

**IN THE SUPREME COURT OF FLORIDA**

**CASE NO. SC11-690**

CHARLES PAUL,

Petitioner,

v.

L.T. Nos. 4D09-2255  
02-8513CF10A

STATE OF FLORIDA,

Respondent.

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**PETITIONER'S REPLY BRIEF**

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**ON DISCRETIONARY REVIEW OF THE FOURTH DISTRICT COURT  
OF APPEAL'S DECISION CERTIFYING CONFLICT**

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## ARGUMENT

Charles Paul filed a hybrid motion, with the trial court, for post-conviction relief under Rules 3.850 and 3.800 of the Florida Rules of Criminal Procedure. (R.4) It was denied. (R.2) He then filed an appeal with the Fourth District Court of Appeal whose opinion affirmed the denial of his motion and certified conflict with *Crapps v. State*, 968 So.2d 627 (Fla. 1<sup>st</sup> DCA 2007), and is the subject of the case at bar. *See Paul v. State*, 59 So.3d 193 (Fla. 4<sup>th</sup> DCA 2011). The State offers two arguments in its Answer Brief: 1) the issue is procedurally barred; and 2) the Fourth District's decision is correct regarding its interpretation of section 790.19 of the Florida Statutes. Both arguments are incorrect and can be overcome.

Due to the brevity of the record involved, it is unclear how many motions the Petitioner has filed and under which criminal procedural rule. However, as stated above, the current motion was put forth under Rule 3.850 and 3.800. (R.4) The Fourth District certified conflict and jurisdiction was accepted by this Court. Regardless of whether the Petitioner has raised the issue of an illegal sentence prior to this motion, on direct appeal or otherwise, this Court has the authority to correct a manifest injustice. *Adams v. State*, 957 So.2d 1183, 1186 (Fla. 3d DCA 2006) (“[W]here ... the court finds that a manifest injustice has occurred, it is the responsibility of that court to correct the injustice if it can.”); *see also Baker v. State*, 878 So.2d

1236, 1246 (Fla. 2004); *State v. McBride*, 848 So.2d 287, 291-92 (Fla. 2003); *Stephens v. State*, 974 So.2d 455 (Fla. 2d DCA 2008). Should this Court agree with the Petitioner's statutory analysis, it should remand this case to the Fourth District Court of Appeal where the Petitioner may avail himself of the manifest injustice exception.

Secondly, the State argues that section 790.19 of the Florida Statutes is an alternative crimes statute and contains two distinct and separate offenses, with distinctive elements, and this Court should only look to the elements of the crime for which the Petitioner was convicted. However, this analysis is erroneous.

It is clear from *Hearns*, and its predecessor *Perkins*, "in determining whether a crime constitutes a forcible felony, courts must consider only the statutory elements of the offense, regardless of the particular circumstances involved." *State v. Hearns*, 961 So.2d 211, 212 (Fla. 2007); *see also Perkins v. State*, 576 So.2d 1310, 1313 (Fla. 1991). The title of section 790.19 itself addresses some of the violations for which the statute could apply, including a way without violence or force toward an individual. §790.19, Fla. Stat. (2001).<sup>1</sup> In addition, the statute itself is not enumerated or separated into subsections.

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<sup>1</sup> Section 790.19, Florida Statute (2001) is entitled: "Shooting into or throwing deadly missiles into dwellings, public or private buildings,

Whoever, wantonly or maliciously, shoots at, within, or into, or throws any missile or hurls or projects a stone or other hard substance which would produce death or great bodily harm, at within, or in any public or private building, occupied or unoccupied, or public or private bus or any train, locomotive, railway car, caboose, cable railway car, street railway car, monorail car, or vehicle of any kind which is being used or occupied by any person, or any boat, vessel, ship, or barge lying in or plying the waters of this state, or aircraft flying through the airspace of this state shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

§790.19, Fla. Stat. (2001).

The State argues that section 790.19 is an alternative crime statute. However, one cannot identify under which alternative the Petitioner was convicted without looking to the underlying circumstances involved in Petitioner's crime. *Hearns* does not permit this. According to *Hearns*, only the statutory elements may be considered, looking behind the conviction is not allowed. *Hearns*, 961 So.2d at 212 (Fla. 2007). Consequently, if any alternative crime in the statute is not a crime of violence, then it must be presumed that any conviction under section 790.19 does not qualify for enhanced sentencing. If this is not the intended consequence of the Legislature, it could have easily separated the statute into alternative crime

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occupied or not occupied; vessels, aircraft, buses, railroad cars, streetcars, or other vehicles.”

subsections so they could readily be identified. Furthermore, *Perkins* addressed the strict construction of criminal statutes and noted that where definiteness was lacking, “the statute must be construed in the manner most favorable to the accused. *Perkins*, 576 So.2d at 1312 (Fla. 1991). “Words and meanings beyond the literal language may not be entertained nor may vagueness become a reason for broadening a penal statute.” *Id.* This also applies to the Fourth District’s interpretation that the Petitioner’s conviction “necessarily required the use of force or violence against an individual.” *Paul v. State*, 59 So.3d 193 (Fla. 4<sup>th</sup> DCA 2011).

### **CONCLUSION**

Therefore, Petitioner respectfully requests this Court to reverse the decision of the Fourth District Court of Appeal with instructions to remand the proceedings to the trial court for a new resentencing hearing.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished by U.S. Mail, to **Melanie Dale Surber, Esquire**, Office of the Attorney General's Office, 1515 N. Flagler Drive., Suite 900, West Palm Beach, FL 33401., Attorneys for Respondent, this \_\_\_\_\_ day of December, 2011.

\_\_\_\_\_  
KERRY COOPER COLLINS



**CERTIFICATE OF COMPLIANCE**

I certify that the lettering in this brief is Times New Roman 14 point  
Font and complies with the font requirements of Florida Rule of Appellate  
Procedure 9.210(a)(2).

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ATTORNEY