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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA

Petitioner,

vs.

ANTHONY DUWAYNE HORSLEY, JR.,

Respondent.
_____/

CASE NO. SC13-2000
Consolidated SC13-1938
L.T. Case No. 5D12-138;
05-2008-CF-010572-C

ON DISCRETIONARY REVIEW FROM THE DECISION OF
THE FIFTH DISTRICT COURT OF APPEAL

SUPPLEMENTAL ANSWER BRIEF OF RESPONDENT

JAMES S. PURDY
PUBLIC DEFENDER
SEVENTH JUDICIAL CIRCUIT

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SUMMARY OF ARGUMENT

Although the express language of the amended statutes and the new statutes enacted pursuant to chapter 2014-220, Laws of Florida, make them applicable to crimes committed after July 1, 2014, the application of the new laws can be made retrospective to Miller pipeline cases, under the principles of fairness, and equal treatment. Article X, Section 9 of the Florida Constitution does not preclude the application of chapter 2014-220, Laws of Florida, to pending cases where the changes do not act to the detriment of the criminal defendant. Additionally, it has been held that a re-sentencing hearing is *de novo* and that the law in effect at the time of a *de novo* resentencing applies to that proceeding. If this Court grants Respondent a re-sentencing hearing, then chapter 2014-220 would apply.

Legislative intent, as to the sentencing options to be considered by Florida courts when conducting Miller sentencing hearings, is now clear in the new laws. The sentence of life with possibility of parole after 25 years, which was approved by the Fifth District Court of Appeals, is contrary to legislative intent and is unconstitutional because Florida's parole system does not provide a meaningful opportunity for release based on demonstrated maturity and rehabilitation, as required by Miller.

Respondent was not provided with a Miller-compliant sentencing hearing

because his motion to continue was denied, which precluded him from presenting mitigation evidence pursuant to the Miller factors, which are included in the new laws. His sentence should be reversed and the cause remanded for a re-sentencing hearing that complies with the dictates of Miller and chapter 2014-220, Laws of Florida.

ARGUMENT

MR. HORSLEY'S SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE FOR THE CRIME OF FIRST DEGREE FELONY MURDER VIOLATES THE DICTATES OF MILLER v. ALABAMA, AND RECENT LEGISLATION HAS SIGNIFICANT IMPACT ON THIS CASE.

The State argues that the newly enacted legislation is not applicable to Mr. Horsley's case because (1) it enacts new statute 921.1401, allowing for a life sentence if, after conducting a sentence proceeding to consider specific factors, the court finds a life sentence is appropriate, and (2) by its terms, the new statute was created to provide this sentencing hearing for those whose crimes were committed on or after July 1, 2014. Respondent responds to refute these and other arguments made by the State in its Initial Supplemental Brief.

Chapter 2014-220, Laws of Florida, enacts new statute 921.1401, to allow for a life sentence to be imposed if the sentencing court finds a life sentence appropriate – but only after conducting a sentence proceeding to consider certain listed factors. *See* Chapter 2014-220, Section 2, Laws of Florida. The new laws were enacted in response to Miller v. Alabama, 132 S. Ct. 2455 (2012), and incorporate many of the juvenile mitigation factors mandated by that case. *See* Id.

at 2468. Mr. Horsley's motion to continue his sentencing hearing was denied, and so he was precluded from presenting evidence with regard to the Miller juvenile mitigation factors.

By its terms, the new law was created to provide an opportunity to persons in a similar circumstance to Mr. Horsley to present Miller mitigation evidence, if their crimes are committed on or after July 1, 2014. However, the application of these new laws can be made retrospective to non-final criminal cases such as Mr. Horsley's, under certain circumstances and pursuant to principles of fairness and equal treatment. *E.g.*, Griffith v. Kentucky, 479 U.S. 314 (1987); Smith v. State, 598 So. 2d 1063, 1066 (Fla. 1992). By its terms, the purpose of Section 775.082(11), Florida Statutes, is to provide uniform punishment for crimes punishable under it.

Article X, Section 9, Florida Constitution, states that "[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for any crime previously committed." Article X, Section 9 is silent as to the situation presented here, where a prior sentencing scheme is unconstitutional – violating the Eighth Amendment to the United States Constitution – as applied to a specific group of criminal defendants, such that it would be unfair and unconstitutional to sentence those persons under the old law. It must be noted that this Court has

previously held that changes to criminal sentencing laws can be retroactively applied when the changes are not detrimental to the criminal defendant. Justus v. State, 438 So. 2d 358, 368 (Fla. 1983); Combs v. State, 403 So. 2d 418 (Fla. 1981). In Justus, the Florida Supreme Court responded to an Article X, Section 9, Florida Constitution, challenge by holding that the retrospective application of the "cold, calculated, and premeditated" aggravator did not change the law to the defendant's detriment, and could therefore be applied. Id., at 368. Because Chapter 2014-220, Laws of Florida, is not detrimental to Miller defendants, and would actually be beneficial, it follows that the Florida Constitution does not bar the retrospective application of the new law.

It is well-established that a re-sentencing hearing is *de novo* and that the law in effect at the time of a *de novo* re-sentencing applies to that proceeding. State v. Fleming, 61 So. 3d 399, 408 (Fla. 2011). The Florida Supreme Court held in that case, that the trial court has discretion at re-sentencing to impose sentence using available factors not previously considered. Id., at 406. Applying the holding in Fleming, Chapter 2014-220, Laws of Florida, would govern a re-sentencing hearing when the sentence is vacated and remanded in order to be constitutionally compliant.

Legislative intent, as to sentencing options to be considered by Florida

courts when conducting Miller sentencing hearings, has been at issue in this case and is now made clear by the passage of Chapter 2014-220, Laws of Florida. The new law provides for sentencing options of life in prison, with judicial review after 25 years for a chance at modification with demonstrated maturity and rehabilitation, or a term of 40 years imprisonment for persons convicted of having committed homicide while juveniles. *See* Chapter 2014-220, Section 1, Laws of Florida. Chapter 2014-220 makes no mention of parole. The sentence of life with the possibility of parole after 25 years, which was approved by the Fifth District Court of Appeals, is therefore contrary to the expression of legislative intent embodied in the new law. The sentence proposed by the District Court of Appeal is also unconstitutional, as against the Eighth Amendment, because Florida's parole system – unlike the new law – does not provide a meaningful opportunity for release based on demonstrated maturity and rehabilitation as required by Miller.

Respondent again submits, to refute the State's argument to the contrary, that Mr. Horsley's sentence of life in prison without possibility of parole violates the dictates of Miller, because he was not provided with a Miller-compliant sentence hearing. His motion to continue the sentencing hearing was denied, in spite of his attorney's frank statement that he was unprepared to provide

mitigation evidence on Mr. Horsley's behalf and could only call the defendant as a witness if he were forced to proceed at that time. As a result, much evidence that could have otherwise been presented was not. Further, the sentencing judge did not believe he had discretion to consider the term-of-years sentence requested by Mr. Horsley, in spite of the Miller decision listing that as a possible option. Finally, the sentencing hearing was not compliant with the dictates of Miller, in that the sentencing court found that Mr. Horsley had not presented evidence of some Miller mitigating factors such as impetuosity and the immaturity of youth, even though a continuance would have allowed his attorney to present such evidence. In short, Mr. Horsley was not given the opportunity to present mitigation evidence as required by Miller, and now by Chapter 2014-220, Laws of Florida. *See* Miller v. Alabama, 132 S. Ct. 2455, 2469 (2012).

The life sentence that was imposed on Mr. Horsley should be reversed and this cause remanded for a Miller-compliant re-sentencing hearing.

CONCLUSION

Based on the foregoing, the Petitioner respectfully asks this Honorable Court to reverse the decision of the Fifth District Court of Appeals, reverse the judgment and sentence and remand for a re-sentencing hearing to comply with the dictates of the Miller decision, as informed by the legislative intent expressed in Chapter 2014-220, Laws of Florida, and with the provisions of the new law.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of font used in this brief is 14 point proportionally spaced Times New Roman, in compliance with Fla. R. App. P. 9.210(a)(2).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been filed electronically delivered to the Florida Supreme Court, Supreme Court Building, 500 South Duval Street, Tallahassee, Florida 32399-1925, at www.myflcourtaccess.com; delivered electronically to the Office of the Attorney General, 444 Seabreeze Boulevard, fifth floor, Daytona Beach, Florida 32118 at crimappdab@myfloridalegal.com and kellie.nielan@myfloridalegal.com; to Paolo Annino at pannino@law.fsu.edu; to Tatiana A. Bertsch at tbertsch@rc-4.com; to Benjamin W. Maxymuk at bmaxymuk@eji.org; and was mailed to: Anthony Horsley, Inmate #E44830, Northwest Florida Reception Center, 4455 Sam Mitchell Drive, Chipley, Florida 32428-3501, on this 31st day of July, 2014.

KATHRYN ROLLISON RADTKE
ASSISTANT PUBLIC DEFENDER

IN THE SUPREME COURT OF FLORIDA

ANTHONY DUWAYNE HORSLEY, JR.,

Petitioner,

vs.

CASE No. SC13-1938
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STATE OF FLORIDA,

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_____/

APPENDIX A

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District Court of Appeal of Florida,
Fifth District.

Anthony Duwayne HORSLEY, JR., Appellant,
v.
STATE of Florida, Appellee.

No. 5D12–138.

Aug. 30, 2013.
Rehearing and Rehearing En Banc Denied Sept. 27, 2013.

Background: Defendant was convicted in the Circuit Court, Brevard County, Charles G. Crawford, J., of first-degree felony murder, robbery with a firearm while inflicting death, and two counts of aggravated assault with a firearm. Defendant appealed.

Holding: The District Court of Appeal, Lawson, J., held that as a consequence of *Miller v. Alabama*, and pursuant to doctrine of statutory revival, the only sentence now available in the state for a charge of capital murder committed by a juvenile is life with possibility of parole after 25 years.

Affirmed in part; remanded with instructions for resentencing.

Question certified.

West Headnotes

KeyCite Citing References for this Headnote

211 Infants
211XVI Rights and Privileges as to Adult Prosecutions
211XVI(C) Sentencing of Minors as Adults
211k3011 k. In general. Most Cited Cases

350H Sentencing and Punishment KeyCite Citing References for this Headnote
350HVII Cruel and Unusual Punishment in General
350HVII(L) Juvenile Justice
350Hk1607 k. Juvenile offenders. Most Cited Cases

As a consequence of the United States Supreme Court's decision in *Miller v. Alabama*, which invalidated statute providing that a mandatory life sentence without parole for capital murders committed by juveniles violated the Eighth Amendment, and pursuant to the doctrine of statutory revival, the only sentence now available in the state for a charge of capital murder committed by a juvenile is life with possibility of parole after 25 years. U.S.C.A. Const.Amend. 8; West's F.S.A. § 775.082(1).

*1131 James S. Purdy, Public Defender, and Kathryn Rollison Radtke, Assistant Public Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Kellie A. Nielan, Assistant Attorney General, Daytona Beach, for Appellee.

LAWSON, J.

Anthony Horsley, Jr. appeals his convictions for first-degree felony murder, robbery with a firearm while inflicting death, and two counts of aggravated assault with a firearm. He also appeals his resentencing to life without parole on the murder count. Regarding his resentencing, Horsley, who was seventeen years old at the time of these offenses, argues that the trial court erred by rejecting the idea that it had discretion under *Miller v. Alabama*, —— U.S. ——, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), to sentence him to a term of years. *Miller* held that a mandatory life sentence without parole for capital murders committed by juveniles—the only sentence allowed by section 775.082(1), Florida Statutes—violated the Eighth Amendment to the United States Constitution. Although this issue has been addressed by the First, Second and Third Districts, none of them have given definitive direction to trial courts regarding the available sentencing alternatives after *Miller*. *See Neely v. State*, —— So.3d ——, 2013 WL 1629227, 38 Fla. L. Weekly D851 (Fla. 3d DCA Apr. 17, 2013); *Hernandez v. State*, 117 So.3d 778 (Fla. 3d DCA 2013); *Walling v. State*, 105 So.3d 660 (Fla. 1st DCA 2013); *Partlow v. State*, —— So.3d ——, 2013 WL 45743, 38 Fla. L. Weekly D94 (Fla. 1st DCA Jan.4, 2013); *Washington v. State*, 103 So.3d 917, 920 (Fla. 1st DCA 2012); *Rocker v. State*, —— So.3d ——, 2012 WL 5499975, 37 Fla. L. Weekly D2632 (Fla. 2d DCA Nov.14, 2012). Applying the principle of statutory revival, we hold that the only sentence now available in Florida for a charge of capital murder committed by a juvenile is life with the possibility of parole after twenty-five years. Accordingly, we vacate the life without parole sentence on the murder charge, and remand for resentencing on that charge only. We affirm in all other *1132 respects. Although Horsley argues that several alleged errors warrant a new trial on all charges, we find that none of the other issues raised by Horsley merit relief or further discussion.

With respect to the sentencing issue on which we have granted relief, we also find further elaboration to be largely unnecessary in light of two thorough and well-reasoned opinions out of the First District, authored by Judges Wolf and Makar. In a concurring opinion, Judge Wolf disagreed with the majority's failure to provide guidance to the trial court regarding the possible sentencing options available on remand, and thoroughly analyzes the available alternatives. *Washington*, 103 So.3d at 920 (J. Wolf, concurring). Judge Wolf advocates for allowing judicial discretion to select a term of years sentence for those cases where life without parole would not be permitted by *Miller*—and a life without parole sentence for the rare case [FN1] where *Miller* would allow that sentence. *Id.*

> FN1. *See Miller*, 132 S.Ct. at 2469 ("appropriate occasions for sentencing juveniles to this harshest possible penalty [life without parole] will be uncommon").

In a competing thorough and thoughtful analysis, with which we fully agree, Judge Makar concluded that statutory revival should be used to revive the 1993 version of section 775.082(1), Florida Statutes, which mandated a sentence of life with the possibility of parole after twenty-five years. *Partlow v. State*, —— So.3d ——, 2013 WL 45743, 38 Fla. L. Weekly D94, 96–97 (Makar, J., concurring in part and dissenting in part). As noted by both Judges Wolf and Makar, the judiciary's role in a case like this—where a legislative enactment is declared unconstitutional and the alternative of having no option to address the subject would be untenable-is largely guided by the doctrine of separation of powers. In other words, the judiciary is attempting to fill a statutory gap while remaining as faithful as possible to expressed legislative intent, but also attempting to avoid judicial intermeddling by crafting our own statute to address the issue with original language. The advantage of relying upon the doctrine of statutory revival is that we simply revert to a solution that was duly adopted by the legislature itself—thereby avoiding the type of "legislating from the bench" that would be required if we were to essentially rewrite the existing statute with original language which we feel might better meet the policy goals of the current legislature. And, while we are certainly cognizant of the fact that the legislature of late appears to be less than enamored with the concept of parole, we also note that the legislature has always been adverse to judicial discretion in sentencing in homicide cases, which could result in a perceived "lenient" term of years sentence in a case of this type. We also strongly believe that many of the considerations outlined in *Miller* would be far better addressed years after sentencing in a parole-type setting, once the juvenile has matured into an adult and his or her conduct during decades of confinement has been evaluated, than through the forward-looking speculation necessitated if these issues are to be addressed with finality at the time of sentencing.

Our resolution of the sentencing issue renders moot Horsley's argument that the trial court's attempt to address the individual mitigation factors required by *Miller* was inadequate, rendering his life without parole sentence illegal for failure to fully comply with the dictates of *Miller*.

Finally, consistent with our agreement with Judge Makar's opinion in *Partlow,* we certify to the Florida Supreme Court as a matter of great public importance the following*1133 question: "Whether the Supreme Court's decision in *Miller v. Alabama,* —— U.S. ——, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), which invalidated section 775.082(1)'s mandatory imposition of life without parole sentences for juveniles convicted of first-degree murder, operates to revive the prior sentence of life with parole eligibility after 25 years previously contained in that statute?" *Partlow,* —— So.3d at —— n. 16, 2013 WL 45743, 38 Fla. L. Weekly at 98 n. 16 (J. Makar, J., concurring in part and dissenting in part).

AFFIRMED in part; REMANDED with instructions for resentencing on single charge.

ORFINGER and WALLIS, JJ., concur.

Fla.App. 5 Dist.,2013.
Horsley v. State
121 So.3d 1130, 38 Fla. L. Weekly D1862

IN THE SUPREME COURT OF FLORIDA

ANTHONY DUWAYNE HORSLEY, JR.,

Petitioner,

vs.

CASE No. SC13-1938
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STATE OF FLORIDA,

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APPENDIX B

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CHAPTER 2014-220

Committee Substitute for House Bill No. 7035

An act relating to juvenile sentencing; amending s. 775.082, F.S.; providing criminal penalties applicable to a juvenile offender for certain serious felonies; requiring a judge to consider specified factors before determining if life imprisonment is an appropriate sentence for a juvenile offender convicted of certain offenses; providing review of sentences for specified juvenile offenders; creating s. 921.1401, F.S.; providing sentencing proceedings for determining if life imprisonment is an appropriate sentence for a juvenile offender convicted of certain offenses; providing certain factors a judge shall consider when determining if life imprisonment is appropriate for a juvenile offender; creating s. 921.1402, F.S.; defining the term "juvenile offender"; providing sentence review proceedings to be conducted after a specified period of time by the original sentencing court for juvenile offenders convicted of certain offenses; providing for subsequent reviews; requiring the Department of Corrections to notify a juvenile offender of his or her eligibility to participate in sentence review hearings; entitling a juvenile offender to be represented by counsel; providing factors that must be considered by the court in the sentence review; requiring the court to modify a juvenile offender's sentence if certain factors are found; requiring the court to impose a term of probation for any sentence modified; requiring the court to make written findings if the court declines to modify a juvenile offender's sentence; amending ss. 316.3026, 373.430, 403.161, and 648.571, F.S.; conforming cross-references; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (1) and (3) of section 775.082, Florida Statutes, are amended to read:

775.082 Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

(1)(a) Except as provided in paragraph (b), a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(b)1. A person who actually killed, intended to kill, or attempted to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age shall be punished by a term of imprisonment for life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an

appropriate sentence. If the court finds that life imprisonment is not an appropriate sentence, such person shall be punished by a term of imprisonment of at least 40 years. A person sentenced pursuant to this subparagraph is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(a).

2. A person who did not actually kill, intend to kill, or attempt to kill the victim and who is convicted under s. 782.04 of a capital felony, or an offense that was reclassified as a capital felony, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life if, after a sentencing hearing conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

3. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(a) or (2)(c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)1. For a life felony committed before ~~prior to~~ October 1, 1983, by a term of imprisonment for life or for a term of at least ~~years not less than~~ 30 years.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of at least ~~not less than~~ 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

5. Notwithstanding subparagraphs 1.-4., a person who is convicted under s. 782.04 of an offense that was reclassified as a life felony which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (2)(c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(b)1. For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

2. Notwithstanding subparagraph 1., a person convicted under s. 782.04 of a first-degree felony punishable by a term of years not exceeding life imprisonment, or an offense that was reclassified as a first degree felony punishable by a term of years not exceeding life, which was committed before the person attained 18 years of age may be punished by a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that a term of years equal to life imprisonment is an appropriate sentence.

a. A person who actually killed, intended to kill, or attempted to kill the victim and is sentenced to a term of imprisonment of more than 25 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(b).

b. A person who did not actually kill, intend to kill, or attempt to kill the victim and is sentenced to a term of imprisonment of more than 15 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(c).

c. The court shall make a written finding as to whether a person is eligible for a sentence review hearing under s. 921.1402(2)(b) or (2)(c). Such a finding shall be based upon whether the person actually killed, intended to kill, or attempted to kill the victim. The court may find that multiple defendants killed, intended to kill, or attempted to kill the victim.

(c) Notwithstanding paragraphs (a) and (b), a person convicted of an offense that is not included in s. 782.04 but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401 and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d).

(d)~~(c)~~ For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

(e)~~(d)~~ For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

Section 2. Section 921.1401, Florida Statutes, is created to read:

921.1401 Sentence of life imprisonment for persons who are under the age of 18 years at the time of the offense; sentencing proceedings.—

(1) Upon conviction or adjudication of guilt of an offense described in s. 775.082(1)(b), s. 775.082(3)(a)5., s. 775.082(3)(b)2., or s. 775.082(3)(c) which was committed on or after July 1, 2014, the court may conduct a separate sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence.

(2) In determining whether life imprisonment or a term of years equal to life imprisonment is an appropriate sentence, the court shall consider factors relevant to the offense and the defendant's youth and attendant circumstances, including, but not limited to:

(a) The nature and circumstances of the offense committed by the defendant.

(b) The effect of the crime on the victim's family and on the community.

(c) The defendant's age, maturity, intellectual capacity, and mental and emotional health at the time of the offense.

(d) The defendant's background, including his or her family, home, and community environment.

(e) The effect, if any, of immaturity, impetuosity, or failure to appreciate risks and consequences on the defendant's participation in the offense.

(f) The extent of the defendant's participation in the offense.

(g) The effect, if any, of familial pressure or peer pressure on the defendant's actions.

(h) The nature and extent of the defendant's prior criminal history.

(i) The effect, if any, of characteristics attributable to the defendant's youth on the defendant's judgment.

(j) The possibility of rehabilitating the defendant.

Section 3. Section 921.1402, Florida Statutes, is created to read:

921.1402 Review of sentences for persons convicted of specified offenses committed while under the age of 18 years.—

(1) For purposes of this section, the term "juvenile offender" means a person sentenced to imprisonment in the custody of the Department of Corrections for an offense committed on or after July 1, 2014, and committed before he or she attained 18 years of age.

(2)(a) A juvenile offender sentenced under s. 775.082(1)(b)1. is entitled to a review of his or her sentence after 25 years. However, a juvenile offender is not entitled to review if he or she has previously been convicted of one of the following offenses, or conspiracy to commit one of the following offenses, if the offense for which the person was previously convicted was part of a separate criminal transaction or episode than that which resulted in the sentence under s. 775.082(1)(b)1.:

1. Murder;

2. Manslaughter;

3. Sexual battery;

4. Armed burglary;

5. Armed robbery;

6. Armed carjacking;

7. Home-invasion robbery;

8. Human trafficking for commercial sexual activity with a child under 18 years of age;

9. False imprisonment under s. 787.02(3)(a); or

10. Kidnapping.

(b) A juvenile offender sentenced to a term of more than 25 years under s. 775.082(3)(a)5.a. or s. 775.082(3)(b)2.a. is entitled to a review of his or her sentence after 25 years.

(c) A juvenile offender sentenced to a term of more than 15 years under s. 775.082(1)(b)2., s. 775.082(3)(a)5.b., or s. 775.082(3)(b)2.b. is entitled to a review of his or her sentence after 15 years.

(d) A juvenile offender sentenced to a term of 20 years or more under s. 775.082(3)(c) is entitled to a review of his or her sentence after 20 years. If the juvenile offender is not resentenced at the initial review hearing, he or she is eligible for one subsequent review hearing 10 years after the initial review hearing.

(3) The Department of Corrections shall notify a juvenile offender of his or her eligibility to request a sentence review hearing 18 months before the juvenile offender is entitled to a sentence review hearing under this section.

(4) A juvenile offender seeking sentence review pursuant to subsection (2) must submit an application to the court of original jurisdiction requesting that a sentence review hearing be held. The juvenile offender must submit a new application to the court of original jurisdiction to request subsequent sentence review hearings pursuant to paragraph (2)(d). The sentencing court shall retain original jurisdiction for the duration of the sentence for this purpose.

(5) A juvenile offender who is eligible for a sentence review hearing under this section is entitled to be represented by counsel, and the court shall appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.

(6) Upon receiving an application from an eligible juvenile offender, the court of original sentencing jurisdiction shall hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. When determining if it is appropriate to modify the juvenile offender's sentence, the court shall consider any factor it deems appropriate, including all of the following:

(a) Whether the juvenile offender demonstrates maturity and rehabilitation.

(b) Whether the juvenile offender remains at the same level of risk to society as he or she did at the time of the initial sentencing.

(c) The opinion of the victim or the victim's next ~~of-kin~~. The absence of the victim or the victim's next of kin from the sentence review hearing may not be a factor in the determination of the court under this section. The court shall permit the victim or victim's next of kin to be heard, in person, in writing, or by electronic means. If the victim or the victim's next of kin chooses not to participate in the hearing, the court may consider previous statements made by the victim or the victim's next of kin during the trial, initial sentencing phase, or subsequent sentencing review hearings.

(d) Whether the juvenile offender was a relatively minor participant in the criminal offense or acted under extreme duress or the domination of another person.

(e) Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense.

(f) Whether the juvenile offender's age, maturity, and psychological development at the time of the offense affected his or her behavior.

(g) Whether the juvenile offender has successfully obtained a general educational development certificate or completed another educational, technical, work, vocational, or self-rehabilitation program, if such a program is available.

(h) Whether the juvenile offender was a victim of sexual, physical, or emotional abuse before he or she committed the offense.

(i) The results of any mental health assessment, risk assessment, or evaluation of the juvenile offender as to rehabilitation.

(7) If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court shall modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation or is not fit to reenter society, the court shall issue a written order stating the reasons why the sentence is not being modified.

Section 4. Subsection (2) of section 316.3026, Florida Statutes, is amended to read:

316.3026 Unlawful operation of motor carriers.—

(2) Any motor carrier enjoined or prohibited from operating by an out-of-service order by this state, any other state, or the Federal Motor Carrier Safety Administration may not operate on the roadways of this state until the motor carrier has been authorized to resume operations by the originating enforcement jurisdiction. Commercial motor vehicles owned or operated by any motor carrier prohibited from operation found on the roadways of this state shall be placed out of service by law enforcement officers of the Department of Highway Safety and Motor Vehicles, and the motor carrier assessed a $10,000 civil penalty pursuant to 49 C.F.R. s. 383.53, in addition to any other penalties imposed on the driver or other responsible person. Any person who knowingly drives, operates, or causes to be operated any commercial motor vehicle in violation of an out-of-service order issued by the department in accordance with this section commits a felony of the third degree, punishable as provided in s. 775.082(3)(e) ~~775.082(3)(d)~~. Any costs associated with the impoundment or storage of such vehicles are the responsibility of the motor carrier. Vehicle out-of-

service orders may be rescinded when the department receives proof of authorization for the motor carrier to resume operation.

Section 5. Subsection (3) of section 373.430, Florida Statutes, is amended to read:

373.430 Prohibitions, violation, penalty, intent.—

(3) Any person who willfully commits a violation specified in paragraph (1)(a) is guilty of a felony of the third degree, punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and 775.083(1)(g), by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

Section 6. Subsection (3) of section 403.161, Florida Statutes, is amended to read:

403.161 Prohibitions, violation, penalty, intent.—

(3) Any person who willfully commits a violation specified in paragraph (1)(a) is guilty of a felony of the third degree punishable as provided in ss. 775.082(3)(e) ~~775.082(3)(d)~~ and 775.083(1)(g) by a fine of not more than $50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.

Section 7. Paragraph (c) of subsection (3) of section 648.571, Florida Statutes, is amended to read:

648.571 Failure to return collateral; penalty.—

(3)

(c) Allowable expenses incurred in apprehending a defendant because of a bond forfeiture or judgment under s. 903.29 may be deducted if such expenses are accounted for. The failure to return collateral under these terms is punishable as follows:

1. If the collateral is of a value less than $100, as provided in s. 775.082(4)(a).

2. If the collateral is of a value of $100 or more, as provided in s. 775.082(3)(e) ~~775.082(3)(d)~~.

3. If the collateral is of a value of $1,500 or more, as provided in s. 775.082(3)(d) ~~775.082(3)(c)~~.

4. If the collateral is of a value of $10,000 or more, as provided in s. 775.082(3)(b).

Section 8. This act shall take effect July 1, 2014.

Approved by the Governor June 20, 2014.

Filed in Office Secretary of State June 20, 2014.