IN THE SUPREME COURT OF FLORIDA

CHARLES MENDENHALL,	)	
	)	
Petitioner,	)	
vs.	)	CASE NO. SC09-400
	)	
STATE OF FLORIDA,	)	
	)	
Respondent.	)	
_____	)	

ON DISCRETIONARY REVIEW FROM THE FIFTH DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, AND THE FIFTH JUDICIAL CIRCUIT IN AND FOR LAKE COUNTY, FLORIDA

PETITIONER'S INITIAL BRIEF ON THE MERITS

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CHARLES MENDENHALL, Petitioner,	)	
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STATE OF FLORIDA, Respondent.	)	

PRELIMINARY STATEMENT

The Petitioner was the Defendant and the Respondent was the Prosecution in the Fifth Judicial Circuit Court, in and for Lake County, Florida. In the brief the Respondent will be called "the State" and the Petitioner will be called "the Petitioner" or "Mr. Mendenhall."

The following is a consolidated appeal, page citations refer to the record on appeal in case no. 5D07-1059. In the brief the following symbols will be used: "R"-volume one and two of the record on appeal; "T"-transcript of trial and sentencing, volumes three, four, and five of record on appeal; "S"-supplements to record on appeal, volumes six and seven.

STATEMENT OF THE CASE AND FACTS

On May 4, 2005, the State charged Mr. Mendenhall, by information, with committing one count of attempted first degree murder with a firearm in violation of section 782.04, 777.04(1), 775.087(1), 775.087(2)(a), Florida Statutes (2004), a life felony (R10-11;Vol.1). On March 1-2, 2007, Mr. Mendenhall was tried by jury before the Honorable Mark F. Nacke, circuit judge (R212-214;Vol.2). Mr. Mendenhall was found guilty of the lesser included offense of attempted second degree murder with a firearm (R212-214;Vol.2). The jury also returned three special verdicts, finding that during the commission of the offense the Petitioner: 1) was in possession of a firearm, 2) did discharge the firearm, 3) "did inflict serious bodily injury by discharging the firearm" (R212-214;Vol.2). The trial court sentenced Mr. Mendenhall to thirty-five years in the Department of Corrections, (DOC), with a thirty-five year mandatory minimum sentence (R223-225;Vol.2). The sentencing order states that the mandatory minimum sentence was ordered pursuant to the section 775.087(2)(a)(1)-(a)(3), Florida Statutes (2007) also called the 10/20/Life statute (R223-225;Vol.2). Mr. Mendendall filed a timely notice of appeal of his judgment and sentence (R227- 228; Vol.2).

Prior to filing an initial brief, the Petitioner filed a motion to correct sentencing error, pursuant to Rule 3.800(b)(2), Florida Rules of Criminal

Procedure (S248-251;Vol.6). Following the State's response to the motion, the Petitioner filed an amended motion making essentially the same argument, but in greater detail (S255-275;Vol.6). One of the grounds raised in the motions, was that the Petitioner's sentence was illegal in that it exceeded that provided by law, because under the 10/20/Life statute the maximum sentence for a second degree felony is thirty years in DOC with a twenty-five year mandatory minimum (S255-275; Vol.6). Specifically, the Petitioner argued that the mandatory minimum provisions of the 10/20/Life statute do not increase the statutory maximums set forth in section 775.082 (S255-275; Vol.6). After conducting a hearing on the motion, the trial court granted relief on this ground, denied the rest of the motion[1], vacated the Petitioner's sentence, and resentenced the Petitioner's sentence to thirty years in DOC, with a twenty-five years mandatory minimum (S276-279;Vol.6).

The State filed a cross-appeal of the trial court's partial granting of Petitioner's motion to correct sentencing error. The Fifth District Court of Appeal ordered that the appeals be consolidated. The Fifth District Court of Appeal

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[1]The other ground argued in the motion to correct sentencing error was that it was error to sentence the Petitioner under 10/20/Life where the jury did not make a finding that "death or great bodily harm was inflicted on any person" and instead the jury made a finding that the Petitioner inflicted "serious bodily injury." The trial court denied this part of the motion, the Fifth District Court of Appeal also rejected this argument on direct appeal, and Petitioner is not raising this issue as part of this current appeal.

reversed the sentence, holding that the original sentence was legal, and remanded for the imposition of the original sentence. Mendenhall v. State, 999 So.2d 665 (Fla. 5th DCA 2008) rehearing denied January 28, 2009.

The Petitioner sought to invoke the discretionary jurisdiction of this Honorable Court of the grounds that the Fifth District Court of Appeal's decision in Mendenhall is in express and direct conflict with the First District Court of Appeal's opinion in Wilson v. State, 898 So.2d 191 (Fla.1st DCA 2005), and the Second District Court of Appeal's opinion in Sousa v. State, 976 So.2d 639 (Fla. 2nd DCA 2008). This Court accepted jurisdiction and this appeal follows.

SUMMARY OF ARGUMENT

The Petitioner was convicted of attempted second-degree murder with a firearm and was sentenced pursuant to the 10/20/Life statute. The applicable minimum mandatory sentence was a range of years from twenty-five years to life. The Fifth District Court of Appeal has held that the minimum mandatory provision increases the statutory maximum and that a sentence of thirty-five years with a thirty-five year minimum mandatory is legal. Petitioner argues that the Fifth District Court of Appeal's interpretation of the 10/20/Life statute is flawed and that the correct interpretation has been set forth by the First and Second District Courts of Appeal who have held that the maximum sentence is thirty years with a twenty-five year minimum mandatory.

The standard of review is de novo. Waste Management, Inc. v. Mora, 940 So.2d 1105, 1107 (Fla.2006) ("The resolution of the conflict between the decisions of the First and Fourth Districts and the decision of the Second District is an issue of statutory construction. Our standard of review is de novo.")

ARGUMENT

THE FIFTH DISTRICT COURT OF APPEAL ERRONEOUSLY HELD THAT, UNDER THE 10/20/LIFE STATUTE, THE TRIAL COURT COULD SENTENCE THE PETITIONER TO 35 YEARS IN PRISON WITH A 35 YEAR MANDATORY MINIMUM

There is currently a conflict among the District Courts of Appeal as to the maximum sentence that may be imposed upon a defendant who is convicted of a first degree felony where the discharge of a firearm causes either death or great bodily harm, such as attempted second degree murder with a firearm, and the defendant is sentenced pursuant to section 775.087, Florida Statutes, also known as Florida's "10/20/Life" statute. The 10/20/Life statute contains several minimum mandatory sentences that must be imposed depending on how a firearm was used in the commission of a crime. All of the minimum mandatory sentences are finite terms of years, save the minimum mandatory sentences to be imposed if the firearm was discharged resulting in either death or great bodily harm, then the the minimum mandatory sentences consists of a range of years, twenty-five years to life. *See* section 775.087(2)(a)3,(3)(a)3. The question before this Honorable Court is whether the statutory maximum, after reclassification, is increased if it falls within the range of years of the minimum mandatory sentence. The First and

Second District Courts of Appeal have all held that the mandatory minimum provisions of the 10/20/Life statute cannot be interpreted to authorize a sentence in excess of the statutory maximum as set forth in 775.082(3)(b), Florida Statutes, while only the Fifth District Court of Appeal has held to the contrary.[2]

In the instant case, the Petitioner was convicted of attempted second degree murder with a firearm and was originally sentenced, pursuant to the 10/20/Life statute, to thirty-five years in DOC, with a thirty-five year mandatory minimum sentence (R212-214,223-225;Vol.2). Petitioner argued, in a motion to correct sentencing error, that the maximum sentence he could receive under the 10/20/Life statute was thirty years in prison with a twenty-five year minimum mandatory sentence (S255-275;Vol.6). The trial court granted the motion and resentenced the Petitioner to thirty years with a twenty-five year minimum mandatory sentence (S276-279;Vol.6). Petitioner, appealed his judgment and sentence to the Fifth District Court of Appeal and the State cross-appealed the resentencing order. The Fifth District Court of Appeal held, *inter alia*, that the trial court erred in granting the motion to correct sentencing error, held that the original sentence was legal, and remanded for the imposition of the original sentence. Mendenhall v. State, 999

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[2]Wilson v. State, 898 So. 2d 191 (Fla. 1st DCA 2005), Sousa v. State, 976 So. 2d 639 (Fla. 2nd DCA 2008), Mendenhall v. State, 999 So.2d 665 (Fla. 5th DCA 2008) rehearing denied January 28, 2009.

So.2d 665 (Fla. 5th DCA 2008) rehearing denied January 28, 2009. Petitioner asserts that Mendenhall was wrongly decided and that the proper interpretation of the 10/20/Life statute is the one espoused by the First and Second District Courts of Appeal.

A. Under the plain language of the 10/20/Life statute, the maximum sentence for attempted second degree murder is 30 years with a 25 minimum mandatory.

Second degree murder is a first degree felony in violation of section 782.04(2), Florida Statutes (2007), which provides:

> The unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, is murder in the second degree and constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084

The Petitioner was charged with attempted second degree murder and under section 777.04(4)(c), Florida Statutes (2007), the degree of the offense was reduced to a second degree felony. Section 777.04, Florida Statutes, provides:

> Except as otherwise provided in s. 893.135(5)[3], if the

[3] Section 893.135(5), Florida Statutes (2007), mandates that a defendant convicted of conspiracy to commit a drug trafficking offense has committed a first

> offense attempted, solicited, or conspired to is a life felony or a felony of the first degree, the offense of criminal attempt, criminal solicitation, or criminal conspiracy is a felony of the second degree, ...

The Petitioner's offense was then subject to the reclassification provision of the 10/20/Life statute, section 775.087(1), and was reclassified to a first degree felony. Section 775.087(1) provides:

> Unless otherwise provided by law, whenever a person is charged with a felony, except a felony in which the use of a weapon or firearm is an essential element, and during the commission of such felony the defendant carries, displays, uses, threatens to use, or attempts to use any weapon or firearm, or during the commission of such felony the defendant commits an aggravated battery, the felony for which the person is charged shall be reclassified as follows:
> (a) In the case of a felony of the first degree, to a life felony.
> **(b) In the case of a felony of the second degree, to a felony of the first degree.**
> (c) In the case of a felony of the third degree, to a felony of the second degree. (Emphasis added)

Notably, the statute merely reclassifies the offense as a first degree felony and does not reclassify the offense as a first degree felony punishable by life.

Since murder is one of the enumerated felonies listed in 775.087(2)(a)1, Florida Statutes (2007), the Petitioner was sentenced subject to the mandatory minimum provision of the 10/20/Life statute, section 775.087(2)(a)3, Florida

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degree felony.

Statutes (2007), which provides:

> Any person who is convicted of a felony or an attempt to commit a felony listed in sub-subparagraphs (a)1.a.-q., regardless of whether the use of a weapon is an element of the felony, and during the course of the commission of the felony such person discharged a "firearm" or "destructive device" as defined in s. 790.001 and, as the result of the discharge, death or great bodily harm was inflicted upon any person, **the convicted person shall be sentenced to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison.** (Emphasis added)

The Fifth District Court of Appeal has interpreted this section to authorize: 1) a sentence in excess of the statutory maximum of 30 years, 2) a mandatory minimum sentence other than 25 years. The Petitioner asserts that section 775.087(2)(a)3, Florida Statutes (2007), does not authorize the sentence he received and the section must be read in *pari materi* with section 775.087(2)(c), which limits the imposition of a minimum mandatory sentence to the "mandatory minimum" sentence where the sentence exceeds the statutory maximum:

> If the minimum mandatory terms of imprisonment **imposed pursuant to this section** exceed the maximum sentences authorized by s. 775.082, s. 775.084, or the Criminal Punishment Code under chapter 921, then the mandatory minimum sentence must be imposed. If the mandatory minimum terms of imprisonment pursuant to this section are less than the sentences that could be imposed as authorized by s. 775.082, s. 775.084, or the Criminal Punishment Code under chapter 921, then the sentence imposed by the court must include the

> mandatory minimum term of imprisonment as required in this section. (Emphasis added)

The Petitioner's sentence exceeds his maximum sentence under the relevant statutes listed in this subsection. Prior to the application of the reclassification provision of section 775.087, the Petitioner's conviction was a second degree felony and section 775.082(3)(c), (2007), states that the statutory maximum for a second degree felony is fifteen years, "For a felony of the second degree, by a term of imprisonment not exceeding 15 years." Section 775.084, Florida Statutes (2007), does not apply to the Petitioner, because it is an enhancement provision for defendants that qualify to be sentenced as habitual felony offenders, habitual violent felony offenders, and three-time violent felony offenders and Petitioner was not sentenced under this statute. Finally the Criminal Punishment Code does not appear to authorize a sentence greater than 30 years, however, since the State failed to prepare a Criminal Sentencing Code scoresheet prior to sentencing Petitioner that conclusion is not certain. Since, the Petitioner's "minimum mandatory" exceeded the statutory maximum sentences authorized by the listed statutes, the "mandatory minimum" sentence must be imposed, which is twenty-five years, the least sentence authorized by 775.087(2)(a)3. Therefore, since the reclassification provision of the 10/20/Life statute does not specifically provide that the a reclassified first degree felony is punishable by life, the maximum sentence the

Petitioner could have received under this section is thirty years with a twenty-five years minimum mandatory sentence.

B. The First and Second District Courts of Appeal have properly concluded that the maximum sentence for attempted second degree murder is thirty years DOC with a twenty-five year minimum mandatory.

In Wilson v. State, 898 So. 2d 191 (Fla. 1st DCA 2005), the First District Court of Appeal held that the maximum sentence for first degree felony subject to the 10/20/Life statute for discharge of a firearm resulting in great bodily harm was 30 years in the DOC with a twenty-five year minimum mandatory sentence. Mr. Wilson had been convicted of attempted second-degree murder with a firearm causing death or great bodily harm and was originally sentenced to 45 years imprisonment with a 25-year minimum mandatory sentence. Id. at 192. The First District Court of Appeal held that this was an illegal sentence and explained:

> Second-degree murder is a first-degree felony. See § 782.04(2), Fla. Stat. (2003). If the criminal offense attempted is a first-degree felony, the offense of criminal attempt is a second-degree felony. See § 777.04(4)(c), Fla. Stat. (2003). Attempted second-degree murder is thus a second-degree felony punishable by a maximum sentence of 15 years. If, as in the instant case, the offense is committed with a firearm, the crime is re-classified to a first-degree felony pursuant to section 775.087 (1)(b), subject to an enhanced sentence not to exceed 30 years.
>
> * * *
>
> Where the sentence imposed exceeds the 30-year maximum sentence for a first-degree felony, as outlined in section 775.082(3)(b),

> Florida Statutes (2003), it is subject to correction in a rule 3.800(a) proceeding.
>
> * * *
>
> Appellant is subject to a mandatory minimum sentence of 25 years pursuant to section 775.087(2)(a) 3, Florida Statutes (2003), for discharge of a firearm resulting in death or great bodily harm. **Notwithstanding the minimum mandatory term, the maximum sentence the trial court properly may impose is a sentence of 30 years**.(emphasis added)

Wilson, 898 So.2d at 192-193. (citations omitted)

The Second District of Appeal has also held that the maximum sentence for first degree felony subject to the 10/20/Life statute for discharge of a firearm resulting in great bodily harm was 30 years in the DOC with a twenty-five year minimum mandatory sentence. Sousa v. State, 976 So. 2d 639 (Fla. 2nd DCA 2008). In Sousa, the defendant appealed the denial of his motion to correct an illegal sentence. Sousa, 976 So. 2d at 639-640. The defendant was convicted of two counts of attempted second-degree murder and sentenced to two terms of 50 years' imprisonment, with a 25-year mandatory minimum. Id. The Second District Court of Appeal, reversed Sousa's sentences and, echoing Wilson, determined that the maximum sentence for the offense was thirty years. Id. Specifically, the Second District Court of Appeal held that the 10/20/Life statute did not override the statutory maximum set forth in section 775.082, stating:

> Second-degree murder is a first-degree felony, punishable by life imprisonment. § 782.04(2), Fla. Stat.

> (1999). Attempted second-degree murder is thus a second-degree felony, punishable by no more than fifteen years' imprisonment. §§ 777.04(4)(c), 775.082(3)(c), Fla. Stat. (1999). Because Mr. Sousa was charged with committing these crimes while using a firearm, the offense was reclassified as a first-degree felony. § 775.087(1)(b). The maximum term of imprisonment for a reclassified first-degree felony, without some special sentencing enhancement, is thirty years' imprisonment. § 775.082(3)(b).
>
> Because Mr. Sousa clearly discharged his firearm during the commission of both of these crimes, causing great bodily harm to his victims**,** he was subject to section 775.087(2)(a)(3) of the 10/20/life statute, which required that he be sentenced "to a minimum term of imprisonment of not less than 25 years and not more than a term of imprisonment of life in prison." **It could be argued that the language of this statute overrides the language in section 775.082(3)(b) that provides for a thirty-year sentence. The case law, however, interprets these statutes in favor of the defendant, so that the maximum term of years is thirty.** (emphasis added)

Sousa, 976 So. 2d at 640. (foot notes omitted)

Additionally, the Fourth District Court of Appeal has held where a defendant is sentenced under 775.087(2)(a)3 and the statutory maximum is less than the minimum sentence, the court may only sentence the defendant to a 25 year minimum mandatory. Collazo v. State, 966 So. 2d 429 (Fla. 4th DCA 2007). More important, the Fourth District concluded its opinion by stating "we recede from that language in Collazo v. State, 936 So.2d 782, 784 (Fla. 4th DCA 2006),

which held that the trial court had the discretion to sentence appellant to more than twenty-five years." Id. at 432. The Fourth District reaffirmed its holding in Thurston v. State, 984 So. 2d 1290 (Fla. 4th DCA 2008), in which it held a 50 year sentence was illegal due to exceeding a 30 year maximum sentence.

C. The Fifth District Court of Appeal has erroneously held that, under the 10/20/ Life statute, the maximum sentence for attempted second degree murder with a firearm is 30 years with a 25 mandatory minimum.

In Mendenhall, the Fifth District Court of Appeal found that a 35 year mandatory minimum sentence was proper under Section 775.087. The court held that the Petitioner's original sentence of thrity-five years imprisonment, with a thirty-five year minimum mandatory sentence, for attempted second degree murder with a firearm was legal under the 10/20/Life statute and that the trial court had erred in granting Appellant's motion to correct sentencing error. The Fifth District Court of Appeal, in reaching its decision, relied on dicta from Sanders v. State, 944 So. 2d 203 (Fla. 2006), which stated the 10-20-life statute created a new maximum sentence of life, and also relied on Judge Griffin's concurring opinion in Yasin v. State, 896 So.2d 875 (Fla. 5th DCA 2005), where she argued that the 10/20/Life statute gave "the trial judge discretion to inflate the mandatory minimum term of incarceration but not to re-define the statutory maximum." Yasin, at 877. Petitioner asserts that when the dicta in Sanders is read in context of the entire

opinion the case does not support the State's contention, alternatively undersigned counsel arrests that on this narrow issue Sanders is wrongly decided. Furthermore, the majority opinion in Yasin is directly on point and holds that mandatory minimum sentence is twenty five years, because that is the least sentence which must be imposed.

1. The dicta in Sanders does not authorize a maximum sentence for attempted second degree murder with a firearm in excess of 30 years with a 25 mandatory minimum.

The Fifth District Court of Appeal stated that case law, particularly the dicta in this Court's opinion in Sanders v. State, 944 So.2d 203 (Fla. 2006), authorized the imposition of a 35-year sentence because, in dicta, this Court adopted the dicta of the Second District Court of Appeal, which stated that the maximum sentence for attempted second degree murder was life. Mendenhall, at 668-669. The court opined:

> Importantly, upon review, our Supreme Court affirmed the Second District's opinion regarding their analysis of the penalty for a lesser included offense and, in dicta, the Court made the following observation:
>
> > The maximum sentence for the core offense of attempted first-degree murder is thirty years, while the sentence for attempted second-degree murder without any enhancements is fifteen years. However, with the application of the ten-twenty-life statute, the resulting maximum sentence for

> both attempted first- and second-degree murder while discharging a firearm and inflicting great bodily harm is the same-life.

Sanders, 944 So.2d at 205. The court then concluded the opinion stating:

> Additional support for our conclusion that the trial court's original sentence was proper is found in our recent opinion in Brown v. State, 983 So.2d 706 (Fla. 5th DCA 2008). In Brown, we recognized that the imposition of a mandatory minimum sentence in excess of the maximum penalty was indeed permissible based upon special findings such as those found in this case. Notably, in Brown, the panel cited to Yasin v. State, 896 So.2d 875 (Fla. 5th DCA 2005), wherein Judge Griffin explained, in her concurring opinion, that the intent of Florida's 10/20/Life statute is to **"give the trial judge discretion to inflate the mandatory minimum term of incarceration but not to re-define the statutory maximums."** (emphasis added)

Mendenhall, at 669.

Sanders was before the Florida Supreme Court on a certified question of great public importance, which was, "In order for an offense to be a lesser-included offense, must it necessarily result in a lesser penalty than either the penalty for the main offense or the next greater offense on the verdict form?" The focus of the Court's case was on determining the meaning of "lesser included offenses" and not on determining appropriate sentence for attempted second degree murder. Furthermore, Petitioner asserts that because this statement only mentions the

maximum sentence a defendant could receive and not the mandatory minimum sentence, that it in fact is only refers to the reclassification provision of the 10/20/Life Statute. According to the opinion, the State in Sanders, had also provided notice that the defendant qualified to be sentenced as a habitual felony offender, which would have increased the defendant's sentence from 30 years to life. Since the Court chose to specifically state that the defendant was subject to the habitual felony offender sentencing and failed to clarify how it determined that the maximum sentence was life, the logical explanation is that the defendant's life sentence was the result of the combination of the reclassification provision of 10/20/Life and the enhancement provision of the habitual felony offender statute.

2. The Fifth District Court of Appeal has previously held that the minimum mandatory provisions of 10/20/Life do not alter the statutory maximum of offenses

The majority opinion in Yasin is directly on point and holds that the mandatory minimum sentence is twenty-five years, because that is the least sentence which must be imposed. Yasin v. State, 896 So.2d 875 (Fla.5th DCA 2005). In Yasin, the Court explained:

> [The defendant] ... argu[es] that his sentence exceeds the 30 year statutory maximum for a first degree felony. However, the trial court held that the sentence was authorized under section 775.087(2)(a)3, Florida Statutes, because the jury found that appellant had

> discharged a firearm, causing great bodily harm.
>
> * * *
>
> The trial court reasoned that the statute created a new statutory maximum of life and concluded that appellant's combined sentence of 45 years did not exceed that statutory maximum.
>
> However, section 775.087(2)(b), Florida Statutes, explains that the quoted provision does not prevent a court from imposing a longer sentence of incarceration "as authorized by law in addition to the minimum mandatory sentence." Also, section 775.087(2)(c), Florida Statutes, states that if the minimum mandatory term under this section exceeds the maximum sentence authorized by sections 775.082, 775.084 or the Criminal Punishment Code, then the mandatory minimum sentence must be imposed, but if the minimum mandatory term under this section is less than the sentence authorized under sections 775.082, 775.084 or the Criminal Punishment Code, then the sentence imposed "must include the mandatory minimum term of imprisonment as required in this section."

Therefore, the statute reaffirms that the statutory maximum is the greater of either the minimum mandatory term under this section, which is 25 years, or the statutory maximum under section 775.082, which is 30 years in this case, or the maximum authorized by the habitual offender statute or the Criminal Punishment Code. Accordingly, section 775.087 clearly establishes a minimum mandatory term of 25 years. It does not change the statutory maximum for all of the affected offenses to life when a weapon is discharged and causes death or great bodily harm.

Yasin, 896 So.2d at 875 -876. (Emphasis added).

D. Alternatively, the rules of statutory construction and the rule of leniency dictate that Petitioner's maximum sentence under 10/20/Life is thirty years with a twenty-five year minimum mandatory.

The Petitioner has argued above that under the plain language of the statute, his maximum sentence is thirty years with a twenty-five year minimum mandatory sentence. This Court has held, "It is a settled rule of statutory construction that unambiguous language is not subject to judicial construction, however wise it may seem to alter the plain language." State v. Jett, 626 So.2d 691, 693 (Fla. 1993). "[I]t is not the prerogative of this court to melt this statute and recast it in a mold of our choosing. The general principle with we must adhere to, simply put, requires this court to interpret legislation, not rewrite it." Jordan v. State, 801 So.2d 1032, 1034 (Fla. 5th DCA 2001).

In alternative, should this Court find that the minimum mandatory provision of the 10/20/Life statute is ambiguous, Petitioner asserts that this Court should still find that his maximum sentence is thirty years with a twenty-five year minimum mandatory sentence, because an ambiguous statute must be strictly construed in favor of the accused. "First, it is a well-established canon of construction that words in a penal statute must be strictly construed. Where words are susceptible of more than one meaning, they must be construed most favorably to the accused." State v. Camp, 596 So.2d 1055, 1056 -1057 (Fla.1992) (citing section 775.021(1), Florida Statutes).

Furthermore, the more specific provision of section 775.082 that sets forth

the statutory maximum statute controls over the more general 10/20/Life Statute.

This Court has held:

> In considering this issue, we note the ""long-recognized principle of statutory construction that where two statutory provisions are in conflict, the specific statute controls over the general statute."" State v. J.M., 824 So.2d 105, 112 (Fla.2002) (citing State ex rel. Johnson v. Vizzini, 227 So.2d 205, 207 (Fla.1969)).

CONCLUSION

BASED UPON the foregoing cases, authorities, and policies, the Petitioner respectfully requests this Honorable Court to quash the decision of the Fifth District Court of Appeal and remand with an order to reinstate Petitioner's earlier sentence of thirty years with a twenty-five year minimum mandatory.

Respectfully submitted,

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_____
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon The Honorable Bill McCollum, Attorney General, 444 Seabreeze Boulevard, Fifth Floor, Daytona Beach, Florida 32118, via hand delivery, and mailed to: Charles Mendenhall, DOC #D11896, Tomoka Correctional Institution, 3950 Tiger Bay Road, Daytona Beach, Florida 32124 on this date September 21, 2009.

_____
MEGHAN ANN COLLINS
ASSISTANT PUBLIC DEFENDER

CERTIFICATE OF FONT

I HEREBY CERTIFY that the size and style of type used in the brief is 14 point proportionally spaced Times New Roman.

_____
MEGHAN ANN COLLINS
ASSISTANT PUBLIC DEFENDER