

IN THE SUPREME COURT OF FLORIDA

CORTEZ HATTEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC15-22

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

JURISDICTIONAL BRIEF OF RESPONDENT

PAMELA JO BONDI  
ATTORNEY GENERAL

TRISHA MEGGS PATE  
TALLAHASSEE BUREAU CHIEF,  
CRIMINAL APPEALS  
FLORIDA BAR NO. 0045489

ANGELA R. HENSEL  
ASSISTANT ATTORNEY GENERAL  
FLORIDA BAR NO. 0093420

OFFICE OF THE ATTORNEY GENERAL  
PL-01, THE CAPITOL  
TALLAHASSEE, FL 32399-1050  
(850) 414-3300  
(850) 922-6674 (FAX)  
crimapptlh@myfloridalegal.com

COUNSEL FOR RESPONDENT

RECEIVED, 07/27/2015 02:43:34 PM, Clerk, Supreme Court

TABLE OF CONTENTS

	PAGE#
TABLE OF CONTENTS .....	ii
TABLE OF CITATIONS .....	iii
PRELIMINARY STATEMENT .....	1
STATEMENT OF THE CASE AND FACTS .....	2
SUMMARY OF ARGUMENT .....	4
ARGUMENT .....	5
ISSUE I: WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION IN REVIEWING THE CERTIFIED CONFLICT IN THIS CASE WITH MARTINEZ V. STATE, 114 SO. 3D 1119 (FLA. 2D DCA 2013); SHEPPARD V. STATE, 113 SO. 3D 148 (FLA. 2 DCA 2013); PRATER V. STATE, 113 SO. 3D 147 (FLA. 2D DCA 2013); LEVINE V. STATE, 162 SO. 3D 106 (FLA. 4TH DCA 2014); ANTOINE V. STATE, 138 SO. 3D 1064 (FLA. 4TH DCA 2014; 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); AND MCLEOD V. STATE, 52 SO. 3D 784 (FLA. 5TH DCA 201). (RESTATED) .....	5
ISSUE II: WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION IN REVIEWING THE CERTIFIED CONFLICT BETWEEN THE INSTANT CASE AND WILEY V. STATE, 125 SO. 3D 235 (FLA. 4TH DCA 2013). (RESTATED)....	7
CONCLUSION .....	9
CERTIFICATE OF SERVICE .....	10
CERTIFICATE OF COMPLIANCE .....	10
IN THE SUPREME COURT OF FLORIDA .....	11

TABLE OF CITATIONS

CASES	PAGE#
<u>Antoine v. State,</u>	
138 So. 3d 1064 (Fla. 4 <sup>th</sup> DCA 2014) .....	4, 5, 6
<u>Hatten v. State,</u>	
152 So. 3d 849 (Fla. 1 <sup>st</sup> DCA 2014) .....	2, 6, 8, 11
<u>Kelly v. State,</u>	
--- So. 3d ---, 2015 WL 3999147 .....	3, 9
<u>Kelly v. State,</u>	
137 So. 3d 2 (Fla. 1 <sup>st</sup> DCA 2014) .....	passim
<u>Levine v. State,</u>	
162 So. 3d 106 (Fla. 4 <sup>th</sup> DCA 2014) .....	4, 5, 6
<u>Martinez v. State,</u>	
114 So. 3d 1119 (Fla. 2d DCA 2013) .....	4, 5, 6
<u>McLeod v. State,</u>	
52 So. 3d 784 (Fla. 5 <sup>th</sup> DCA 2010) .....	4, 5, 7
<u>Parker v. State,</u>	
113 So. 3d 147 (Fla. 2d DCA 2013) .....	4, 5, 6
<u>Roberts v. State,</u>	
158 So. 3d 618 (Fla. 5 <sup>th</sup> DCA 2013) .....	4, 5, 7
<u>Sheppard v. State,</u>	
113 So. 3d 148 (Fla. 2d DCA 2013) .....	4, 5, 6
<u>Walden v. State,</u>	
121 So. 3d 660 (Fla. 4 <sup>th</sup> DCA 2013) .....	4, 5, 6

Wiley v. State,

125 So. 3d 235 (Fla. 4<sup>th</sup> DCA 2013) ..... passim

Wooden v. State,

42 So. 3d 837 (Fla. 2010) ..... 4, 5, 6

CONSTITUTIONAL PROVISIONS

Article V, § 3(b) (4), Fla. Const ..... 5

STATUTES

§ 775.082, Florida Statutes ..... 6

§ 775.087, Florida Statutes ..... 8

§ 775.087(2) (a)3, Florida Statutes ..... 6, 7

§ 775.087(2) (b), Florida Statutes ..... 7, 8

§ 775.082(3) (b), Florida Statutes ..... 6

RULES

Fla. R. App. P. 9.030(a) (2) (A) (vi) ..... 5

PRELIMINARY STATEMENT

Respondent, the State of Florida, the Appellee in the District Court of Appeal (DCA) and the prosecuting authority in the trial court, will be referenced in this brief as Respondent, the prosecution, or the State. Petitioner, CORTEZ HATTEN, the Appellant in the DCA and the defendant in the trial court, will be referenced in this brief as Petitioner or proper name.

"PJB" will designate Petitioner's Jurisdictional Brief. That symbol is followed by the appropriate page number.

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

STATEMENT OF THE CASE AND FACTS

Petitioner was convicted of manslaughter, attempted second degree murder, and possession of a firearm by a convicted felon. Hatten v. State, 152 So. 3d 849, 850 (Fla. 1<sup>st</sup> DCA 2014). Amongst other issues, Petitioner claimed "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." Id. at 850. The First District held, as it pertained to the fourth issue:

We affirm the fourth issue based upon Kelly v. State, 137 So. 3d 2, 6-7 (Fla. 1<sup>st</sup> 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 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. 4<sup>th</sup> 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,<sup>1</sup> Fourth,<sup>2</sup> and Fifth<sup>3</sup> 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

---

<sup>1</sup> Martinez v. State, 114 So. 3d 119, 1120 (Fla. 2d DCA 2013); Sheppard v. State, 113 So. 3d 148, 149 (Fla. 2d DCA 2013); Parker v. State, 113 So. 3d 147, 147-48 (Fla. 2d DCA 2013).

<sup>2</sup> Levine v. State, 162 So. 3d 106, 107 (Fla. 4<sup>th</sup> DCA 2014); Antoine v. State, 138 So. 3d 1064, 1078 (Fla. 4<sup>th</sup> DCA 2014); Walden v. State, 121 So. 3d 660, 661 (Fla. 4<sup>th</sup> DCA 2013).

<sup>3</sup> Wooden v. State, 42 So. 3d 837, 837 (Fla. 2010); Roberts v. State, 158 So. 3d 618, 618 (Fla. 5<sup>th</sup> DCA 2013); McLeod v. State, 52 So. 3d 784, 786 (Fla. 5<sup>th</sup> DCA 2010).

when the court imposes a mandatory minimum term of less than 30 years.

Id. Petitioner filed his Notice to Invoke Discretionary Jurisdiction on January 5, 2015, but this Court stayed the proceedings, pending the disposition of Kelly v. State, --- So. 3d ---, 2015 WL 3999147; where this Court discharged jurisdiction of Kelly, dismissing review of the proceedings on July 2, 2015. Petitioner filed his Initial Jurisdictional Brief on July 6, 2015.

## SUMMARY OF ARGUMENT

### ISSUE I.

This Court should exercise its discretionary jurisdiction by reviewing the certified conflict between the First District in the instant case and Martinez v. State, 114 So. 3d 1119, 1120 (Fla. 2d DCA 2013); Sheppard v. State, 113 So. 3d 148, 149 (Fla. 2d DCA 2013); Parker v. State, 113 So. 3d 147, 147-48 (Fla. 2d DCA 2013); Levine v. State, 162 So. 3d 106, 107 (Fla. 4<sup>th</sup> DCA 2014); Antoine v. State, 138 So. 3d 1064, 1078 (Fla. 4<sup>th</sup> DCA 2014); Walden v. State, 121 So. 3d 660, 661 (Fla. 4<sup>th</sup> DCA 2013); Wooden v. State, 42 So. 3d 837, 837 (Fla. 2010); Roberts v. State, 158 So. 3d 618, 618 (Fla. 5<sup>th</sup> DCA 2013); McLeod v. State, 52 So. 3d 784, 786 (Fla. 5<sup>th</sup> DCA 2010), concerning whether a trial court can impose a sentence that exceeds the statutory maximum when imposing a minimum mandatory sentence pursuant to Florida's 10/20/Life statute.

### ISSUE II.

This Court should exercise its discretionary jurisdiction by reviewing the conflict between the instant and Wiley v. State, 125 So. 3d 235 (Fla. 4<sup>th</sup> DCA 2013), in order to determine whether a trial court may exceed the maximum statutory sentence after imposing a minimum mandatory less than the maximum pursuant to Florida's 10/20/Life statute without first having the "authority" of a separate statute.



## ARGUMENT

ISSUE I: WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION IN REVIEWING THE CERTIFIED CONFLICT IN THIS CASE WITH 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); LEVINE V. STATE, 162 SO. 3D 106 (FLA. 4TH DCA 2014); ANTOINE V. STATE, 138 SO. 3D 1064 (FLA. 4TH DCA 2014); 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); AND MCLEOD V. STATE, 52 SO. 3D 784 (FLA. 5TH DCA 201). (RESTATED)

### 1. Jurisdictional Criteria

Petitioner contends that this Court should exercise its discretionary jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(vi), which parallels Article V, § 3(b)(4), Fla. Const. The constitution provides:

The supreme court . . . [m]ay review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

### 2. The instant case is the proper case for this Court to exercise its discretionary jurisdiction.

In the instant case, Petitioner's second degree felony conviction was reclassified to a first degree felony pursuant to §§ 775.087(1)(b) and 775.087(3)(b), Florida Statutes. Appellant received a 40 year sentence in the Department of Corrections with a 25 year minimum mandatory sentence pursuant to Florida's 10-20-Life statutory scheme. (R. 85). Therefore, it was Petitioner's assertion that the trial court was capped at imposing a 30 year sentence pursuant to the general sentencing statute, which imposes a maximum sentence of 30 years for a first-degree felony.

The First District, relying upon Kelly v. State, 137 So. 3d 2 (Fla. 1st DCA 2014), certified conflict with multiple cases from other districts holding to the contrary. All of the cases hold "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 minimum mandatory term of less than 30 years" because sentencing pursuant to § 775.087(2)(a)3, Florida Statutes, does not create a new statutory maximum. Hatten, 152 So. 3d at 850 (certifying conflict with Martinez v. State, 114 So. 3d at 1120 (reversing and remanding for resentencing because the life sentence with a 25 year minimum mandatory for a reclassified first-degree felony exceeds 30 years under § 775.082(3)); Sheppard v. State, 113 So. 3d at 149 (reversing and remanding for resentencing because the 35 year sentence with a minimum mandatory of 25 years exceeds the statutory maximum provided for in § 775.082, Florida Statutes); Prater v. State, 113 So. 3d at 147-48 (reversing and remanding for resentencing because the 40 year sentence with a 25 year minimum mandatory exceeds the maximum permitted under § 775.082(3)(b), Florida Statutes); Levine v. State, 162 So. 3d at 107 (reversing and remanding the 50 year sentence with a minimum mandatory of 25 years because it exceeds the statutory maximum, certifying conflict with Kelly); Antoine v. State, 138 So. 3d at 1078 (finding the trial court's imposition of a 40 years sentence with a 25 year minimum mandatory was illegal because it exceeded the statutory maximum of 30 years); Walden v. State, 121 So. 3d at 661 (reversing and remanding the imposition of a 40 years sentence with a 25 year minimum mandatory because it exceeded the 30 year statutory maximum); Wooden v. State, 42 So. 3d 837, 837 (Fla. 5<sup>th</sup> DCA

2010) (reversing and remanding the 50 year sentence with a minimum mandatory of 25 years because it exceeded the statutory maximum and § 775.087(2) (a) (3), Florida Statutes, does not create a new statutory maximum); Roberts v. State, 158 So. 3d at 618 (reversed and remanded for resentencing where the 10 year consecutive probation term to the 30 year prison sentence with a 25 year minimum mandatory exceeded the statutory maximum); and McLeod v. State, 52 So. 3d at 786 (reversing and remanding life sentence with 25 year minimum mandatory because it exceeded the 30 statutory maximum)).

The First District's holding is premised upon an opposite reading of the plain language of § 775.087(2) (b), Florida Statutes, as explained in Kelly, which also certified conflict with Wiley. This issue will be discussed in Issue II, infra. For the reasons to be discussed, this Court should exercise its jurisdiction to resolve the conflict with the cases.

ISSUE II: WHETHER THIS COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION IN REVIEWING THE CERTIFIED CONFLICT BETWEEN THE INSTANT CASE AND WILEY V. STATE, 125 SO. 3D 235 (FLA. 4TH DCA 2013). (RESTATED)

1. Jurisdictional Criteria

The State adopts the Jurisdictional Criteria set out in Issue I. See supra, pgs. 5.

2. The instant case is the proper case for this Court to exercise its discretionary jurisdiction.

In the instant case, as in Kelly, the First District certified conflict with Wiley v. State, 125 So. 3d 335 (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, 152 So. 3d at 850.

In Kelly, the First District was tasked with deciding whether the trial court committed reversible error by imposing a mandatory minimum sentence that exceeded the trial court's original mandatory minimum sentence during resentencing. 137 So. 3d at 2. The defendant was convicted of three first degree felonies and received a 40 year sentence, with a 25 year minimum mandatory sentence pursuant to the 10-20-Life statute. Id.

In deciding this issue, the Court disagreed with the Fourth District's interpretation of § 775.087, Florida Statutes, in Wiley, by explaining:

Thus, in Wiley, the Fourth District interpreted section 775.087(2)(b) as providing that, once a trial court imposes a mandatory minimum sentence, it can impose a sentence above that minimum only if otherwise provided by law -- that is, by an authorized sentence enhancer such as the habitual felony offender provision applicable in that case. We disagree.

First, if, pursuant to Mendenhall, a trial court may impose a mandatory minimum that exceeds the maximum sentence, that would otherwise apply but for the 10-20-Life statute, it seems logical that the court could also impose a total sentence that exceeds that otherwise applicable maximum sentence. This interpretation is supported by the plain language of section 775.087(2)(b), Florida Statutes: "Subparagraph (a)1., subparagraph (a)2., or subparagraph (a)3. does not prevent a court from imposing a longer sentence of incarceration as authorized by law in *addition to the minimum mandatory sentence*, or from imposing a sentence of death pursuant to other applicable law.

Unlike the court in Wiley, as we read the statute, the phrase "as authorized by law," as used in this provision does not refer to some external authorization for a sentence in excess of the trial court's selected mandatory minimum (such as the habitual offender statute in Wiley); rather it refers to the interpretation, we point to the phrase "or from imposing a sentence of death pursuant to *other applicable law*." § 775.087(2)(b) (emphasis added). The emphasized language clearly refers to external authority for

imposing the death sentence, in contrast to the "as authorized by law" language that appears earlier in the statute. Had the Legislature intended for this phrase to refer to a sentence-enhancing statute, we are of the opinion that it would instead read "as *otherwise* authorized by law."

*Id.* at 6. (emphasis supplied).

Therefore, the State would assert that both issues are dispositive upon the interpretation of the plain language of the phrase "as authorized by law." The State would note that the First District also certified conflict with Wiley in Kelly, for which this Court exercised its discretionary jurisdiction, and then disposed of Kelly v. State, --- So. 3d ---, 2015 WL 3999147, by discharging jurisdiction and dismissing review of the proceedings on July 2, 2015.

#### CONCLUSION

Based on the foregoing discussions, the State respectfully requests this Honorable Court exercise its jurisdiction in this cause.

CERTIFICATE OF SERVICE

I certify that a copy hereof has been furnished to the following by ELECTRONIC MAIL on July 27, 2015: MELISSA J. FORD, Assistant Conflict Counsel, at Mina.Ford@rc1.myflorida.com.

CERTIFICATE OF COMPLIANCE

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

Respectfully submitted and certified,  
PAMELA JO BONDI  
ATTORNEY GENERAL

/s/ Trisha Meggs Pate  
TRISHA MEGGS PATE  
Tallahassee Bureau Chief,  
Criminal Appeals  
Florida Bar No. 0045489

/s/ Angela R. Hensel  
By: ANGELA R. HENSEL  
Florida Bar No. 0093420  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, FL 32399-1050  
(850) 414-3300 (VOICE)  
(850) 922-6674 (FAX)  
AGO#: L15-1-00218

Attorney for the State of Florida

IN THE SUPREME COURT OF FLORIDA

CORTEZ HATTEN,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

Case No. SC15-22

INDEX TO APPENDIX

A. *Hatten v. State*, 152 So. 3d 849 (Fla. 1st DCA 2014).



152 So.3d 849, 39 Fla. L. Weekly D2599  
(Cite as: 152 So.3d 849)

## H

District Court of Appeal of Florida,  
First District.  
Cortez HATTEN, Appellant,  
v.  
STATE of Florida, Appellee.

No. 1D12-5504.  
Dec. 16, 2014.  
Rehearing Denied Dec. 16, 2014.

**Background:** Defendant was convicted in the Circuit Court, Gadsden County, Jonathan E. Sjostrom, J., of offenses including manslaughter, attempted second-degree murder, and possession of a firearm by a convicted felon, and received sentences including a 40-year sentence with a 25-year mandatory minimum term for the attempted second-degree murder. Defendant appealed.

**Holding:** On motion for rehearing and rehearing en banc, the District Court of Appeal held that trial court could impose 40-year sentence with a 25-year mandatory minimum term for attempted second-degree murder.

Affirmed and remanded with directions.

West Headnotes

### Homicide 203 ⇐1567

#### 203 Homicide

203XIV Sentence and Punishment  
203k1565 Extent of Punishment in General  
203k1567 k. Murder. Most Cited Cases

### Sentencing and Punishment 350H ⇐80

#### 350H Sentencing and Punishment

350HI Punishment in General  
350HI(D) Factors Related to Offense  
350Hk76 Weapons  
350Hk80 k. Use. Most Cited Cases  
Trial court could impose 40-year sentence with

a 25-year mandatory minimum term for attempted second-degree murder, which was enhanced from a second-degree felony to a first-degree felony due to defendant's use of a firearm during commission of the offense, despite contention that the 40-year term exceeded the 30-year statutory maximum for a first-degree felony; trial court could impose a sentence in addition to the selected mandatory minimum sentence without regard to whether additional statutory authority existed for the additional sentence. West's F.S.A. §§ 775.087(1)(b), 777.04(4)(c), 782.04(2).

\*849 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 RE- HEARING 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 \*850 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; <sup>FN1</sup> and (5) the trial court erred in impos-



152 So.3d 849, 39 Fla. L. Weekly D2599  
(Cite as: 152 So.3d 849)

ing several costs. The latter two issues were preserved by a motion filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2).

FN1. 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.

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*, 148 So.3d 789 (Fla. 1st DCA 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 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,<sup>FN2</sup> Fourth,<sup>FN3</sup> and Fifth<sup>FN4</sup> 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.

FN2. *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).

FN3. *Levine v. State*, — So.3d —, 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).

FN4. *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).

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 a \$415 cost pursuant \*851 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

152 So.3d 849, 39 Fla. L. Weekly D2599  
(Cite as: 152 So.3d 849)

present.

AFFIRMED and REMANDED with directions;  
CONFLICT CERTIFIED.

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

Fla.App. 1 Dist.,2014.  
Hatten v. State  
152 So.3d 849, 39 Fla. L. Weekly D2599

END OF DOCUMENT