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IN THE SUPREME COURT OF THE STATE OF FLORIDA,

RONALD WILLIAMS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No.: SC13-1080
L.T. No.: 4D10-437

****
ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL
****

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PRELIMINARY STATEMENT

Petitioner, Ronald Williams, appealed his conviction and sentence. Respondent at bar was the Appellee in the Fourth District Court of Appeal.

In this brief, the parties will be referred to as they appear before this Court, except that the Respondent may also be referred to as "State"."

The following symbols will be used:

R = Record on Appeal

IB = Initial Brief of Petitioner

OPPOSITION TO ORAL ARGUMENT

Petitioner has requested that this Court grant Oral Argument. Respondent is opposed to Petitioner's request. The record is clear as to the certified question expounded by the Fourth District Court of Appeal. The factual matters in this case are uncomplicated. There is no need for the attorneys to appear before the Court and rehash the record or the legal arguments already presented. Both parties, in their brief and response , have clearly set forth their arguments with regard to the certified question. Therefore, oral argument will be of no further benefit to the Court.

STATEMENT OF THE CASE AND FACTS

The procedural history and facts on which the Fourth District Court of Appeal relied in making its decision are found in Williams v. State, --- So.3d ----, 2013 WL 1748687 (Fla. 4th DCA 2013), which Respondent adopts as its statement of the case and facts for the purpose of determining jurisdiction in this appeal:

> This certified question arises from the following history of the case. Four men were outside their home when they exchanged words with the defendant. The defendant pulled a gun, pointed it at the men, and then fired the gun into the air multiple times, causing the men to run inside their home.
>
> The state charged the defendant by information with four counts of aggravated assault with a firearm, during the course of which the defendant actually possessed and discharged a firearm. The four counts corresponded with each of the four victims.
>
> The jury found the defendant guilty as charged on all four counts. The jury also specifically found that the defendant actually possessed and discharged a firearm on all four counts.
>
> At sentencing, the court first recognized that each count carried a minimum mandatory twenty-year sentence. See § 775.087(2)(a) 2., Fla. Stat. (2008) ("Any person who is convicted of a felony ... listed in sub-subparagraphs (a)1.a.-q. [including aggravated assault] ... and during the course of the commission of the felony such person discharged a 'firearm' ... shall be sentenced to a minimum term of imprisonment of 20 years.").
>
> The court then heard the parties' sentencing

recommendations. The state recommended that the court impose consecutive sentences. The defendant recommended that the court impose concurrent sentences. The defendant argued that consecutive sentences were not required. In support, the defendant cited State v. Christian, 692 So.2d 889 (Fla.1997), where our supreme court held: "As a general rule, for offenses arising from a single episode, stacking is permissible where the violations of the mandatory minimum statutes cause injury to multiple victims, or multiple injuries to one victim." Id. at 890 (emphasis added; footnotes omitted).

The state replied that section 775.087(2)(d), which the legislature added in 1999 after Christian, required consecutive sentences. The state also cited Scott v. State, 42 So.3d 923 (Fla. 2d DCA 2010), where the second district held that under section 775.087(2)(d), a trial court could impose consecutive sentences upon a defendant who sprayed gunfire at multiple victims in a single episode but did not strike anyone.

The trial court agreed with the state's recommendation to impose consecutive sentences. The court reasoned:

Given the language of [section 775.087](2)(d), as well as this Scott opinion from the [second district], I believe that ... it's not a permissible stacking situation, it's a mandatory stacking situation. Pre-amendment, it would appear that it would have been merely permissible. But again, in this amendment to the statute, and the language in the Scott opinion, it appears to be mandatory.

The court then sentenced the defendant to the four consecutive minimum mandatory twenty-year sentences on the four counts of aggravated assault with a firearm.

Williams, --So.3d-- at 1-2.

The Fourth District Court of Appeal held the trial court did not err in finding that it was required to impose consecutive sentences pursuant to section 775.087(2)(d), Florida Statutes (2008). As the Fourth District observed:

> Applying the plain language of section 775.087(2)(d), as interpreted by our supreme court in State v. Sousa, 903 So.2d 923 (Fla.2005), we conclude that the trial court was required to impose consecutive sentences.

Williams, --So.3d-- at 1.

While the Fourth District affirmed the sentence of the trial court, the court certified the following question as a matter of great public importance:

> Does section 775.087(2)(d)'s statement that "The court shall impose any term of imprisonment provided for in this subsection consecutively to any other term of imprisonment imposed for any other felony offense" require consecutive sentences when the sentences arise from one criminal episode?

SUMMARY OF THE ARGUMENT

Respondent contends that jurisdiction was improvidently granted. The statutory language of section 775.087(2)(d), Florida Statutes is plain and unambiguous that sentences "shall" be consecutive. Accordingly, the statute is clear that a trial court has no discretion but to impose consecutive sentences and there is no reason to subject the statute to further interpretation.

Respondent submits this Court must answer the certified question in the affirmative and hold that section 775.087 (2)(d), Fla. Stat. requires consecutive sentences when the sentences arise from one criminal episode. Florida case law holds that the word "shall" means mandatory and not permissive as it involves sentencing. While there is no reason to consider the legislative intent as Respondent contends the statute is plain and unambiguous, the legislative intent behind the statute is to punish criminal defendants to the "fullest extent of the law".

ARGUMENT

THE QUESTION OF GREAT PUBLIC IMPORTANCE CERTIFIED TO THIS HONORABLE COURT MUST BE ANSWERED IN THE AFFIRMATIVE; THE PLAIN AND UNAMBIGUOUS LANGUAGE OF SECTION 775.087(2)(D) REQUIRES COURTS TO SENTENCE DEFENDANTS TO CONSECUTIVE SENTENCES ONE SENTENCES THAT ARISE FROM ONE CRIMINAL EPISODE

Petitioner submits this Court should hold that section 775.087(2)(d), Fla. Stat. permits the trial court *discretion* in imposing consecutive sentences for offenses committed under the statute. In so imploring this Court to hold that maxim, he contends the statute is not plain and unambiguous, thus this Court should look to the legislative history of the statute. Respondent disagrees as 775.087(2)(d) is clear and unambiguous and, as this Court has held, the legislature intended to punish criminal defendants to the "fullest extent of the law".

Preliminarily, Respondent contends that jurisdiction was improvidently granted as to the certified question. The statutory language of 775.087 (2)(d) is clear and unambiguous that sentences "shall" be imposed consecutively. See e.g., Mancini v. State, 312 So. 2d 732 (Fla. 1975)(after further review, noting that jurisdiction was improperly granted). As this Court observed in State v. Sousa, 903 So.2d 923, 928 (Fla. 2005) interpreting 775.087, the "fundamental rule of

construction in determining legislative intent is to first give effect to the plain and ordinary meaning of the language used by the Legislature. Courts are not to change the plain meaning of a statute by turning to legislative history if the meaning of the statute can be discerned from the language in the statute [citations omitted]". Accordingly, Respondent requests that this Court not review the certified question.

"Questions of statutory interpretation are subject to *de novo* review." Mendenhall v. State, 48 So.3d 740, 747 (Fla. 2010). "[L]egislative intent is the polestar that guides a court's statutory construction analysis." Knowles v. Beverly Enters.-Fla., 898 So.2d 1, 5 (Fla. 2004). In determining that intent, "we look first to the statute's plain meaning." Id. (quoting Moonlit Waters Apartments, Inc. v. Cauley, 666 So.2d 898, 900 (Fla.1996)).

"As with any case of statutory construction, [the Court must begin] with the 'actual language used in the statute.' " Heart of Adoptions, Inc. v. J.A., 963 So.2d 189, 198 (Fla.2007) (quoting Borden v. East–European Ins. Co., 921 So.2d 587, 595 (Fla.2006)). "This is because legislative intent is determined primarily from the statute's text." Id. In Velez v. Miami–Dade Cnty. Police Dep't, 934 So.2d 1162, 1164–65 (Fla.2006) this Court has explained:

> [W]hen the language of the statute is clear and unambiguous and conveys a clear and definite meaning ... the statute must be given its plain and obvious meaning. Further, we are without power to construe an

> unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power. A related principle is that when a court interprets a statute, it must give full effect to all statutory provisions. Courts should avoid readings that would render part of a statute meaningless.

Section 775.087(2)(d), Florida Statutes (2008), addresses consecutive imposition of mandatory minimums which provides:

> It is the intent of the Legislature that offenders who actually possess, carry, display, use, threaten to use, or attempt to use firearms or destructive devices be punished to the fullest extent of the law, and the minimum terms of imprisonment imposed pursuant to this subsection shall be imposed for each qualifying felony count for which the person is convicted. The court shall impose any term of imprisonment provided for in this subsection consecutively to any other term of imprisonment imposed for any other felony offense.

In State v. Thomas, 487 So.2d 1043 (Fla.1986), this Court permitted consecutive mandatory minimums where the defendant committed attempted first-degree murder and aggravated assault in one incident, shooting at two victims and injuring one. Id. at 1044. The court reasoned that even without explicit statutory authority, consecutive sentencing was permissible because the single incident involved "two separate and distinct offenses involving two separate and distinct victims." Id. Such is the case here and Appellant concedes as much (IB 13).

In State v. Sousa, 903 So.2d 923 (Fla. 2005), this Court held that

775.087(2)(d) explicitly authorizes consecutive mandatory minimum sentences imposed under 10–20–Life. Id. at 927. The Second District, in Sousa v. State, 868 So.2d 538 (Fla. 2d DCA 2003) relying upon Mondesir v. State, 814 So.2d 1172 (Fla. 3d DCA 2002), had held that section 775.087(2)(d) does not permit the stacking of mandatory minimum sentences imposed under 10–20–Life, interpreting the operative sentence in section 775.087(2)(d) to mean that mandatory minimums under 10–20–Life could only run consecutively to sentences for other separate crimes that are not part of a single prosecution. Disagreeing with this interpretation, this Court stated:

> We disagree that section 775.087 as amended still does not permit consecutive sentences. To draw that conclusion we would have to find that the 1999 amendment to section 775.087 overrules our decisions in Christian and Thomas. We do not agree. Rather we conclude that this amendment to the statute is consistent with the decisions in Christian and Thomas.
>
> We do not agree with the reasoning of the Third District in Mondesir to the extent it construes the statute to mean that the "any other" language only refers to crimes which took place at different times. We find nothing in the statutory language which supports that construction of the statute. The statute's plain language does not state that, nor do we find the language of the statute to be ambiguous.

Id. at 927 (citation omitted).

Appellant agrees with this Court's interpretation of the statute that "any

other felony" includes crimes that occurred within the same episode (IB 13).

In Williams, the Fourth District held that the term "shall" in 775.087 (2)(d) is mandatory. Id., at 4. As a footnote to it's decision the Fourth District stated:

> In reaching our conclusion, we also have come to recognize the need to clarify a statement from one of our recent decisions, Jean–Michel v. State, 96 So.3d 1043 (Fla. 4th DCA 2012). There, we stated: " Sousa [II] held that 10–20–Life sentences involving multiple victims must be served consecutively to each other, in accordance with the statutory mandate." Id. at 1046. Sousa II did not expressly state such a holding, although we recognize such a holding in today's opinion.

Williams, , --- So.3d ----, 2013 WL 1748687 at 5.

It is because the Fourth District did not construe Sousa II[1] as definitive on the issue of non-discretion on the part of the trial court, that the certified question was presented.

It is noteworthy that other District Courts of Appeal have echoed the holding of the Fourth in both Williams and Jean-Michel v. State, 96 So. 3d 1043 (Fla 4th DCA 2012). In Mondesir, which this Court reversed on other grounds[2], the Third

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[1] The Fourth District's references this Court's decision in State v. Sousa, 903 So.2d 923 (Fla. 2005) as Sousa II.

[2] "We do not agree with the reasoning of the Third District in Mondesir to the extent it construes the statute to mean that the "any other" language only refers to crimes which took place at different times. Sousa, 868 So.2d at 540. We find nothing in the statutory language which supports that construction of the statute. The statute's plain language does not state that, nor do we find the language of the statute to be ambiguous." Sousa, 903 So.2d at 927-289(emphasis added)

District held:

> Turning to the cross-appeal, we first agree with the state that the statute, section 775.087(2)(d), Florida Statutes (2000), [footnote omitted] which unequivocally requires that the substantive sentences be imposed "consecutively to any other term of imprisonment imposed for any other felony offense" requires the sentences on the remaining charges be served consecutively to those in the cocaine case. State v. Cherry, 801 So.2d 278 (Fla. 4th DCA 2001).

Mondesir , 814 So. 2d at 1173.

See Walton v. State, 106 So. 3d 522 (Fla. 1st DCA 2013) (held any mandatory minimum term required by statute authorizing consecutive mandatory minimum sentences under 10–20–Life for crimes committed in a single episode, whether the defendant fires a gun or only carries or displays it, shall be imposed consecutively to any other term imposed for any other felony); Smart v. State, 114 So.3d 1048 (Fla.App. 1st DCA 2013) (held any minimum sentence required by section 775.087(2)(d) shall be imposed consecutively to any other term imposed for any other felony offense, citing Walton); see e.g., Dunbar v. State, 46 So.3d 81 (Fla. 5th DCA 2010) (held the imposition of a mandatory minimum sentence under section 775.087(2) of the Florida Statutes is a nondiscretionary duty of a trial court when the record indicates that the defendant qualifies for mandatory minimum

sentencing; a trial court must impose the mandatory minimum sentence once a defendant is convicted of an enumerated felony under section 775.087(2), and the failure to do so is reversible error).

As the Appellant in the Second District's decision in Sousa successfully argued regarding the provision of consecutive sentences as to the "any other felony" language of 775.087 (2)(d), Petitioner commends and implores this Court to consider the comments to its Final Analysis of CS/CS/HB 113 (SB 194), which became Chapter 99–12, Laws of Florida, and subsection regarding the statute:

> Consecutive Sentences
>
> The bill provides that the Legislature intends for the new minimum mandatory sentences to be imposed for each qualifying count, and the court is required to impose the minimum mandatory sentences required by the bill consecutive to any other term of imprisonment imposed for any other felony offense. This provision does not explicitly prohibit a judge from imposing the minimum mandatory sentences concurrent to each other.

The Second District in Sousa acknowledged the above-referenced legislative staff analysis upon which Mondesir relied . Though successful in persuading the Second District to reverse the trial court, in reviewing the Second District decision in Sousa, this Court considered that argument and found it unavailing:

> The fundamental rule of construction in determining legislative intent is to first give effect to the plain and

> ordinary meaning of the language used by the Legislature. Courts are not to change the plain meaning of a statute by turning to legislative history if the meaning of the statute can be discerned from the language in the statute. See Rollins v. Pizzarelli, 761 So.2d 294, 299 (Fla.2000); see also Taylor Woodrow Constr. Corp. v. Burke Co., 606 So.2d 1154, 1156 (Fla.1992) ("Where the statutory provision is clear and not unreasonable or illogical in its operation, the court may not go outside the statute to give it a different meaning."). We have previously stated that the legislative history of a statute is irrelevant where the wording of a statute is clear, see Aetna Cas. & Sur. Co. v. Huntington Nat'l Bank, 609 So.2d 1315, 1317 (Fla.1992), and that courts "are not at liberty to add words to statutes that were not placed there by the Legislature." Hayes v. State, 750 So.2d 1, 4 (Fla.1999).

Sousa, 903 So. 2d. at 928.

There is no reason this Court's rationale as to legislative history in Sousa should not be applicable here. Respondent contends the statute is not ambiguous and is plain in its meaning. Accordingly, a review of the legislative history is neither required or necessitated.

Ironically, in his initial brief it is Petitioner – not seeking legislative review - who seeks to give a different interpretation to the statutes wording:

> Appellant argues that a better reading of the statue is "the court *shall* impose any term of imprisonment provided for in this subsection consecutively to any other term of imprisonment imposed *for any other felony offense" not included in this subsection*.

(IB 12).

Respondent contends the legislative language is not at odds with the statute. "[T]he court must give unambiguous language its plain and ordinary meaning, unless it leads to a result that is either unreasonable or clearly contrary to legislative intent." R.T.G. Furniture Corp. v. Coates, 93 So.3d 1151, 1153 (Fla. 4th DCA 2012). In addition to the statute's plain language, a basic rule of statutory construction provides that the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless. See Unruh v. State, 669 So.2d 242, 245 (Fla.1996); Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So.2d 452, 456 (Fla.1992).

Petitioner further argues that public policy demands that "trial courts be given sentencing discretion to avoid the extreme and harsh sentences that can yield results that Appellant now finds himself in". However, explicit in the statute is the public policy of the state of Florida regarding the use of firearms. Section 775.087, Florida Statutes, commonly referred to as the 10–20–Life statute, provides for mandatory minimum sentences for offenders who possess or use a firearm in some manner during the commission of certain crimes. As explained by this Court, in enacting the 10–20–Life statute, the Legislature "has very clearly mandated that it is the policy of this State to deter the criminal use of firearms." McDonald v. State,

957 So.2d 605, 611 (Fla.2007). "This mandate is underscored by the widespread promulgation of the 10–20–LIFE law beyond mere statutory notice, through television commercials, posters, and other forms of advertising." Id.

In Mendenhall, supra, this Court held a trial court has discretion, under the provision of the 10–20–Life statute setting forth a mandatory minimum sentence of 25 years to life for defendants who discharge a firearm during the commission of certain enumerated crimes and inflict death or great bodily harm as the result of the discharge, to impose a mandatory minimum sentence of 25 years to life even if such mandatory minimum exceeds the statutory maximum sentence for the crime set forth in the general sentencing statute. In reaching this holding, this Court noted that § 775.087(2)(d), Fla. Stat. clearly states that it is the intent of the Legislature to punish those offenders who possess or use firearms to the fullest extent of the law. Mendenhall, 48 So. 3d. at 747. This Court further observed:

> Finally, this reading of the statute not only recognizes that specific statutes control over general statutes and that words in a statute should not be rendered meaningless, but also effectuates the Legislature's clearly stated and unambiguous intent to punish offenders who possess or use firearms "to the fullest extent of the law." § 775.087(2)(d), Fla. Stat. (2004). The Legislature, in enacting the 10–20–Life statute, "very clearly mandated that it is the policy of this State to deter the criminal use of firearms." McDonald, 957 So.2d at 611. This policy is underscored by the statement of legislative intent contained in the act enacting section 775.087(2)(a)(3):

WHEREAS, Florida ranks among the most violent states in the nation, and

WHEREAS, in 1975 the Florida Legislature enacted legislation requiring a minimum mandatory sentence of three years in prison for possessing a gun during the commission or attempted commission of a violent felony, and

WHEREAS, the Legislature enacted this mandatory penalty in order to protect citizens from criminals who are known to use guns during the commission of violent crimes, and

WHEREAS, the FBI reports that among persons identified in the felonious killings of law enforcement officers in 1997, 71% had prior criminal convictions, and one of every four were on probation or parole for other crimes when they killed the officers, and

WHEREAS, criminals who use guns during the commission of violent crimes pose an increased danger to the lives, health, and safety of Florida's citizens and to Florida's law enforcement officers who daily put their lives on the line to protect citizens from violent criminals, and

WHEREAS, the Legislature intends to hold criminals more accountable for their crimes, and intends for criminals who use guns to commit violent crimes to receive greater criminal penalties than they do today, and

WHEREAS, the Legislature intends that when law enforcement officers put themselves in harm's way to apprehend and arrest these gun-wielding criminals who terrorize the streets and neighborhoods of Florida, that these criminals be sentenced to longer mandatory prison

> terms than provided in current law, so that these offenders cannot again endanger law enforcement officers and the public, and
>
> WHEREAS, there is a critical need for effective criminal justice measures that will ensure that violent criminals are sentenced to prison terms that will effectively incapacitate the offender, prevent future crimes, and reduce violent crime rates, and
>
> WHEREAS, it is the intent of the Legislature that criminals who use guns to commit violent crimes be vigorously prosecuted and that the state demand that minimum mandatory terms of imprisonment be imposed pursuant to this act,
>
> NOW, THEREFORE,
>
> Be It Enacted by the Legislature of the State of Florida...

Ch. 99–12, at 537, Laws of Fla.

Mendenhall, 48 So. 3d. at 749-50.

Prior to the 1999 Amendment to 775.087, in State v. Christian, 692 So.2d 889,890 (Fla.1997) this Court held that for offenses arising from a single episode, stacking is permissible where the violations of the mandatory minimum statutes cause injury to multiple victims or multiple injuries to one victim. As further evidence of the legislatures intent to impose harsh sentences for the use of firearms, after this Court's decision in Christian, 775.087 was amended to reflect the imposition of consecutive sentences by the trial court.

In Williams, the Fourth District has held that in the context of the statute, the word "shall" is unambiguous and mandatory. Id., at 4.

"Although there is no fixed construction of the word 'shall,' it is normally meant to be mandatory in nature." See S.R. v. State, 346 So.2d 1018, 1019 (Fla.1977). The word "shall" is mandatory in nature. See Fla. Bar v. Trazenfeld, 833 So.2d 734, 738 (Fla.2002) ("The word 'may' when given its ordinary meaning denotes a permissive term rather than the mandatory connotation of the word 'shall.' "). "Shall" is normally interpreted as a mandatory term that creates an obligation impervious to judicial discretion. City of St. Petersburg v. Remia, 41 So.3d 322, 326 (Fla. 2d DCA 2010); Psychiatric Inst. of Delray, Inc. v. Keel, 717 So.2d 1042, 1043 (Fla. 4th DCA 1998).

As the Third District observed in Allied Fidelity Insurance Co. v. State, 415 So.2d 109, 111 (Fla. 3d DCA 1982):

> Whether "shall" is mandatory or discretionary will depend, then, upon the context in which it is used and the legislative intent expressed in the statute. S. R. v. State, 346 So.2d 1018 (Fla.1977). Thus, for example, where "shall" refers to some required action preceding a possible deprivation of a substantive right, S. R. v. State, supra; Neal v. Bryant, supra; Gilliam v. Saunders, 200 So.2d 588 (Fla. 1st DCA 1967), or the imposition of a legislatively-intended penalty, White v. Means, 280 So.2d 20 (Fla. 1st DCA 1973), or action to be taken for the public benefit, Gillespie v. County of Bay, 112 Fla. 687, 151 So. 10 (1933), it is held to be mandatory.

(emphasis added)

Clearly, in a circumstance where the legislative intent seeks to punish the defendant to the "fullest extent of the law" and the statute unequivocally states "shall", it is a directive to the trial court to impose consecutive sentences. Consecutive sentences under 775. 087 (2)(d) concern both a deprivation of a substantive right and the imposition of a legislatively-intended penalty. See State v. Goode, 830 So.2d 817, (Fla. 2002) ("because there are significant and substantial liberty interests involved with the involuntary and indefinite detentions provided for under the Ryce Act, we conclude that the Legislature used the word "shall" to convey that the thirty-day time limit was mandatory, although not jurisdictional"); State v. Kremer, 114 So.3d 420 (Fla. 5th DCA 2013)(held sentence legal where Section 316.193(3), Florida Statutes (2009), states, "A person who is convicted of DUI manslaughter shall be sentenced to a mandatory minimum term of imprisonment for 4 years."); State v. Strazdins, 890 So.2d 334, 335 (Fla. 2nd DCA 2004) (held trial court had nondiscretionary duty to impose the three-year mandatory minimum sentence pursuant to section 893.135(1)(k)(2), Florida Statutes (2001) wherein it states "shall be sentenced to a mandatory minimum term of imprisonment of 3 years"); State v. Cherry, 801 So. 2d 279 (Fla. 4th DCA 2001) (held under statute providing minimum ten-year term for anyone convicted of

certain enumerated felonies, including robbery, who actually possesses a firearm during the commission of the felony, defendant's sentence for robbery with a firearm statutorily required to run consecutive to concurrent sentences for robbery with a weapon, kidnapping, robbery, and robbery with a deadly weapon).

Accordingly, in accordance with the plain and unambiguous language of 775.087 (2)(d), there is no clearer definition of the meaning of “shall” being mandatory.

CONCLUSION

WHEREFORE based on the arguments and the authorities cited herein, Respondent respectfully requests that this Court find that jurisdiction was improvidently granted , or in the alternative, contends the certified question posed by the Fourth District Court of Appeal be answered in the affirmative, that is, this Court should hold that, under 775.087 (d)(2) consecutive sentences are required when the sentences arise from one criminal episode.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Respondents Answer Brief on the Merits" was sent by e-mail to: Richard G. Lubin, P.A., Second Floor, Flagler Plaza, 1217 South Flagler Drive, West Palm Beach, FL 33401 at rich@lubinlaw.com on December 11, 2013.

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CERTIFICATE OF TYPE FACE AND FONT

Counsel for the Respondent/Appellee hereby certifies, pursuant to this Court's Administrative Order of July 13, 1998, that the type used in this brief is Times Roman 14 point proportionally spaced font.

/s/Mitchell A. Egber
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