

**IN THE
SUPREME COURT OF FLORIDA**

SHIMEEK DAQUIEL GRIDINE,

Petitioner,

v.

Case Number: SC12-1223

STATE OF FLORIDA,

Respondent.

_____ /

ON DISCRETIONARY REVIEW OF A CERTIFIED QUESTION

PETITIONER'S SUPPLEMENTAL INITIAL BRIEF

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SUMMARY OF ARGUMENT

Chapter 2014-220, Laws of Florida, amends section 775.082 and creates sections 921.1401 and 921.1402 of the Florida Statutes, in an apparent attempt to comply with Graham v. Florida, 560 U.S. 48 (2010). However, the legislation specifies it applies only to crimes committed on or after July 1, 2014, and appears not to address juveniles such as Mr. Gridine whose sentences violate Graham and who are entitled to a remedy for those unconstitutional sentences. The Court therefore must fashion a remedy for juveniles whose sentences violate Graham.

ARGUMENT

CHAPTER 2014-220, LAWS OF FLORIDA, APPEARS NOT TO ADDRESS JUVENILES SUCH AS MR. GRIDINE WHOSE SENTENCES VIOLATE GRAHAM V. FLORIDA, 560 U.S. 48 (2010), BUT WHOSE CRIMES OCCURRED BEFORE THE EFFECTIVE DATE OF THE LEGISLATION, THUS LEAVING THE TASK OF DEVISING A REMEDY TO THE COURT.

The Court has directed the parties "to address the impact, if any, of the juvenile sentencing legislation on the issues in this case." (Order of June 26, 2014, Gridine v. State, SC12-1223). The legislation was passed by the Florida Legislature in its 2014 session, ch. 2014-220, Laws of Florida, and was signed into law by the Governor on June 20, 2014. The legislation amends section 775.082 and creates sections 921.1401 and 921.1402 of the Florida Statutes.

On Count 1, Mr. Gridine was convicted of attempted first-degree murder under sections 782.04(1)(a), 775.087(2)(a)3. and 777.04(1), Fla. Stat. (2009) (R. 51). The trial court imposed a sentence of 70 years' imprisonment which included a mandatory minimum sentence of 25 years for the discharge of a firearm causing great bodily harm under section 775.087(2)(a)3, Fla. Stat. (2009).¹

Mr. Gridine has argued to the Court that his 70-year

¹On Count 2, Mr. Gridine was convicted of attempted armed robbery with discharge of a firearm causing great bodily harm. The court imposed a 25-year mandatory minimum prison sentence, concurrent to the sentence on Count 1.

sentence is a *de facto* life sentence requiring resentencing and sentence review after serving the concurrent 25-year mandatory minimum sentences on both counts. If the new juvenile sentencing legislation was applied to Mr. Gridine, he would be entitled to a judicial review of his sentence, § 775.082(3)(a)5.a., Fla. Stat. (2014), which would occur after Mr. Gridine had served 25 years in prison. § 921.1402(2)(b), Fla. Stat. (2014).

However, the new legislation does not address juveniles like Mr. Gridine, who have already been sentenced in violation of Graham v. Florida, 560 U.S. 48 (2010). New sections 921.1401 and 921.1402 state that these sections apply only to crimes committed on or after July 1, 2014. §§ 921.1401(1), 921.1402(1).

Graham directed Florida and the other states to rethink their systems of juvenile sentencing:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. It is for the State, in the first instance, to explore the means and mechanisms for compliance.

560 U.S. at 75. The Florida Legislature has failed to provide “the means and mechanisms for compliance” with Graham for juveniles such as Mr. Gridine whose sentences violate Graham and who are therefore entitled to resentencing and to a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” 560 U.S. at 75.

There is no principled distinction between juveniles whose crimes occurred before July 1, 2014, and those whose crimes occurred after that date. All juvenile offenders in Florida whose sentences violate Graham must be treated equally under the Eighth Amendment.²

This Court has the responsibility and authority to enforce Graham and therefore to fashion a remedy which provides juveniles such as Mr. Gridine a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” Graham, 560 U.S. at 75. Mr. Gridine previously suggested two such remedies: (1) establishing a rule of criminal procedure providing judicial review of sentences such as his and (2) holding section 947.16(6), Florida Statutes, which abolished parole, unconstitutional as applied to a juvenile offender sentenced as an adult and require that a juvenile offender be eligible for parole.

In light of the new legislation’s failure to remedy sentences such as Mr. Gridine’s, a procedural vehicle is needed for long-term sentence review which provides a “meaningful opportunity to obtain release based on demonstrated maturity and

²Mr. Gridine’s case is on direct appeal and was in the pipeline when Graham was decided. Additionally, Graham is retroactive and applies to all juveniles whose sentences violate its holding. See Johnson v. State, ___ So. 3d ___, 2013 WL 1809685 (Fla. 1st DCA Apr. 30, 2013) (pending review, SC13-971); St. Val v. State, 107 So. 3d 553 (Fla. 4th DCA 2013); Kleppinger v. State, 81 So. 3d 547 (Fla. 2nd DCA 2012).

rehabilitation.” Graham, 560 U.S. at 75. Amendment of rule 3.800 to authorize sentence review as specified in new section 941.1402 would provide that vehicle. Under Article V, Section (2) (a), Florida Constitution, this Court has authority to amend a rule of criminal procedure.

Another available remedy is to open the parole system to juveniles such as Mr. Gridine. Other state supreme courts have relied upon parole eligibility to remedy Graham violations. People v. Caballero, 282 P.3d 291, 295 (Cal. 2012); State v. Shaffer, 77 So. 3d 939, 940-43 (La. 2011); Bonilla v. State, 791 N.W.2d 697, 698-703 (Iowa 2010).

Of course, the parole system will have to provide the “meaningful” and “realistic” opportunity for early-release review required by Graham. 560 U.S. at 75, 82. The Florida Parole Commission will have an independent constitutional obligation under the Eighth and Fourteenth Amendments of the United States Constitution and under article 1, section 17 of the Florida Constitution to provide review which complies with Graham. The Florida Department of Corrections, which controls the educational and vocational opportunities available to juvenile offenders, will share this constitutional obligation.

To comply with Graham, Florida’s Parole Commission and Department of Corrections will have to provide recurring and meaningful parole review for juveniles such as Mr. Gridine which

includes: (1) access to educational and vocational programs in prison so these juveniles may seek to rehabilitate themselves; (2) in-person hearings before the decision-makers; (3) access to all information considered by these decision-makers; (4) representation by counsel; (5) sufficient notice, recording of proceedings, and a written statement of reasons supporting the grant or denial of early release; and (6) meaningful appellate review.

The new legislation unfortunately does not address juveniles such as Mr. Gridine. This Court must therefore fashion a remedy which applies to Mr. Gridine and others like him and which complies with Graham.

CONCLUSION

Based upon the argument presented here, in his prior briefs and in oral argument, Mr. Gridine requests the Court to answer the certified question in the affirmative, reverse his sentence on Count 1, order resentencing and provide for later early-release review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing supplemental initial brief was furnished to **Wesley Heidt** and **Kellie A. Nielan**, Assistant Attorneys General, at crimappdab@myfloridalegal.com, and by U.S. Mail to **Mr. Shimeek Daquiel Gridine**, DOC# 132747, Suwannee Correctional Institution, 5964 U.S. Highway 90, Live Oak, Florida 32060, on July 31, 2014.

CERTIFICATE OF FONT AND TYPE SIZE

I hereby certify that this brief was typed using Courier New, 12 point.

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