

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-685

TORRENCE LAWTON,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

AMENDED PETITIONER'S SUPPLEMENTAL REPLY BRIEF

ON PETITION FOR DISCRETIONARY REVIEW
FROM THE DISTRICT COURT OF APPEAL OF
FLORIDA, THIRD DISTRICT

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INTRODUCTION

In response to this Court’s order, the petitioner filed a supplemental brief on the effect of chapter 2014-220 on the disposition of this case, and the State filed its answer. This is the reply to the State’s supplemental answer brief. “Life without parole” will be abbreviated as LWOP throughout the brief. Unless otherwise indicated, all emphasis is supplied.

SUMMARY OF THE ARGUMENT

The State has not disputed the proper remedy on remand: sentences to terms of not more than thirty years on the nonhomicide counts.

The Supplemental Initial Brief argued that the Court need not apply chapter 2014-220. The State responds that the Court *cannot* do so. It is unnecessary for the Court to consider the State's argument in this case, as the law in effect at the time the offenses were committed provides for a sentence that would satisfy *Graham v. Florida*, 560 U.S. 48 (2010).

ARGUMENT

On remand the circuit court must sentence Mr. Lawton to a term of not greater than thirty years imprisonment for the nonhomicide offenses. The State has not disputed this. Instead it reargues its position that *Graham v. Florida*, 560 U.S. 48 (2010), permits Mr. Lawton to serve LWOP for nonhomicide offenses, even though he is eligible for parole for homicide. Supplemental Answer Brief, 3-4. Should the Court disagree, the State has offered no alternative remedy under the sentencing laws in effect at the time of the charged offenses.

The Initial Brief established that the Court need not apply chapter 2014-220 – the laws in effect in 1987 permit a legal non-LWOP sentence. The State replies that the Court cannot. Supplemental Answer Brief, 2-3. The State is correct that neither chapter 2014-220 or Article X, section 9 of the Florida Constitution provide for retroactive application. In an appropriate case, Florida’s laws and constitution must yield to the United States Constitution. *See* U.S. Const. art. VI, cl. 2; *State v. Harden*, 938 So. 2d 480 (Fla. 2006). Because the relevant statutes in this case already provide for a sentence that would not violate Eighth Amendment, this is not that case.

CONCLUSION

For the foregoing reasons, the Court should remand with directions to vacate the LWOP sentences for attempted murder and armed robbery and sentence him to a term not to exceed 30 years.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Court’s e-filing portal to counsel for the Respondent, Nicole Hiciano, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, 444 Brickell Avenue, Suite 950, Miami, Florida 33131, on October 13, 2014.

/s/Andrew Stanton
ANDREW STANTON
Assistant Public Defender

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that the type used in this brief is 14 point proportionately spaced Times New Roman.

/s/Andrew Stanton
ANDREW STANTON
Assistant Public Defender