

**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 REPLY BRIEF

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ARGUMENT IN REPLY

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 State first argues that the new juvenile sentencing legislation does not apply to Mr. Gridine because his 70-year sentence does not violate Graham v. Florida, 560 U.S. 48 (2010) (Supplemental Answer Brief at 2, 3-6) ("SAB"). However, in this respect, the new legislation does affect Mr. Gridine's sentence because it establishes that the Legislature has rejected the State's interpretation of Graham.

Under the new legislation, a person such as Mr. Gridine convicted of a first degree felony punishable by life would be entitled to a judicial review of his sentence, § 775.082(3)(a)5.a., Fla. Stat. (2014), which would occur after the juvenile served 25 years in prison. § 921.1402(2)(b), Fla. Stat. (2014). Other juvenile offenders would be entitled to sentence review after serving 15 or 20 years in prison. §§ 775.082(3)(b)2.b., 775.082(3)(c), Fla. Stat. (2014). These provisions show that the Legislature recognized that a lengthy term-of-years sentence without the possibility of early release violates Graham.

The State also argues that the new legislation cannot be applied to Mr. Gridine under Article 10, Section 9 of the Florida

Constitution (SAB at 2 n.1). Article X, Section 9 states, “[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed.”

Contrary to the State’s argument, this Court has held that changes to criminal sentencing laws can be applied retroactively when the changes do not act to the detriment of the criminal defendant. Justus v. State, 438 So. 2d 358, 368 (Fla. 1983) (discussing Combs v. State, 403 So. 2d 418 (Fla. 1981)). In Combs, this Court upheld retrospective application of the “cold, calculated and premeditated” aggravating factor because it inured to the benefit of the defendant. 403 So. 2d at 421. In Justus, the Court relied upon Combs to state that an Article X, Section 9 challenge to retrospective application of that aggravating factor lacked merit. 438 So. 2d at 368. Since the new legislation acts to the benefit of juvenile offenders, Article X, Section 9 is no barrier to its retrospective application.

Additionally, Mr. Gridine has argued that he is entitled to resentencing because his current sentence violates Graham. Under Florida law, a resentencing is a *de novo* proceeding governed by the law in effect at the time of the resentencing. State v. Fleming, 61 So. 3d 399, 408 (Fla. 2011). Thus, if this Court vacates Mr. Gridine’s sentence because it is unconstitutional under Graham, Mr. Gridine’s resentencing would be governed by Chapter 2014-220, Laws of Florida.

Finally, Mr. Gridine notes his agreement with the solution to the question of remedy proposed in the supplemental amicus brief of the Florida Association of Criminal Defense Attorneys, provided that a new Rule 3.800(c) authorizes sentence review as specified in new section 941.1402.

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, Hamilton Correctional Institution, 10650 S.W. 46th Street, Jasper, Florida 32052, on September 2, 2014.

CERTIFICATE OF FONT AND TYPE SIZE

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

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