

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC13-685

TORRENCE LAWTON,

Petitioner,

-vs-

THE STATE OF FLORIDA,

Respondent.

PETITIONER'S SUPPLEMENTAL BRIEF

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

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INTRODUCTION

References to the record will be to the appendix to this brief and will be indicated by the letter of the appendix followed by the page number. “Life without parole” will be abbreviated as LWOP throughout the brief. Unless otherwise indicated, all emphasis is supplied.

QUESTION PRESENTED

The Appellant's LWOP sentences for the nonhomicide crimes of attempted murder and armed robbery violate the Eighth and Fourteenth Amendments and Article I § 17 of the Florida Constitution. What is the impact of chapter 2014-220, Laws of Florida, which created a system of judicial review of sentences of juveniles sentenced to life imprisonment or a lengthy term of years?

STATEMENT OF THE CASE AND FACTS

A full statement of the case and facts may be found in the initial brief. The following is most relevant to the subject of this supplemental brief are as follows:

In case number F87-9838B the state charged Torrence Lawton with first-degree murder, attempted first-degree murder, and robbery. (B.). The crimes were alleged to have happened on January 4th, 1987, when Mr. Lawton was sixteen years old. (B. 1-2). A jury found him guilty as charged on all three counts. (C 1). The trial court sentenced Mr. Lawton to life imprisonment for murder. (C. 3-5). Because the crimes occurred in 1987, Mr. Lawton would be eligible for parole on the murder count after twenty-five years. *See* § 775.082(1), Fla. Stat. (1986). On the attempted first-degree murder with a firearm charge the judge sentenced Mr. Lawton to LWOP. (C. 4). He also sentenced Mr. Lawton to LWOP for armed robbery, a first-degree felony punishable by a term of years not to exceed life. (C. 5).

In 2011, Mr. Lawton filed a postconviction motion arguing that his LWOP sentences violated *Graham v. Florida*, 560 U.S. 48 (2010). The trial court denied Mr. Lawton's motion, reasoning that because Mr. Lawton had been convicted of homicide he fell into an exception to *Graham* for defendants who were sentenced for a homicide offense in addition to the nonhomicide crimes. (G. 6-7). The Third District Court of Appeal affirmed.

Lawton v. State, 109 So. 3d 825, 828-29 (Fla. 3d DCA 2013).¹ This Court subsequently granted Mr. Lawton’s petition for discretionary review based on express and direct conflict with the opinions of other district courts. On June 26, 2014, the Court ordered supplemental briefing on the impact of chapter 2014-220, Laws of Florida, on this case.

¹ As discussed in the initial brief, the district court reversed as to a second case in which there was no homicide conviction.

SUMMARY OF THE ARGUMENT

Chapter 2014-226 has no direct bearing on this case. The statutes in effect at the time of the offenses permit non-LWOP sentences. A life felony may result in a sentence of life, or a term of not more than 40 years. Here, the attempted murder count was not even a life felony. The trial court enhanced the first-degree felony of attempted first-degree murder by applying section 775.087, Florida Statutes. This enhancement violated this Court's decision in *Traylor v. State*, 785 So. 2d 1179 (Fla. 2000).

The statutes in place at the time of the offense also permit a constitutional sentence for armed robbery with a firearm, a first-degree felony punishable by a term of years not exceeding life. Under the circumstances, however, the term of years cannot exceed 40 years. The maximum sentence for a life felony committed by a juvenile is 40 years. Permitting a harsher sentence for crime that is lesser in degree would violate the Eighth and Fourteenth Amendments as well as Article I, Section 17.

ARGUMENT

Chapter 2014-226 has no direct impact on this case. The laws in effect at the time of Mr. Lawton's offenses allow the trial court to impose non-LWOP sentences. Consequently, the court does not confront the same problem it does in cases where a defendant received a mandatory LWOP sentence for homicide in violation of *Miller v. Alabama*, 132 S.Ct. 2455 (2012), where Florida law provides no legal sentencing alternative. *See, e.g., Horsley v. State*, 121 So. 3d 1130 (Fla. 5th DCA 2013), *rev. granted* SC13-1938, SC13-2000 (Nov. 14 2013) (unpublished order).

The trial court treated attempted first-degree armed murder as a life felony. The crimes for which Mr. Lawton was convicted took place on January 4, 1987. At that time, a life felony was punishable by "a term of imprisonment for life or by a term of imprisonment not exceeding 40 years." § 775.082(3)(a), Fla Stat. (1986). An LWOP sentence for a life felony would violate *Graham*.² The statute provides a legal alternative: a term of 40 years or less, *see Frison v. State*, 76 So. 3d 1103 (Fla. 5th DCA 2011), so long as that sentence would permit a meaningful opportunity for release.

² *Graham v. Florida*, 560 U.S. 48 (2010)

In fact, the attempted first-degree murder in this case is a first-degree felony subject to a sentence no greater than 30 years. An attempt to commit a capital felony is a first-degree felony. § 777.04(4)(b), Fla. Stat. (1986). The court enhanced the attempted murder to a life felony based on the use of a firearm, applying section 775.087. This enhancement was contrary to this Court’s decision in *Traylor v. State*, 785 So. 2d 1179 (Fla. 2000). By its own terms, section 775.087 cannot be applied to a crime in which the use of a firearm is an element. § 775.087(1). “The essential elements of attempted felony murder include the elements of the actual underlying felony.” *Traylor* at 1181. This is true even when the indictment charges on a theory of premeditated murder as well. *Id.* at 1181-82. The indictment in this case charged attempted murder “with felonious intent and from a premeditated design to effect the death of a human being, **or while engaged in the perpetration of, or in an attempt to perpetrate robbery ...**” (B.) In count three it charged robbery with a firearm.

The armed robbery sentence is limited to a term of 40 years or less. The crime of armed robbery with a deadly weapon was and is a first-degree felony punishable by a term of years not exceeding life. § 812.13(2)(a), Fla. Stat. (1986). As described above, any juvenile convicted of a *life* felony could be sentenced to not more than 40 years. Any sentence exceeding 40 years for a first-degree felony “punishable by life” would violate the

Eighth and Fourteenth Amendments, as well as Article I, 17. *See Solem v. Helm*, 463 U.S. 277 (1983); *Peters v. State*, 128 So. 3d 832 (Fla. 4th DCA 2013). “If more serious crimes are subject to the same penalty, or to less serious penalties, that is some indication that the punishment at issue may be excessive.” *Solem*, 463 U.S. at 291. In *Peters* the Fourth District Court of Appeal held:

By creating a system of graduated penalty classes, the legislature established that certain crimes were more worthy of punishment than others, with life felonies standing a tier above aggravated first degree felonies. Under the current circumstance, Peters would have been better situated had he committed a life felony, a more serious crime under the legislative framework, than the crimes he committed. This is an affront to the Constitution that cannot stand. Therefore, under the applicable statutes, juvenile defendants convicted of aggravated first-degree felonies committed between October 1, 1983, and July 1, 1995, may not be sentenced beyond 40 years imprisonment.

128 So. 3d at 855.

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 or 40 years, respectively.

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 July 26, 2014.

/s/Andrew Stanton
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CERTIFICATE OF COMPLIANCE

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

/s/Andrew Stanton
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