IN THE SUPREME COURT OF FLORIDA

RICKY BRADLEY,

Petitioner,

v. Case No. SC08-196

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

MERITS BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The State generally accepts Bradley's statement of the case and facts but restates and adds the following:

At the outset of Bradley's plea hearing held on July 3, 2003, counsel for Bradley indicated that Bradley would be entering a plea. The following exchange occurred:

> Mr. Swain: . . . Your honor, at this time pursuant to negotiations with the State of Florida Mr. Bradley is going to withdraw his not guilty pleas as to attempted felony murder and armed robbery with a firearm. He's going to plead no contest to each count of the information. There's going to be a stipulation that the injuries to the victim, Irene Pahy, P-a-h-y, were moderate. What this does is take it out of the 25 year mandatory sentencing under the 10/20/life bill. Which if they were deemed to be severe injuries it would be a mandatory 25.
>
> The agreement is pursuant to the 10/20/life bill[,] he is still exposed, because the firearm was discharged, to 20 years mandatory. He will be sentenced to 20 years in state prison with the expectations he will have to serve 20 years day for day with credit for time served. I've explained to him the only way he'll get out in less than 20 years is if some how the laws change and it applies to it. But as it stands now he's got to do 20 years. . . .
>
> THE COURT: Is that the agreement of the state as well?
>
> MS. FOXMAN: Yes, it is, Your Honor. It's also been communicated to the victim through an interpreter who is also in agreement. She feels this is the appropriate remedy, sentence.

(Supp. Vol. II, T. 104-105)(emphasis added).

Prior to engaging in the plea colloquy with Bradley, defense counsel further added to the trial court that there had been

"extensive plea negotiations" and they felt this sentence was "the best we could do in the case." (Supp. Vol. II, T. 106). During the plea colloquy, Bradley indicated that he had enough time to talk with his attorney and his family, that he was satisfied with counsel's advice and that he was pleading no contest to the charges of attempted felony murder and robbery with a firearm, offenses punishable by life. (Supp. Vol. II, T. 107-108).

When asked about the factual basis for the plea, defense counsel stated, "We would stipulate the facts alleged in the complaint affidavit in the court file would provide a prima facie case for each charge pled to." (Supp. Vol. II, T. 109). The complaint affidavit alleged that Bradley approached the victim after she made a $60 withdrawal from a bank ATM machine and demanded her money. He struck her in the head with a handgun, pulled the trigger twice, it misfired, and then he pulled the trigger a third time and shot the victim in the lower abdomen. (Vol. I, R. 66).

On October 3, 2003, Bradley filed a motion to correct sentence pursuant to Florida Rule of Criminal Procedure 3.800(b)(2), alleging the imposition of the minimum mandatory terms of twenty years was improper because there was no language in the information charging the sentencing enhancement. (Vol. I, R. 88). Bradley cited Jackson v. State, 852 So.2d 941 (Fla. 4th DCA 2003). (Vol. I, R. 88). The trial court held a hearing on the motion on December

5, 2003 and decided to hold its decision in abeyance while Jackson was pending review in this Court. (Supp. Vol. T. 122-158). Review was denied in Jackson on February 16, 2004. See State v. Jackson, 869 So.2d 540 (Fla. 2004).

A second hearing was held on the motion on September 29, 2006 and argument was heard regarding the defective information with respect to Bradley's sentence. (Vol. I, T. 1-64). Prior to denying the motion, the trial court noted Jackson, questioned the result, noting that it didn't "make any sense." (Vol. I, T. 56). The trial court then stated:

> I think we all know of the – we've all had cases like that. It's the old 'bad facts make bad law' doctrine. There must have been something in Jackson that we don't know that just we're – where justice demanded that Mr. Jackson have his sentence reduced in some way.
>
> I don't see that screaming out from the Bradley case.
>
> Instead, what I see, are two of the very best lawyers that we have in Volusia County, in the criminal bar, come here agreeing, in circumstances where everything was said out loud. The Defendant was able to hear it and so was his family. The attorneys heard it. I heard it. We all came to an agreement on his sentence . . .
>
> Everyone in the room was mistaken as to the state of the law and a sentence, which ended up being illegal because it didn't square up the way that it should, ended being imposed.
>
> But I don't think that justice is served by going back and saying the State made a mistake in their charging document and we're going to all that to supersede all of these obvious clear communications. I

> don't think that justice is well-served in that circumstance at all. I think it's mocked.

(Vol. I, T. 56-57).

The trial court entered a written order denying Bradley's motion to correct sentence, finding Jackson to be in conflict with Hope v. State, 588 So.2d 255 (Fla. 5th DCA 1991), rev. denied, 599 So.2d 656 (Fla. 1992). (Vol. I, R. 93).

Bradley timely appealed to the Fifth District Court of Appeal. In affirming the order denying the motion to correct, the district court determined:

> Here, we conclude that Mr. Bradley stipulated to the relevant facts necessary to support the imposition of the twenty-year minimum mandatory sentence required for the discharge of a firearm during the commission of a qualifying offense. The plea proceedings reflect that Mr. Bradley was sufficiently put on notice that he was subject to the enhanced minimum mandatory of twenty years due to his discharge of a firearm.

Bradley v. State, 971 So.2d 957, 961 (Fla. 5th DCA 2007).

The district court concluded that Bradley "could not credibly argue he was not aware of the plea agreement with the State" and that the contrary result reached in Jackson "place[d] a premium on form at the expense of substance." Id. The district court certified an express and direct conflict with Jackson. Id. Thereafter, this Court granted Bradley's petition for discretionary review.

SUMMARY OF ARGUMENT

The district court of appeal properly affirmed the denial of Bradley's motion to correct sentence. Bradley entered into a plea bargain with the State which provided for a minimum mandatory sentence of twenty years under the 10/20/Life Statute, section 775.087(2) of the Florida Statutes (2002), predicated upon the discharge of a firearm. Bradley stipulated to the discharge of the firearm during his plea colloquy. Given these facts, Bradley cannot establish any due process violation because the information failed to include language regarding discharge of the firearm. To conclude otherwise and invalidate a defendant's sentence where a defendant can make no credible due process argument regarding lack of notice or prejudice would be legally flawed.

ARGUMENT

BRADLEY WAS LAWFULLY SENTENCED TO A MINIMUM MANDATORY TERM OF TWENTY YEARS PURSUANT TO A VALID PLEA AGREEMENT.

Prior to addressing the merits of Bradley's' claims, Respondent reiterates the argument made in its brief in opposition of jurisdiction and further asserts the following.

Bradley sought and this Court accepted jurisdiction of this case based upon an express and direct conflict certified by the Fifth District Court of Appeal with Jackson v. State, 852 So.2d 941 (Fla. 4th DCA 2003). However, a careful reading of that decision in conjunction with the decision issued by the district court below demonstrates no express and direct factual or legal conflict.

Here, prior to entry of his plea, counsel for Bradley stated on the record that Bradley was subject to the twenty year minimum mandatory term under the 10/20/Life statute[1], the plea was entered based upon entry of that sentence, and was done so with a stipulation that the victim only suffered moderate victim injury in order to avoid the imposition of the twenty-five year minimum mandatory sentence under the statute. During the plea colloquy,

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1 The 10/20/Life statute, section 775.087(2) of the Florida Statutes (2002), requires the imposition of a minimum mandatory sentence of ten years of imprisonment for possessing a firearm, twenty years of imprisonment for discharging a firearm, and twenty-five years to life imprisonment for causing death or great bodily harm resulting from the discharge of a firearm, during the commission of one of the felonies enumerated in the statute. See

Bradley agreed to the factual basis as set forth in the complaint affidavit which provided he discharged the firearm. As a result, the district court found that Bradley's plea to the robbery charge and sentence stemming from the discharge of the firearm acted as an implicit amendment to the charging document to include the discharge element. See Bradley, 971 So.2d at 960-961.

In Jackson, there was neither a stipulation during the plea colloquy to the fact that the firearm at issue was discharged nor was there any discussion on the record regarding the applicability of the twenty-year minimum mandatory sentence for discharge of the firearm. See Jackson, 852 So.2d at 943-945. Additionally, the district court in Jackson did not even address whether the defendant lacked notice based upon the defective information or whether that information even implicated his due process rights or whether his plea could have implicitly amended the information. Instead, the district court simply declared Jackson's sentence to be illegal because the discharge was not alleged in the information. See id.

This Court has repeatedly held that conflict must be express and direct, that is, "it must appear within the four corners of the majority decision." Reaves v. State, 485 So.2d 829, 830 (Fla. 1986). There are stark factual differences between the instant case and Jackson. Here, there is no question that Bradley entered

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section 775.087(1)(a)1-3, Fla. Stat. (2002).

into the plea to receive the twenty year minimum mandatory sentence and there was a stipulation that he discharged a firearm. Until another district court of appeal is faced with the facts presented in this case and holds differently from the district court below, expressly and directly finding that a factual stipulation to the discharge of a firearm stemming from a negotiated plea does not implicitly amend an information to include the element of discharge of the firearm, there is no express and direct conflict upon which this Court can exercise its jurisdiction. In light of the foregoing, Respondent urges this Court to discharge its jurisdiction in this case.

Notwithstanding the jurisdictional bar precluding review by this Court, Bradley argues that his twenty year minimum mandatory sentence pursuant to the 10/20/Life statute, section 775.087(2) of the Florida Statutes (2002), which was triggered by his discharge of a firearm, was a fact not alleged in the information, constituting a due process violation. He makes this due process argument despite the fact that he voluntarily agreed to this sentence and stipulated to the discharge of the firearm. In making this argument, Bradley focuses upon the fact that by imposing the sentence based upon the discharge of the firearm, the State was impermissibly permitted to implicitly amend the information to include the element of discharge. He claims that this runs afoul of due process.

Conspicuously absent from Bradley's argument and what underpins the rationale of the Fifth District Court of Appeal in rejecting his argument is that he can set forth no prejudice or lack of notice, a necessary predicate when claiming a due process violation. Thus, at issue before this Court is whether a due process violation occurs when a defendant enters into a negotiated plea bargain which is based upon a fact not included in the information but is undisputed, is central to the plea agreement, and is stipulated to during the plea colloquy

Florida Rule of Criminal Procedure 3.140(b) provides that an information "shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged." "The purpose of an information is to fairly apprise [the] defendant of the offense with which he is charged." Rogers v. State, 963 So.2d 328, 332 (Fla. 2d DCA 2007)(quoting Leeman v. State, 357 So.2d 703, 705 (Fla. 1978)). "An information must allege each of the essential elements of a crime to be valid." Id. (quoting State v. Dye, 346 So.2d 538, 541 (Fla. 1977)).

The test for granting relief based on a defect in the charging document is actual prejudice to the fairness of a trial. State v. Gray, 435 So.2d 816, 818 (Fla. 1983); Castillo v. State, 929 So.2d 1180, 1181 (Fla. 4th DCA 2006); Billot v. State, 711 So.2d 1277, 1278 (Fla. 1st DCA 1998). Thus, due process prohibits a defendant

from being convicted of a crime not charged in the information or indictment. Crain v. State, 894 So.2d 59, 69 (Fla. 2004), cert. denied, 546 U.S. 829 (2005). The due process right to notice stems from a defendant's ability to sufficiently defend a charge at trial, not to defend a potential sentence stemming from a conviction from that charge. Accordingly, "[t]he right of persons accused of serious offenses to know, before trial, the specific nature and detail of crimes they are charged with committing is a basic right guaranteed by our Federal and State Constitutions." Aaron v. State, 284 So.2d 673, 677 (Fla. 1973)(emphasis added).

"No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal." Cole v. Arkansas, 333 U.S. 196 (1948). This right of a defendant to be informed of the nature and cause of the accusation "contemplates that the accused be so informed [of the nature and cause of the accusation] sufficiently in advance of trial or sentence to enable him to determine the nature of the plea to be entered and to prepare his defense if one is to be made." In re Oliver, 333 U.S. 257, 279 n. 1 (1948)(Rutledge, J., concurring).

Correspondingly, Florida Rule of Criminal Procedure 3.610(a) permits the court to grant a motion in arrest of judgment when

"[t]he indictment or information on which the defendant was tried is so defective that it will not support a judgment of conviction." "The reason for this provision is to discourage defendants from waiting until after a trial is over before contesting deficiencies in charging documents which could have easily been corrected if they had been pointed out before trial." White v. State, 973 So.2d 638, 641 (Fla. 4th DCA 2008)(quoting DuBoise v. State, 520 So.2d 260, 264 (Fla. 1988)). Thus, a defendant will waive a defect in the information if he or she fails to object before pleading to the substantive charges. Lacey v. State, 831 So.2d 1267, 1271 (Fla. 4th DCA 2002); Colson v. State, 717 So.2d 554, 555 (Fla. 4th DCA 1998).

Here, not only did Bradley enter a plea, but he also entered this plea predicated upon a sentence which incorporated discharge of the firearm during the offense. Bradley does not and cannot allege any lack of notice regarding the imposition of the twenty year minimum mandatory sentence based upon discharge of the firearm despite the failure to include the word discharge in the information. The twenty year sentence was negotiated on his behalf in exchange for his not going to trial on two first degree felonies punishable by life and the imposition of a twenty-five year minimum mandatory sentence under the 10/20/Life statute based upon his discharge of the firearm causing great bodily harm to the victim. See section 775.087(2)(a)3, Fla. Stat. (2002). Thus, Bradley's

failure to object and his outright assent to a sentence which includes that uncharged element constitutes a waiver of that defect with no constitutional ramifications. He should not and cannot be heard later to complain of his charging document when he has suffered no prejudice and has benefitted by a significantly lesser sentence as a result of his plea. See Lacey, 831 So.2d at 1271.

In rejecting his argument and affirming the order denying his motion to correct sentence pursuant to Florida Rule of Criminal Procedure 3.800(a)[2], the Fifth District Court of Appeal properly focused upon the fact that Bradley entered into a voluntary, negotiated plea to this twenty year sentence pursuant to the 10/20/Life statute in lieu of facing two life terms for the charges of both attempted felony and robbery with a firearm. See Bradley, 971 So.2d at 960-961. The court determined:

> Here, we conclude that Mr. Bradley stipulated to the relevant facts necessary to support the imposition of the twenty-year minimum mandatory sentence required for the discharge of a firearm during the commission of a qualifying offense. The plea proceedings reflect that Mr. Bradley was sufficiently put on notice that he was subject to the enhanced minimum mandatory of twenty years due to his discharge of a firearm.

Id. at 961.

In reaching this conclusion, the district court looked to

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2 Because Bradley did not appeal his judgment and sentence, the district court noted that the trial court properly treated Bradley's motion filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) as a motion filed under rule 3.800(a), which allows for a defendant to raise the issue of an illegal sentence at any time. See Bradley, 971 So.2d at 958 n.1.

numerous decisions from this Court in which convictions have been affirmed "even where an element of the crime was not supported by a jury finding, concluding that the element was either not in dispute or was waived by the lack of a contemporaneous objection to the jury instructions." See id. at 961 n. 2 (citing Insko v. State, 969 So.2d 992 (Fla. 2007); Pena v. State, 901 So.2d 781 (Fla. 2005); and Glover v. State, 863 So.2d 236 (Fla. 2003)). As these cases direct that a defendant can waive a jury's failure to find an element of a crime, there can be "no difficulty in concluding that a defendant can stipulate to the existence of that element or sentencing factor in the context of a voluntary plea." Bradley, 971 So.2d at 961 n.2.

Respondent further notes that the 10/20/Life statute was specifically charged in count two of the information. That count alleged the crime of robbery with a firearm, and section 775.087(2) is specifically listed. (Vol. I, R. 71). Thus, from the outset of this case, Bradley was put on notice that this sentencing scheme was being sought. Although convictions of a crime not charged in the information may be a denial of due process and fundamental error

> the failure to include an essential element of a crime does not necessarily render an indictment so defective that it will not support a judgment of conviction when the indictment references a specific section of the criminal code which sufficiently details all the elements of the offense.

White, 973 So.2d at 641 (quoting Fulcher v. State, 766 So.2d 243,

244-245 (Fla. 4th DCA 2000).

If the reference to a statutory section is sufficient to provide notice for the elements of the crime to a defendant, certainly the reference to the appropriate sentencing statute will suffice to provide notice to the defendant of punishment, particularly since "publication in the Laws of Florida or the Florida Statutes gives all citizens constructive notice of the consequences of their actions.". See Ellis v. State, 762 So.2d 912 (Fla. 2000)(quoting State v. Beasley, 580 So.2d 139, 142 (Fla. 1991)).

Likewise, by charging a crime, a defendant is put on notice that he could be convicted of any and all lesser offenses of that charge. See Florida Rule of Criminal Procedure 3.490 ("If the indictment or information charges an offense divided into degrees, the jury may find the defendant guilty of an offense charged or any lesser degree supported by the evidence."). With that, the reference to a sentencing statute in the charge as in the instant case will likewise put a defendant on notice that he will be sentenced pursuant to that statute depending upon a jury's findings. Accordingly, Respondents submit reference to the 10/20/Life statute as section 775.087(2) in an information, as in the instant case, can satisfy due process by putting a defendant on notice of the likelihood of an enhanced sentence. See Coke v. State, 955 So.2d 1216, 1217 (Fla. 4th DCA 2007).

Bradley is hard-pressed to argue his due process rights were violated when he was put on notice of the 10/20/Life statute at the inception of the criminal charge, he pled nolo contendere to the robbery charge in order to receive a twenty minimum mandatory sentence to avoid a life term, and he stipulated to the factual basis for the sentence. As the facts of this case reflect and as the district court determined, Bradley "could not credibly argue he was not aware of the plea agreement with the State." Bradley, 971 So.2d at 961. See Coke, 955 So.2d at 1217 (specific reference to section 775.087(2) in charging information and information which alleged facts that the defendant shot the victim sufficiently advised of great bodily harm giving defendant adequate notice of application of 10/20/Life statute, and thus, imposition of twenty-five year minimum mandatory sentence was not an illegal sentence under rule 3.800(a)) and compare Inmon v. State, 932 So.2d 518, 520 (Fla. 4th DCA 2006)(when there is no plea agreement and defendant goes to trial, a mere reference to subsection (2) of section 775.087 was not specific enough to give the accused notice of a possible twenty year sentence because section 775.087 contains a lesser alternative). As the trial court even noted below, any notion that Bradley was unaware as to why a twenty year minimum mandatory sentence was being imposed because the information did not use the word discharge is disingenuous given the facts of this case. See Vol. I, T. 57 ("But I don't think that justice is served by going

back and saying the State made a mistake in their charging document and we're going to allow that to supersede all of these obvious clear communications. I don't think justice is well-served in that circumstance. I think it's mocked.").

The contrary result reached in Jackson, as the district court noted below, "places a premium on form at the expense of substance." Bradley, 971 So.2d at 961. In Jackson, the defendant agreed to plead to a twenty-five year to life term under the 10/20/Life statute. The written plea agreement reflected the imposition of the twenty-five year to life minimum mandatory.[3] Jackson, 852 So.2d at 943. That portion of the statute provides for such a sentence when "during the course of the commission of the felony such person discharged a 'firearm' . . . and, as the result of the discharge, death or great bodily harm was inflicted upon any person, . . ." See section 775.087(2)(a)3, Fla. Stat. (2001)(emphasis added). Additionally, the evidence presented at the plea hearing established that he had, in fact, discharged the firearm during the commission of the robbery. Jackson, 852 So.2d at 944. Thus, in Jackson, as in the instant case, there was no factual dispute that he discharged the firearm nor did Jackson make any allegation that he did not have notice or was unaware as to the basis for the imposition of the minimum mandatory term which was

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3 As set forth supra n. 1, that portion of the statute provides for such a sentence. See section 775.087(2)(a)3, Fla. Stat. (2002).

the discharge of the firearm.

Rather than address whether Jackson's due process rights were violated by his sentence, which should be at the foundation for any claim regarding a defective information, the Fourth District Court of Appeal simply declared Jackson's sentence to be illegal because the discharge was not alleged in the information. Yet, that conclusion is reached without the appropriate analysis of whether Jackson was adequately informed of the nature and cause of the accusation, which "contemplates that the accused be so informed [of the nature and cause of the accusation] sufficiently in advance of trial or sentence to enable him to determine the nature of the plea to be entered and to prepare his defense if one is to be made." In re Oliver, 333 U.S. at 279 n. 1 (Rutledge, J., concurring). The facts in Jackson reflect that he was well-aware of the basis for his sentence and that his plea and sentenced comported with due process. The notion that his sentence can be declared illegal and his conviction stemming from a negotiated plea be nullified based upon a charging document which did not deprive him of any of his due process rights is legally flawed and should not be endorsed by this Court.

In addition to Jackson, the First District Court of Appeal found similarly in Mobley v. State, 939 So.2d 213 (Fla. 1st DCA 2006), that the defendant could not agree to a plea which was predicated upon the discharge of a firearm when that discharge was

not charged in the information. In doing so, the court relied upon both Jackson and the notion that a defendant cannot plead to an illegal sentence. See Mobley, 939 So.2d at 214 (citing Leavitt v. State, 810 So.2d 1032 (Fla. 1st DCA 2002).

The error in Jackson is compounded in Mobley when the district court looked to the charging document and from only that concluded that an illegal sentence was imposed, affording Mobley relief under Florida Rule of Criminal Procedure 3.800(a). In doing so, the district court did not even address whether Mobley was prejudiced by the omission in the charging document or whether his sentence was illegal which would have warranted relief under rule 3.800(a).[4]

For purposes of rule 3.800(a), an "illegal sentence" is one that imposes a punishment or penalty that no judge under the entire body of sentencing statutes and laws could impose under any set of factual circumstances." Williams v. State, 957 So.2d 600, 602 (Fla. 2007); Wright v. State, 911 So.2d 81, 83 (Fla. 2005); Carter v. State, 786 So.2d 1173, 1181 (Fla. 2001). See also Galindez v State, 955 So.2d 517, 519 (Fla. 2007)(quoting Blakely v.

4 As set forth supra, Mobley cited to Leavitt in declaring the sentence illegal. See Mobley, 939 So.2d at 214. However, in Leavitt, the district court correctly determined that the defendant's twenty year sentence pursuant to a plea bargain to a second degree felony which carried a statutory maximum of fifteen years was illegal as he could not plead to an illegal sentence. See Leavitt, 810 So.2d at 1032. The Fourth District Court of Appeal erred by extending the holding of Leavitt to apply to a significantly different sentencing issue in Mobley, particularly when the facts plainly show that Mobley did not plead to an illegal sentence.

Washington, 542 U.S. 296, 303-304 (2004))(the "statutory maximum" for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant. The relevant "statutory maximum" is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings.").[5]

A sentence can be deemed illegal under rule 3.800(a) if it violates statutory or constitutional provisions and the illegality is of a fundamental nature. Wright, 911 So.2d at 84; Hopping v. State, 708 So.2d 263 (Fla. 1998). Both Bradley and Mobley were subject to life terms for the robbery with a firearm charge. See section 812.13, Fla. Stat. (2002). Thus, the imposition of the twenty year minimum mandatory sentences was not illegal for purposes of rule 3.800(a) and there can be no finding of an illegal sentence.[6]

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5 Bradley admitted to the discharge of the firearm. Thus, the concerns of Apprendi v. New Jersey, 530 U.S. 466 (2000), Blakely v. Washington, 542 U.S. 296 (2004) and Booker v. United States, 543 220 (2005) are not applicable here. See Sanchez v. State, 33 Fla. L. Weekly D553 (Fla. 3d DCA February 20, 2008)(defendant's stipulation to the discharge of a firearm as a factual basis for a plea and to the imposition of the minimum mandatory sentence under the 10/20/Life statute did not entitle him to relief under rule 3.800(a) as the sentence was not illegal and not subject to Apprendi).

6 Respondent does note that the 10/20/Life statute does mandate that if the minimum mandatory term is greater than the statutory maximum under the Criminal Punishment Code or any other sections of chapter 775, the minimum mandatory sentence must be imposed. See section 775.087(3)(c), Fla. Stat. (2002). However, that provision

Moreover, as indicated supra, Bradley has only alleged a due process violation which, given his notice of and assent to the sentence reveals no prejudice; thus, his constitutional challenge is unavailing here. Accordingly, any avenue for relief under rule 3.800(a) is also not available to him. Given that both Mobley and Bradley could have received life terms, neither of their sentences is illegal under rule 3.800(a). See Sanchez, 33 Fla. L. Weekly at D553 (imposition of minimum mandatory term under 10/20/Life statute was legal as none of the sentences exceeded the legal maximum, thus rule 3.800(a) was not available form of relief.).

Because this case involves a negotiated plea bargain that was predicated upon the defendant's discharge of a firearm and that this fact was stipulated to during the plea colloquy, this case differs significantly from those decisions which strike down a minimum mandatory sentence based upon a discharge following a trial when the elements of the 10/20/life statute are not alleged in the information. See Inmon, 932 So.2d at 520); Adams v. State, 916 So.2d 36 (Fla. 2d DCA 2005); Fountaine v. State, 895 So.2d 535 (Fla. 1st DCA 2005); Davis v. State, 884 So.2d 1058 (Fla. 2d DCA 2004), rev. denied, 900 So.2d 552 (2005); Whitehead v. State, 884 So.2d 139 (Fla. 2d DCA 2004); Altieri v. State, 835 So.2d 1181 (Fla. 4th DCA 2002); Rogers v. State, 875 So.2d 769 (Fla. 2d DCA 2004); Koch v. State, 874 So.2d 606 (Fla. 5th DCA 2004); and

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is not applicable here as the minimum mandatory term imposed does

compare also Bryant v. State, 744 So.2d 1225 (Fla. 4th DCA 1999) and Gibbs v. State, 623 So.2d 551 (Fla. 4th DCA), rev. denied, 630 So.2d 1099 (Fla. 1993).

Furthermore, to ensure that no due process violation occurred here, the district court properly found that Bradley's explicit plea to the discharge of a firearm constituted consent to an implicit amendment to the charging information to include this element. His agreement to the plea and the ensuing factual stipulation reflects that he understood the nature and consequences of his plea, negating any notion that he was misled or prejudiced by an implicit amendment to the charging document. Bradley, 971 So.2d at 960; Billot, 711 So.2d at 1277; Hope, 588 So.2d at 258; Shanklin v. State, 369 So.2d 620 (Fla. 2d DCA), cert. denied, 378 So.2d 348 (Fla. 1979); and Burns v. State, 300 So.2d 317 (Fla. 2d DCA 1974). Particularly, when, as here, a defendant makes no credible claim of prejudice, a plea to an offense acknowledging the existence of unpled essential elements will implicitly amend the information to include them. Billot, 711 So.2d at 1278; Hope, 588 So.2d at 258.

In all, Respondents submit that given the fact that Bradley can assert no prejudice or lack of notice by this omission of the word "discharge" from the charging document, he cannot receive relief based upon a due process violation where no violation

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not exceed the statutory maximum for the offense.

exists. Instead, Bradley was lawfully sentenced pursuant to a negotiated plea bargain. The ruling of the district court of appeal should be affirmed and the contrary conclusions reached by the Fourth District Court of Appeal in Jackson and in Mobley should be rejected by this Court.

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests that this Court discharge its jurisdiction in this case or alternatively, affirm the decision of Bradley v. State, 971 So.2d 957 (Fla. 5th DCA 2007) in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing merits brief has been furnished by delivery to Assistant Public Defender Rebecca M. Becker, counsel for Bradley, 444 Seabreeze Boulevard, Suite 210, Daytona Beach, Florida 32118, this _____ day of May, 2008.

CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this brief was typed using 12 point Courier New, a font that is not proportionately spaced.

_____
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