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IN THE SUPREME COURT OF FLORIDA

TORRENCE LAWTON,

Petitioner, Case No. SC13-685

v.

STATE OF FLORIDA,

Respondent.

_____/

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

SUPPLEMENTAL RESPONSE OF RESPONDENT

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SUMMARY OF ARGUMENT

By their express language, the statutes that were amended and enacted pursuant to chapter 2014-220, Laws of Florida, are only applicable to crimes committed after July 1, 2014. Further, the Florida Constitution provides that the amendment of a criminal statute shall not affect punishment for any crime previously committed, so the application of this newly enacted legislation would be unconstitutional. Lawton's life sentence without the possibility of parole is legal and should be affirmed. When offenses occur during a single criminal episode, and at least one offense is a homicide offense, there is no Eighth Amendment prohibition to sentencing a juvenile to life imprisonment for nonhomicide offenses at the same time.

ARGUMENT

THE DISTRICT COURT CORRECTLY DETERMINED THAT THERE IS NO EIGHTH AMENDMENT PROHIBITION AGAINST SENTENCING A JUVENILE TO A LIFE SENTENCE WITHOUT PAROLE WHERE HE HAS COMMITTED BOTH HOMICIDE AND NONHOMICIDE OFFENSES WITHIN THE SAME CRIMINAL EPISODE AND RECENT LEGISLATION HAS NO IMPACT ON THIS CASE.

The Florida Legislature recently enacted legislation which amended section 775.082, Florida Statues, to provide that a person under the age of eighteen who actually killed, (as Lawton did), "shall be punished by a term of imprisonment for life if, after a sentencing proceeding conducted by the court in accordance with s. 921.1401, the court finds that life imprisonment is an appropriate sentence." Ch. 2014-220, § 1, Laws of Fla. In addition, section 921.1401, Florida Statues, was created to provide for a sentencing hearing to determine if a term of imprisonment for life or a term of years equal to life imprisonment is an appropriate sentence for those offenders who committed such offense "on or after July 1, 2014,..." *Id.* at § 2. Lawton committed his murder long before July 1, 2014, so the newly enacted legislation is not applicable to his case.

Further, the Florida Constitution imposes a restriction on retroactive application of criminal legislation. Article X, section 9 state that "[r]epeal or amendment of a criminal statute shall not affect prosecution or punishment for

any crime previously committed." This provision thus precludes any newly enacted criminal statutes from applying to pending criminal cases. *See*

Smiley v. State, 966 So.2d 330, 336-37 (Fla. 2007)(newly enacted self defense statute qualified as criminal statute because it has a direct impact on the prosecution of the offense of murder in Florida, and article X, section 9 of Florida's constitution made it impermissible for it to receive retroactive application where it would provide the defendant with a new affirmative defense); *Castle v. State*, 330 So.2d 10, 11 (Fla. 1976)(because ten years was the maximum penalty in effect when the crime was committed, the imposition of a later enacted lower sentence would be unconstitutional pursuant to article X, section 9 of the Florida Constitution); *State v. Pizzaro*, 383 So.2d 762 (Fla. 4th DCA 1980)(because retroactive application of an amended statute affecting prosecution is unconstitutional, the Youthful Offender Act, which alters the prescribed punishments for those persons meeting its requirements, cannot apply to offenses committed before it effective date.

Accordingly, this Court does not need to consider the new legislation because Lawton's conviction became final in 1989 and therefore he is not entitled to retroactive relief under the new legislation. Moreover, as explained in its answer brief, the State maintains that Lawton's sentence does not violate *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176

L.Ed.2d 825 (2010). Although Petitioner was found guilty of a homicide offense, he maintains that his life sentence as to his nonhomicide offenses that were part of the same, single criminal episode are illegal under *Graham*. As the Second and Third District Courts of Appeal and non-Florida jurisdictions have properly recognized, a life sentence under this fact pattern is not illegal under the express language of Graham. When offenses occur during a single criminal episode, and at least one offense is a homicide offense, there is no Eighth Amendment prohibition to sentencing a juvenile to life imprisonment for nonhomicide offenses at the same time. Thus, Lawton's sentence is legal.

CONCLUSION

Based on the arguments and authorities presented herein, the new legislation enacted under 775.082, Florida Statues has no bearing on Petitioner. The State respectfully requests this Honorable Court approve the Third District Court of Appeal decision in Lawton.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Supplemental Brief of Appellant has been furnished by email to counsel for the Petitioner: Andrew Stanton, Assistant Public Defender via electronic service at Appellatedefender@pdmiami.com and astanton@pdmiami.com

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P.9.210(a)(2).

Respectfully submitted and certified,
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