

IN THE SUPREME COURT OF FLORIDA

CASE No. SC08-999
District Court Case No. 4D07-2064

STATE OF FLORIDA,
Petitioner,

vs.

ALICIA GRIFFIN,
Respondent.

ON REVIEW OF A CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE
FROM THE FOURTH DISTRICT COURT OF APPEAL

ANSWER BRIEF OF ALICIA GRIFFIN

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STATEMENT OF CASE AND FACTS

The Respondent, Alicia Griffin, adopts the State of Florida's Statement of Case and Facts.

SUMMARY OF ARGUMENT

The plain language of Florida Rule of Criminal Procedure 3.800(c) permits a defendant to seek a reduction of a legal sentence within 60 days after that sentence is initially imposed. That is what Ms. Griffin did, and the Fourth District correctly held that her request was timely. The State's contrary argument relies on public policy considerations—but ignores the plain language of Rule 3.800(c) as well as the rule of lenity.

This Court should approve the Fourth District's decision and hold that relief under Rule 3.800(c) is available within the 60-day period after a legal sentence is first imposed, regardless of whether that legal sentence was first imposed as the result of post-conviction relief.

ARGUMENT

THE PLAIN LANGUAGE OF FLORIDA RULE OF CRIMINAL PROCEDURE 3.800(c) COMPELS THE DISTRICT COURT'S DECISION THAT MS. GRIFFIN'S REQUEST FOR A SENTENCE REDUCTION WAS TIMELY

“Our courts have long recognized that the rules of construction applicable to statutes also apply to the construction of rules. Thus, when the language to be construed is unambiguous, it must be accorded its plain and ordinary meaning.”¹

This case turns on interpretation of Florida Rule of Criminal Procedure 3.800(c), which states:

Reduction and Modification. A court may reduce or modify to include any of the provisions of chapter 948, Florida Statutes, a legal sentence imposed by it within 60 days after the imposition, or within 60 days after receipt by the court of a mandate issued by the appellate court on affirmance of the judgment and/or sentence on an original appeal, or within 60 days after receipt by the court of a certified copy of an order of the appellate court dismissing an original appeal from the judgment and/or sentence, or, if further appellate review is sought in a higher court or in successively higher courts, within 60 days after the highest state or federal court to which a timely appeal has been taken under authority of law, or in which a petition for certiorari has been timely filed under authority of law, has entered an order of affirmance or an order dismissing the appeal and/or denying certiorari. This subdivision shall not be applicable to those cases in which the death sentence is imposed or those cases in which the trial judge has

¹ *Brown v. State*, 715 So. 2d 241, 243 (Fla. 1998) (citing *Syndicate Properties v. Hotel Floridian Co.*, 94 Fla. 899, 903, 114 So. 441, 443 (1927); *Merchants' Nat'l Bank v. Grunthal*, 39 Fla. 388, 394, 22 So. 685, 687 (1897); *Thayer v. State*, 335 So. 2d 815 (Fla.1976); *McDonald v. Roland*, 65 So. 2d 12 (Fla. 1953); *A.R. Douglass, Inc. v. McRainey*, 102 Fla. 1141, 137 So. 157 (1931); *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693 (1918)).

imposed the minimum mandatory sentence or has no sentencing discretion.

FLA. R. CRIM. P. RULE 3.800(c) (emphasis added).

In ruling for Ms. Griffin, the Fourth District explained:

[T]he clear language of the rule indicates it applies to [Ms. Griffin's] situation. The rule allows a trial court to "reduce or modify ... a legal sentence imposed by it within 60 days after the imposition." It does not state that it cannot apply when a legal sentence is first imposed as the result of the correction of an illegal sentence due to a successful collateral attack on the sentence. Prior to October 11, 2006, Defendant's sentence was illegal. On that date, her legal sentence was imposed, thus giving the trial court jurisdiction to reduce or modify it.

Courts do use the term "imposition" of a sentence to describe resentencing pursuant to a postconviction motion. *E.g.*, *Dougherty v. State*, 785 So.2d 1221, 1223 (Fla. 4th DCA 2001) (holding that a defendant has a right to be present at sentencing, whether the sentence to be "imposed" results from adjudication of guilt or from a successful rule 3.850 motion) (quoting from *Barcelo v. State*, 774 So.2d 895, 896 (Fla. 4th DCA 2001)); *Wilson v. State*, 947 So.2d 1225, 1226 (Fla. 1st DCA 2007) (direct appeal from sentence "imposed" after partial granting of rule 3.800(a) motion).

Furthermore, if there is a question as to precisely what is meant by the rule's phrase "legal sentence imposed," we are required to apply the rule of lenity. § 775.021(1), Fla. Stat. (2006) ("The provisions of this code and offenses defined by other statutes shall be strictly construed; *when the language is susceptible of differing constructions, it shall be construed most favorably to the accused.*") (emphasis added).

Griffin v. State, 979 So. 2d 1253, 1255-56 (Fla. 5th DCA 2008).

In its Initial Brief, the State does not dispute that the decision of the Fourth

District is consistent with the clear language of Rule 3.800(c). Nor, of course, does the State disagree that the rule of lenity requires that any ambiguity in the Rule must be construed in favor of Ms. Griffin. Nonetheless, the State argues that the result is bad public policy, so this Court should hold that—*under Rule 3.800(c)*—a criminal defendant cannot seek reduction of a legal sentence within 60 days after its initial imposition if the legal sentence was initially imposed because of a successful collateral challenge to an illegal sentence.²

There may (or may not) be good public policy reasons to revise Rule 3.800(c).³ If so, that is an issue for the Florida Criminal Procedure Rules Committee to examine—not this case. As currently written, Rule 3.800(c) permits a defendant to seek a reduction of a legal sentence within 60 days of its initial imposition. That is precisely what Ms. Griffin did, and the Fourth District correctly held that her request was timely.

² Rule 3.800(c) only permits reduction of a “legal sentence.” So if the State’s position were adopted, the express terms of the rule would deny such a criminal defendant *even one* opportunity to seek a sentence reduction.

³ The Fourth District certified the current question because it felt that the result Rule 3.800(c)’s “plain language” currently compels, *Griffin*, 979 So. 2d at 1255, “does not make much sense,” *id.* at 1256.

CONCLUSION

The Court should answer the certified question by holding that relief under Rule 3.800(c) is available within the 60-day period after a legal sentence is first imposed, regardless of whether that legal sentence was first imposed as the result of post-conviction relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On October 22, 2008, I mailed a copy of this brief to Joseph A. Tringali, Esq., Office of the Attorney General, 1515 North Flagler Drive, West Palm Beach, FL 33401; and Ms. Alicia Griffin, DC#798838, Gadsen Correctional Facility, 6044 Greensboro Highway, Quincy, Florida 32351-9100.

CERTIFICATE OF COMPLIANCE

I prepared this brief in Times New Roman, 14-point font.
