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IN THE SUPREME COURT OF FLORIDA

JOURDAN DANIEL PARKS,

Petitioner,

vs.

CASE NO. SC23-1355
DCA CASE NO. 1D22-1566
LT NO. 2020-CF-2475

STATE OF FLORIDA,

Respondent.

_____/

ON DISCRETIONARY REVIEW
FROM THE FIRST DISTRICT COURT OF APPEAL

INITIAL BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner, the appellant in the district court and the defendant in the trial court, will be referenced in this brief as Petitioner or by proper name. Respondent, the State of Florida, the appellee in the district court and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State.

The record on appeal consists of one volume, which will be referenced by volume number expressed in roman numerals followed by any appropriate page number. A supplemental volume exists which is paginated consistently with the main volume and will be referenced similarly. A volume of the filings in the district court also exists which is paginated separately and will be referenced by "DCA" followed by any appropriate page number.

All emphasis through bold lettering is supplied unless the contrary is indicated.

STATEMENT OF THE CASE AND FACTS

Petitioner, Jourdan Daniel Parks, was charged by information on July 21, 2020, with Count I) Resist Officer with Violence, Count II) Battery on a Law Enforcement Officer, Count III) Battery on a Law Enforcement Officer, Count IV) Fleeing or Attempting to Elude Marked Police Car, Count V) Felony Battery (Priors), Count VI) Criminal Mischief (Above $200.00 but Below $1,000), and Count VII) Driving While License Canceled Suspended or Revoked (1st Conviction). (I 34). The information was amended on March 4, 2022, to charge Count I) Resist Officer With Violence, Count II) Battery on a Law Enforcement Officer, Count III) Battery on a Law Enforcement Officer, Count IV) Fleeing or Attempting to Elude (High Speed Reckless), and Count V) No Valid Driver's License. (I 115). A second amended information was filed on March 21, 2022, charging the same offenses. (I 128).

On March 23, 2022, a Plea, Waiver and Consent form was filed to each of the five counts. (I 137). The form indicated that Petitioner pleaded open to the court. (I 137). Petitioner entered a plea on March 23, 2022. (I 241-259). Petitioner was sentenced as a habitual felony offender on May 6, 2022, to five years in prison for

Count I, 10 years in prison for Count II, 10 years in prison for Count III, 25 years in prison for Count IV, and 60 days with credit for time served on Count V. (I 150-158, 307). Various costs and fines were also imposed, including a $100 cost of prosecution. (I 159). The State did not request the $100 cost of prosecution.

A motion to correct illegal sentence was filed, challenging the imposition of certain costs and fines, including the imposition of the $100 cost of prosecution without request by the State. (I 328-336). The court granted the motion in part, but denied the portion of the motion challenging the imposition of the $100 cost of prosecution.

Petitioner filed an initial brief raising the issue of the imposition of the $100 cost of prosecution without request by the state attorney. (DCA 23). The First District Court of Appeal issued a written opinion on August 2, 2023, denying relief while acknowledging conflicting district court opinions on the issue, including between the opinion in this case and in D.L.J v. State, 331 So.3d 227 (Fla. 2d DCA 2021). (DCA 60). Petitioner filed a motion for rehearing and rehearing en banc on August 17, 2023, and the district court denied it on September 27, 2023. (DCA 64, 72).

Petitioner filed a notice to invoke the discretionary jurisdiction of this court based on express and direct conflict between this case and the opinion in D.L.J. on September 28, 2023. (DCA 76). After considering the jurisdictional briefs filed by the parties, this Court accepted jurisdiction.

This appeal follows.

SUMMARY OF THE ARGUMENT

This Court should resolve the express and direct conflict between Parks v. State, 371 So. 3d 392 (Fla. 1st DCA 2023), and D.L.J. v. State, 331 So. 3d 227 (Fla. 2d DCA 2021), in favor of D.L.J. The trial court in Parks erred by denying Petitioner's motion to correct illegal sentence, and the First District erred by affirming that decision. The State failed to request the cost of prosecution, and thereby failed to fulfill the conditions for Petitioner to be liable for the cost of prosecution at all. The holding in Parks to the contrary runs afoul of the plain meaning of the text of the cost of prosecution statute, the presumption that the legislature adopted the historical interpretation that a request by the state attorney was required to impose the cost of prosecution, and the requirement to read subsection one and subsection eight together without negating the portion of subsection one requiring the state attorney to request the cost of prosecution before liability attached. Therefore, the imposition of that cost was erroneous, and it must be stricken without opportunity for reimposition.

The holding of the Second District in D.L.J., that the state attorney must request a cost of prosecution before it is imposed, is

therefore correct by the same reasoning. This Court should adopt the holding in D.L.J., quash the opinion in Parks, and reverse and remand with instructions for the cost of prosecution to be stricken and all sentencing documents amended to reflect this change.

ARGUMENT

THE TRIAL COURT ERRED BY DENYING THE MOTION TO CORRECT ILLEGAL SENTENCE REGARDING THE IMPOSITION OF A COST OF PROSECUTION WITHOUT REQUEST BY THE STATE ATTORNEY.

Standard of review: This case presents a question of law, and is therefore reviewed de novo. See Kaaa v. Kaaa, 58 So. 3d 867, 869 (Fla. 2010).

Preservation: This issue was preserved by Appellant's motion to correct illegal sentence and the trial court's denial of relief on the issue. (I 328-336, 337-340).

Merits: This Court should resolve the express and direct conflict between Parks v. State, 371 So. 3d 392 (Fla. 1st DCA 2023), and D.L.J. v. State, 331 So. 3d 227 (Fla. 2d DCA 2021), in favor of D.L.J. The trial court in Parks erred by denying Petitioner's motion to correct illegal sentence, and the First District erred by affirming that decision. The State failed to request the cost of prosecution, and thereby failed to fulfill the conditions for Petitioner to be liable for the cost of prosecution at all. The holding in Parks to the contrary runs afoul of the plain meaning of the text of the cost of

prosecution statute, the presumption that the legislature adopted the historical interpretation that a request by the state attorney was required to impose the cost of prosecution, and the requirement to read subsection one and subsection eight together without negating the portion of subsection one requiring the state attorney to request the cost of prosecution before liability attached. Therefore, the imposition of that cost was erroneous, and it must be stricken without opportunity for reimposition.

The holding of the Second District in D.L.J., that the state attorney must request a cost of prosecution before it is imposed, is therefore correct by the same reasoning. This Court should adopt the holding in D.L.J., quash the opinion in Parks, and reverse and remand with instructions for the cost of prosecution to be stricken and all sentencing documents amended to reflect this change.

1. Historically, the "if requested by such agency" clause in §938.27(1), Fla. Stat., has been interpreted to apply to the cost of prosecution generally, and to impose a condition that the state attorney request the cost before liability is imposed on a defendant for any cost of prosecution.

The proper interpretation of the following sentence in §938.27(1), Fla. Stat., is at issue in the instant case:

> 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 requirement of a request by an agency for a prosecution cost, including an investigative cost, has existed in Florida law for almost four decades. See Ch. 87-243, § 47, Laws of Fla. (amending predecessor statute §939.01, Fla. Stat. (1987). As recognized by the First District in Hills v. State, 90 So. 3d 927, 928 (Fla. 1st DCA 2012), this sentence was historically interpreted by Florida courts to require the State Attorney to request the imposition of a cost of prosecution before the trial court could impose it; imposition absent such a request would not survive appellate review.

> Historically, imposition of "costs of prosecution" was discretionary and therefore required a request by the state, on the record, to survive appeal. *See James v. State,* 662 So.2d 995 (Fla. 2d DCA 1995) (reversing costs of prosecution absent record request under predecessor section 939.01, Fla. Stat.). This requirement remained after the 2003

> amendment to the statute. *See Brown v. State,* 963 So.2d 342 (Fla. 2d DCA 2007) (applying § 938.27(1), Fla. Stat. (2004)). Under the 2007 version of section 938.27, the state conceded error in *Del Valle v. State,* 26 So.3d 650 (Fla. 2d DCA 2010), where the trial court imposed prosecution costs "because the costs were not requested or announced at sentencing and no documentation was presented supporting the costs." 26 So.3d at 651. However, the Second District Court of Appeal noted that section 938.27(1) "was amended in 2008 to no longer require such costs to be documented." *Del Valle v. State,* 26 So.3d at n. 1.

Hills, 90 So. 3d 927 at 928.

The First District's interpretation of subsection one's request requirement changed following the 2008 amendments. While those amendments did not substantively alter the request requirement in subsection one, they instead added subsection eight to the statute, which is as follows, in relevant part:

> (8) 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 per case 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. In Hills, the First District interpreted the enactment of subsection eight to have "negated any reason to

require the state attorney to request the minimum costs for the state attorney." Id. at 928. Therefore, the court held that the State no longer needed to request a cost of prosecution before the minimum cost set by subsection eight could be imposed.

The Second District Court of Appeal, however, has continued to interpret the request requirement in subsection one as it has historically, by requiring the state attorney to request the cost of prosecution before the minimum amount becomes eligible for imposition. In Vandawalker v. State, 333 So. 3d 249, 250 (Fla. 2d DCA 2021), a $100 cost of prosecution was imposed without request of the state attorney. The court reversed this imposition, reasoning that because the plain language of subsection one requires a request for costs, and there was no request by the state attorney, the trial court's imposition of the cost was error. Id. Similarly, the court in D.L.J v. State, 331 So.3d 227 (Fla. 2d DCA 2021), held that the request requirement applied to the state attorney, and that imposing a cost of prosecution absent such a request was error. "The State maintains that only the listed agencies, not the State Attorney's Office (SAO), must make an

express request, but our court has held that the requirement applies to the SAO as well." Id., 331 So. 3d 227 at 228.

In Brown v. State, 348 So.3d 31 (Fla. 1st DCA September 21, 2022), an appeal from the conviction of two misdemeanors, the First District departed from its holding in Hills that the imposition of a minimum cost of prosecution did not require a request by the state attorney. In Brown, appellate counsel had filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The First District struck the Anders brief "because our review reveals several sentencing errors . . ." Id. at 33. Among those errors was the imposition of a minimum cost of prosecution without request by the state attorney. The First District held as follows:

> Under section 938.27, a trial court may assess a minimum of $50 in prosecution costs for a misdemeanor, but the State is required to request such costs (which it did not do here), and the State is further required to demonstrate a factual basis for assessing costs above the $50 minimum (which it also did not do here). *See Richards v. State*, 288 So. 3d 574, 576 (Fla. 2020) (holding that the State is required to ask a trial court to assess prosecution costs); *Jenkins v. State*, 332 So. 3d 1013, 1018 (Fla. 4th DCA 2022) (holding that the State bears the burden of proving that costs of prosecution exceed $50 statutory minimum).

Id. Notably, the First District recognized this Court's opinion in Richards v. State, 228 So.3d 574 (Fla. 2020), as holding that the State was required to ask a trial court to assess prosecution costs.

In Richards, 288 So. 3d 574, this Court considered the imposition of a cost of investigation under §938.27(1), Fla. Stat. When analyzing the language of subsection one, this Court observed the following:

> The first sentence of the statute articulates the conditions that the State must satisfy before a defendant becomes liable for investigative costs: the defendant must be convicted of a crime, and the State must request these costs. § 938.27(1), Fla. Stat. (2019) ("[C]onvicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, ... if requested by such agencies."). The second sentence further provides that the trial court "shall" impose "these costs in every judgment rendered against the convicted person." *Id.* We must consider these two sentences together to determine the statute's meaning. *See Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 548 (Fla. 2019) ("[U]nder a longstanding fundamental principle applicable to statutes and ordinances, 'words, phrases, clauses, sentences and paragraphs of a statute may not be construed in isolation[.]' Rather, the sentence must be read in the context of the entire provision." (alterations in original) (quoting *Trafalgar Woods Homeowners Ass'n, Inc. v. City of Cape Coral*, 248 So. 3d 282, 284 (Fla. 2d DCA 2018))). If under the first sentence the State must request investigative costs to make a defendant liable for those costs, and

> if under the second sentence the requested costs must be "include[d] ... in every judgment rendered," § 938.27(1), Fla. Stat., then it follows that the State's request must occur before the judgment is rendered.

Id at 576-577.

While the facts of Richards involved a subset of prosecution costs for investigation, this Court's analysis at all times in the opinion while quoting the relevant portions of subsection one considered the clause "if requested by such agencies" in conjunction with both the investigative costs and the larger category of costs of prosecution. Id. Specifically, this Court applied emphasis to these words in subsection one, while omitting what it believed to be irrelevant portions: "*convicted persons are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, ... if requested by such agencies*. Id. at 576 (emphasis in original). This same selection linking the cost of prosecution and investigative costs as modified by the "if requested by such agencies" clause appears later in the portion quoted above at pages 576-577 of the opinion. This Court found this language to be clear an unambiguous, and capable of being applied as written. Id. at 576.

Subsequent to Brown, the First District revisited the issue of whether the State was required to request a cost of prosecution before it could be imposed in the instant case. In this case, the First District abandoned both their recent opinion in Brown that a request was required, as well as their reasoning in Hills that a request was not required because subsection eight's enactment negated subsection one's requirement for a request. Instead, the First District adopted, for the first time, reasoning that the plain text of subsection one's request requirement, which had long been held by Florida's district court to apply to all forms of prosecution costs, applied only to the subset of prosecution costs that were investigative costs. Parks v. State, 371 So. 3d 392, 393 (Fla. 1st DCA 2023), reh'g denied (Sept. 27, 2023).

In O'Malley v. State, 378 So. 3d 672, 673 (Fla. 5th DCA 2024), the Fifth District recently issued an opinion on this issue that cites to Parks, but does not adopt the reasoning of Parks. Instead, the Fifth District relied on the reasoning of the First District in Hills that the 2008 addition of subsection eight negated any reason for the state attorney to request the cost of prosecution. Consequently, in O'Malley, the Fifth District held that no request by the state

attorney was required for the minimum cost of prosecution to be ordered.

2. A correct application of the principles of statutory construction reveals that the state attorney must request the cost of prosecution before liability attaches for the cost.

When engaging in statutory construction, it is legislative intent that drives the inquiry into the meaning of a statute. See State v. Bodden, 877 So. 2d 680, 685 (Fla. 2004).

> Legislative intent is derived primarily from the language of the statute. *See Rife,* 789 So.2d at 292. Thus, "it is axiomatic that in construing a statute courts must first look at the actual language used in the statute." *Woodham v. Blue Cross & Blue Shield of Florida, Inc.,* 829 So.2d 891, 897 (Fla.2002); *see also Joshua v. City of Gainesville* 768 So.2d 432, 438 (Fla.2000).

Id. When considering statutory text that has been in force over many years and subject to prior interpretation by Florida courts, a presumption that the legislature has adopted the interpretation by Florida's courts exists, as illustrated by this Court's reasoning in Morris v. Muniz, 252 So. 3d 1143, 1154 (Fla. 2018):

> Additionally, while the dissent argues that the 2003 amendments to section 766.202(6) support its

> interpretation, the "duly and regularly engaged" language has remained unchanged since its first appearance in the statute in 1988. *See* § 766.202, Fla. Stat. (Supp. 1988). This is especially important because the Legislature " 'is presumed to know the judicial constructions of a law when enacting a new version of that law' and "the legislature is presumed to have adopted prior judicial constructions of a law unless a contrary intention is expressed in the new version.' " *Jones v. ETS of New Orleans, Inc.*, 793 So.2d 912, 917 (Fla. 2001) (quoting *City of Hollywood v. Lombardi*, 770 So.2d 1196, 1202 (Fla. 2000)). Thus, in this case, the Legislature is presumed to be aware of the First District's interpretation of section 766.202 in 1997 and made no changes to it.

Moreover, portions of a statute must be read together and cannot be analyzed in isolation. See Richards, 288 So. 3d 574 at 576. Finally, "a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless." State v. Goode, 830 So. 2d 817, 824 (Fla. 2002).

At issue in the instant case is the meaning of § 938.27(1), Fla. Stat., and specifically that portion which requires a request before a cost of prosecution may be imposed. Chapter 938 Part IV of Florida Statutes is titled "Discretionary Costs in Specific Types of Cases"

and includes sections 938.21-938.301. Section 938.27(1) reads as follows in relevant part:

> 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. . . .

Section 937.27(8) states in relevant part:

> 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 per case 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.

Applying the above principles concerning statutory construction, subsection one's request requirement ("if requested by such agencies") applies to all costs of prosecution, and not merely the subset of costs of prosecution that are investigative costs. Initially, the plain text yields this meaning. Of particular importance was the legislature's choice in drafting subsection one

to have a comma immediately preceding the "if requested by such agencies" clause, and immediately after an illustrative clause of investigative costs included in the term "costs of prosecution". Regarding the importance of comma placement in such a sentence, this Court has recognized the following:

> "[C]ommas 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 v. State, 991 So. 2d 803, 812–13 (Fla. 2008)(italicized emphasis in original, bold emphasis added). Consequently, the use of a comma to set off the clause "if requested by such agencies" from the illustrative clause beginning with "including investigative costs", which itself was set off by a comma from the noun "cost [of prosecution]", reveals that the "if requested by such agencies" clause applies to all antecedents, including the noun "cost [of prosecution]. Additionally, it reveals what is apparent from the context of the sentence, that the clause beginning with "including investigative costs" is a nonrestrictive appositive that provides additional but nonessential information about another noun in the sentence. Stated another way, the investigative costs clause merely illustrates one type of cost of prosecution, all of which are subject the request requirement in the clause "if requested by such agencies."

This plain text reading is, unsurprisingly, the same as that which Florida courts have historically given to subsection one's language and clauses, which have been substantively the same since 1987. Even after the 2008 amendment, those district courts

which applied the statute differently in the context of the newly added subsection eight, maintained their interpretation of subsection one, as discussed above. Rather than alter their interpretation of subsection one, the district courts which no longer required a state attorney to request a cost of prosecution merely reasoned that subsection eight had "negated" the request requirement of subsection one as it applied to the state attorney's office. Consequently, the legislature is presumed to have adopted the historical interpretation of subsection one as requiring that the "if requested by such agencies" clause applies to the cost of prosecution generally, and not only to the subset of investigative costs.

The First District's novel interpretation of subsection one in the instant case, in contrast to the rules of grammar discussed above and the long history of interpretation of this section by Florida courts, fails to adhere to the plain meaning of the text. While the Parks court claimed a reliance on the plain text, the opinion is conclusory and without grammatical analysis concerning the construction of the "if requested by such agencies" clause. Instead, the Parks court simply concluded that "[t]his subsection

does not state that all costs of prosecution must be requested, for instance, the minimum cost for the state attorney described in § 938.27(8), but only that agency "investigative" costs must be requested." Parks, 371 So. 3d 392 at 393. Consequently, the Parks opinion not only reaches the wrong result by the wrong reasoning, but fails to meaningfully engage in the required statutory construction.

Of course, to view, as the First and Fifth District have in Hills and O'Malley, subsection eight as negating part of subsection one after the 2008 amendment runs afoul of the principle that a statute must not be read to render part of it meaningless. By holding that subsection eight "negates" the request clause's application to the cost of prosecution generally, the First and Fifth District's have rendered that portion of the statute meaningless.

Instead, when reading the portions of the statute together, each section must be given effect. Subsection one, as this Court recognized in Richards, "articulates the conditions that the State must satisfy before a defendant becomes liable for investigative costs: the defendant must be convicted of a crime, and the State must request these costs." Richards, 288 So. 3d 574 at 576.

Because the request requirement applies equally, as discussed above, to the costs of prosecution generally, subsection one the conditions the State must satisfy before a defendant becomes liable for such costs.

In this context, subsection eight sets a floor on the amount of a prosecution cost that must be ordered once liability attaches after satisfaction of the conditions in subsection one, which remain substantively unaltered since 1987: that (1) a person must be convicted, and 2) "the State must request these costs." Richards, 288 So. 3d 574 at 576. This is consistent with the legislature's decision to include this cost in the part of Chapter 938 entitled, "**Discretionary** Costs in Specific Types of Cases", rather than in the three preceding parts of Chapter 938, all of which concern various mandatory costs.

The trial court erred by denying Petitioner's motion to correct illegal sentence, and the First District erred in affirming the trial court's decision. The State failed to request the cost of prosecution, and thereby failed to fulfill the conditions for Petitioner to be liable for the cost of prosecution at all. Therefore, the imposition of that cost was erroneous, and it must be stricken without opportunity for

reimposition. As discussed above, the holding of the Second District in D.L.J. v. State, 331 So. 3d 227 (Fla. 2d DCA 2021), is correct, and the holding of the First District in Parks v. State, 371 So. 3d 392 (Fla. 1st DCA 2023), is incorrect. This Court should adopt the holding in D.L.J., quash the opinion in Parks, and reverse and remand with instructions for the cost of prosecution to be stricken and all sentencing documents amended to reflect this change.

CONCLUSION

Based on the foregoing, the Petitioner respectfully requests this Court adopt the holding in D.L.J., quash the opinion in Parks, and reverse and remand with instructions for the cost of prosecution to be stricken and all sentencing documents amended to reflect this change.

CERTIFICATES

I hereby certify, pursuant to Florida Rule of Appellate Procedure 9.045, that this brief complies with the applicable font and word-count-limit requirements. I hereby certify that this brief was served, via the Florida Courts E-Filing Portal, on Julian E. Markham, Assistant Attorney General, at crimapptlh@myfloridalegal.com, on April 5, 2024.

Respectfully submitted,

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