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IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA, Petitioner, v. FRANK ANDRE MOSLEY, Respondent.	Case No. SC13-704 L.T. No. 1D11-4936

ON DISCRETIONARY REVIEW FROM
THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

MERITS BRIEF OF PETITIONER

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PRELIMINARY STATEMENT

Petitioner, the State of Florida, the Appellee in the District Court of Appeal (First District) and the prosecuting authority in the trial court, will be referenced in this brief as Petitioner, the prosecution, or the State. Respondent, Frank Andre Mosley, the appellant in the First District and the defendant in the trial court, will be referenced in this brief as Respondent or by proper name.

The record on appeal will be referenced by an "R" with the appropriate roman numeral to denote the volume, followed by any appropriate page number. The trial transcript will be referenced by an "T" with the appropriate roman numeral to denote the volume, followed by any appropriate page number. The sentencing transcript will be referenced as "S", followed by any appropriate page number.

A bold typeface will be used to add emphasis. Italics appears in original quotations, unless otherwise indicated.

STATEMENT OF THE CASE

Respondent was charged with and, following a jury trial, convicted of one count of Lewd and Lascivious Molestation and one count of Aggravated Stalking. (RI 66-67; RIII 435-436). Prior to trial, the State filed notice that the Respondent qualified for Prison Releasee Reoffender (PRR) sentencing. (RI 92). At sentencing, after receiving the requisite proof, the trial court imposed consecutive PRR sentences for counts I and II. (RIII 465-471; S 2-16). Respondent appealed, asserting that his consecutive

PRR sentences were illegal as the crimes were committed in a single criminal episode. The First District affirmed Respondent's convictions. However, the First District held that consecutive PRR sentences are impermissible when the crimes are committed during a single criminal episode and remanded for resentencing stating the following:

> PRR sentences may not be ordered to run consecutively when the crimes were committed during a single criminal episode. *See Preston v. State*, --- So.3d ----, ---- (Fla. 1st DCA 2012); *Robinson v. State*, 829 So.2d 984, 985 (Fla. 1st DCA 2002). Because we conclude that Count I and Count II occurred during the same criminal episode, Appellant's consecutive PRR sentences were error.
>
> Upon resentencing, the trial court may remove the PRR designation on one of the counts and still impose consecutive sentences. *See Reeves v. State*, 957 So.2d 625, 628–29 (Fla.2007) (holding that Criminal Punishment Code sentence can run consecutive to PRR sentence even though offenses arose from same criminal episode). Although not argued by the State, we recognize an apparent conflict between our opinion in *Preston* and the Fifth District's opinion in *Young v. State*, 37 So.3d 389, 391 (Fla. 5th DCA 2010), which in analyzing the Supreme Court's decision in *Reeves*, held that consecutive PRR sentences are not prohibited.

Slip Op. at 1.

The State timely filed notice to invoke jurisdiction of the Florida Supreme Court. This Court has accepted jurisdiction and this appeal follows.

STATEMENT OF THE FACTS

The State provides a very brief synopsis of the facts for the underlying crimes, although Respondent's convictions are not at issue.

The victim was 18 years old at the time of trial. In April 1-4, 2007, the victim was 14 and living with her stepfather on Overman Street, but she also stayed at the Pines Village trailer park in Bagdad with her sister, Miranda. (TI 29-31). The victim's brother, Kenneth, lived with her stepfather; her sister, Destiny, stayed 'back and forth just like me." (TI 31). The landlord, Brenda Gibson, and her daughter, Star, also lived at the trailer park. (TI 32).

The victim met John Mosley at the trailer park in April, 2007. The victim was at the landlord's house when Mosley arrived, and the landlord asked the victim, Destiny, and Star to show Mosley a trailer. (TI 32). While they were at the trailer, Mosley told the victim she had a nice butt. (TI 33). Mosley asked the victim her age and questions about school. The vicitm did not answer him, but Destiny told Mosley how old the victem was and what school she went to. (TI 34). The victim did not tell anyone about the conversation because she "didn't want to start family problems." (TI 37).

Another day the victim, her cousin Dustin, and Destiny were walking down the road to go swimming, and Mosley drove by in a white van. (TI 37-38). Mosley asked where the victim was staying. (TI 40). The victim said she was going to the river, and Mosley offered to buy them drinks. (TI 41). Kenneth and his friend, Micah, were also at the river. (TI 42). Mosley arrived with the drinks. They were all swimming when Mosley got in the

water in his underwear. The victim was wearing pants and a bathing suit top. (TI 43-44). The victim was swimming when she felt someone come up underneath her and grab her butt with two hands. The victim swam away. (TI 44). The victim later told, Micah, what happened. (TI 46).

While the victim was walking home from the river, Mosley pulled up beside her and offered her money and a telephone. The victim told him no. (TI 47). The victim saw Mosley two more times after that, once when she did not go to school, and another time, when her sister got home and said Mosley was parked down the road and wanted her to come over there. Mosley was driving a different car that day. He asked the victim if she wanted to go for a ride, but she said no. (TI 48 50). The victim was staying with her stepfather on Overman Street at the time. (TI 48). Another time, the victim saw Mosley in her yard talking to her stepfather about a boat. (TI 51).

The victim saw Mosley one more time early in the morning before school. Destiny was going to the bus stop, and she came back with a letter for the victim. The victim got scared when she started to read the letter because she "knew that he was somewhere close because he had came to the house." (TI 52-53). The victim showed the letter to her friend's mom; Mosley drove by while they were on her friend's porch. The victim and her friend went to the bus stop, and the victim told the bus driver. When she got to school, she gave the letter to the school resource officer. (TI 54-55)

The victim identified the letter. (TI 55-56). The victim identified

appellant in court as the man who grabbed her buttocks in the river and gave her the letter. (TI 59). Destiny and Micah, among others, testified at the trial. Their testimony corroborated that of the victim's.

The letter was read into evidence by a detective as follows:

> What's up, Misty? Smiling face. Well, I'm just setting here in the tub smiling face and I said this would be a good time to write you. It was so nice to see you today. I am always thinking about you and wondering if yu are okay. i hope you are thinking about me like I think about you. Lady, I can tell that you are a good young lady. What I see is that you should have been in a older person life. You have what it takes to make a good life for yourself, but kicking it with them little boys won't get you anywhere. They have so much to learn about life and don't have nothing to offer. Misty, baby, don't play yourself with them young boys. Baby, take yourself to another level where you belong. Today I got closer to your stepdad so I can start coming by your house and talk with him. This will help you and me to be able to see, look into each other's eyes. Baby, once I'm in friends with your parents, then you and I can have words with each other. I hope this is what you want. I feel that you do, smiley face and baby, I will help you and your family. Okay. Your little sister is so cool. I like her and she is very nice to me. Lady, write me and put the letter in my car when I come over. I really want to know how you feel about me. You're 14. I'm 30, but age in't nothing but a number. Young females now a'days like older men because they know how to treat a young woman. Look, I need you and your sister sizes so I can get ya'll you'll some outfits and shoes. I am going to buy your dad some food for the house. He is having a hard time. I will be a friend to your family. I know how hard life can be at times. Yes, I got money and cars, but I know how it feels to be doing bad. I had a female get me for everything, exclamation point. Misty, you said you want me to get a place out by your aunt's trailer. Well, lady, if I do that, it's only because to scratched out it able me to be closer to you and you could visit, but I was thinking that trailer park isn't the place for us to be spending time at. Misty, them people would find out and we don't need anyone in our business. I have a place and I can't read that, here off Highway 87 north by the skating ring. It really laid back here and no one knows who come and go. Misty, I promise to be good to you and take my time with you and teach you what love and care is all about. You know, we have some years to go before our business can be known. Well, the way I can

put money in your pocket without anyone knowing what's real up is by letting you keep my daughter. She is mixed. You'll love her. Plus you need to keep money in your pocket so you can call me if you need me. Oh, the girl across the street gave me her number, Lisa in parenthesis, but I didn't call her. Shit, lady, females try me every day, but I have my eyes on you, smiley face and only you. Baby, do you miss seeing me? Do you think about me? And yes, you do have a nice butt, but what I like most is your golden heart. You seem to be a strong person. I don't like weak females. That's why you need a real man in your life, not some kid-minded kid. Look, baby, don't keep none of these letter, okay? Please let me know when you need something. If I'm to be your man, then let me do my part when I come to helping out, plus, when you stayed out of school, you can come spend the day at my place. No one will ever know no one will never know. Hey, you know, I would get in the water if you called me chicken. Smiley face with the tongue sticking out. Say, my love, what time do you catch the bus to school, and where do it pick you up at? Keeping it real, your Andre. PS, you better write your soldier back, smiley face, it's all good, baby, I'll show you how real man do it.

(TII 211-214)

SUMMARY OF ARGUMENT

This Court should adopt the holding in *Young v. State*, 37 So.3d 389 (Fla. 5th DCA 2010), which relied on the reasoning of *Reeves v. State*, 957 So.2d 625 (Fla. 2007), to conclude that a trial court can lawfully impose two or more PRR sentences consecutively for offenses that arise out of the same criminal episode.

ARGUMENT

ISSUE: WHETHER TWO OR MORE PRISON RELEASEE REOFFENDER SENTENCES MAY BE IMPOSED CONSECUTIVELY FOR OFFENSES THAT ARISE OUT OF THE SAME CRIMINAL EPISODE?

I. Standard of Review

Questions of statutory interpretation are reviewed *de novo*. *J.M. v. Gargett*, 101 So.3d 352, 356 (Fla. 2012).

II. Merits

Frank Mosley (Mosley) was charged and convicted of one count of Lewd and Lascivious Molestation and one count of Aggravated Stalking. After receiving the requisite proof, the trial court designated Mosley a Prison Releasee Reoffender (PRR) and imposed consecutive PRR sentences for counts one and two. Mosley appealed asserting that his consecutive PRR sentences were illegal as the crimes were committed in a single criminal episode based on First District Court of Appeal (First District) precedent. The First District affirmed Respondent's convictions. *Mosley v. State*, 112 So.3d 538, 539 (Fla. 1st DCA 2013). However, the First District held that consecutive PRR sentences are impermissible when the crimes are committed during a single criminal episode and remanded for resentencing. *Id.*

The First District relied on its decision in *Robinson v. State*, 829 So.2d 984, 985 (Fla. 1st DCA 2002), as controlling precedent for this conclusion. The *Robinson* court was the first case in the First District to

consider whether consecutive PRR sentences for crimes occurring in a single criminal episode were permissible. The *Robinson* court relied on the rationale in *Hale v. State*, 630 So.2d 521 (Fla. 1993), to conclude it was not permitted.

A. History-*Hale* and its predecessors

In *Palmer v. State*, 438 So.2d 1 (Fla. 1983), the defendant walked into a funeral parlor during a wake, brandished a gun, and ordered the mourners to throw their valuables on the floor. Palmer was convicted of thirteen counts of robbery, one count of aggravated assault, and one count of carrying a concealed firearm. The trial court sentenced Palmer on the robbery counts to seventy-five years of imprisonment for each count, with the sentences to run consecutively, for a total of 975 years. *Id.* at 2. The trial court also imposed the mandatory minimum sentence of three years on each robbery count, for a total of thirty-nine years without eligibility for parole, for possessing a firearm during the commission of the robberies. *Id.* This Court reversed the three-year mandatory minimum sentences on each of the thirteen consecutive sentences, holding that section 775.087, Florida Statutes (1981), did not authorize a trial court to deny a defendant the eligibility for parole for a period greater than three calendar years. *Id.* at 3. This Court noted that the executive branch has the exclusive power to grant paroles or conditional releases, and the Legislature can mandate through statute that certain convicted persons

serve a certain amount of their sentence without eligibility for parole. *Id.* However, while courts can impose the mandatory minimum terms already authorized, they are not permitted to exceed such terms by imposing consecutive mandatory minimum terms in such circumstances without explicit authority. *Id.* This Court explained that by imposing consecutive mandatory minimum terms, the trial court sentenced Palmer to thirty-nine years without eligibility for parole based on a statute that expressly authorized denial of eligibility for parole for only three years. *Id.* Finally, this Court stated: "[w]e do not prohibit the imposition of multiple concurrent three-year minimum mandatory sentences upon conviction of separate offenses included under subsection 775.087(2), nor do we prohibit consecutive mandatory minimum sentences for offenses arising from separate incidents occurring at separate times and places." *Id.* at 4. Thus, the *Palmer* court upheld the trial court's imposition of sentences of seventy-five years imprisonment on each of the thirteen counts of robbery, with the sentences to run consecutively for a total of 975 years but reversed and remanded for the trial court to correct the sentences so that the thirteen minimum mandatory terms run concurrently. *Id.*

The *Palmer* court rejected the argument that Fla. Stat. Ann. § 775.087,

when read in pari materia[1] with subsection 775.021(4)[2] allows for consecutive sentencing at the discretion of the trial court. The court simply stated:

> We do not believe the legislature intended such a result as the sentence under review here when it added subsection (4) to section 775.021. In any event we are unwilling to construe these two statutes in such a way as to allow the imposition of any sentence without eligibility for parole greater than three calendar years.

Id. at *4. Chief Justice Alderman dissented stating:

> Reading Fla. Stat. Ann. § 775.087(2), providing that a person who had a firearm in his possession during the commission of a robbery shall be sentenced to a minimum of three years imprisonment, in conjunction with Fla. Stat. Ann. § 775.021(4) (West 1981), requiring separate sentences for separate criminal offenses with the trial judge making the determination as to whether these sentences are to be served concurrently or consecutively, I can only conclude that the legislature intended separate mandatory minimum sentences which could run consecutively for separate offenses. Had Palmer committed thirteen robberies at thirteen separate houses, there would be no question that he could receive thirteen separate, consecutive, three-year mandatory minimum sentences. He should not be entitled to less than this merely because he committed the thirteen separate robberies

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[1] "The doctrine of *in pari materia* is a principle of statutory construction that requires that statutes relating to the same subject or object be construed together to harmonize the statutes and to give effect to the Legislature's intent." Fla. Dep't of State v. Martin, 916 So.2d 763, 768 (Fla. 2005).

[2] Section 775.021, Florida Statutes (1981) states: Whoever, in the course of one criminal transaction or episode, commits an act or acts constituting a violation of two or more criminal statutes, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense, excluding lesser included offenses, committed during said criminal episode, **and the sentencing judge may order the sentences to be served concurrently or consecutively.** (emphasis added)

> in the same criminal episode. Certainly a defendant who commits multiple crimes should be punished more severely than one who commits only one crime. The legislature did not intend that crime be "cheaper by the dozen."
>
> The constitution does not proscribe consecutive, three-year mandatory minimums in the present case. Fla. Stat. Ann. § 775.021(4) requires separate sentences and gives the trial court the discretion to determine whether they are to be served consecutively. I would approve the decision of the district court affirming these sentences.

Id.

Building on the rational of *Palmer*, this Court in *Daniels v. State*, 595 So.2d 952, 953 (Fla. 1992), answered the following certified question:

> Does a trial judge have the discretion under sections 775.021(4) and 775.084, Florida Statutes (1988) to impose consecutive fifteen-year minimum mandatory sentences for first-degree felonies committed by an habitual violent felony offender arising from a single criminal episode?

Daniels was convicted of burglary while armed, sexual battery with a deadly weapon, and armed robbery that all occurred during a single criminal episode. *Id.* Daniels was sentenced, for each offense, to life in prison with a 15-year minimum mandatory sentence all running consecutively as a Habitual Violent Felony Offender (HVFO). *Id.* Daniels argued that the consecutive minimum sentences were illegal based on Palmer, 438 So. 2d 1 This Court recognized that it had previously upheld consecutive minimum mandatories for capital offenses in *State v. Edmond*, 476 So.2d 165 (Fla. 1985) and *State v. Boatwright*, 559 So.2d 210 (Fla. 1990), while leaving the *Palmer* rational intact. In order to reconcile the holdings in all of these cases, the *Daniels* court distinguished between minimum mandatory sentences

included in the sentence under the statute for the prescribed crime, such as the mandatory 25-years before eligibility for parole for murder, and minimum mandatory sentences imposed through enhancement statutes, such as the HVFO statutory provision. Then this Court, relying on its holding in *Palmer v. State*, 438 So.2d 1 (Fla. 1983), concluded that consecutive sentences were impermissible because the HVFO enhancement statute did not specifically provide for consecutive sentences but rather the Legislature intended to punish repeat felony offenders for longer periods of time which was accomplished by enlarging the maximum sentence that could be imposed. *Id.* at 954. The *Daniels* court, relying upon its decision in *Palmer*, also rejected the State's contention that section 775.021(4)(a), Florida Statutes (Supp. 1988) permitted consecutive sentences. *Id.* The *Daniels* court reversed and remanded with directions that the minimum mandatory terms be made to run concurrently. *Id.*

In *Hale*, this Court held that a trial court lacks discretion to impose consecutive sentences under the habitual violent felony offender (HVFO) statute for offenses arising out of the same episode. *Hale* at 524. Hale was convicted of one count of sale of cocaine and one count of possession of cocaine with intent to sell. *Hale* at 522. The trial court sentenced Hale, as a HVFO on each count, to 25-years incarceration with a 10-year minimum mandatory term with the sentences for each count to run consecutively. *Id.*

The *Hale* court once again rejected the State's argument that section 775.021(4)(a), Florida Statutes, permits consecutive sentencing under the trial court's discretion[3] based on the *Daniels* court's rejection of this argument. *Id.* at 524. This Court stated:

> For the same rationale set out in *Daniels* we find that Hale's enhanced maximum sentences must run concurrently. In *Daniels* we recognized that
>
> > by enacting sections 775.084 and 775.0841, Florida Statutes (Supp.1988), the legislature intended to provide for the incarceration of repeat felony offenders for longer periods of time. However, this is accomplished by enlargement of the maximum sentences that can be imposed when a defendant is found to be an habitual felon or an habitual violent felon.
>
> *Id.* Thus, the legislative intent is satisfied when the maximum sentence for each offense is increased. We find nothing in the language of the habitual offender statute which suggests that the legislature also intended that, once the sentences from multiple crimes committed during a single criminal episode have been enhanced through the habitual offender statutes, the total penalty should then be further increased by ordering that the sentences run consecutively.

Id. Based on this, the *Hale* court reversed and remanded with directions that the entire enhanced sentence pursuant to the HVFO statutory provision

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[3] Subsection 775.021(4)(a), Florida Statutes, requires separate sentences for separate offenses arising from a single criminal transaction or episode *and allows the trial court to order the sentences served concurrently or consecutively.*(Emphasis added). Section 775.021(4), Florida Statutes (1981), is worded substantially the same as the current subsection 775.021(4)(a).

be made to run concurrently[4], not just the minimum mandatory term as held in *Daniels*. *Id*.

B. *Reeves v. State*, 957 So.2d 625 (Fla. 2007)

When the Legislature enacted the sentencing structure for prison release reoffenders it purposely included their intent in enacting the provision. Section 775.082(9), Florida Statutes, states, in pertinent part:

> (c) *Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law*, pursuant to s. 775.084 or any other provision of law.
>
> (d)1. *It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law* and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.

(Emphasis added).

In *Reeves*, this Court held that a PRR sentence for one count may be followed consecutively by a Criminal Punishment Code (CPC) sentence for another count, even if the crimes arose from a single criminal episode. *Reeves* at 626. Reeves was convicted of four third-degree felonies: 1) burglary of a structure, 2) grand theft, 3) resisting a law enforcement

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[4] However, similarly convicted defendants that are not recidivists can still receive consecutive sentences thereby possibly serving longer sentences then their recidivist counterparts.

officer with violence, and 4) battery on a law enforcement officer. *Id.* at 627. Reeves was sentenced as a PRR on count three followed by three consecutive CPC sentences on counts one, two, and four. *Id.* Reeves appealed arguing that the sentences imposed for each of his four crimes must run concurrently because his sentence under the PRR statute is the maximum he can receive for all the crimes committed during one criminal episode. *Id.* at 628.

First, this Court held, applying the rules of statutory construction, that the PRR statute:

> expresses clear legislative intent that prison releasee reoffenders be 'punished to the fullest extent of the law[5]' and that trial judges have the discretion to impose greater sentences of incarceration as authorized by law[6].

Id. at 629. For the first time, citing to section 775.021(4), Florida Statutes, this Court recognized that "nothing in the PRR statute can be construed as restricting a trial judge's general discretion to impose sentences consecutively or concurrently." *Id.*

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[5] Section 775.082(9)(c), Florida Statutes states: *Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law*, pursuant to s. 775.084 or any other provision of law. (Emphasis added).

[6] Section 775.082(9)(d)1, Florida Statutes states: It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be *punished to the fullest extent of the law* and as provided in this subsection … (Emphasis added).

Second, this Court held that the PRR minimum mandatory sentence **does not** serve as the statutory *maximum* sentence for all offenses arising out of the same criminal episode. *Id.* at 632. In reaching this conclusion, this Court relied on its holdings in *Grant v. State*, 770 So.2d 655 (Fla. 2000) and *Nettles v. State*, 850 So.2d 487 (Fla. 2003). In *Grant*, the defendant was sentenced as a PRR and HFO to fifteen years for one count of sexual battery. *Grant* at 657. Grant appealed arguing that this sentence violated double jeopardy because he was being punished twice for the same offense. *Id.* The *Grant* court held that the legislative intent of the Prison Releassee Reoffender Punishment Act (PRRPA) was clear that offenders previously released from prison who meet the criteria of the Act be punished to the fullest extent of the law *and* as provided for in the Act. *Id.* at 658. Quoting *Cotton v. State*, 769 So.2d 345, 354 (Fla. 2000), the *Grant* court held that:

> "[W]hen the Act is properly viewed as a mandatory minimum statute, its effect is to establish a sentencing "floor." If a defendant is eligible for a harsher sentence "pursuant to [the habitual offender statute] or any other provision of law," the court may, in its discretion, impose the harsher sentence."

Grant at 658. The *Grant* court concluded that the Legislature's intent both to provide a mandatory minimum term of imprisonment pursuant to the PRRPA and to allow for imposition of the greatest sentence authorized by law is clear. *Id.* at 659. The *Grant* court held that a defendant may be sentenced as a PRR and an HFO for one offense as long as the HFO term was longer then

the PRR term. *Id.*

In *Nettles*, this Court held that a defendant may be sentenced pursuant to the PRRPA as well as the CPC for one offense. *Nettles* at 495. Nettles entered a plea to two counts of attempted lewd and lascivious conduct, third degree felonies, in exchange for concurrent PRRPA and CPC sentences for 66.4 months on each count. *Nettles* at 489. Under the PRRPA, Nettles would have to serve a mandatory minimum term of five years imprisonment without the eligibility for gain-time. *Id.* However, because of Nettles extensive criminal history, his lowest permissible CPC sentence was 66.4 months[7]. Thus, the last 6.4 months of the sentence would be served pursuant to the CPC. Nettles argued that because the language of the PRRPA precludes sentencing under the "sentencing guidelines[8]" that his sentence pursuant to the CPC was illegal. *Id.* at 489-490.

This Court stated:

> [I]f we were to follow the logic of the dissent and hold that Nettles could only be sentenced to the 60 months provided by the PRRPA, the result would be a sentence less than that which he would have received, namely 66.4 months, had he not been sentenced as a prison

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[7] Section 921.0024(2), Florida Statutes, states: If the lowest permissible sentence under the code exceeds the statutory maximum sentence as provided in s. 775.082, the sentence required by the code must be imposed.

[8] The CPC repealed and replaced the sentencing guidelines for all crimes committed after October 1, 1998, but are still applicable to crimes committed before the effective date of the CPC. *Nettles* at 492.

> releasee reoffender. Such an interpretation and application would completely ignore the intent of the Legislature in enacting the PRRPA. The Legislature unquestionably intended that those sentenced under the PRRPA would "be punished to the fullest extent of the law." § 775.082(9)(d) 1., Fla. Stat. (2000). We have repeatedly held that "'[w]hen construing a statutory provision, legislative intent is the polestar that guides' the Court's inquiry. Legislative intent is determined primarily from the language of a statute." *State v. Rife*, 789 So.2d 288, 292 (Fla.2001) (*quoting McLaughlin v. State*, 721 So.2d 1170, 1172 (Fla.1998)). As Nettles does not contest that he qualifies for sentencing as a prison releasee reoffender, his negotiated sentence of 66.4 months, with the first 60 months being served pursuant to the PRRPA and the remaining 6.4 months served under the CPC, effectuates the Legislature's intent in this case and comports with the applicable statutory provisions.

Finally, the *Reeves* court held that the holdings in *Daniels* and *Hale*, which interpreted consecutive sentences that involved the violent career criminal statute, HVFO, and were decided when the sentencing guidelines were in effect had no bearing on the interpretation of the PRRPA and thus, did not extend that rational to the *Reeves* case. *Reeves* at 633. In conclusion, the *Reeves* court held that based on the legislative intent plainly seen in the PRRPA, a PRR sentence for one count can be followed by a consecutive CPC sentence for another count for crimes occurring during one criminal episode. *Id.* 633-634.

C. Conflict Between Districts

The First District's decision in the instant case expressly and directly conflicts with the Fifth District's decision in *Young v. State*, 37 So.3d 389 (Fla. 5th DCA 2010). Young was convicted of five aggravated assaults. *Id.* The trial court imposed five consecutive PRR sentences. *Id.* Young

appealed arguing that consecutive PRR sentences were illegal when the crimes occurred during the course of a single criminal episode. *Id.* The Fifth District Court of Appeal (Fifth District), based on the reasoning and holding in *Reeves v. State*, 957 So.2d 625 (Fla. 2007), held otherwise, and upheld the consecutive PRR sentences even though the crimes arose from a single criminal episode. The Fifth District in *Young* found:

> Subsequently, the Fifth District recognized in *Reeves v. State*, 920 So.2d 724 (Fla. 5th DCA 2006) that the prison releasee reoffender act is not an enhancement statute, but rather, a minimum mandatory statute, and thus, the rule established in *Hale* had no application to the PRR statute. The Florida Supreme Court agreed in *Reeves v. State*, 957 So.2d 625, 633 (Fla. 2007) finding that *Hale* had little bearing on the interpretation of the PRR statute. In finding that the trial court had the discretion to impose a criminal punishment code sentence consecutively to a PRR sentence for offenses arising from the same criminal episode, the Court stated,
>
> > "Paragraph (b) indicates that section 775.082(9) dictates a minimum sentence or sentencing floor, not a statutory maximum....Moreover, nothing in the PRR statute can be construed as restricting a trial judge's general discretion to impose sentences consecutively or concurrently."
> >
> > *Reeves* at 630.
>
> Based upon the Supreme Court's decision in *Reeves*, the cases cited by defendant, all of which rely upon *Hale* as their foundational authority, are called into question. Given the holding in *Reeves* and the stated intent of the PRR statute to punish eligible offenders to the fullest extent of the law, the court can find no reasonable interpretation of the PRR statute that would prohibit consecutive PRR sentences but permit the imposition of consecutive PRR and criminal punishment code sentences as approved in *Reeves*.

Young at 390-391.

D. Argument

The State contends that both the PRRPA and Section 775.021(4)(a), Florida Statutes, when read together effectuates the Legislature's intent with respect to sentencing prison release reoffenders. In *Reeves*, this Court held that the "legislative intent of the PRRPA was clear that prison releasee reoffenders be punished to the fullest extent of the law and that trial judges have the discretion to impose greater sentences of incarceration as authorized by law." *Reeves* at 629. This Court also held that nothing in the PRR statute can be construed as restricting a trial judge's general discretion to impose sentences consecutively or concurrently citing section 775.021(4), Florida Statutes. *Id.* at 630. Finally, the *Reeves* court found that the rationals of *Hale* and *Daniels* had no bearing on the interpretation of the PRRPA. *Id.* at 633. Furthermore, the Legislature has mandated that trial courts must impose a sentence for each criminal offense committed during a single criminal episode and that trial courts have the discretion to order those sentences to run concurrently or consecutively and nothing within subsection 775.021(4)(a) could be construed as limiting this mandate by the Legislature to sentences imposed solely pursuant to the CPC. *See* § 775.021(4)(a), Fla. Stat.

Under *Hale* and its predecessors, trial courts could not impose longer sentences then specifically provided for by the Legislature in statutory enhancement statutes. In *Palmer v. State*, supra., this meant trial courts

could not order mandatory minimum sentences pursuant to 775.087 for possession of a firearm during the commission of an enumerated offense, to run consecutively because it was the executive branch that determined the amount of time that a defendant had to serve before being eligible for parole. In *Hale v. State, supra.*, this meant that because the Legislature had provided that habitual offenders could be punished with expanded sentences beyond their sentencing guideline maximum a trial court could not then lengthen the sentence again by ordering the sentences to run consecutively. The rationale of *Hale* and its predecessors was framed around the defendant's eligibility for parole and the sentencing guidelines, neither of which exists today and the apparent silence regarding concurrent/consecutive sentencing within the enhancement provisions at issue in those cases.

Now, based on *Hale* and its predecessors, Mosley would urge this Court to find that consecutive PRR sentences are illegal. Essentially, Mosley's argument is that a sentence for one offense imposed pursuant to the PRR statutory provision, is the maximum a defendant can receive for all PRR qualifying offenses commited during one criminal episode. Mosley's theory amounts to every shopper's dream; buy one and get everything else for free. This is an absurd result and such an interpretation would completely ignore the intent of the Legislature in enacting the PRRPA. The Legislature could not possibly have intended for defendant's that are prison release

reoffenders to get a "bulk discount[9]" when their intent was for these offenders to be "punished to the fullest extent of the law."

Only when both the PRRPA and Section 775.021(4)(a), Florida Statutes, are read together is the Legislature's intent with respect to sentencing prison release reoffenders effectuated. Based on *Reeves*, this Court should reject the First District's holding in the instant case as it relies on *Hale*. Instead, this Court should adopt the Fifth District's holding in *Young* which relied on the reasoning in *Reeves*, to conclude that a trial court, at its discretion, can lawfully impose two or more PRR sentences consecutively for offenses that arise out of the same criminal episode.

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[9] This same rationale calls into question the holdings of *Hale* and its predecessors because of this Court's apparent reluctance to apply the Legislature's grant to the trial court, under § 775.021(4), Fla. Stat., the discretion to impose concurrent or consecutive sentencing to the sentence modifying provisions at issue in those cases. All of these modifying provisions were silent with respect to concurrent/consecutive sentencing but the Legislature's mandate in subsection 775.021(4) was clear. It is also clear that the Legislature is well aware that it provided the trial court with this discretion. In 1999, the Legislature amended section 775.087, Florida Statutes, adding subsection (2)(d) which states that "*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" thereby removing the trial court's discretion and making consecutive sentences under this sentence modifying provision mandatory. Ch. 99-12, § 1, at 540, Laws of Fla. (emphasis added).

CONCLUSION

Based on the foregoing argument and authority, the State respectfully requests this Honorable Court reverse the decision in *Mosley v. State*, 112 So.3d 538 (Fla. 1st DCA 2013), and declare that consecutive sentences, in which the defendant is designated a PRR, are permissible.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by ELECTRONIC MAIL on March 11, 2014: Glen Gifford, Esq. at glen.gifford@flpd2.com.

CERTIFICATE OF COMPLIANCE

I certify that this brief was computer generated using Courier New 12 point font.

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