principle’ -- namely, the principle that ‘[t]he words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.’” State v. McKenzie, 331 So. 3d 666, 670 (Fla. 2021)(quoting Ham v. Portfolio Recovery Assoc., LLC, 308 So. 3d 942, 946 (Fla. 2020)(quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 56 (2012))). “[E]very word employed in [a legal text] is to be expounded in its plain, obvious, and common sense, unless the context furnishes some ground to control, qualify, or enlarge it.” Id. at 670-71 (quoting Joseph Story, *Commentaries on the Constitution of the United States* 157-58 (1833), *quoted in* Scalia & Garner, *Reading Law* at 69).

B. The First District Correctly Construed the Provision in Section 938.27 for Minimum Cost for the State Attorney as a Mandatory Cost of Prosecution Requiring no Request for Imposition.

The “‘plain meaning of [a] statute is always the starting point in statutory interpretation.’” Alachua Cnty. v. Watson, 333 So. 3d 162, 169 (Fla. 2022)(quoting GTC, Inc. v. Edgar, 967 So. 2d 781, 785 (Fla. 2007)). Section 938.27 provides for the imposition of costs of

prosecution arising in criminal cases that result in a conviction. Here, the analysis begins with the category, or subset, of these costs addressed in section 938.27(1), which in relevant part provides:

In all criminal and violation-of-probation or community-control cases, convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person.

§ 938.27(1), Fla. Stat. This subset of costs is typically referred to as investigative costs. The subsection expressly conditions the imposition of this subset on a request by an agency for payment. *Id.*; see Richards v. State, 288 So. 3d 574, 576 (Fla. 2020). The imposition of investigative costs is discretionary; a defendant is afforded an opportunity to challenge the amount requested by an agency. § 938.27(4), Fla. Stat.; see Reyes v. State, 655 So. 2d 111, 116 (Fla. 2d DCA 1995).

A second subset of costs of prosecution, the “[c]osts for the state

attorney,” is addressed separately in section 938.27(8).¹ § 938.27(8),

Fla. Stat. The relevant language of this subsection provides:

Costs for the state attorney must be set in all cases at no less than \$50 per case when a misdemeanor or criminal traffic offense is charged and no less than \$100 when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred.

§ 938.27(8), Fla. Stat. The text of subsection (8) clearly reflects a legislative determination that the services of the state attorney are, at a minimum, valued at \$50 or \$100 depending on the nature of the charged offense. The inclusion in subsection (8) of the word “must” connotes a command or requirement, rendering the minimum cost’s imposition mandatory in “all” cases. Little Brownie Props., Inc. v. Wood, 328 So. 3d 1049, 1051 (Fla. 5th DCA 2021). The second sentence of the subsection addresses the possible imposition of higher costs, which is discretionary. § 938.27(8), Fla. Stat.

¹ This subset of costs is typically referred to in the trial courts as “costs of prosecution,” but, for the purposes of the instant analysis, the State refers to this subset as “state attorney costs” or “costs for the state attorney.” To achieve clarity, the State respectfully suggests that the courts likewise employ this or similar language in imposing these costs.

Notably, in contrast to subsection (1), subsection (8) contains no provision that requires a request to impose the minimum costs for the state attorney. This material variation in language strongly suggests that “different meanings were intended.” Millien v. State, 336 So. 3d 354, 356 (Fla. 4th DCA 2022)(quoting D.M.H. v Pietilla, 33 So. 3d 800, 801 (Fla. 5th DCA 2010)(quoting State v. Mattox, 787 So. 2d 811, 819 (Fla. 2006))). Had the Legislature intended to require a request before minimum state attorney costs are imposed, it easily could have used language similar to that of subsection (1). See State v. Bradford, 787 So. 2d 811, 819 (Fla. 2001).

Subsection (1), in contrast to subsection (8), contains no provision for imposition of minimum costs. This material variation in language also supports the conclusion that different meanings were intended, most likely because of practical differences in the nature of the costs. The language of subsection (1) cannot provide for a minimum cost because the amount expended to pursue a criminal case varies greatly depending on the nature or circumstances of the offense. For example, an offense committed in an officer’s presence may require no investigation at all while cases involving other offenses may require the hiring of experts or extensive scientific testing. Conversely,

because the services of a state attorney are always required, a minimum, consistent value for the attorney's services can be determined in advance.

To an ordinary reader, then, section 938.27(8)'s plain meaning supports the instant decision of the First District. The \$100 state attorney cost is a mandatory minimum cost of prosecution that is distinct from a cost of the kind described in subsection (1), which requires a request. The courts presume that "a legislature says in a statute what it means and means in a statute what it says there." Page v. Deutsche Bank Trust Co. Americas, 308 So. 3d 953, 958 (Fla. 2020)(quoting Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992)).

The structure and context of the statute's actual language points to the same meaning. For example, subsections (1) and (8) are separated by subsections bearing on imposition and collection of costs, and resolution of cost disputes. § 938.27(2)-(7), Fla. Stat. The separation of the subsections reflects a legislative choice to distinguish between the statute's broader provision for investigative costs and its narrower provision for state attorney costs. The Legislature had no reason to address the two subsets of costs in separate subsections

unless it had intended for the provisions to be construed separately.

Moreover, insofar as the language requiring a request to impose investigation costs in subsection (1) conflicts with subsection (8)'s language mandating imposition of minimum costs for the state attorney, the narrower provision for state attorney costs prevails over the broader, more expansive provision for the subset of costs described in subsection (1). McDonald v. State, 957 So. 2d 605, 610 (Fla. 2007). The specific provision operates “as an exception to or qualification of” the general terms of the broader provision to the extent of the conflict. Id. (quoting Adams v. Culver, 111 So. 2d 665, 667 (Fla. 1959)). The operation of the specific provision does not render the general one ineffective, or “meaningless,” as Petitioner contends; the general provision continues to govern all other situations. Scalia & Garner, *Reading Law* at 184.

The holding in Parks is consistent with that in earlier opinions of the First District as well as opinions of several other districts.² The Fifth District recently addressed a challenge to the imposition without

² See, e.g., Wasden v. State, 342 So. 3d 298, 299 (Fla. 5th DCA 2022); Guadagano v. State, 291 So. 3d 962, 963 (Fla. 4th DCA 2020).

a request of \$100 in state attorney costs. O'Malley v. State, 378 So. 3d 672 (Fla. 5th DCA 2024). It affirmed the denial of a motion to correct sentencing error, writing that the “mandatory provisions of section 938.27(8) and the other amendments restricting the trial judge’s discretion have negated any reason to require the state attorney to request the minimum costs.” Id. at 673 (quoting Hills v. State, 90 So. 3d 927, 298 (Fla. 1st DCA 2012)). In other words, any reason to request the minimum costs was “negated” by operation of the provision in subsection (8) that requires their imposition.

Brown did not signal a change in the First District’s reading of section 938.27, as Petitioner appears to suggest. Brown v. State, 348 So. 3d 31 (Fla. 1st DCA 2022). In Brown, the First District issued an order striking an Anders brief.³ Id. at 34. The First District explained in Parks that the order in Brown “broadly addressed the request requirement, but under different circumstances.” 371 So. 3d at 394 n.*. Brown “involved an undescribed \$82 cost assessment, which troubled the court in view of cases requiring specific requests to be

³ Anders v. California, 386 U.S. 738 (1967).

made for investigative costs and over-the-minimum prosecution costs.” Id. (citations omitted). The order lacked any value as precedent in Parks because of its non-dispositive nature.

The analysis by Petitioner of the grammar used in subsection (1) is not persuasive evidence of the meaning of subsection (8). The rules of grammar are considered in construing statutory language, but any sense of a statute derived from its grammar can be overcome by other textual indications of meaning. State v. Bodden, 877 So. 2d 680, 685 (Fla. 2004); Scalia & Garner, *Reading Law* at 140-41. Here, in view of the textual indications of meaning already discussed, subsection (8) governs a distinct subset of costs that is construed separately from the statutory text in subsection (1).

Petitioner’s reliance on the statutory history of section 938.27 is unavailing for similar reasons. The Legislature in amending a statute “is presumed to have adopted” the preexisting judicial construction of the statute “unless a contrary intention is expressed in the new version.” Zommer v. State, 31 So. 3d 733, 754 (Fla. 2010)(emphasis omitted)(quoting Fla. Dep’t of Children & Families v. F.L., 880 So. 2d 602, 609 (Fla. 2004)). Here, although the text of subsection (1) was largely not affected by the changes in 2008 to section 938.27,

subsection (1)'s judicial construction does not control the separate language added by the Legislature to subsection (8), which expressed a contrary intention by mandating the imposition of minimum state attorney costs.

The State's reading of section 938.27, moreover, makes far more practical sense than Petitioner's. The Legislature has not provided for mandatory minimum investigative costs for "law enforcement agencies," "fire departments," and "the Department of Financial Services or the Financial Services Commission." § 938.27(1), Fla. Stat. As a result, a trial court can impose investigative costs for those agencies only if the agency identifies and proves the amount of its expenditure. That, as a practical matter, requires a "request[]" for a particular dollar figure. Id. But no similar difficulty arises with minimum state attorney costs. The scheme the Legislature adopted therefore makes sense: no request is necessary to impose only the \$50 or \$100 minimum state attorney costs; but when reimbursement of costs that exceed the minimum are sought, the state attorney, like the agencies listed in subsection (1), must file a request. That squares with the text of subsection (8), which provides that the court "may set a higher amount" of state attorney costs "upon a showing of sufficient proof of higher costs

incurred.” § 938.27(8), Fla. Stat.⁴

C. The Second District’s decision in D.L.J. is unsound because it interprets section 938.27(1) in isolation, without reference to its context within the entire text of section 938.27.

The Second District in D.L.J. reversed the imposition of \$100 in costs of prosecution, an amount that was assessed as minimum state attorney costs. 331 So. 3d at 228. The prosecutor had not requested the imposition of the minimum costs at sentencing. Id. The Second District’s analysis consisted of a reiteration of its earlier holdings that an express request was required by section 938.27(1) before the cost was imposed. Id. Broadly, those earlier holdings concluded without extensive analysis that the “plain language of section 938.27(1) ... requires that prosecution costs be requested.” Vandawalker v. State, 310 So. 3d 483 (Fla. 2d DCA 2020); see Davis v. State, 286 So. 3d 898, 899 (Fla. 2d DCA 2019); Mercado v. State, 304 So. 3d 786 (Fla. 2d DCA 2018).

⁴ Contrary to Petitioner’s suggestion, Pet’r’s Br. at 13-14, the Court’s opinion in Richards, 288 So. 3d 574, does not require a different result. That case involved a dispute over “investigative costs.” Id. at 575. The Court therefore had no occasion to consider whether state attorneys must request the minimum amounts listed in subsection (8).

Historically, “imposition of ‘costs of prosecution’ was discretionary and therefore required a request by the state, on the record, to survive appeal.” Hills, 90 So. 3d at 928. However, the Legislature amended section 938.27 in several respects in 2008, notably by including language in subsection (8) that “created mandatory minimum costs for the state attorney and removed the trial court’s discretion to impose these costs.” Id. Petitioner observes that since these changes the Second District “has continued to interpret the request requirement in subsection one as it has historically,” by requiring the State to request costs of prosecution before minimum state attorney costs may be imposed. Pet’r’s Br. at 11.

The Second District’s adherence to a construction of section 938.27 that predates the amendment of subsection (8) is, respectfully, a reason why its analysis of state attorney costs in D.L.J. is unsound. The language in subsection (1) was largely not affected by the legislative changes to the statute in 2008, but the inclusion that year of the separate provision in subsection (8) for minimum costs changed the statute’s meaning in a significant way. By adhering to its original reading of section 938.27, the Second District construed the statute’s meaning by looking to subsection (1) in isolation. Because it did not

consider the context provided by the different parts of the statute, the district court overlooked the change in the statute's meaning.

The earlier authority that the Second District cited in D.L.J. is unsound for the same reason. The Second District in that authority construed the statutory provision for state attorney costs solely by reference to "the plain language of section 938.27(1)." Vandawalker, 310 So. 3d at 383; see Davis, 286 So. 3d at 899; Mercado, 304 So. 3d at 786. To ascertain a statute's plain meaning, however, courts must not only "look to the particular statutory language," but also to "the language and design of the statute as a whole." Watson, 333 So. 3d at 170 (quoting K Mart Corp. v. Cartier, Inc., 486 U.S. 281, 291 (1988)).

Here, by construing subsection (1) in isolation, the earlier authority did not ascribe meaning of every portion of the statute or consider the relationship of its parts, as required. "Context always matters because sound interpretation requires paying attention to the whole law, not homing in on isolated words or even isolated sections." McKenzie, 331 So. 3d at 671 (quoting King v. Burwell, 576 U.S. 473, 500-01 (2015)(Scalia, J., dissenting)). The analysis in the earlier authority, by looking only to the language of subsection (1), did not account for the addition in subsection (8) of a separate provision for imposition of

minimum costs for the state attorney and, as a result, missed the change in the statute's meaning.

CONCLUSION

For the foregoing reasons, the State requests that this Court approve the instant decision of the First District.

CERTIFICATE OF SERVICE

I certify that the foregoing was furnished to the following through the Court's e-Filing Portal on June 17, 2024: Kathryn Lane, Esq., at kathryn.lane@flpd2.com.

CERTIFICATE OF COMPLIANCE

I certify that the foregoing was prepared in Bookman Old Style 14-point font and contains 3460 words, therefore satisfying the provisions of rule 9.045, Florida Rules of Appellate Procedure.

Respectfully submitted and certified,

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