IN THE SUPREME COURT OF FLORIDA

CORTEZ HATTEN,

Petitioner,

v.

CASE NO.: SC15-22
Lower Tribunal No(s).: 1D12-5504;
202010CF000239XXAXMX

STATE OF FLORIDA,

Respondent.

_____/

ON DISCRETIONARY REVIEW FROM
THE FIRST DISTRICT COURT OF APPEAL

PETITIONER'S INITIAL BRIEF ON JURISDICTION

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STATEMENT OF THE CASE AND THE FACTS

Petitioner, Cortez Hatten, was convicted of attempted second degree murder in Gadsden County Case No. 2010-CF-239, after a jury trial.[1] In addition to finding Petitioner guilty of attempted second degree murder, the jury found that he discharged a firearm causing great bodily harm during the commission of the offense. Attempted second degree murder, ordinarily a second degree felony, was reclassified as a first degree felony in Petitioner's case, pursuant to section 775.087(1)(b), Florida Statutes. On this first degree felony, he was sentenced to forty years in DOC custody, with twenty-five years as a mandatory minimum pursuant to 775.087(2)(a), Florida Statutes; that section is commonly referred to as the "10-20-Life statute."

Petitioner filed an appeal in the First District Court of Appeal to review, *inter alia*, the trial court's denial[2] of a motion filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). In relevant part, the motion argued that a forty-year prison sentence for a first degree felony that included a twenty-five-year mandatory minimum term pursuant to 775.087(2)(a), Florida Statutes, was an illegal sentence because the total sentence exceeded the statutory maximum sentence for a first degree felony.

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[1] He was also convicted of manslaughter and possession of a firearm by a convicted felon at the same jury trial.

[2] The trial court did not address the merits of Petitioner's motion in a timely manner; it was deemed denied by rule. See Fla. R. Crim. P. 3.800(b)(1)(B).

The First District Court of Appeal affirmed this issue "based upon Kelly v. State, 137 So. 3d 2, 6-7 (Fla. 1st DCA 2014)," wherein the First District Court of Appeal held that "circuit courts in the First District may, pursuant to [the 10-20-Life statute], impose a sentence in addition to its selected mandatory minimum sentence without regard to whether additional statutory authority for such an additional sentence exists." Hatten v. State, 152 So. 3d 849, 850 (Fla. 1st DCA 2014).

In disposing of Petitioner's case, the First District Court of Appeal certified conflict with Wiley v. State, 125 So. 3d 235 (Fla. 4th DCA 2013), "to the extent that case held that a trial court may not impose a sentence in excess of the mandatory minimum term imposed under the 10-20-Life statute unless such a sentence is authorized by some other statute." Hatten, at 850. Additionally, the First District Court of Appeal certified conflict with several decisions of the Second, Fourth, and Fifth Districts that "held that the trial court may not impose a sentence in excess of 30 years for a first-degree felony under the 10-20-Life statute when the court imposes a mandatory minimum of less than 30 years." Id. The cases, which are listed in footnotes 2, 3, and 4 of the opinion in Petitioner's case, are as follows: Levine v. State, 162 So. 3d 106 (Fla. 4th DCA 2014); Antoine v. State, 138 So. 3d 1064 (Fla. 4th DCA 2014); Martinez v. State, 114 So. 3d 1119 (Fla.

2d DCA 2013); Sheppard v. State, 113 So. 3d 148 (Fla. 2d DCA 2013); Prater v. State, 113 So. 3d 147 (Fla. 2d DCA 2013); Walden v. State, 121 So. 3d 660 (Fla. 4th DCA 2013); Roberts v. State, 158 So. 3d 618 (Fla. 5th DCA 2013); Wooden v. State, 42 So. 3d 837 (Fla. 5th DCA 2010); McLeod v. State, 52 So. 3d 784 (Fla. 5th DCA 2010).

The First District Court of Appeal's mandate issued in Petitioner's case on January 2, 2015; his notice to invoke the discretionary jurisdiction of this Court was timely filed on January 5, 2015. On January 8, 2015, this Court stayed the proceedings in Petitioner's case, pending disposition of Kelly v. State, Case No. SC14-916, which was then pending in this Court. This court disposed of Kelly on July 2, 2015, by discharging jurisdiction in that case. Thus, the stay in Petitioner's case before this Court has been lifted; because proceedings in his case in this Court may now continue, Petitioner files this jurisdictional brief.

SUMMARY OF THE ARGUMENT

In this case, the First District Court of Appeal held that Petitioner's total sentence of forty years, with a mandatory minimum of twenty-five years (under 10-20-Life), was a legal sentence for a first degree felony. The Second, Fourth, and Fifth District Courts of Appeal have reached the opposite conclusion, holding that when the trial court chooses to impose a

mandatory minimum sentence of twenty-five years for a first degree felony, the total sentence imposed for that same first degree felony may not exceed the statutory maximum sentence of thirty years. In Petitioner's case, the First District Court of Appeal certified conflict with the Second, Fourth, and Fifth Districts on this question.

JURISDICTIONAL STATEMENT

The Florida Supreme Court has discretionary jurisdiction to review a decision of a district court of appeal "that is certified by it to be in direct conflict with a decision of another district court of appeal." Art. V, § 3(b)(4), Fla. Const.

ARGUMENT

I. As certified by the First District Court of Appeal, the decision of the First District Court of Appeal in this case conflicts with the decisions of the Second District Court of Appeal in Martinez v. State, 114 So. 3d 1119 (Fla. 2d DCA 2013), Sheppard v. State, 113 So. 3d 148 (Fla. 2d DCA 2013), and Prater v. State, 113 So. 3d 147 (Fla. 2d DCA 2013); conflicts with the decisions of the Fourth District Court of Appeal in Levine v. State, 162 So. 3d 106 (Fla. 4th DCA 2014), Antoine v. State, 138 So. 3d 1064 (Fla. 4th DCA 2014), and Walden v. State, 121 So. 3d 660 (Fla. 4th DCA 2013); and conflicts with the decisions of the Fifth District Court of Appeal in Roberts v. State, 158 So. 3d 618 (Fla. 5th DCA 2013), Wooden v. State, 42 So. 3d 837 (Fla. 5th DCA 2010), and McLeod v. State, 52 So. 3d 784 (Fla. 5th DCA 2010).

The First District Court of Appeal has interpreted Florida Statutes as allowing a sentence in excess of thirty years for a first-degree felony under the 10-20-Life statute when the court imposes a mandatory minimum term

of less than thirty years. Hatten, at 849-50. The Second, Fourth, and Fifth District Courts of Appeal have reached precisely the opposite conclusion in the cases with which the First District Court of Appeal has certified conflict. Hatten, at 850, n.2, n.3, n.4. Petitioner respectfully submits that this Court should grant discretionary review and resolve the conflict by quashing the decision of the First District Court of Appeal. The Second, Fourth, and Fifth District Courts of Appeal have correctly resolved this question, and Petitioner respectfully submits that under the analysis in the Second, Fourth, and Fifth District Courts of Appeal, his sentence would be illegal because it exceeds the statutory maximum for the offense.

II. As certified by the First District Court of Appeal, the decision of the First District Court of Appeal in this case conflicts with the decision of the Fourth District Court of Appeal in Wiley v. State, 125 So. 3d 235 (Fla. 4th DCA 2013).

In disposing of Petitioner's case, the First District Court of Appeal relied on its holding in Kelly v. State, 137 So. 3d 2, 6-7 (Fla. 1st DCA 2014), that "circuit courts in the First District may, pursuant to [the 10-20-Life statute], impose a sentence in addition to its selected mandatory minimum sentence without regard to whether additional statutory authority for such an additional sentence exists." Hatten, at 850. The First District Court of Appeal noted that it was certifying conflict with Wiley v. State, 125 So. 3d 235 (Fla. 4th DCA 2013), "to the extent that case held that a trial

court may not impose a sentence in excess of the mandatory minimum term imposed under the 10-20-Life statute unless such a sentence is authorized by some other statute." Hatten, at 850. Petitioner respectfully submits that this Court should grant discretionary review and resolve the conflict by quashing the decision of the First District Court of Appeal and by approving of Wiley.

CONCLUSION

This Court has discretionary jurisdiction to review the decision below on the bases certified by the First District Court of Appeal, and the Court should exercise that jurisdiction to consider the merits of Petitioner's argument.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been electronically served on Trisha Meggs Pate, Assistant Attorney General, counsel for the State of Florida, crimapptlh@myfloridalegal.com, Office of the Attorney General, The Capitol, PL-01, Tallahassee, Florida 32399-1050; and has been furnished by U.S. Mail to Appellant, Cortez Hatten, DC# X53106, Holmes Correctional Institution, 3142 Thomas Drive, Bonifay, Florida 32425-0190, on this date, July 6, 2015.

CERTIFICATE OF FONT SIZE

I HEREBY CERTIFY that, pursuant to Florida Rule of Appellate Procedure 9.210, this brief was typed in Times New Roman 14 Point.

Respectfully submitted,

Office of Jeffrey E. Lewis
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APPENDIX

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CORTEZ HATTEN,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

CASE NO. 1D12-5504

_____/

Opinion filed December 16, 2014.

An appeal from the Circuit Court for Gadsden County.
Jonathan E. Sjostrom, Judge.

Melissa Joy Ford, Assistant Conflict Counsel, Office of Criminal Conflict and Civil Regional Counsel, Region One, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Angela R. Hensel, Assistant Attorney General, Tallahassee, for Appellee.

ON MOTION FOR REHEARING AND REHEARING EN BANC

PER CURIAM.

We grant Appellant's motion for rehearing, withdraw our prior opinion, and substitute this opinion in its place in order to clarify our disposition of Appellant's fourth issue. We deny Appellant's motion for rehearing en banc.

In this direct appeal, Appellant seeks review of his judgment and sentence for manslaughter (count I), attempted second degree murder (count III), and possession of a firearm by a convicted felon (count V). He raises five issues: (1) the trial court erred in denying his motion for judgment of acquittal on count III; (2) the jury instructions for justifiable use of deadly force were fundamentally erroneous; (3) the statute upon which count V was based is unconstitutionally vague; (4) his 40-year sentence with a 25-year mandatory minimum term for count III is illegal because the 40-year term exceeds the 30-year statutory maximum for a first-degree felony;[1] and (5) the trial court erred in imposing several costs. The latter two issues were preserved by a motion filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).

We affirm the first and second issues without comment. We affirm the third issue based upon Weeks v. State, 146 So. 3d 81 (Fla. 1st DCA 2014), and Kraay v. State, 39 Fla. L. Weekly D1950 (Fla. 1st DCA Sept. 10, 2014).

We affirm the fourth issue based upon Kelly v. State, 137 So. 3d 2, 6-7 (Fla. 1st DCA 2014), wherein this court held that "circuit courts in the First District may, pursuant to [the 10-20-Life statute], impose a sentence in addition to its selected mandatory minimum sentence without regard to whether additional

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[1] The offense charged in Count III, attempted second-degree murder, is a second-degree felony, but it was enhanced to a first-degree felony in this case because Appellant used a firearm during the commission of the offense. See §§ 775.087(1)(b), 777.04(4)(c), 782.04(2), Fla. Stat.

statutory authority for such an additional sentence exists." And, as we did in Kelly, we certify conflict with Wiley v. State, 125 So. 3d 235 (Fla. 4th DCA 2013), to the extent that case held that a trial court may not impose a sentence in excess of the mandatory minimum term imposed under the 10-20-Life statute unless such a sentence is authorized by some other statute. We also certify conflict with decisions from the Second,[2] Fourth,[3] and Fifth[4] Districts which held that the trial court may not impose a sentence in excess of 30 years for a first-degree felony under the 10-20-Life statute when the court imposes a mandatory minimum term of less than 30 years.

With respect to the fifth issue, we remand for correction of the following minor sentencing errors: imposition of a $230 cost pursuant to section 938.05(1)(a), Florida Statutes, when the statutory maximum is $225; imposition of

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[2] Martinez v. State, 114 So. 3d 1119, 1120 (Fla. 2d DCA 2013); Sheppard v. State, 113 So. 3d 148, 149 (Fla. 2d DCA 2013); Prater v. State, 113 So. 3d 147, 147-48 (Fla. 2d DCA 2013).

[3] Levine v. State, 2014 WL 5149098 (Fla. 4th DCA Oct. 15, 2014) (reversing 50-year sentence for attempted second-degree murder where trial court only imposed a 25-year minimum mandatory term under the 10-20-Life statute and certifying conflict with Kelly); see also Antoine v. State, 138 So. 3d 1064, 1078 (Fla. 4th DCA 2014); Walden v. State, 121 So. 3d 660, 661 (Fla. 4th DCA 2013).

[4] Wooden v. State, 42 So. 3d 837, 837 (Fla. 5th DCA 2010) ("[O]nce the trial court imposed the minimum mandatory sentence of twenty-five years, it could not exceed the thirty year maximum penalty for a first degree felony under section 775.082(3)(b). The twenty-five year to life minimum mandatory range under section 775.087(2)(a)(3) does not create a new statutory maximum penalty of life imprisonment.") (citation omitted); see also Roberts v. State, 2013 WL 6687751 (Fla. 5th DCA Dec. 20, 2013); McLeod v. State, 52 So.3d 784, 786 (Fla. 5th DCA 2010).

a $415 cost pursuant to section 775.083(2), Florida Statutes, when the statutory maximum is $50; and imposition of the $100 cost of prosecution without citing the statutory basis for the cost. We recognize that, during the pendency of this appeal, the trial court entered a corrected judgment to correct these sentencing errors; however, that judgment is a legal nullity because it was filed more than 60 days after Appellant filed his rule 3.800(b)(2) motion. See Fla. R. Crim. P. 3.800(b)(1)(B); Ogden v. State, 117 So. 3d 479 (Fla. 1st DCA 2013). We see no reason that the trial court could not simply reenter the corrected judgment on remand. Appellant need not be present.

AFFIRMED and REMANDED with directions; CONFLICT CERTIFIED.

VAN NORTWICK, WETHERELL, and MAKAR, JJ., CONCUR.