

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 REPLY BRIEF

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

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REPLY ARGUMENT

**THE STATUTORY LANGUAGE OF SECTION 775.087(2)(d)
PROVIDES A SENTENCING COURT DISCRETION TO
SENTENCE CONCURRENTLY OR CONSECUTIVELY TO ANY
OTHER TERM OF IMPRISONMENT FOR ANY OTHER
FELONY OFFENSE ARISING FROM ONE CRIMINAL
EPISODE OR NOT.**

Respondent argues that section 775.087(2)(d), *Fla.Stat.*, is plain and unambiguous and the Florida courts have construed the statutory language to mean only one thing- that a trial court has no discretion but to impose consecutive sentences to a defendant charged with multiple counts under section 775.087(2)(d) and, arising from the same criminal episode.

It is Appellant's contention 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." *Williams v. State*, 125 So.3d 879 (Fla.4th DCA 2013), citing to *Sousa v. State*, 903 So.2d 927 (Fla. 2005).

As previously stated in his initial brief, Appellant agrees with this Court’s reasoning in *Sousa II*, where it construed that the “any other language” in the statute included crimes that occurred within the same episode. However, that does not mean section 775.087(2)(d) mandated consecutive sentences for offenses arising from the same episode and charged under section 775.087(2)(d). The language of the statute, “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*”, suggests that the mandatory element refers to a sentence for a felony “other” than those enumerated in section 775.087(2)(d). If not, then the legislative would have left the term “other” out and written it as such, “for any felony offense”. The inclusion of the word “other” seems to infer other felony offenses not enumerated in section 775.087(2)(d). Because of this ambiguity, Appellant contends that statutory interpretation and a review of legislature history is necessary. “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.*

Respondent argued in its brief that Appellant, ironically, is not seeking legislative review. That was and is not Appellant’s position. Appellant argued that

if this Court deems section 775.087(2)(d) not ambiguous, as it has previously addressed the statute in *Sousa II*, then, as the Court held there that stacking was permissible, Appellant argued such a holding inferred discretion. Appellant does agree with the Fourth District's analysis that "the issue before the supreme court in *Sousa II*, was whether consecutive sentences are permissible, not whether such sentences are required." *Williams*, 125 So.3d at 884. While this analysis is true, a lawyer, however, reading the holding that stacking is permissible, coupled with the statutory language, can logically infer that concurrent sentences are also permissible. Unfortunately, as Appellant has previously noted, the prior cases construing the statute in question and, under similar circumstances as here, have involved consecutive sentences rather than concurrent sentences.

Respondent further argues that as a basic rule of statutory construction the courts should avoid readings that would render part of a statute meaningless. See *Unruh v. State*, 669 so.2d 242(Fla 1996). Appellant has suggested that the ambiguity in the statute is evident from the differing opinions from the State's appellate courts. That referring to the legislative history would provide guidance, certainty and clarity and would do the opposite of rendering a part of the statute meaningless. It would give trial court's discretion to determine a fair sentence based on a case by case basis. To rule otherwise would lead to unnecessarily lengthy and unwarranted

sentences as the one Mr. Williams faces.

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 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 5^h day of February, 2014.

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.

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