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IN THE SUPREME COURT OF APPEAL OF FLORIDA

CASE NO.: SC13-1080

L.T. NO.: 4D10-4237

RONALD WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

APPELLANT'S INITIAL BRIEF

ON APPEAL FROM AN APPEAL AFFIRMING THE FINAL JUDGMENT OF CONVICTION AND SENTENCE FROM THE FOURTH DISTRICT COURT OF APPEAL

RICHARD G. LUBIN, P.A.
Second Floor, Flagler Plaza
1217 S. Flagler Drive
West Palm Beach, FL 33401
Telephone: (561) 655-2040
Facsimile: (561) 655-2182
Counsel for Appellant,
RONALD WILLIAMS

CERTIFICATE OF INTERESTED PERSONS

The following persons may have an interest in this case:

Ronald Williams, Appellant

Jonathan R. Kaplan, Counsel for Appellant

Edwin Ferguson, Trial Counsel for Appellant

Alethea McRoberts, Assistant State Attorney

Christopher Keeler, Assistant State Attorney

David Aronberg, State Attorney

Honorable Joseph Marx, Circuit Court Judge

Mitchell Egber, Assistant Attorney General

Fourth District Court Judges: Gerber, C.J.May, Warner, Polen,

Stevenson, Gross, Taylor, Conner, Damoorgian, Ciklin, and Levine

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PRELIMINARY STATEMENT

The following symbols, abbreviations and references will be utilized throughout this Initial Brief of Appellant, Ronald Williams:

The term "Appellant" shall refer to the Defendant, Ronald Williams, in the District Court below. The term "Appellee" shall refer to the Plaintiff, the State of Florida, in the District Court below. The Record on Appeal in this case contains pleadings and transcripts from the trial court. The record on appeal consisted of a total of six volumes which included the pleadings, trial and sentencing transcripts, evidence log and a one volume supplement. Citations to the pleadings and trial exhibits are contained in volumes 1 and 2 of the record. Those portions of the record shall be referred by Volume number and page. (i.e., V-1, p.33) The trial and sentencing transcripts contained in the Record on Appeal shall be referred to as "(R)" followed by the appropriate page number. Reference to the supplemental record will be cited as "SR" followed by the appropriate page number.

REQUEST FOR ORAL ARGUMENT

Appellant, RONALD WILLIAMS, has been sentenced to 80 years in prison. Given the gravity of the sentence, the complexity of the issue raised here and the on-going controversy amongst the district courts with the statutory language in section 775.087(2)(d), Mr. Williams, through undersigned counsel respectfully requests this Court to grant Oral Argument.

JURISDICTION

Jurisdiction is invoked pursuant to Rule 9.020(h) & 9.030(a)(2)(A)(v), Fla.R.App.P., discretionary jurisdiction of the Supreme Court to review the decisions of the Fourth District Court of Appeal rendered on April 24, 2013. The decision is within the Supreme Court's jurisdiction because the decision of the Fourth District Court of Appeal certified the question to be of great public importance. (See rule 9.030(a)(2)(A)).

STANDARD OF REVIEW

Review is de novo. *Williams v. State*, 2013 WL 1748687,--So.3d--(Fla 4th DCA 2013) *citing Johnson v. State,* 78 So.3d 1305, 1310 (Fla.2012) ("Judicial interpretations of statutes are pure questions of law subject to de novo review.").

STATEMENT OF THE CASE

This is an appeal from an appeal affirming: (a) a jury verdict and judgment of

conviction and sentence of four (4) counts of Aggravated Assault with a Firearm and one (1) count of Resisting Officer Without Violence.

Appellant was charged by Information with four counts of Aggravated Assault with a Firearm and one count of Resist Officer without Violence. (V-1, p. 28). The Information charged Appellant with discharging a firearm during the commission of aggravated assault offenses. Appellant proceeded to trial on September 15, 2010. The jury returned a guilty verdict on September 16, 2010, to all counts as alleged in the Information. (V-1, p.65). A special verdict form was submitted to the jury specifically related to the discharge of a firearm element. The jury made a finding that the firearm had been discharged on each of the aggravated assault with a firearm counts. (V-1, pp.65-67).

The trial court immediately proceeded to sentencing after the verdict on September 16, 2010, adjudicating Appellant guilty on all counts and sentencing him to consecutive minimum mandatory terms of twenty years in prison on counts 1-4, (V-1,pp.68-74). Appellant pursuant was sentenced under section 775.087(2)(a)(c)&(d), *Florida Statutes* (2007). Appellant was sentenced on count 5, resisting arrest without violence, to one year in jail, to run concurrent with count 1. (V-1, p. 69, R- 457). Appellant was credited with 776 days on counts 1and 5. (R-457)

Appellant filed a timely Notice of Appeal on October 12, 2010. (V-1,p. 110).

After filing the notice of appeal, Appellant filed a Motion to Correct Sentencing Errors While Appeal is pending pursuant to Rule 3.800(b)(2), *Fla.R.Crim.P*, in the trial court on May 27, 2011 and a corresponding Notice in this court. The trial court entered an Order denying Appellant's motion to correct sentencing error on August 9, 2011.

The Fourth District Court of Appeal, in an *En Banc* opinion dated April 24, 2013, affirmed Appellant's conviction and sentence and certified the following question to be 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?

Williams v. State, 2013 WL 1748687 (Fla. Dist. Ct. App. Apr. 24, 2013).

On May 21, 2013, Appellant filed a notice to invoke discretionary jurisdiction with this Court. On July 16, 2013, this Court accepted jurisdiction.

STATEMENT OF FACTS

The information alleged that Appellant threatened Jeremy Hoggins, Javaris Allen, Latodd Davis and Benjamin Butler with a firearm and during the course of the offense Appellant discharged the firearm. (V-1,pp.28,29).

On February 12, 2008, Jeremy Hoggins was living on 1033 9th Street Apartment B, Riviera Beach, Florida with his three roommates Javaris Allen, Latodd Davis and

Benjamin Butler. (R-183). Sometime during the day the four roommates left the apartment and returned home together. Davis testified that he remembered finishing his work shift when the four returned home in the same vehicle. As Davis exited the vehicle, he recalled hearing someone "name calling" from the parking lot at or towards him. (R-212,213). Although Hoggins vaguely remembered the incident, he remembered that there was a verbal altercation with Appellant where there was an exchange of words "about our sexuality". (R-187). Hoggins did not know Appellant, but had seen him in the past and knew he was friends with his neighbor. (R-189). He heard Appellant yell "punk, faggot, and other homosexual gestures". (R-191). Appellant stayed by his parked car in the parking lot during the entire incident as the four continued to walk towards their apartment. (R-192).

After the exchange of words between Appellant and the four, Hoggins remembered seeing Appellant point a gun in their direction. (R-195). Hoggins then observed Appellant point the gun in the air and fire it. When the gun was discharged, it was never pointed in the direction of the four or at any one person. (R-195, 196). As the gun fired, all four ran to the doorway of the apartment. (R-196). Hoggins also stated that Appellant "couldn't have shot in our direction because it would have hit the wall or one of us."

Latodd Davis was unable to see if the gun was pointed at him, as he was the first

one through the door when the first gunshots were fired. (R-215,216). During his deposition and later at trial, Davis testified that he did see Appellant shoot the gun straight in the air. (R-229). Davis was not sure as to the number of shots, but remembered Appellant leaving the area after firing two. (R-230).

Javaris Allen testified that as he approached the door to his apartment he heard someone call out "punk." (R-307). Allen recognized Appellant as he had seen him several times at the neighbor's apartment. (R-308). As Allen approached the front door he turned towards Appellant and saw a silver shining object. (R-309). Allen saw Appellant raise the gun and fire it in the air without pointing it at them. (R-312). After hearing the three gunshots Allen became frightened. (R-312).

After Appellant was taken into custody, he provided Detective Patrick Walsh from the Riviera Beach Police Department with a taped statement. (R-352). Appellant stated that he was upset with the four as they were flirting with him and giving him the eye. (R-362). Appellant stated that he had remained in the car, pointed the gun up and out when firing, and never pointed it any one of them. (R-363,366). The gun was discharged five times. Appellant stated that it was his intention to only scare them and at no point did he ever "intend to harm anybody". (R-369). Appellant had told Detective Walsh that he had drank some gin earlier in the day. (R-366).

Benjamin Butler did not testify at trial. Attorney for Appellant moved for a

judgment of acquittal as to the count related to Benjamin Butler. (R-372). Court denied the motion and the jury returned a guilty verdict on all five counts of the information. The trial court then proceeded to sentence Defendant to four consecutive twenty year sentences, for a total of eighty (80) years on the four third degree felonies of aggravated assault with a firearm.

SUMMARY OF ARGUMENT

Appellate court erred by holding that Section 775.087(2)(a), *Florida Statutes*, also known as the 10-20-Life Statute, required it to affirm the imposition of four consecutive minimum mandatory sentences of twenty years for each offense of aggravated assault with a firearm where the conduct giving rise to the offenses occurred in a single episode against multiple victims and no one victim sustained any injuries. Language in House Bill 113, which initiated the amendment to the 10-20-Life statute stated the following: "This provision does not explicitly prohibit a judge from imposing the minimum mandatory sentences concurrent to each other." Said provision made it clear that trial judges were to have discretion to sentence defendants to concurrent sentences when defendant faced multiple counts arising from the same criminal episode.

ARGUMENT

POINT I

STATUTORY LANGUAGE OF SECTION 775.087(2)(d) 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" IS AMBIGUOUS REQUIRING COURT TO LOOK AT LEGISLATIVE INTENT, WHICH DOES NOT PROHIBIT CONCURRENT SENTENCES FOR OFFENSES ARISING FROM ONE CRIMINAL EPISODE.

On appeal the Fourth District Court addressed the issue of whether section 775.087(2)(d), *Fla.Stat*., required it to sentence Appellant to consecutive minimum mandatory sentences or did the statute allow concurrent sentences for the same offenses.

At sentencing, the State argued that the recent decision of *Scott v. State*, 42 So.2d 923 (Fla.2n DCA 2010) was on point and required the trial court to sentence Appellant to consecutive sentences. After reviewing *Scott*, the trial court pronounced the following sentence:

> "Given the language of subsection (2)(d), as well as this *Scott* opinion from the 2nd District, I believe that the– this is not a –**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."

(R-457).

The trial court proceeded to sentence Appellant to four consecutive twenty year sentences, for a total of eighty (80) years on four third degree felonies. Appellant argued that under section 775.087(2)(a)(c)(d), *Fla.Stat.,* the trial court was not required, but had the discretion to sentence Appellant to concurrent terms and the facts of the case warranted concurrent sentences where there were no physical injuries to any of the victims and Appellant never shot and or discharged the firearm at any one victim. Appellant does concede that the sentencing judge had the discretion to sentence to concurrent, consecutive or a hybrid of the two sentences. Judge Joseph Marx[1], sitting in as the sentencing judge at the motion to correct sentencing error, stated the following:

> "I still stand by what I said earlier, is this thing still doesn't seem completely resolved in my mind, but let's tee it up right so somebody's going to get it resolved one way or the other..." (SR-40).
>
> "Mr. Williams, I would never give you eighty years on this case... We have first degree murder cases that people get less than this." (SR-41).

[1] Judge John J. Hoy presided over the trial and the initial sentencing. Subsequently, Judge Hoy transferred out of the division and into a civil division. Judge Marx was then transferred into the division.

"But here's what I'm going to do, because either way he's going to be in custody. So I'm not completely sure, but it would make no sense for me when I'm completely unsure and I've got this 4th DCA PCA here and uncertainty of it, let's tee it up for the 4th District Court of Appeal to make a ruling... I am going to deny the motion, because we're going to have the 4th District Court of Appeal tell us is it required in a case that there are separate convictions? We have multiple victims...and there are multiple injury. We'll call it a mental injury. So we have separate and distinct, so the court certainly could have imposed a consecutive sentence.

What I want the 4th District Court of Appeal to tell me is must I? Is it required, and is that what the statute–and there's a dispute over the House Bill, and that House Bill language was in one of those cases, too..." (SR-44).

In *Scott*, 42 So.2d 923, the defendant had sprayed bullets from an automatic weapon at nine people during a single episode, none of the nine were hit. A jury found defendant guilty of nine counts of attempted second degree murder. The trial court sentenced Scott to consecutive twenty-year minimum mandatory prison sentences on each count. *Id*. The *Scott* Court addressed the issue of whether the trial

court was permitted to run the sentences consecutive to each other. In affirming the trial court's consecutive sentences, the Second District Court held that consecutive minimum mandatory sentences under the "10-20-Life" statute were *permissible*. The *Scott* court, throughout it's opinion, used words such as "permissible" and "allows" when discussing the sentencing statute, evidencing the discretion given to the judge when sentencing under section 775.087(2)(d).

This discretionary language appears to have its origins in *State v. Christian* 692 So. 2d 889, 890 (Fla. 1997), where the Florida Supreme Court stated that , "[a]s a general rule, for offenses arising from a single episode, stacking is permissible where the violations of the minimum mandatory statutes cause injury to multiple victims, or multiple injuries to one victim. The injuries bifurcate the crimes for stacking purposes."

In the present case, the Fourth District Court held that the statutory language and case law, specifically *State v. Sousa,* 903 So.2d 923 (Fla. 2005)(herein *"Sousa II*"), did not provide a sentencing court with the discretion to sentence to concurrent sentences under section 775.087(2)(d), but required the imposition of consecutive minimum mandatory sentences.

In addressing the issue of whether stacking minimum mandatory sentences was permissible, the Fourth District Court stated the following:

> "We answer that question "yes"after applying the plain language of section 775.087(2)(d), as interpreted by the supreme court in *Sousa II.* Section 775.087(2)(d)'s last clause states: "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.*"(emphasis added). The supreme court held in *Sousa II* that "any other felony offense"may include offenses falling under section 775.087(2)(a)'s mandatory minimum provisions and occurring during the same criminal episode. Thus, when a defendant is convicted of such offenses, as occurred in this case, the word "shall"prefacing section 775.087(2)(d)'s last clause *requires* that a court impose consecutive sentences for each of those offenses.

Williams v. State, 13 WL 1748687. –so.3d–(2013). Although the *Williams* court held that section 775.087(2)(d), required it to reach the conclusion of mandatory consecutive sentences, it did recognize that *Sousa II* only answered the question of whether consecutive mandatory minimum sentences were *permissible* under section 775.087(2)(d). *"Sousa II* left unanswered the question of whether consecutive mandatory minimum sentences are *required* by section 775.087(2)(d) under the same circumstances." *Id*. Based on the foregoing, the Fourth District Court certified the following question to be 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?

The Fourth District Court concluded that the plain language of section 775.087(2)(d) coupled with the term "*shall impose*" made it clear that any felony

offense would require consecutive sentences. Although the statutory language is plain, it is far from clear. Appellant has argued that the language "any other felony offense" means any felony offense *other than* a section 775.087(2)(d) enumerated offense. The focus here is on the phrase "any other". Appellant argues that a better reading of the statute 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.* This would then allow a court discretion to sentence consecutively on the mandatory minimum offenses and no discretion on other offenses that fall outside section 775.087(2)(d). A similar interpretation of the statute was first recognized by the Second District Court in *Sousa v. State* ("*Sousa I* "), 868 So.2d 538, 540 (Fla. 2d DCA 2003) when it reversed the consecutive sentences, holding that section 775.087(2)(d) did not "provide the legislative authorization necessary to require consecutive sentencing." To support that holding, the Second District agreed with the holding in *Mondesir v. State,* 814 So. 2d 1172 (Fla. 3d DCA 2002) that section 775.087(2)(d)'s last clause, requiring consecutive sentences "for any other felony offense",means that "sentences received pursuant to section 775.087(2)(d) must only be consecutive to other felony sentences *not subject to* section 775.087(2)(d)." *Sousa I,* 868 So.2d at 539 (citing *Mondesir,* 814 So.2d at 1173).

In *Sousa II*, this Court did not agree with the reasoning in *Mondesir* only 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 II,* 903 So.2d at 927. Appellant here agrees with this Court's interpretation of the statute that "any other" also includes crimes that occurred within the same episode. Accordingly, Appellant contends that the language of the statute does not require or mandate consecutive sentences on offenses arising from the same episode and falling under section 775.087(2)(d).

Because this case involves statutory interpretation, this Court's review is de novo. *Gomez v. Vill. of Pinecrest,* 41 So. 3d 180, 185 (Fla. 2010) *quoting Larimore v. State,* 2 So.3d 101, 106 (Fla.2008). "A court's purpose in construing a statute is to give effect to legislative intent, which is the polestar that guides the court in statutory construction."*Id.* (citing *Bautista v. State,* 863 So.2d 1180, 1185 (Fla.2003)). "To discern legislative intent, a court must look first and foremost at the actual language used in the statute."*Id.*

> "As this Court has often repeated, when 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."

Gomez v. Vill. of Pinecrest, 41 So. 3d at 185 *quoting Velez v. Miami-Dade County Police Dep't*, 934 So.2d 1162, 116-65 (Fla. 2006). *See also Sousa II*, 903 So. 2d at 928 ("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.)

In *Sousa II*, the Florida Supreme Court, in interpreting the statute under the 1999 amendment, came to the conclusion that stacking minimum mandatory sentences were *permissible*. The 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*.

Sousa II, 903 So.2d at 927. The Fourth District Court now reads the statute as requiring consecutive sentences where there is one episode and more than one injury. Such a holding by the Fourth District Court required it to recede from its previous holding in *Arutyunyan v. State*, 863 So. 2d 410 (Fla.4th DCA 2003)(Court previous held that consecutive minimum mandatory sentences *were not required where offenses occurred in same criminal episode.*)(emphasis added).

In *Walton v. State*, 106 So.3d 522, 527 (Fla. 1st DCA 2013), the First District

Court recently addressed defendant's consecutive sentences under section 775.087(2)(d). There the court stated that section 775.087(2)(d) authorizes consecutive minimum mandatory sentences for multiple offenses committed during a single episode, involving multiple victims where the defendant discharges a firearm. The First District Court's holding that the statute "authorizes consecutive...", suggests that it is not required or mandatory to sentence to consecutive sentences under the circumstances, but it is discretionary with the trial court. See also *Scott v. State*, 42 So.3d 923 (Fla.2n DCA 2010)(Second District Court's use of the word "allows" in its opinion evidences that the trial court had the discretion to impose either consecutive or concurrent sentences); and *Hargrove v. State*, 905 So.2d 275, 276 (Fla. 2d DCA 2005)(Stacking of minimum mandatory sentences *approved* where the defendant shot the driver of a car and shot at a passenger but missed). *Hargrove, Scott* and *Walton* were after *Sousa II*. With such variations in the language of the holdings from this State's District Courts, it can not be said that the statute in question is clear and unambiguous.

A review of the legislative history of the statute's amendment is not only instructive but necessary to settle the ongoing controversy. "In the comments to its Final Analysis of CS/CS/HB 113 (SB 194), which became Chapter 99-12, Laws of Florida, and subsection 775.087(2), the Committee on Crime and Punishment in the

House of Representatives so stated:

> **Consecutive Sentences**
>
> The bill provides that the Legislature intends for the new minimum mandatory sentence 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. [emphasis]*

If this Court's prior holding in *Sousa II* stands and this Court's statement "nor do we find the language of the statute to be ambiguous" negating any review of the legislative history, then it's holding would allow a court discretion to sentence concurrently or consecutively. "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." *Sousa*, 903 So. 2d 923, 927-28. However, if this Court believes clarification is needed to settle the ongoing controversy, then a review of the legislative history also leads to the same conclusion.

It is interesting to note that the cases cited within this brief addressed the issue from the perspective of consecutive sentences (as the defendants were all sentenced to minimum mandatory consecutive sentences). It is unfortunate that none of the appeals addressed the issue of whether the statue allowed concurrent sentences. This argument may be more semantics than a legal difference, but the sentence imposed here seems to run contrary to the rule of lenity. More and more offenses are falling

under minimum mandatory sentences and taking discretion away from judges for sentencing. 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.

CONCLUSION

Re-sentencing is required under section 775.087(2)(d), *Fla. Stat.* Statutory language provides trial courts with discretion to sentence defendants charged with multiple counts under Section 775.087(2)(d), to concurrent or consecutive sentences.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing "Request to Toll Time" has been served via U.S. Mail and email to Mitchell Egber, OFFICE OF THE ATTORNEY GENERAL, 9th Floor, 515 N. Flagler Drive, West Palm Beach, FL 33401, at mitchell.egber@myfloridalegal.com on the 17th day of October, 2013.

RICHARD G. LUBIN, P.A.
Second Floor, Flagler Plaza
1217 South Flagler Drive
West Palm Beach, FL 33401
Tele: 561/655-2040
Fax: 561/655-2182
Attorneys for Appellant

By ***/s/ Jonathan R. Kaplan***
Jonathan R. Kaplan
Fla. Bar No. 0910759

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY THAT the foregoing Petition is in compliance with Rule 9.210(2), *Florida Rules Of Appellate Procedure* and the font contain herein is in Times New Roman -14 point.

RICHARD G. LUBIN, P.A.
Second Floor, Flagler Plaza
1217 South Flagler Drive
West Palm Beach, FL 33401
Tele: 561/655-2040
Fax: 561/655-2182
Attorneys for Defendant

/s/ Jonathan R. Kaplan
Jonathan R. Kaplan
Fla. Bar No. 0910759